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PARLIAMENTARY DEBATES

(Part II—Proceedings other than Questions and Answers)

OFFICIAL REPORT

HOUSE OF THE PEOPLE

Tuesday, 4th May, 1954

The House met at a Quarter Past Eight of the Clock

[MR. SPEAKER *in the Chair*]

QUESTIONS AND ANSWERS

(See Part I)

9-16 A.M.

PAPERS LAID ON THE TABLE

DELIMITATION COMMISSION FINAL ORDER No. 10.

The Minister of Parliamentary Affairs (Shri Satya Narayan Sinha): I beg to lay on the Table a copy of the Delimitation Commission, India, Final Order No. 10, dated the 5th April, 1954, under sub-section (2) of Section 9 of the Delimitation Commission Act, 1952. [*Placed in Library. See* No. S-139/54]

CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL—*Contd.*

Mr. Speaker: The House will now proceed with the further consideration of the motion moved by Dr. Katju yesterday in connection with the reference to the Joint Committee of the Code of Criminal Procedure (Amendment) Bill.

The Minister of Home Affairs and States (Dr. Katju): I dealt yesterday briefly with the topic of perjury in our

law courts and the necessity of checking it as best we can through our legislative process and, of course, through the pressure of public opinion.

So far as the legislative process is concerned, experience shows that centralised administration of justice has had a very deleterious effect upon this matter. If witnesses are examined on the spot in the presence of their co-residents, there is a noticeable tendency not to make false statements. There is the pressure of public opinion to act as a check. In the olden days in our old agricultural economy, there being no centralised courts anywhere, all disputes were settled by the panchayat or by the local court in the villages or in towns. With the advent of the British rule, we had our centralised courts and the witnesses had to go hundreds of miles or dozens of miles to give evidence, and they just did what they liked. At present, the law permits a Magistrate, if he is so inclined, to hold court anywhere within his jurisdiction. I trust that magistrates may find it possible to hold, wherever practicable, mobile courts for the trial of offences. That is permissible under the law and that needs only executive direction to that effect either by the High Courts or by the State Governments.

The sessions judge at present, under the law, can only hold his court at the headquarters of a sessions division, and the sessions division may be a very large one; sometimes it includes two districts. Here in this Bill we are permitting a sessions judge, after of course giving opportunities to the parties concerned to put before him

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their point of view to hold his court at any place other than the headquarters of his sessions division. If it is found possible, if convenient arrangements for the accommodation of the accused in the dock can be made and if there are sufficient security arrangements available, he may hold his court in subdivisional headquarters, in any important town in his sessions division or elsewhere, so that justice may be brought as near the home of the accused as possible and the witnesses who appear in a court may have the consciousness of their deposing in the presence of their co-residents.

The other check that we have provided in this Bill is the opportunity to courts to mete out summary punishment. This is a matter of some importance, and I should like to take a minute or two of the House to explain what we have in mind.

When a witness gives evidence, he may be dealing with matters which are in issue, and when he is cross-examined, he is cross-examined on those points and he is cross-examined on what is called credibility and on his general veracity. Now, in so far as matters in issue are concerned, the court can come to a decision after it has heard all the relevant evidence on that point and after weighing the *pros and cons,* and the court must suspend its judgment before all the evidence has been heard. But, on the other question, *viz.;* as to whether a witness is worthy of credit or not, whether he is a man who is telling the truth on those points or not, it is open to the learned judge to come to a decision all at once, and if a judge is satisfied that the witness has been making false statements, then power is given to the judge or the magistrate to take action at once, to call upon him to show cause why he should not be punished for perjury, and dispose of the matter then and there. The punishment which is mentioned in the section is not a very heavy punishment. I think it is a month or two of imprisonment or a small fine, but I do think that it would act as a deterrent and prevent lying witnesses readily to go into a court and to give false evidence just at the behest of parties.

Pandit K. C. Sharma (Meerut Distt.—South): May I ask for one clarification?

Dr. Katju: Do please.

Pandit K. C. Sharma: What would be the result if the case is reversed in appeal and the man who is convicted for perjury by the sessions judges has been held as a truthful witness by the High Court?

Mr. Katju: My hon. friend has not done me the honour of following me.

Pandit K. C. Sharma: I am following you.

Mr. Speaker: He was engaged in talks with his neighbour.

Dr. Katju: I distinguish between two types of evidence: one, what I may call evidence on the point at issue, and the other, evidence bearing on the credibility of a witness. I will give one instance to point out what I have in mind. A murder takes place. How it took place and all that is a relevant issue. Supposing a witness goes there and says: I witnessed it", and the defence says: "You are lying. This murder took place on the 5th May. Are you quite sure you were in your village on the 5th May? Were you not in Calcutta on that very day, at that very time?" He says "No". Then the defence says: "Look at this letter. Is it in your handwriting?" Witness looks at the letter, and says "It is in my handwriting". He is asked: "Did you not write it from the Grand Eastern Hotel in Calcutta?" He says: "Yes, I did it." The defence asks: "Did you not write it on the 5th?" The witness looks at it. Then defence asks: "Are you prepared to say even now that you were in this village on the 5th May?" And of course, the witness is puzzled. That is a clear case of perjury not bearing on the points at issue. The sessions judge will have nothing to do with it. The man has

got to prove whether he was at Calcutta or in the village where the occurrence took place. I am only giving a very obvious illustration. It is on these points that you can catch hold of the witnesses and give them an opportunity to show whether they were telling the truth or not. These are the cases I have in mind. I think we have tried to make it quite clear in our draft that it is only on these subsidiary points that immediate action for perjury can be taken. The Select Committee may go into it, and if the language is defective, put it right. I have no intention whatsoever of proceedings for perjury being taken on matters in issue, while the case is proceeding.

There is another point of great importance to which I should like to draw attention, and that is the right of an accused person to give evidence on his own behalf. The House knows that in the olden days, there was an assumption that the people concerned, namely the accused, his wife, and his relations closely related to him, may not be depended upon to tell the truth, and therefore they were not competent witnesses. A wife was not a competent witness, a relation was not a competent witness, but it was only in later days that this disability was removed by express legislation. In so far as the accused himself was concerned, this disability was removed in England, I believe, in 1908 or somewhere about that time.

Shri Sadhan Gupta (Calcutta—South-East): In 1898.

Dr. Katju: Yes, in 1898, it was removed there. In India, we have section 342 of the Act, which renders it obligatory on a sessions judge or a magistrate to put it to the accused and call for his explanation. This statement by the accused is not made on oath, but every bit of evidence that he gives is made use of against him. Speaking from experience, I can tell you how the judicial mind works. Whatever the accused says in his statement,—which is not on oath,—against himself, is made use of, and whatever he says in his own favour is generally discarded. That is rather very unfair to the accused. I submit that if he were made competent to give evidence, then he can go into the witness-box, and submit himself to cross-examination, saying, if I am wrong, here I am, you can cross-examine me.

Under our Constitution, there is a provision which says that no one can be compelled to give evidence against himself. But the Constitution does not forbid the accused from giving evidence, if he wants to give evidence, and he volunteers to do so. But it is our Criminal Procedure Code that forbids it. Therefore, in this amending Bill we try to give him power, absolutely to himself, so that if he likes, he may go and offer himself in the witness-box; but his desistance will not be a matter which will weigh against him, nor will it be adverted to and unfavourable conclusions sought to be drawn from it, either in the course of argument or in the course of the judgment. It is a matter entirely left to his discretion.

I submit that we are hereby conferring a valuable privilege upon the accused.

[SARDAR HUKAM SINGH *in the Chair*]

If he is an honest individual or an innocent person, he will very much cherish it. I repeat what I have said over and over again, that the function of a law court is to punish if the man is guilty and to acquit, if the man is innocent. There is no presumption either way, and you have got to try the matter on the facts. It is in the public interest that an innocent man should have every opportunity allowed to him to establish the evidence, and if he has the courage to go into the witness-box, he will strengthen his defence very much. That is the second point which I wish to emphasize here.

Then I spoke about delays which occur during the pendency of criminal trials. A very fruitful source of delay

[Dr. Katju]

is a tendency on the part of the accused persons just to make frivolous applications for transfer. As the Code stands at present, the moment an accused person informs the magistrate that he wants to go and apply for a transfer to the High Court, the case is almost automatically stayed. The magistrate gives him time for ten days, a fortnight or three weeks. The accused goes to the High Court and files an affidavit; notice is given then, and the proceedings are stayed. The case may thus stand over for six months or seven months, and sometimes it takes a little longer time. All this leads to protraction.

We have provided here that if the accused is only complaining of a magistrate in the district, and he wants a transfer within the district or within the division, from one magistrate to another magistrate within the sessions division, then, before the accused goes to the High Court, he must go to the sessions judge. The sessions judge can deal with his application for transfer within a few days. Within two days, he can entertain it. Either he dismisses it summarily, or he may issue notice and hear the government pleader, and dispose of the matter within seven days. If the High Court knows that the sessions judge has dismissed the application, then I suggest that the High Court will be very reluctant, in the first place, to admit the application, and in the second place, to allow it. The result will be a diminution of these applications and a lessening of these tactics in order to protract proceedings. Of course, if an application is for transfer from the district or the sessions division itself, then the matter has to go to the High Court. This is one method we have adopted for the purpose of lessening delays.

Secondly, adjournments and delays take place because of transfer of magistrates. Supposing a magistrate is transferred as the law stands at present, the case has to be heard *de novo*. There is a provision that if both parties agree, there may not be a *de novo* trial. But the general experience is that the case is heard over again, much to the expense of the accused and the inconvenience of all concerned. The amendment now suggested is that on another magistrate taking over the case, there should not be a *de novo* trial, but we do give him an opportunity to do so. He is empowered, if he likes or if the accused makes an application to him, to summon any particular witness who has already been examined, and hear him afresh and record his evidence. The magistrate may say, well, in this case there are three important and crucial witnesses, I should like to see their faces in the witness-box, and see what type of people they are to watch their demeanour; the recorded statement will not give me that opportunity. Thus, he may pick out those three men, ask them to come again in the witness-box, and listen to their story over again. That is left to the magistrate. I do submit that this is also a provision which will serve the purpose of lessening delays in the trial of criminal cases. Then there is another procedure which we have attended to in this Bill. As the House knows, when a case is tried by the sessions judge, then there is an appeal straight to the High Court. Nobody interferes with that. But if a case is heard by a magistrate or by an assistant sessions judge and he passes a limited sentence, then an appeal lies to the sessions judge. So you have a trial by the magistrate originally and an appeal before the sessions judge, and inasmuch as in the vast majority of cases the question is a simple question of fact, if the two courts agree, namely, the trial magistrate's court and the appellate sessions court, then the High Court has made it a convention or rule that it will not interfere with the finding of fact. Unfortunately, the language of section 435, which confers this revisional power on a High Court, is much too wide. That section says that it will be open to the High Court to send for the record and to examine the case with regard to the correctness, pro-

priety or legality of any finding. While some of the High Court judges are very strict in this matter, the practice varies from judge to judge. And what happens? You may have 100 criminal revision cases filed; about 50 of them are disposed of—summarily dismissed—and of the 50 or 30 or 20 which may be admitted, only two or three or four succeed; the rest fail. I submit in a matter of this kind it is not only a protraction of judicial proceedings; it is the ruin of the accused himself. This is a case in which an accused person should be protected against himself and the proposal now is that the language of this revisional clause should be limited to a consideration of the legality of the order passed and there should not be this general scope—the propriety or the correctness of any finding. The language at present is so wide that you may, if you like, go into all the facts again. I submit these criminal revisions, to my knowledge, are mostly filed in order to secure a bail order and to avoid going into jail for six months and then take a chance. I do not want to make a law court—if I possibly can—a sort of a gambling den. It is true to some extent that every proceeding in a law court is a sort of a gamble, but I do not want to extend it indefinitely. Now, that is the provision about the language of section 435.

Then there is another matter. In the sessions court in regard to what are called cases triable in sessions, inasmuch as a trial could only be either with the aid of assessors or by jury, there could be no investing of other courts with judicial powers. You know, Sir, we have got three kinds of magistrates—third-class, second-class and first-class. The first-class magistrate can impose a two-year sentence and a particular fine; the third-class magistrate, I believe, only a month or so. Then we have got section 30 which authorises the State Government to invest first-class magistrates who are of more than ten years' standing with special powers to impose sentences up to 7 years. It is rather curious that the section, as it stands, confers these powers upon the Governments of what were called the non Regulation provinces. It can be done in the Punjab; it can be done in Orissa, Assam and some other provinces, but it cannot be done in Bombay. Now inquiries I have made go to show that in the Punjab it is a procedure which is widely prevalent to invest selected magistrates with over ten years' standing with powers under section 30. The result is more speedy trials and the appeal goes to the sessions judge if within the limits; otherwise, there is no question of a commitment proceeding, sessions trial and so on. When I looked into this matter, I really could not understand it, as to why what is good enough for the Punjab is not good enough for the rest of India. Either the section is bad and this power is bad in which case it ought to be repealed, or the power is good. If the power is good and it has worked satisfactorily in the Punjab, it is desirable that other provinces should have the benefit of these special powers. In this Bill it is proposed that the provisions of section 30 should extend all over India and State Governments may be empowered, if they so desire, to invest selected magistrates of over ten years' standing with these powers. We have also said that the power of punishment of assistant sessions judges who are generally civil judges and who have worked as judicial officers for a length of time and who are now being trained for being appointed as district and sessions judges should be extended from 7 years to 10 years.

[MR. DEPUTY-SPEAKER *in the Chair*]

The result of all this is this. If the case goes to a sessions judge, he has got unlimited powers of punishment—anything from a sentence till rising of the court up to a death sentence. In the case of an assistant sessions judge, it is up to 10 years, the magistrate under section 30—up to 7 years, ordinary first-class magistrate—two years and so on.

Then there is one matter which, I think, the House will like very much

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itself. This is a step towards the direction of separation of judiciary from the executive. At present all appeals from second-class and third-class magistrates are filed before a district magistrate and he disposes of them. We have now changed this procedure and we direct that every appeal from a magistrate shall lie to a sessions judge. No appeal shall lie to the district magistrate at all. Appeal from a third-class magistrate and a second-class magistrate must go to the sessions judge. It will be filed before him. He may either hear it himself or the additional sessions judge may hear it or the assistant sessions judge may hear it; otherwise not.

Mr. Deputy-Speaker: The first-class magistrate has no jurisdiction in appeals?

Dr. Katju: The first-class magistrate has no jurisdiction to hear an appeal. Under the current procedure, it is only the district magistrate who can hear an appeal, but now we want to take it away entirely from the magistracy and give it to the sessions judge.

Mr. Deputy-Speaker: The practice differs from province to province. In Madras, automatically an appeal from the third-class magistrate or second-class magistrate goes to the first-class magistrate, and if he is not there, they prefer an appeal to the district magistrate.

Dr. Katju: We want to make it uniform. The sessions judge, the additional sessions judge or the assistant sessions judge is not a part of the executive and we want that there should be a hearing before a non-executive authority in the shape of these officers. This has been introduced, I believe, in the U.P. The practice may vary from State to State. We want to make it uniform throughout India.

श्री रघुनाथ सिंह (जिला बनारस--मध्य): ठीक है, यू० पी० में यही सिस्टम है ।

Dr. Katju: Last of all is the honorary magistrate. I believe in most of the States the institution of honorary magistrates exists. I know that there is some criticism. I have always been of the opinion that the system is good. I think we ought to encourage it and we ought to take advantage of a desire to render public service. The system is not bad. It is the mode of selection or appointment of the people who are selected for this job which makes the system vulnerable to attack. It is now provided by an amendment that honorary magistrates must fulfil certain conditions. You may appoint retired judical officers as honorary magistrates. I have known in the U. P. retired district magistrates and retired sessions judges coming forward to render service to the community by acting as honorary magistrates. If it is not a retired judicial officer, then the State Government must lay down rules of qualifications and must give them training and, I think, with these safeguards, the system should work well. I am not conversant with the figures in the other States, but in the U. P. we found that the honorary magistrates were discharging an enormous amount of work. I believe, in the year 1938, if my recollection is right, more than 60 per cent. of smaller cases were heard by honorary magistrates and in Oudh, probably, it was more than 50 per cent. The result is that if you abolish the honorary magistrates altogether, then you will have to increase the number of stipendiary magistrates twofold. Today the condition is that throughout India there is a complaint of the inadequacy of magisterial staff in spite of the honorary magistrates. I submit that the Government must encourage the use of the judicial talent of people of respectability and integrity who want to render service to the community in this way.

Shri T. N. Singh (Banaras Distt.—East): One question I would like to ask is this. Would you vest the power of appointment of honorary magistrates in the executive or would you like it to be administered—or appointments made—by the judical authority?

Dr. Katju: This point has not been considered. What we have suggested

in the amendment is that the rules of qualification should be laid down. This point which my hon. friend has raised will be considered in the Select Committee and when the directive in the Constitution is fully given effect to and there is complete separation of the judiciary and the executive, then the appointments should be by the High Court or in consultation with the High Court. But, what I am protesting against, so far as I am personally concerned is, that we should not without due consideration, purely because of prejudice, say that the whole system is bad. You may say that the method of recruitment or appointment is bad. Otherwise, I have known myself, in the course of my judicial practice, most of the honorary magistrates as competent, independent and with as much integrity as any other sessions judge or even a High Court judge.

I am very nearly finishing. I now come to one important matter which has already attracted some discussion and I consider it as of great importance. That is the subject of defamation. At present, the offence of defamation is not a cognizable offence. The result is, if I am defamed or if anybody is defamed, he must, if he wants to have legal redress, lodge a complaint.

An Hon. Member: Why not?

Mr. Deputy-Speaker: The hon. Members will hear and not say 'Why not' or 'Why'.

Shri Nambiar (Mayuram): If he is defamed let him go to court.

Mr. Deputy-Speaker: I am not worried about it. Hon. Members will certainly have an opportunity to say what they have to say. Let them hear first of all what the hon. Minister has to say.

Dr. Katju: I have been wondering why I have not been interrupted more often.

Mr. Deputy-Speaker: The other side is so pleased with the hon. Minister.

Dr. Katju: Now, the present procedure is this. If I think that I have been defamed and I want legal redress, I have to go before a magistrate, lodge a complaint personally, engage a lawyer, I have to be examined, then I go on a second day and the process is issued. Then, I produce my witnesses; there may be a number of attendances and expenses also, if it is a matter of purely personal nature. If it is between one citizen as against another, then you may use your right if you choose to or you may remain silent. But, in the case of government servants, the Government has got a special responsibility. It is in two ways. The Government, on the one hand, is bound to protect its officers. On the other hand, the Government is equally bound to expose them if they are guilty of improper behaviour. In this House and elsewhere, we have heard complaints made about fraud, their work and conduct and corruption and so on and so forth. Government is told that they are not doing proper things. What happens? Charges are made. There are libellous attacks against public servants in newspapers. Here, we may see two or three or four newspapers of standing and of great status every day. But the House is aware that practically in every district headquarters there are sheets, there are what are called weekly journals of four to eight pages and they are full of abusive articles. These carry weight. In India, even today, the printed stuff has got great consequences in the eyes of some people. Whatever is published must be true. We call those journals in our language 'yellow journals'. The common man in the street does not make that distinction. When an attack is made, I say to the public servant, 'your conduct is attacked, why don't you go and prosecute?' The answer is, 'where am I to get the money from? It means so much botheration. It is the yellow press. No one takes notice of it and I won't prosecute.' He may say so for two reasons. It may be that the charge made is baseless and untrue but he fears the trouble that he will be put to and he does not go to prosecute. Or, it may be, on the other hand, that he has got a guilty con-

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science; the charge may be exaggerated but there may be some substance in it. He wants a pretext and what is the pretext? The pretext is that it is yellow press and so on. 'Who takes these papers seriously and why should I prosecute?' The result is that these charges are made and broadcast, wild, less wild and may be innocent. The charges vary, Mr. Deputy-Speaker, from the most insulting attacks on private character, private life, immorality and what is called character assassination, and improper use of official authority and so on; and there is no investigation. Now, what we have suggested is that the charge must be made cognizable. I heard somewhere, 'Oh, it is very serious, it offends against the liberty of the Press. Do you know what will happen? This thing will be published and two days later a sub-inspector will go to the office of the editor and say, come along you are under arrest. I have taken cognizance of this and I arrest you.' That is not in our mind. What we have in mind is this. When such a charge is made, under standing instructions or specific instructions from the district magistrate, or superior authority, the police will look into this matter. They will go, probably, to the public servant and ask him. 'what have you got to say about this?' And, if the police is satisfied with the answer of the public servant, that the public servant has given a completely clear answer, then they might make further enquiry. They may even make an enquiry from the Press itself, from the editor and find their source of information and all that. When the police enquiry is complete, it will submit a report, which may be either implicating the public servant and saying that there is some foundation in the charges which have been made or it may be that the charges which have been made are absolutely false and baseless. What I have in mind is that every such publication shall either lead to a departmental enquiry against the public servant concerned or should lead to a prosecution of the newspaper, of the editor and publisher.

Shri Nambiar: The publisher will have straightaway to go to the lock-up.

Mr. Deputy-Speaker: The hon. Member will keep his soul in patience. He will have his opportunity to speak.

Dr. Katju: If he is guilty of defamation and I start a private complaint then I can ask him to go to the lock-up because it is a bailable offence. The question is who starts the proceedings. The question of bail and non-bail is a different matter altogether. Supposing the Police started the proceedings, then the man might be let out on bail just for the asking. The question is: who takes the responsibility for the conduct of the prosecution? If it is a prosecution initiated by the police, then the public servant concerned appears in court on one day or on as many days as may be required, as a prosecution witness and he does not bother about the prosecution. The Public Prosecutor or the Prosecuting Inspector sees it through and the editor gives his defence. My submission is that if you put the burden entirely upon the public servant concerned, then he may say "I do not have the money at all and further it is very troublesome." My object is to have the public services purified.

Shri S. S. More (Sholapur): How?

Dr. Katju: In this way, that is, either a departmental proceeding against the public servant or a public prosecution of the editor concerned.

Shri S. S. More: Supposing a Government servant is defamed, the Government may tell him "You had better file a prosecution and we shall finance you with the cost involved." That was done in the case of Harvey Nariman when he was prosecuted.

Dr. Katju: My hon. friend may advance that, but personally I think that mine is the sounder proposition. There is a preliminary enquiry by the police just to see where the truth lies. If the police makes a report against the public servant, then

I immediately order a departmental enquiry.

Shri Bansal (Jhajjar-Rewari): Will it be possible for any police officer to make that kind of enquiry against a higher officer?

Dr. Katju: What is meant by a 'higher officer'?

Shri Bansal: Can a police officer make an enquiry against a magistrate, for instance?

An Hon. Member: Or a Minister?

Dr. Katju: Suppose in the house of a district magistrate, there is a quarrel between two brothers, and one brother is accused of having beaten the other brother. Suppose that the district magistrate himself is accused of beating his younger brother—there are all sorts of things taking place, widows, this thing and that—and if the district magistrate comes within the four corners of the criminal law, somebody has to make an enquiry against him. It depends upon the status of the police officer. We must attribute some sense to the police authorities.

Shri S. S. More: No. *(Interruption)*

Dr. Katju: My hon. friend is a very respected and very responsible person.

Shri S. S. More: I am not prepared to attribute sense to the police officers at all.

Dr. Katju: I thought that the House would welcome this particular provision.....

Some Hon. Members: No.

Dr. Katju: You are not taking the vote of the House now. I am only explaining the proposition and then we will have to debate on it, namely, whether to make it cognizable. If the House does not approve of it, the conclusion that I shall draw is that you really do not mean any thorough or real cleansing of the public services.

Shri S. S. More: We protest as it is an aspersion against ourselves. Because we do not agree with the hon. Home Minister that he should slander us that way is itself a defamation.

Dr. Katju: This is just in Mr. More's style and we cannot follow his line.

Mr. Deputy-Speaker: The hon. Members want to know evidently these two things: (1) Is it confined only to Government servants and public men? If even a private individual is offended, does it become a cognizable offence? (2) Is there any safeguard, before a prosecution is launched, for a district magistrate or a high authority to give sanction to it?

Dr. Katju: So far as the second point is concerned, it is a matter of executive authority. It will not be left to the discretion of the police. That can be dealt with by the House by the insertion of a provision to the effect that no prosecution shall be launched without the previous approval of the Government concerned or officers to whom such authority has been delegated.

Shri S. S. More: With your permission, may I ask....

Mr. Deputy-Speaker: Let the hon. Home Minister finish first.

10 A.M.

Shri S. S. More: Supposing the Home Minister of a State himself is a party and certain allegations are made against him, what is the position? The police are under the Home Minister and in this case, the Home Minister himself is one of the aggrieved persons. He is the boss over the police of that province. Now what will be the position of the police? The Home Minister being their boss, they will be interested not so much in cleansing his reputation as in harassing the other party.

Mr. Deputy-Speaker: Does the hon. Member suggest another person for the Home Minister? There is no good going on in that way. Ultimately, the Supreme Court decides the matter.

Shri S. S. More: What about the harassment?

Mr. Deputy-Speaker: These are all exceptional cases where you must trust the topmost men.

Dr. Katju: The Home Minister of my hon. friend's imagination cannot certainly start a prosecution by filing a complaint. Although he is the Home Minister, he will have to go before a magistrate. No magistrate in his State will dare do anything against him, but.....

Shri S. S. More: He can go to a magistrate outside his State.

Dr. Katju: The question before the House now is only about the starting of the proceedings, whether the proceedings can be started by the police or whether they can only be started by a private complaint. The moment the proceedings are started, then it is open to the accused, if he thinks that in that particular State and having regard to the nature of the case, he cannot expect to get justice, to go to the High Court or the Supreme Court and he can ask for such a transfer. The only question is whether we should retain this particular provision on the statute book, namely, that in cases of defamation of public servants, the proceedings can only be started by a private complaint. The result is that a newspaper, whom nobody wants to protect here, takes advantage of the reluctance on the part of the public servants to undertake this burden and the newspaper flourishes upon it. I do hope I am talking seriously when I say that there is no desire on the part of any Member of the House either to shield a dishonest public servant or to shield a dishonest editor or publisher of libellous matter. What we want is that there should be an enquiry into the conduct of the public servant or an enquiry into the conduct of the newspaper itself. There must be an open judicial enquiry. The whole question is how the enquiry is to commence or to be initiated. Let us take the case of murder. The police submits their charge in what is called 'Report No. 3'. If they say that a case is not made out, it is open then to any relation of the deceased or any friend of the deceased to go before a magistrate and file a private complaint and say that there has been a murder and let there be a judicial enquiry. The magistrate examines the witnesses and he commits the accused to session. It is only the initiating step that is under consideration and not the process of the judicial enquiry. The suggestion is that the Home Minister may compel the police to do the act of launching a prosecution. That is all. That was the last matter which I wanted to refer.

There are many other matters of smaller importance. One is about section 145 dealing with the disputes relating to immovable property which are likely to cause disturbance of public peace. As the law stands, the magistrate, when he receives information on a police report or otherwise, issues notice to both parties, and he either attaches or does not attach the immovable properties and then holds an enquiry into the question of possession.

Now I have heard many complaints,—there have been many reports to that effect—that they do not want a magistrate to go into this matter of what is really in the nature of a civil case. And it sometimes takes an enormous length of time. What we have proposed here is that the magistrate may if he is satisfied that there is likelihood of a breach of the peace, attach the property and leave the parties to go to court. This attachement will be for a limited time. This is a matter which should be examined by the Select Committee. There may be other alternatives. You may say: "Well, the magistrate may, if he likes attach, and himself remit that issue, as is the practice in the U. P." For instance, cases going before revenue courts are of a civil nature. The revenue court frames an issue and sends it to the nearest *munsif* or the nearest subordinate judge and asks for a finding on that particular issue The finding is sent in two months or

six weeks and the magistrate decides accordingly. Similarly, any other alternative may be considered and if it is found more appropriate adopted. What we want is that the function of deciding questions which are essentially of a civil nature may not be entrusted to magistrates. They may be disposed of by civil courts at the earliest possible moment.

Now, Mr. Deputy-Speaker, I have practically dealt with all the major questions which arise on this amending Bill. In the end I wish again to say that the Government of India is not committed to this Bill on any party lines. It is a matter which affects the welfare and happiness of Indian citizens as a whole and I am sure it shall be considered here and elsewhere on those lines. We will do our best to achieve the object which we have in view, namely, to render service to the community, to restore trust and reverence for law and order, to make people feel that a court of law is really a place where justice is administered without fear or favour, justice is administered quickly, swiftly and independently and there are no enormous delays. It should not be made so expensive that it may be beyond the resources of the poorer sections of the community. Whenever I hear that a rich man—whether it is in a civil court or in a criminal court—can protract proceedings to an indefinite length, it causes me personally great pain. We all say that before a court of justice the poor and the rich, the high and the low, stand alike. This should not merely be a conventional phrase. The law should be so framed and so administered that it should be literal truth and nothing short of that.

Sir, I move.

Shri S. V. Ramaswamy (Salem): Sir, I have two points of order.

Mr. Deputy-Speaker: If I agree with the hon. Member does it prevent me from placing this motion before the House?

Shri S. V. Ramaswamy: One point of order may amount to that.

My first point of order is this. In 1952 I introduced a Bill to amend the Criminal Procedure Code. This Bill was taken up and finally disposed of on the 12th March 1954. Speaking on that occasion, the hon. the Home Minister said (I am reading from the uncorrected Parliamentary Debates—page 4968):

> "So I would suggest to my hon. friend, the Mover, that he may ask the House to let this motion stand over, and I undertake that on the Government day for disposal of legislative business, when the Government motion for reference of the Government Bill to a Joint Select Committee comes up, his motion will also be tagged on to the Government motion so that both matters may be disposed of at one and the same time."

Dr. Katju: May I interrupt for a while. My hon. friend is quite right. I have no objection to his Bill being taken up. There is another Bill of his which seeks to abolish the system of assessors. This Bill is likely to go on for some time.

Shri S. V. Ramaswamy: My second point is this. If the sponsors of these Bills are not on the Committee, I submit the Bills become orphans

Dr. Katju: So far as that is concerned, I want to look after orphans.

To shorten the discussion, I may say that there is one Bill which advocates the abolition of the system of trial by assessors. Now that is accepted in the Bill. There will be nothing to which my hon. friend can take objection. We will sponsor his cause in the Select Committee.

By another Bill my hon. friend wanted to abolish the system of jury. His Bill is before the House. Let him suggest another Select Committee, or whatever motion he wants to move.

Shri S. V. Ramaswamy: But who is to take care of the Bills? They have no inherent right.

Mr. Deputy-Speaker: I have been invited to say who is to take care of the hon. Member.

So far as these two points are concerned, it is open to Government—and there is a precedent for this—to allow any hon. Member to move his Private Bill on a Government day; but it is only on a non-official day it has to come in the ballot. I remember a prior occasion when Dr. Deshmukh introduced a Bill on Women's Right to Property. Mr. N. N. Sarkar, who was then the Law Member, said that Government would like the Bill to be accepted. Therefore, on an official day, I think, it was allowed to be moved. In further stages also, if there is official time at the disposal of Government they can accommodate.

Therefore, if the Government is willing to accommodate him tomorrow the hon. Member may give notice of a motion by this evening for reference of his Bill to a Select Committee or any other motion he likes to make. That will be taken up and he can choose his own Members.

In regard to the hon. Member's other Bill regarding abolition of the system of assessors, the hon. Minister if he likes can find a place for the hon. Member.

Moreover, hon. Members are aware that under the Rules every hon. Member of this House is entitled to come and sit in the Select Committee and give his own views while discussion goes on. The only thing is he cannot vote.

So if the hon. Member gives notice of his motion, the hon. Minister is willing to find time from official business. Without notice it would not be taken. The mere statement in the House is not notice.

I will now place this motion before the House.

Motion moved.

"That the Bill further to amend the Code of Criminal Procedure, 1898, be referred to a Joint Committee of the Houses consisting of 49 members, 33 members from this House, namely.—Shri Narhar Vishnu Gadgil, Shri Ganesh Sadashiv Altekar, Shri Joachim Alva, Shri Lokenath Mishra, Shri Radha Charan Sharma, Shri Shankargauda Veeranagauda Patil, Shri Tek Chand, Shri Nemi Chandra Kasliwal, Shri K. Periaswami Gounder, Shri C. R. Basappa, Shri Jhulan Sinha, Shri Ahmed Mohiuddin, Shri Kaliash Pati Sinha, Shri C. P. Matthen, Shri Satyendra Narayan Sinha, Shri Resham Lal Jangde, Shri Basanta Kumar Das, Shri Rohini Kumar Chaudhuri, Shri Raghubir Sahai, Shri Raghunath Singh, Shri Ganpati Ram, Shri Syed Ahmed, Shri Radha Raman, Shri C. Madhao Reddi, Shri K. M. Vallatharas, Shri Sadhan Chandra Gupta, Shri Shankar Shantaram More, Sardar Hukam Singh, Shri Bhawani Singh, Dr. Lanka Sundaram, Shri Rayasam Seshagiri Rao, Shri N. R. M. Swamy and Dr. Kailas Nath Katju and 16 members from the Council;

that in order to constitute a sitting of the Joint Committee the quorum shall be one-third of the total number of members of the Joint Committee:

that the Committee shall make a report to this House by the last day of the first week of the next session;

that in other respects the Rules of Procedure of this House relating to Parliamentary Committees will apply with such variations and modifications as the Speaker may make; and

that this House recommends to the Council that the Council do join in the said Joint Committee and communicate to this House the names of members to be appointed by the Council to the Joint Committee."

There are some amendments to this motion.

Shri Vallatharas

Shri A. M. Thomas (Ernakulam): He is a Member of the Select Committee.

Mr. Deputy-Speaker: He need not speak. But he can move his amendment.

Shri Vallatharas (Pudukkottai): I beg to move:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 31st July, 1954".

Mr. Deputy-Speaker: There is an other circulation motion in the name of Pandit Thakur Das Bhargava.

Pandit Thakur Das Bhargava (Gurgaon): I beg to move:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 31st July, 1954."

Mr. Deputy-Speaker: There is another amendment in the name of Shri N. Sreekantan Nair. The date is different.

Shri N. Sreekantan Nair (Quilon *cum* Mavelikkara): I beg to move:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 30th September, 1954."

Mr. Deputy-Speaker: Then there is another amendment in the name of Pandit Thakur Das Bhargava. Is he moving it?

Pandit Thakur Das Bhargava: Yes Sir.

Mr. Deputy-Speaker: It is for a Select Committee instead of a Joint Committee. He must give the names

Pandit Thakur Das Bhargava: I want the very same names given by the hon. Minister, Nos. 1 to 33. I do not want to be there.

Mr. Deputy-Speaker: He may make a formal motion.

Pandit Thakur Das Bhargava: I beg to move:

"That the Bill be referred to a Select Committee consisting of Shri Narhar Vishnu Gadgil, Shri Ganesh Sadashiv Altekar, Shri Joachim Alva, Shri Lokenath Mishra, Shri Radha Charan Sharma, Shri Shankargauda Veeranagauda Patil, Shri Tek Chand, Shri Nemi Chandra Kasliwal, Shri K. Periaswami Gounder, Shri C. R. Basappa, Shri Jhulan Sinha, Shri Ahmed Mohiuddin, Shri Kailash Pati Sinha, Shri C. P. Matthen, Shri Satyendra Narayan Sinha, Shri Resham Lal Jangde, Shri Basanta Kumar Das, Shri Rohini Kumar Chaudhuri, Shri Raghubir Sahai, Shri Raghunath Singh, Shri Ganpati Ram, Shri Syed Ahmed, Shri Radha Raman, Shri C. Madhao Reddi, Shri K. M. Vallatharas, Shri Sadhan Chandra Gupta, Shri Shankar Shantaram More, Sardar Hukam Singh, Shri Bhawani Singh, Dr. Lanka Sundaram, Shri Rayasam Seshagiri Rao, Shri N. R. M. Swamy and Dr. Kailas Nath Katju, with instructions to report by the last day of the first week of the next session."

Shri Venkataraman (Tanjore): I think Pandit Thakur Das Bhargava's motion is out of order because he does not include himself in the list of Members.

Pandit Thakur Das Bhargava: I do not want to include myself as the hon. Minister and the Government do not want me.

Shri Venkataraman: Every Member who makes a motion for Select Committee should include himself.

Pandit Thakur Das Bhargava: Where is that law?

Mr. Deputy-Speaker: I am not aware of the rule under which the Mover should necessarily be there.

Shri Venkataraman: The position is this. In this House the person is supposed to be responsible for the motion he is making and for taking the subsequent proceedings. May I ask the Secretary to help us to find one instance in which the person who makes a motion for reference to Select Committee is not a member thereof?

Shri A. M. Thomas: Is it open to any hon. Member to appeal to the Secretary?

Pandit Thakur Das Bhargava: May I submit in reply to the point made by Shri Venkataraman...

Mr. Deputy-Speaker: Order, order. It is unnecessary for any hon. Member to invoke the aid of any members of the staff here. The Speaker or whoever sits in the Chair is the only person whom he can address or to whom any request should be made. If the Speaker or the Chairman is not able to decide, he will take aid from all quarters in the House. Therefore I hope such reference will be avoided in future.

So far as the point is concerned, I do not find any point of order in a Member making a motion for Select Committee not himself being there. No rule says that at every stage, clause by clause, the Mover should do so. It is the Chairman. The Mover may be out-voted in the Select Committee. I understand Shri Venkataraman to say that the Mover's name ought also to be included. But modesty makes him desist from putting down his own name. It is open to the honourable House, if it accepts it, to accept it with the other modification and any other hon. Member can move that Pandit Thakur Das Bhargava's name might be included.

Pandit Thakur Das Bhargava: I have no desire to thrust myself there, Sir.

Mr. Deputy-Speaker: I am not making the motion myself; therefore there is no trouble. Motion moved:

> "That the Bill be referred to a Select Committtee consisting of Shri Narhar Vishnu Gadgil, Shri Ganesh Sadashiv Altekar, Shri Joachim Alva, Shri Lokenath Mishra, Shri Radha Charan Sharma, Shri Shankargauda Veeranagauda Patil, Shri Tek Chand, Shri Nemi Chandra Kasliwal, Shri K. Periaswami Gounder, Shri C. R. Basappa, Shri Jhulan Sinha, Shri Ahmed Mohiuddin, Shri Kailash Pati Sinha, Shri C. P. Matthen, Shri Satyendra Narayan Sinha, Shri Resham Lal Jangde, Shri Basanta Kumar Das, Shri Rohini Kumar Choudhuri, Shri Raghubir Sahai, Shri Raghunath Singh, Shri Ganpati Ram, Shri Syed Ahmed, Shri Radha Raman, Shri C. Madhao Reddi, Shri K. M. Vallatharas, Shri Sadhan Chandra Gupta, Shri Shankar Shantaram More, Sardar Hukam Singh, Shri Bhawani Singh, Dr. Lanka Sundaram, Shri Rayasam Seshagiri Rao, Shri N. R. M. Swamy and Dr. Kailas Nath Katju, with instructions to report by the last day of the first week of the next session."

There is an amendment in the name of Shri Raghubar Dayal Misra. Does he want to move it?

Shri R. D. Misra (Bulandshahr Distt.): Yes, Sir.

Mr. Deputy-Speaker: He wants to give certain instructions to the Select Committee. I have some difficulty in this. The amendment reads:

> "That in the motion, *after* 'and 16 members from the Council' *add* 'with instructions to make the following provisions...etc.' "

My difficulty is so far as the language is concerned. The point is whether we are committing ourselves to this or whether some modification of the language is necessary. Rule 92 says "On the day on which any motion referred to in rule 91 is made, or on any subsequent day..... Provided that if an amendment or a motion for appointment of a Select Committee or a Joint Committtee has been moved under this sub-rule, any member may move that the House give instructions to the Select Committee or to the Joint Committee to which the Bill has been referred to make some particular or additional provision in the Bill and if necessary or convenient to consider and report on amendments which may be proposed to the original Act which the Bill seeks to amend...etc."

Therefore, if we accept this motion "with instructions *to make* the following provisions", that means the House commits itself to all these Is the House going to go provision after provision and say "no". I would therefore say "consider the inclusion of" instead of the word "make", that is "to consider the inclusion of the following provisions in the Bill and to consider and report on amendments which may be proposed to the original Act"—or to these suggestions.

Shri R. D. Misra: I beg to move:

That in the motion, *after* "and 16 members from the Council" *add*—

"with instructions to consider the inclusion of the following provisions in the Bill and to consider and report on amendments which may be proposed to the original Act or to these suggestions:—

(i) That summons cases will be tried in a summary way under Chapter XXII.

(ii) That the provision under Chapter XX be omitted and sections 248 and 249 be added at the end in Capter XXIV.

(iii) That the words 'who cannot give a satisfactory account of himself' be added after 'any person' in clause (a) of section 109 and clause (b) of section 109 be omitted.

(iv) That the powers of the magistrates of first class, second class and third class under section 32 be raised to three years, one year and six months respectively.

(v) That the Short Title of the Code of Criminal Procedure, 1898 be changed to 'the Code of Criminal Procedure, 1954'.

(vi) That the sections of the Code be renumbered serially;"

Mr. Deputy-Speaker: Amendment moved:

That in the motion, *after* "and 16 members from the Council" *add*—

"with instructions to consider the inclusion of the following provisions in the Bill and to consider and report on amendments which may be proposed to the original Act or to these suggestions:—

(i) That summons cases will be tried in a summary way under Chapter XXII.

(ii) That the provision under Chapter XX be omitted and sections 248 and 249 be added at the end in Chapter XXIV.

(iii) That the words 'who cannot give a satisfactory account of himself' be added after 'any person' in clause (a) of section 109 and clause (b) of section 109 be omitted.

(iv) That the powers of the magistrates of first class, second class and third class under section 32 be raised to three years, one year and six months respectively.

(v) That the Short Title of the Code of Criminal Procedure, 1898 be changed to 'the Code of Criminal Procedure, 1954.'

(vi) That the sections of the Code be renumbered serially;"

Mr. Deputy-Speaker: I shall place other amendments that have been moved.

Amendments moved:

"That the Bill be circulated for the purpose of eliciting opinion thereon by 31st July, 1954".

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 31st July, 1954".

[Mr. Deputy-Speaker]

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 30th September, 1954".

Shri Sinhasan Singh (Gorakhpur Distt.—South): I beg to move:

That in the motion, *after* "and 16 members from the Council" *add*:

"with instructions to suggest and recommend amendments to any other sections of the said Code not covered by the Bill, if in the opinion of the said Committee such amendments are necessary".

Mr. Deputy-Speaker: Amendment moved:

That in the motion, *after* "and 16 members from the Council" add:

"with instructions to suggest and recommend amendments to any other sections of the said Code not covered by the Bill, if in the opinion of the said Committee such amendments are necessary".

Now, the original motion moved by Dr. Katju along with the amendments that have been moved, are before the House for discussion. I will now call on any hon. Member to speak.

Several Hon. Members *rose*—

Pandit Thakur Das Bhargava: Sir, this is not a party question as the hon. Minister has said; therefore, there is no question of any hon. Member of the opposite party getting any preference over others.

Mr. Deputy-Speaker: I agree that this is not a party question, but all the same, I would appeal to hon. Members whose names appear here in this list of 33 Members, that they should not kindly stand up while I am choosing Members to speak. I cannot go on verifying from time to time. Those hon. Members will get ample opportunity.

Shri Vallatharas: Sir, my right is a different one, not covered by any of these. Two days earlier the hon. Speaker had given a ruling that the Mover of a Bill though he is in the Select Committee is entitled to speak. I come under a distinct right to move an amendment to this motion. Therefore, I am entitled to talk and there is no prohibition for me. My right is a totally independent one.

Pandit Thakur Das Bhargava: The hon. Speaker said that the Mover of a Bill is entitled to speak and not other Members of the Select Committee. The Mover of an amendment is not the Mover of the Bill.

Mr. Deputy-Speaker: This is a matter for consideration of the House. I think some serious consideration is necessary to the points raised by Shri Vallatharas. I am considering this.

Shri Vallatharas: I will state my viewpoint, Sir.

Mr. Deputy-Speaker: I am agreeing with the hon. Member. My own feeling is this: the motion moved by the hon. Minister that the Bill be referred to a Joint Committee is before the House. Another hon. Member comes forward with an amendment that the Bill should be circulated. That means he does not accept the motion to refer the Bill to a Select Committee by his consent. If his amendment to circulate the Bill is not accepted by the House then he will accept the motion. Therefore, he must state before the House as to why he wants that the Bill be circulated. I will not allow him to go into the details of the Bill. When he starts speaking on that line I will remind him that he is a Member of the Select Committee. All that he can speak about is in trying to persuade the House to consent to the circulation of the Bill; all items of information have already been gathered and so on. Up to that limit I will allow him to speak.

Shri S. S. More: May I seek some clarification? A Member who is appointed on a Select Committee is supposed to have given his consent for that appointment to be on the Select Committee. Is it not a fact that he indirectly accepts the motion to refer the Bill to a Select Committee?

Mr. Deputy-Speaker: The hon. Member Shri Vallatharas will kindly be in suspended animation for some time so far as his speech is concerned. The point of order raised by Shri More comes to this: whether an hon. Member who has given his consent to serve on the Select Committtee debars himself from making a separate motion and suggest it as an alternative one. I understand the word 'alternative' is not used there. He says that if this is not accepted, he is willing to serve on the Select Committee. Therefore, I will think over this matter and call on him, at a later stage when I agree with him.

Shri N. Sreekantan Nair: Sir, I am not in the Select Committee.

Shri Dabhi (Kaira North): Sir, I want to raise a point of order. Apart from this, from what you have said, does it mean that any Member who wants to bring in an amendment to the motion is entitled to speak on this?

Mr. Deputy-Speaker: I have not got all the amendments in my brain. I can only confine myself to an amendment which is for circulation or something like that. If there are any other amendments, there is time enough for me to consider that question. Now, I will call upon Shri U. M. Trivedi to speak.

Shri U. M. Trivedi (Chittor): Sir, the object and reasons for the introduction of this . . .

Mr. Deputy-Speaker: I may also remind the House that there is time-limit fixed for this Bill, which is 12 hours, including the time taken by the hon. Minister. Therefore, each Member will have 15 to 20 minutes.

Pandit Thakur Das Bhargava: Sir, so far the convention in this House has been that on the question of Bills there is no time-limit. This is a Bill of a special nature, not only just like our Constitution, but even, perhaps more important than the Constitution. I, therefore, respectfully ask you to either ask the Business Advisory Committee to reconsider their decision or do something by which sufficient time is given to consider this Bill. When the hon. Minister takes two hours in constructing a thing, other Members who have to demolish the arguments and reconstruct also, would require at least three hours each. I would, therefore, humbly suggest that in a matter of this nature the time should not be restricted. I would not speak in this House if you restrict the time to 15 minutes because 15 minutes are required so far as the preface is concerned. This is an important matter which concerns the whole country and, therefore, I would humbly beg of you to kindly not to impose the rule and ask the Business Advisory Committee to give more time to the House.

Shri Bansal: Sir, this is a very important Bill and if you restrict the time, only three or four lawyer Members of the House can speak. This is a Bill on which you want to hear the layman's view also as to what the public think of our legal administration. Therefore, you must ask the Business Advisory Committee to give some more time so that a large number of Members can participate on this debate. I am sure most of the Members will be willing to sit over-time in order to participate in this connection.

Mr. Deputy-Speaker: We will assume that the Business Advisory Committee has agreed to give 20 hours, even then, can I allow every hon. Member of this House to speak?

[Mr. Deputy-Speaker]

I have no objection, every hon. Member is entitled technically to take part in the debate, and if every hon. Member takes 3 hours then only a few Members can take part. At that rate, even if you increase the time, there must be some kind of limit. Now, I will give 30 minutes to each hon. Member, but in exceptional cases when I find that he is developing a point I will give some more time. However, a ceiling has to be fixed as 12 or 15 hours. It necessarily implies that there is some time-limit. Each hon. Member must curtail his speech in such a way so that other Members can also have an opportunity to speak. Regarding the other point that the time as a whole—12 hours—must be increased, as soon as the Business Advisory Committee makes its recommendation, it is placed before the House and the House adopts it.

Shri S. S. More: A regular motion is never made; we were only told about it and it does not become binding on us. I refer you to Rule 37, Sir.

Shri T. N. Singh: Even assuming that the House at that stage expressed a desire to confine itself to that, I think it is even now, in view of the very importance of the Bill, open to the House to revise its decision and suggest that more time may be given.

Mr. Deputy-Speaker: This is on the 17th April. The hon. Speaker read it out. Item 11 relates to the Criminal Procedure Code: 12 hours. On the House agreeing to the report, the Speaker made the announcement. When the Speaker read it out, it was time for hon. Members to say that 12 hours were not enough.

Shri S. S. More: May I make a submission, as you have been kind enough to raise this point? The Business Advisory Committee comes to a decision and that decision is reported to this House under rule 36. After it is reported, rule 37 comes in. A regular motion is to be made before this House as it is being made in the matter of the report of the Committee for Private Members Resolutions and Bills. The Secretary will please allow me to finish my argument. I want your undiverted attention. The process of instruction may be carried on at some other time. My submission is that for the purpose of giving a form of allocation or order to the report of the Business Advisory Comittee, the procedure under rule 37 has to be followed. It is never followed. Simply, the report of the Speaker is taken as tantamount to an allocation order.

Sardar Hukam Singh: Even if it is assumed that the Business Advisory Committee went into all this, there was no idea of what this volume was that we had to consider. Nobody knew that the hon. Home Minister would take two hours or three hours in the beginning. We apprehend that he may require another two hours at the end for reply. Therefore, in these circumstances, even if the House has given that approval to the programme of the Business Advisory Committee, now the sense of the House is that some more time should be allowed and the Business Advisory Committee may be asked to consider it.

Mr. Deputy-Speaker: I shall convey the sense of the House to the Speaker who is the Chairman of the Business Advisory Committee to consider this matter. Whoever may be responsible, the Government has to make a motion, I understand.

Shri Venkataraman: May I suggest that the House may sit from 4 P.M. to 7 P.M. for two or three days so that we may finish this Bill?

Some Hon. Members: No, no.

Shri Venkataraman: If we want more time, that is one way of getting over the difficulty.

Shri T. N. Singh: I agree with this suggestion.

Mr. Deputy-Speaker: I have no objection to afternoon sittings, because, there is the other point that the House has to rise on the 21st. We cannot go on indefinitely.

Shri Bansal: Let us have afternoon sessions.

Mr. Deputy-Speaker: I shall convey the desire of the House to the Speaker, and he will take a decision in the matter. The House will now proceed with the business.

Shri U. M. Trivedi: A very laudable objective has been disclosed by the hon. Home Minister in introducing this Bill. The primary object is twofold: (a) to provide adequate facilities to every accused person for defending himself in a proper manner, and (b) at the same time, to ensure speedy disposal of all criminal judicial business, so that innocent persons should not suffer from protracted proceedings and the real offenders should be punished as early as possible after proper trial. May I put a question in a very blunt manner, to the hon. Home Minister? He has travelled far and wide. He has practised at various places. He is an astute lawyer and a well trained lawyer. In the whole scheme of this Bill which he has presented to this House, has he provided anywhere some provision which exists in the English law that if the police prosecutes any innocent person and if he is discharged, if he is acquitted, he shall be paid so much by way of compensation? It is one of the salutary things that obtain in England whereby melicious, fictitious prosecutions are not launched against innocent persons in England. The police have to think ten times before any innocent person a respectable person is arrested and put behind the bars. Here it is not so. Even a Minister, who may not be very honest, who may not be as honest as Dr. Katju is, may inspire some police officer and get hold of his enemy and put him behind the bars. This goes on from day to day. Very recently, during the elections, it was found and it has been said in so many words by the Election Tribunal which decided the case, that the application of section 144 at a particular place in Rajasthan was at the instance of a particular Minister and the whole thing was arbitrary, dishonest and *mala fide*, and that about 19 persons were kept behind the bars and were not allowed, not only to exercise the vote, but were not allowed to canvass for the candidate for whom they were working. This is the machinery that we want to mend. I said in the beginning of my speech that this is a most laudable object that we have in view. But, are we going the whole hog for achieving that very object?

This Bill seeks to amend the provisions of section 497. In what manner? The only provision that is added is, a time-limit is given under clause 95. It says:

> "(3A) If the trial of any person accused of a non-bailable offence cannot be concluded by a magistrate within six weeks from the date on which he appears or is brought before the Magistrate, he shall be released on bail to the satisfaction of the Magistrate, if he is in custody, unless the Magistrate for reasons to be recorded in writing otherwise directs."

Why should you allow this Magistrate a long rope and give him the opportunity of putting anything as the reason for keeping a man behind the bars? If you sincerely believe that a man should not be harassed, if our desire is that an accused person must be treated as an honest man, as an innocent man and must be given all the facilities which our Constitution provides, it is redundant for us, at the same time, to make a suggestion and leave it in the hands of the Magistrate for any reasons to be recorded in writing. What are the reasons that can be

[Shri U. M. Trivedi]

recorded? He cannot put down any reasons. The reasons must be of such a nature that are specified in the statute itself. What are the general reasons? Every now and then, in bail applications, we come across the argument, and the police are always willing to put in an affidavit, that if this man is released on bail, he is likely to tamper with the witnesses. What a ridiculous suggestion? That is generally made by the police. If a man is prosecuted for a major offence, he can equally be prosecuted for a minor offence. In the case of a minor offence, can he not tamper with the witnesses? Do you mean to say that we should allow a man to escape punishment that could be meted out to him because he has committed a minor offence? Can we allow him to tamper with the witnesses because he has committed a minor offence, and allow him to be released on bail? This allegation of tampering with the witnesses is a sad reflection on our own character, on the national character and on our desire to administer justice. It is such things which are going on. This is what we have inherited from the past. It is this inheritance from the past that hangs very heavily upon us in determining the granting of bail to accused persons. This little thing that you want to do in favour of the accused is taken away by allowing it to the magistrate that he may for reasons to be recorded in writing otherwise direct. That means, he will not be willing to grant any bail. The position that has to be considered is that the whole of sections 497 and 498 must be redrafted in the light of our Constitution. Our Constitution provides that a man, as soon as he is accused of a particular offence, as soon as he is arrested by the police, must be brought before a magistrate. The idea is that once he is arrested and brought before a Magistrate to have his say, bail must be the rule rather than the not granting of it. But generally what happens is that as soon as a man is accused of any major offence—a major offence generally means murder or anything which borders upon that—he is clamped behind bars and at the end of two or three years of trial, he is acquitted.

Mr. Deputy-Speaker: What is the object of arresting a person as soon as he commits an offence? Is it to prevent him from tampering with the evidence or to prevent him from running away and absconding?

Shri U. M. Trivedi: You have put a very apt question. The object of arresting a person, to my mind, is only to make sure that some person should stand guarantee or he himself should stand guarantee that he will stand the trial. The object should not be oppressive, to deprive a person of his liberty. The only object should be that the man should stand the trial.

Section 497 reads:—

> "When any person accused of any non-bailable offence is arrested or is detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or transportation for life:"

Now, we will have imprisonment for life instead of transportation for life.

Very recently, a judge of the Rajasthan High Court said: "Unless and until there is a full enquiry into the allegation that is being made, it will not be possible.....

Mr. Deputy-Speaker: Even in the case of a murder where there is a *prima facie* case, is it the object of detention to give part of the punishment in advance or merely to prevent him from terrorising the witnesses that may come forward and committing murder of any of them? What is the object?

Shri U. M. Trivedi: I agree in cases of murder, it is just possible, the other object is that he may be prevented from doing further mischief or he may be prevented from doing mischief to himself also. It is just possible. I do not say every murderer must be let off on bail. My suggestion is only this that the provision "...he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence..." should go away. There should be no pre-determination of a man's guilt.

Mr. Deputy-Speaker: Being desperate and knowing full well that the evidence against him is definite and he will be hanged one day, the accused may cut off the lives of a number of others before he goes to the other world.

Shri U. M. Trivedi: The point is only this much. What happens is this. This evidence is never placed before the accused person or his advocate who may be able to look into it and find out whether what the magistrate thinks is correct or not.

Mr. Deputy-Speaker: Is he not entitled to get a copy of the charge-sheet?

Shri U. M. Trivedi: In a recent case it was said by one of the judges of the Nagpur High Court that judges and magistrates should not look at the diaries which are not made available to the opposite side, to the accused. Under this provision, whatever is entered in the police diary—it may be false, completely false, and it is false I think so many times—is placed before the magistrate to prejudice him. This particular clause in section 497 allows a magistrate to look into things which cannot be scrutinized. He looks into it for himself and decides for himself, and without giving any reasons, says: "No. Bail is refused". I say some provision must be made that if the diary is made use of by the Police for purposes of convincing the magistrate that there is reasonable ground for believing that the man is guilty, it must be made available to the accused also. Only in such cases should the magistrate look into the diary, and if he comes to the conclusion that there is reasonable ground for believing that the man is guilty on that basis, then and then alone should the question of his not being released on bail be considered by the Magistrate. Because you know fully well as an advocate that releasing on bail is releasing on bail be it by the magistrate, be it by the Sessions judge, be it by the High Court, once a man is released, ample powers are given under section 498 to the High Court. What is there to prevent the exercise of the same power by the Magistrate, and even by the police?

I say our police is not trained in that respect. The police say: "We have got circulars issued by our Superintendent of Police that we shall not release anybody on bail, whatever happens". I have heard it said in this capital city of Delhi that the police say that even for an offence of cheating, even for an offence under section 403 they will not release anybody on bail, because the Police would be suspected of dishonesty if they are released on bail. It is that attitude that has got to be mended. And to secure this particular end, a good deal of time is wasted. Files go from one place to the other. If the magistrate is at one place and the sessions judge happens to be in the headquarters town, then the files go to the headquarters town. That takes time. And from the headquarters town, if the sessions judge does not release on bail, the thing goes to the High Court, and that takes a good deal of time. By that time the object of this provision which the hon. Minister wants to bring in viz., that if a man has been in custody for a month and a half, he will be automatically considered to be fit enough to be released, will be defeated by keeping this provision in section 497. I, therefore,

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submit that before the whole Act is considered and before this provision as provided for in the present Bill is taken into consideration, the whole of the provisions of sections 497 and 498 may be very carefully looked into and a provision may be made whereby, the police, if they want to object to an accused person being released on bail, must place all the materials before the magistrate, not only for the magistrate to see, but also for the accused person to look into it.

Then, the other object of the Bill is to provide adequate facility for every accused person to defend himself in a proper manner. What is the remedy that is provided here whereby an accused person may be properly defended? The one salutary principle that was obtaining under section 162 of the Criminal Procedure Code is being taken away by this very new provision that you are providing. There was some chance that anything reduced to writing against the accused person would be made available to the accused or his advocate to look into, for purposes of cross-examination at least. He may have a chance of looking into it and may be able to find out whether the story that is given by a witness in the witness box is truthful or not. And many a case has been won only on this ground that one story has been given to the police and another story has been given in the court. There are enthusiastic police officers, some with a desire to secure a promotion, and they go on tutoring the witness from day to day and try to build up the case. That can be checkmated by the provision under section 162. But even this you have taken away now. I say that something must be done to see that the diaries and the statements recorded by the police must be made available to the accused so that he may know what the accusation against him is, and who the witnesses are, that are likely to come up against him. If you can incorporate a provision to that effect, you will be doing something definite to fulfil the desire which you have expressed in the Statement of Objects and Reasons, namely, to provide adequate facilities to every accused person for defending himself in a proper manner.

So far as the jury system is concerned, it is very desirable—and there is no doubt about it—that it should be introduced all over India. In the Bombay State it has worked well. In fact, wherever it has been introduced, it has worked well. It is one of the institutions of England, which has preserved the liberty of the people, and advanced the democratic principles obtaining in the country. Of course, it may have its own demerits, and as we say, human nature is such that everybody cannot be honest. There have been dishonest juries, and accusations have been made about them. But that does not mean that we can have a generalisation and say that because there is a jury trial, the guilty person is going to be acquitted. In fact, the jury trial is very essential and it will go a long way in satisfying the accused persons that they will get a fair trial, for it is very necessary that the accused should not only get justice, but they should also feel that justice is being done to them. This jury trial may go a long way in rehabilitating that confidence of the public in the administration of justice.

The hon. Home Minister explained at great length the provision made here to the effect that jury trial can be dispensed with in cases involving a big volume of evidence and a huge file of arguments. On the contrary, I would say that it is all the more necessary in such cases, in view of the fact that jury trial in England obtains even for civil cases, for cases of tort, and for cases where damages have to be allowed for breach of contract. If the trial proceeds regularly from day to day, we cannot conceive of a case where the trial

will not be over within the short period of a month. It is true that our people are not trained to sit in jury for a number of days together. But I have seen in Rangoon, Bombay and other places, where cases have gone on for a number of days, and the jury have attended on all the days.

If jury trial is to be provided, why should you make a discrimination and leave it in the hands of the judge to decide whether there shall be a jury trial or not? Why give them powers which are likely to be abused? I would submit that this portion of the law must be well looked into, before we can give power into the hands of a judge to decide whether jury trial should be resorted to in a particular case or not.

My hon. and learned friend, the Home Minister was suggesting the *panchayat* courts have done well. I do not know about his experience. I do not know whether he has visited the same number of villages that I have visited. I do not know whether he has gone into every small village that I have visited. My experience has been that the worst calamity that we could have imposed upon the public is the imposition of these *panchayats*. On the one hand we are suggesting that the juries are dishonest or are likely to be dishonest, and on the other, we are prepared to believe that those who are sitting on the *panchayats* will be very honest people. I have some experience of cases, where simply because a man happens to be of a particular caste, he has been punished, saying, oh, he is a *kayastha*, he has come into our hands after a long time, come on, let us sentence him. There have also been cases where *darogas* have been sentenced for a month or two by these *panchayats*, saying,

इतनी हिम्मत करली कि हमारे सामने चले आये ।

Shri M. S. Gurupadaswamy (Mysore): Communal jealousy.

Shri U. M. Trivedi: This kind of communal jealousy and casteism is obtaining in the case of these *panchayats*. I remember the case of *sarpanch* who was a *kayastha*. He used to dispense justice to the best of his ability, and it so happened that a Rajput was sentenced. But because the *sarpanch* had the audacity of passing some sentence upon the Rajput, the Rajput chopped off the nose of the *sarpanch*, and after that, nobody was willing to be a *sarpanch*. These things are going on. When you want to improve upon your magistracy, I see no jusification whatsoever for keeping these *panchayats*. These *panchayats* are not good at present, or at least for the time being.

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If you study the very institution of law-giving in India, and not merely apply your mind to the things which the British imposed upon us, you would be surprised to find that even these caste *panchayats* were doing much better. They were dispensing a greater amount of justice. They were able to try their cases in a much better manner. Now you want to take away this system of caste *panchayats*, because you do not want to believe in castes. But you want to believe in political castes, such as the Congress caste, the Jan Sangh caste, the communist caste, the Krishak Lok caste, the Socialist caste, etc. You do not want to believe in the old castes that were there, but you want to believe in these political castes. You want to create *panchayats* based on this new caste system, instead of on the old caste system. I say that if you want to do away with this caste system, please do away with this *panchayat* system also. If the caste *panchayats* of old are no good these *panchayats* also are no good. At least, the caste *panchayats* had greater control and greater moral force behind them. Even without the help of Government, they were able to impose their sanctions against any individual against whom they wanted those sanctions to be applied. Since they had greater force behind themselves, they were able to impose fines etc. on any indi-

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vidual, even without the help of Government. But that does not obtain in the case of these present *panchayats*. Not only does this new political caste system obtuse, but the old casteism also has its hold upon them, with the result that when a particular type of caste people are the only persons who are sitting on these *panchayats*, they do greater harm to the people than could be conceived, because the sanction of Government is behind them, the force of Government is behind them, and the power of Government is behind them. They do greater harm to the ignorant and innocent people, because they have no broad outlook, and they are narrow-minded. If you want to improve the judiciary, and if it is your desire that the people should be happy, and that good government must be established in the country please do not make experiments with the ignorant and innocent people. Have your judiciary, and make the system of recruitment to the judiciary more sound, have some sort of proper training given to the magistrates, for without proper training, it is not possible to have a correct interpretation of the law. I know of what happened in a particular case, where the magistrate was prepared to sentence anybody who was caught for having entered a house which belonged to government, because he thought that if a person entered a house belonging to Government, he would be causing annoyance to the whole of Government, and therefore, section 448 would apply. Nobody could swallow the interpretation that he was going to put on the law. But these things are just possible, if the magistrates are not trained. There must have been some provision in this Bill, to have a proper system of training for these magistrates.

I say, Sir, that laudable as the object is, you should not run away with this idea that by simply making some change in the Criminal Procedure Code, you may be able to obtain speedy trial or speedy disposal of cases. What is required is that there must be an honest judiciary which must dispense justice and you can obtain that honest judiciary by doing away with those old police officers who are trained in the art of suppression. They have inherited this art of oppression from those who have gone before them and they have not yet forgotten those days. These are their methods of operation. The Government also take some sort of pleasure in allowing these police officers to carry on the same old methods. We should not tolerate them. It may be that you might feel some sort of individual pleasure in keeping your enemy persecuted, in keeping your political opponent persecuted. But you must have a broader outlook—is it worthwhile allowing a political opponent to be persecuted, because the chance may be that you may be the political opponent some time later and the same persecution may follow? You do greater harm to the country by this vicious process that you may like to perpetuate. It will be to your advantage to step into it and not to allow the police to commit excesses. How can that be done? That can be done by either scrapping the whole of this old police force or having new recruits on a different basis, on a different training. Give them an indication: 'After all, you are merely servants of the public. It is your duty to discarge that to the public at large. It is your duty to be friendly to them, it is your duty not to be oppressive towards them, it is your duty to see that the country's name is not marred by your oppressive behaviour'. If these things are inculcated in these old-timers, the police officers, or in the new recruits that are going to come, then and then alone speedy trial will obtain. What generally happens is this. I very recently appeared for a bail application where an accusation was made that by giving a lathi blow a man suffered some sort of injury. One month later, suddenly it came

into the head of the police officer that that lathi blow was likely to cause death. Therefore he will change the offence from section 325 and convert it into an offence under section 307. And because it was section 307, that poor fellow, all his family and friends —everybody—in all 19 persons were arrested and put behind bars. Because, it was section 307, the magistrate got frightened and said: 'I am not going to exercise my discretion' and the net result was that these people remained in jail for two months and the sessions judge would not grant bail even after a good deal of persuasion! The High Court judge, of course, on the very presentation of the applicatcn granted bail and now result has been that no prosecution is taking place. I say that this happens only because the old police force and the old police methods are not changed by us, and this Criminal Procedure Code is not going to change that. Therefore, if there is a sincere desire in our minds that we must be able to provide adequate facilities to every accused person for defending himself in a proper manner, and at the same time to ensure speedy disposal of all criminal judicial business, so that innocent persons should not suffer from protracted proceedings and the real offenders should be punished as early as possible after proper trial, I reiterate and put before you these two humble demands. The present police force must be reformed. I do not say it should be destroyed. No— I do not want it. I never desire that any man who has got employment should lose his employment, but do reform them. At the same time, I beg to submit that you must make certain provision whereby if there is any dishonest desire on the part of any police officer to prosecute any innocent person, it may be checked. Then, if an innocent person is so placed and his liberty is jeopardised, he shall be paid so much compensation by the Government, of which a certain portion shall have to be reimbursed by the police officer who was responsible for the wrongful arrest of such person. If these two provisions are made, I say, Sir, they will go a long way in preventing injustice being done.

Mr. Deputy-Speaker: Shri C. C. Shah.

Shri N. Sreekantan Nair: May I raise a point of order? Those people who have moved amendments for circulation of the Bill for eliciting public opinion have to place their views before the House.

Mr. Deputy-Speaker: I am calling them.

Shri Bansal: May I know if it is necessary for us to send our names befcrehand or to plead to you otherwise?

Mr. Deputy-Speaker: No, no. The hon. Member has not been in default at all. He has already sent in his name.

Shri Bansal: I have not paid a visit to you at your seat.

Mr. Deputy-Speaker: I will clarify the position.

Shri Sinhasan Singh: May I sumit, Sir, that those persons who have moved amendments should be given a chance to speak, so that people who have not moved amendments may also throw light on those amendments later on in their argument.

Mr. Deputy-Speaker: This is a method of creating an exception to the rule laid down by the hon. Speaker. The hon. Member, Shri Sinhasan Singh, is in the Select Committee, I understand.

Shri Sinhasan Singh: I am not in the Select Committee.

Mr. Deputy-Speaker: Then I will certainly call him. He has tabled an amendment asking that direction should be given to the Select Committee. Shri R. D. Misra has also given notice of one amendment. Then there is Shri Sreekantan Nair. I will certainly call all these friends. One of the hon. Members, Shri C. C. Shah, said that he was going away and that

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he could not stay on, and if he was given an opportunity, he could speak I wanted to give him an opportunity. So I called him. It is only with reference to Shri Vallatharas who is in the Select Committee and has also moved an amendment that I shall take time to consider. If I do not call upon him today, there is enough time tomorrow. I will make up my mind and I will, as far as possible, stretch a point in favour of every hon. Member to speak, unless I am so constrained as not to allow that exception. Therefore, I will consider that matter. Every hon. Member will certainly have a chance. I am only appealing to hon. Members. Certainly, this is a very big subject where 15 minutes may not be sufficient. Normally, half an hour will be allowed. I allowed 40 minutes for Mr. Trivedi. In case they want to exceed, we will consider. But in marshalling, let them place their points of importance first and then if there is time, the minor points next.

Shri N. S. Jain (Bijnor Distt.—South): May I know if it is necessary to send a chit to you?

Mr. Deputy-Speaker: No, no. I want to mention that also. Normally, what I have done is that as soon as I see which hon. Members are anxious to speak, I note down their names when they rise without any chit being sent. But if a chit is sent, I will certainly include it in the list. That does not mean that a chit is necessary to be sent, nor that the moment a chit is sent, he will be called. Neither the one way nor the other. I am noting down for my own convenience as to who are all the hon. Members who want to speak. When a number of hon. Members stand up, even if I do not know their names, I will make enquiries and then send the Marshal to gather their names and then I note them down here myself. Thus, whoever wants to speak, there is no prevention. One who does not want to send a chit is not at a disadvantage. Thus, he is free to choose whatever course he likes.

Shri N. Somana (Coorg): May I make a humble submission? Some of us who have tried our best to get a chance when the Companies Bill was under discussion, may be given a chance here.

Shri Velayudhan (Quilon *cum* Mavelikkara—Reserved—Sch. Castes): That is quite correct.

Mr. Deputy-Speaker: I would appeal to the Whips and all the important members of every Party to sit together and try to apportion time so as to avoid this kind of scramble, later on throwing the responsibility on the Chair. If they do not do that then certainly the Chair will do so.

Pandit S. C. Mishra (Monghyr North-East): May I make a submission...

[SARDAR HUKAM SINGH *in the Chair*]

Mr. Chairman: Mr. Shah.

Shri C. C. Shah: (Gohilwad-Sorath): I am grateful to you for giving me this early opportunity to participate in this debate. This is a very important measure, and the hon. Home Minister has declared that this is not a Party matter at all. This measure is a part of the Government programme for the reform of the judicial system for the administration of justice, and we should look at this measure not in an isolated manner, but as a part of that programme for the reform of the entire judicial system of the country. With your permission, I propcse to make some observations on the general subject of the reform of the judicial system before I go into the specific provisions of the Bill.

Administration of justice is one of the most important function of any State, and much more so, for a welfare State, and, therefore, it is necessary that the State should have a judicial system which appeals to

the people and which fulfils the needs of the people. The present judicial system which we have in this country is a legacy of the British. That system has some very good points in the sense that, for example, it enshrines the independence of the judiciary, it enshrines the principle of equality before the law, namely, that the rich or the poor, the high or the low shall have the same treatment and equality before the law, it enshrines the rule of law, namely, that the administration of justice shall not be according to the whims, caprices or eccentricities of any individual, but it shall be according to the law which is known to all. These are very good and salutary principles, but that system also enshrines a procedural law, which we have adopted, and that procedural law is highly technical and highly complicated. That procedural law has, if I may respectfully say so, a very legalistic approach rather than an equitable or a human approach, and the procedural system is so cumbersome that the dissatisfaction with the present system is widespread and deep-rooted. It is, therefore, right that the Government has undertaken this programme of the reform of the judicial system. The two besetting sins of the present system are its inordinate delays and its ruinous cost. It is not enough to state that these two things are there. It is very difficult to give any adequate idea of the evil arising out of these two things—delays and cost. The evil, if I may say so, is deep-rooted and widespread and would, therefore, need an extensive reform of the system. It is well said that justice delayed is justice denied. We know today that the legal justice is within the reach of the rich who may either succeed in getting justice or may succeed in defeating justice. If we are to reform such a system, we must have a clear idea as to what we are about. Dr. Katju observed that the people have lost faith in the courts. It is a very serious statement to make and it is a true statement. It will be a great calamity for any nation if its people lose faith in its courts, and that statement by itself is a great condemnation of the system which brings about the administration of justice. A person of the eminence of the Home Minister and with his experience has said that people have lost faith in courts and, therefore, we can measure the extent of the evil and the necessity of the reform. I submit that the present system is wholly unsuited to the conditions in the country and we need a radical and a fundamental change in the entire system. Illiteracy and mass poverty in this country make it necessary that we should make justice within the reach of all and we should make it available as swiftly as possible. Administration of justice, at present, has been brought to ridicule, to a certain extent. When people find that a claim cannot be adjudicated upon for three, four or five years or even more, we can imagine the feelings which they have. I come from a great city like Bombay which has a large commercial community, and I notice that they have become so very much discouraged with the present system. If I have a claim for a lakh of rupees today and I need my money urgently. I file a suit, but defendant has only to put in some defence to delay for three or four years and then the case is adjudicated upon. By the time the decree comes, I do not know how the defendant stands; in fact, he may be in a different position altogether and it may be the worse for the delay. This is a denial of justice, even though it may be obtained at the end of three or four years. The same is the position with regard to the administration of criminal justice. Dr. Katju said that there are 75 per cent. of acquittals on technical grounds, and in that case what must be the feelings of the people against those persons whom they know to have committed the offence but get acquitted on technical grounds.

Pandit K. C. Sharma: It is not a correct statement of fact.

Shri C. C. Shah: My experience is very limited and I might frankly confess that my practice has been more on the civil side than criminal. After 25 years of experience at the Bar and with a practice not small in extent, I have no heart to advise any litigant to go to a court of law to seek redress or justice. It has been my practice to discourage it and see that it is settled outside the courts, if possible. Of course, if they cannot settle outside and are driven to go to court, it cannot be helped. The people view it as a calamity if they have to go to court be it as a plaintiff or as a defendant, or as a complainant or an accused. I have been telling people, as Dr. Katju said this morning, that litigation is a sort of gamble. If you have a purse long enough, you may succeed either in getting justice or in defeating it, but I would advise the ordinary man to forget the injustice if any, and employ himself more usefully rather than waste his time by going to court to get justice. That is a statement of fact. What is necessary is, as Dr. Katju rightly observed, that we should restore the faith of the ordinary man in a court of law that he will get justice. That needs, I submit, a very radical approach to the problem. Any change within the framework of the present law is not going to bring about a position that will meet the needs of the situation. I am expecting that we should change the very basis of the system —the procedural law. It is not a question of merely amending the Criminal Procedure Code or add a few provisions to it. You have to consider also the Civil Procedure Code; you have also to consider the Evidence Act; you have also to consider many of the procedural laws which make for delays and cost. All that is not enough. You have also to consider the constitution of the courts, the High Courts etc.; there are first class, second class and third class magistrates and so on, so that there are about seven or eight courts from the bottom to the top. You have to consider the organisation of the legal profession, the remuneration to be paid to the legal profession and so many other questions. All these are co-related with the reform of the judicial system. A mere amendment of the Criminal Procedure Code is not going to bring about a change which we are all so eager to have. I am, therefore, expecting that the Government would take this problem in a much wider perspective, because Dr. Katju rightly observed—many of his observations were very significant and relevant—that people do not feel that these are their courts.

In the administration of justice, there are five parties concerned really. The first is the judiciary. In a reform of any judicial system, you have to consider the calibre of the judiciary, its status, its remuneration, its prospects, its future, etc. No amount of amendment of the Criminal Procedure Code will bring about that change. Then there is the litigant; then there are the lawyers; then there is the public at large who have to come and give evidence and assist in the administration of justice. Dr. Katju has referred to the widespread evil of perjury. Why is it so? Lastly, there is the Government and the police.

I am not objecting to the present Bill: I welcome this Bill as a first step; I welcome it as a necessity to do something immediately; it will go someway, in my opinion, to bring about some change in the administration of criminal justice. But I am making these observations to point out to Government that we should not take a false sense of satisfaction that once we have amended the Criminal Procedure Code or the Civil Procedure Code the problem will be solved. We will be failing in our duty if we took any such false satisfaction that by mere amendments to the Criminal Procedure Code or the Civil Procedure Code, we will be solving the problem.

Take the legal profession as such, which plays such a large part in the administration of justice. The lawyer's profession is said to be a noble profession, and it is. Yet, does it remain so today? I ask my hon. friends.

Shri N. S. Jain: Which profession has remained so?

Shri C. C. Shah: I agree with my friend and that is the position in which we are. Does the lawyer command that respect in society which he should if he is to discharge his function, of not merely getting success for his clients, but if he is to discharge his function as officer of court assisting in the administration of justice? That is a great thing for a lawyer.

The other day Government appointed a committee, the Das Committee for the All-India Bar. I had the honour to be a member of that Committee. I made certain suggestions in that Committee for reform of this judicial system. The Das Committee could not naturally consider this. The Das Committee had to consider the organisation of the legal profession: the question of remuneration did not come before the Das Committee.

We are considering the question of cost. Now what shall we do regarding cost? The legal profession is over-crowded. At the bottom we find people not getting enough to make a living; at the top we find people charging heavy fees, disproportionate fees, in my opinion. Fees must have some proportion to the labour involved. We find leaders of bars setting example of charging heavy fees. I do not wish to blame men of my profession. They say: "If there are people prepared to pay why should we not charge them?" They say that if the mercantile community has made riches out of all proportion to what they deserve and if they have to be defended, then, what is wrong in our asking them to pay a large sum out of that? But I submit that is no answer. (*Interruption*)

Mr. Chairman: I would request hon. Members to resist the temptation of making frequent interruptions.

Shri C. C. Shah: I have been feeling all the while that the time may come when we may have to make the legal profession, or the legal service a national service. That is my feeling. I know the disadvantages, or the difficulties inherent in making any service a national service. I can recount them better than anybody can. But I feel that the advantages will far outweigh the disadvantages. A lawyer having an interest in litigation, where his duty conflicts with his interests, is something of a situation which cannot make for proper administration of justice. Of course, these are much wider social problems. I am taking the legal profession as an instance, because we happen to consider that. Probably there is much more to be said about and against the industrialists, the capitalists, the mercantile community, the medical profession or any other profession, for the matter of that. But, as I said, the administration of justice is not an isolated problem of reform of Criminal Procedure Code alone.

Take another instance—the question of cost. Dr. Katju has rightly said that court fees should never be treated as a source of revenue by any State. It is an observation with which I entirely agree. But what do we find? Every State considers court fees to be a source of revenue. In Bombay recently they have put a 25 per cent. surcharge on court fees. Recently they have applied to the original side of the High Court the Court Fees Act, which was not applied for the last seventy years. Because, they treat it as a source of revenue.

Dr. Katju: Was that not removal of undue discrimination?

Shri C. C. Shah: If discrimination is to be removed, it can be removed by reducing court fees. If adminis-

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tration of justice is a function of the State, then it is not necessary that we should charge the litigants for getting justice. I am mentioning this as an instance as to the manner in which cost can be reduced, because two items which enter heavily into litigation are the court fees and the lawyer's remuneration. Both these questions will have to be carefully considered by Government if the administration of justice is to be made cheap.

Along with procedural law we have a bewildering volume of case law. It is a problem to which Government will have to apply its mind if the administration of justice is to be made swift. Take a book like the Criminal Procedure Code, a copy of which I have before me. Under every section you will find a large number of cases quoted, conflicting cases, some cases not worth reporting at all, and a lawyer trying to find out whether his opponent is not citing a case already over-ruled and looking up the index of over-ruled cases, whether a case has been commented upon, followed, dissented and this, that and the other. This is a problem to which we will have to apply our mind. I do not know what the solution will be. But the fact remains that the whole system has become so complicated and cumbersome, only because the precedent has come to us from the British and we have adopted it. We do not know what the consequence of it is going to be. Take a volume of the *All India Reporter*. You will find reports relating to Part A States, Part B States, etc., etc. We are asking for a simple law which a layman can understand. I at least ask for a law which a lawyer can understand. That is the position to which we are reduced today.

Dr. Katju in a very able note which he prepared, has shown in his preface or rather introduction, that with his wide and varied experience is alive to all these things. In his introduction he says:

> "This analysis will show that the roots of the evil are manifold (That is precisely what I wanted to draw attention to, namely that the roots of the evil are manifold—not merely an amendment of the Criminal Procedure Code) and that the mischief is widespread. (Perfectly right) and that the treatment, therefore, must be fairly deep and extensive."

In connection with his last sentence, I would say not only should the treatment be fairly deep and extensive, it has got to be radical and revolutionary, if I may say so.

Now, why is it that Government has not done this? Dr. Katju referred to a letter which the Home Department circulated to the various States, inviting opinions on the proposed amendment of the Criminal Procedure Code. The problem before Government was either to appoint a Commission to go into these things, or to undertake a speedy reform for immediate results. Now, I will read one sentence from that letter which is very significant:

> "The present generation of judges and advocates are steeped in the old traditions and one cannot anticipate any revolutionary outlook from such a Commission.
>
> "And what is more important, the people have during the period of 100 or 150 years become accustomed to and familiar with the procedure now prevailing. It may be easier for the next generation, twenty or twenty-five years later to strike out new lines altogether and mould the procedure on some other model."

I am afraid if this generation cannot think on revolutionary or radical lines, we will never think on radical or revolutionary lines. It will be wrong to say that only the future generation, twenty or twenty-five

years later, can think of amendment of the judicial system on radical and revolutionary lines. I think we have men enough who can think on radical and revolutionary lines.

I welcome this Bill. I do not want to be misunderstood. As an immediate measure of reform needed today, I welcome it. But let there be no false sense of satisfaction that we have solved the problem. We have not solved the problem. And we will not solve the problem until we examine the judicial systems of the various other countries who have solved the problem in a different manner altogether. It is not a small job, it is not a small problem. It needs application, study, men who can bring to bear upon the problem a fresh and radical outlook. And we have men not lacking in our midst to do that.

I would with the utmost respect urge upon Government that while it may amend the Criminal Procedure Code and the Civil Procedure Code, it will also have to amend the Evidence Act. The Evidence Act is highly technical, with its highly technical rules for admissibility, relevance, proof, hearsay, secondary and primary evidence. If you tender a book of account you must bring the man who has written it. When you go before an arbitrator, he is not bound by the Evidence Act. There are some people who have a feeling that the more complicated you make the system, the greater the justice; and the man must have a feeling that justice is not merely done but it must appear to be done, and therefore the man must be given a long rope to say everything he wants. If you want to have swift and speedy justice, that kind of principle will not do. Therefore I would end by saying on these general observations that if Dr. Katju wants, and I believe he does certainly, that the faith which people have lost in the courts should be restored, he will have to do something more radical than what has been done in the present Bill. That problem cannot wait. It is an urgent problem, and it need not wait for the next generation or twenty or twenty-five years. It must be done immediately.

Having said this on the general observations, I will make, with your permission, a few observations, on the present Bill itself. I welcome many of the provisions in this Bill. For example, the omission of the committal proceedings. It was a needless duplication. I therefore welcome it. I also agree to the omission of the assessors—it is a unanimous opinion—about which there is no dispute.

About the jury system the opinion is divided. I must frankly confess that I have not that faith in the jury system which Dr. Katju has. But as an immediate course I welcome clause 42 which provides that in the case of complicated cases or cases which are likely to take long, the High Court may dispense with juries. In fact I would wish that this provision were applied immediately, because in Bombay I find four Sessions Courts continuously sitting all the year round and yet unable to dispose of the cases. Trials taking six or eight weeks are not rare. And the juries, with great respect to them, have not been very helpful in such trials. I would request, if it is possible, that this may be applied immediately, so that at least some of the trials which I know, are likely to be prolonged and complicated may have the benefit of this.

Then there is another provision which provides that the accused should be granted bail after six weeks if the case is not completed. It is a very wholesome provision. Of course, the entire administration of criminal justice, as Member after Member will point out, depends upon the integrity and the efficiency of the police force. It is a *sine qua non* of any efficient system of judicial administration on the criminal side. I do not want to cast any aspersions on our police forces, but I am not incorrect if I say that the public

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has not that faith and confidence in the police force which can make for speedy administration of justice. In the investigation of cases, in the prosecution of cases we still do not find that atmosphere on the part of the police which will make for confidence in the public. But I do know that efforts are being made to improve matters, and in some cases the efforts have been successful also.

Then I welcome the amendment of sections 145, 146 and 147 regarding land disputes. They are essentially in the nature of civil disputes. For the magistrate to go into the question of possession will take a great deal of time. Then there are amendments relating to transfer, revision etc. I do not want to go into the details, but I do hope that on the whole these provisions will reduce the delay at present inherent in the present system.

There are one or two provisions of this Bill with which I do not agree and to which I should like to make reference. The first is that option is given to the court of sessions to hold a trial at any place. I welcome mobile or circuit courts because they make for convenience. But at the same time I find from my experience that those kind of courts do not have the atmosphere or the dignity of a court—I mean you feel as if you are in a camp—and sometimes it becomes costly to have lawyers from headquarters. So I would suggest that where a sessions court trial is to be held in a place other than its usual seat, it must be held only if the accused consents to it. If he objects it should not be done. The option must be given to the accused. I think that would be a salutary provision.

Then the omission of section 162 is highly controversial. I am not satisfied that that will be a salutary thing. We know today the manner in which the police record statements. I have experience of some cases, and as Solicitor to the Government of Bombay for a period of four years I have had to deal with a number of these cases. What happens is an inspector hears a number of people sitting before him, and does not take down immediately what they have said. But at his pleasure he dictates what he considers to be what the witnesses said. That is not exactly what the witness said or intended to say, but probably what the inspector wants him to say. And then the inspector may go before the magistrate and under section 164 make him bound by oath. I think it may lead to greater perjury. That is a provision about which I am very doubtful and I would like the Select Committee to go into it carefully.

Then the right of appeal is given to a private complainant against acquittal, by the leave of the court.

Dr. Katju: He is given a right to apply for leave for appeal.

Shri C. C. Shah: I have always held the view that a man is supposed to be innocent and if a court has acquitted him and has held him to be innocent, the matter should end. The State undoubtedly has a right to appeal if it feels that the judgement of the magistrate is either wrong or perverse. But there is a sense of responsibility in the State itself before it goes in appeal against acquittal. I know the Supreme Court severely discourages appeal against acquittal, even in respect of the State. A private person would always feel aggrieved. I have known several cases in which I have on behalf of private individuals requested the State to go in appeal and the State has for its own reasons turned down the request. If the case is fit enough for special leave by the High Court to the private complainant, surely it is a case worthy enough for the State itself to appeal and it need not necessarily be for the private complainant to go to the High Court.

Now, another section is the summary punishment for false evidence. I know very well that Dr. Katju is

greatly concerned over this matter. I do not know whether the evil of perjury is so widespread as Dr. Katju thinks, but as I said my experience is more on the civil side and more so on the original side of the Bombay High Court, where I am glad to say that the standard is more high. The evil of perjury is a social evil and by giving summary powers to the magistrates, I am afraid, the remedy may prove worse than the disease. I know some drastic steps have to be taken. Probably, it may be said: "Let us try, and if we find that it has resulted in injustice, then we will remedy". I also know that it has been very much limited, namely, that the power to punish for perjury is on the credibility or veracity of the witness only and not on the merits of the case. I will give you an instance. There are very few judges who can keep back long their opinion over the case. They disclose their mind and once a witness knows that the judge is of a particular mind, he would hesitate to disclose what he knows due to fear of displeasing the magistrate or the judge. The judge might say: "What you are telling is a lie, I do not believe at all what you say". Even in the Bombay High Court, where the judges of course are of high calibre, I have known judges—I say with utmost respect—telling witnesses "you are telling a lie; I do not believe it; you are a liar". One judge said, "you are a past master in the art of lie". When such things are said to witnesses they are naturally discouraged from speaking out their minds; they will tell what the magistrates and judges would like them to say.

Dr. Katju: Are not they discouraged from telling more lies?

Shri C. C. Shah: We have to choose between two evils. The witness has come to tell his story and the judges are simply to hear what he has to say. The judge will then decide at the proper time whether what the witness said is true or false. I have known cases in which the judges have disbelieved the witnesses and used derogatory expressions about the credibility of the statements and the court of appeal has believed every word of what the witness said. I know several cases of such nature. Personally speaking, I feel that it is better to leave it to public opinion to remedy the evil of perjury rather than give summary powers to the magistrate.

Then, in clause 98, amending section 510 of the principal Act, the words "Chief Inspector of Explosives or the Director of Finger Print Bureau" are added. Section 510 refers to certain reports which can be filed in the trial. I can understand the Director or Chief Inspector of Explosives or the Chemical Analyser's report, because they are not very controversial, but the inclusion of the report of a Director of Finger Print Bureau is not correct. This report is on a disputed handwriting and the science of handwriting has not, I believe, so advanced as a man can infallibly and confidently say: "this is not the handwriting of such and such a person". I have known handwriting experts being cross examined in the witness-box and they have at times collapsed on cross-examination. Even Government handwriting experts have collapsed in the witness-box, after having given their opinion on a particular document as forgery. Therefore, it must be admitted that the science of handwriting is not so advanced for anyone to say that his opinion is unchallengeable. Therefore, I submit that it is wrong to put the opinion of the Director of Finger Print Bureau on the same footing as that of the Chemical Analyser or the Chief Inspector of Explosives.

Lastly, I have to say about defamation. Dr. Katju has rightly said that this is not a party question and the opinions which we express are not based on any party spirit—probably, every provision in this Bill is based on his own experience. But, defamation essentially is a private matter, and now to make it a cognizable offence not only for the Presi-

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dent, the Governor or Rajpramukh of State, but for Ministers and for any public servant. I think he is going too far. The object Dr. Katju said, is to expose corruption and to give the man an opportunity to clear his character. I know the yellow journalism and I know the kind of irresponsible criticism which is being indulged in against the Ministers and public servants. I know the vicious atmosphere which is being created by such kind of criticisms. But, I would rather leave it to the good sense of the public to decide about such statements and also to the man concerned. If a Minister takes exception to what is said about him, it is open to him to go to the court of law for defamation. Even the King of England went to the court and submitted himself to the witness-box. That does not mean that the police should intervene. Dr. Katju says that the man concerned may not have enough money to go to the court of law. In such cases, if the State finds that a public servant has been recklessly exposed to wrong criticism, the Government may finance the defence of the public servant. In my opinion it need not be made a cognizable offence. These are all the observations I have to make.

Dr. Katju: May I make a request to the hon. Member to send me the revolutionary and radical proposals that he has in mind in writing?

Shri Velayudhan: We are appointing a committee.

Shri C. C. Shah: It is a relevant question, Sir, and I would like to reply.

Mr. Chairman: The hon. Member can send his reply in writing as the hon. Minister has desired.

Shri Velayudhan: If he is made the Home Minister he will make all these changes.

Shri N. Sreekantan Nair: Sir, I am no lawyer and the little criminal law I know had been thrust down my throat by the police during the days of autocracy as also under the benign rule of the Congress. So, my appraisal and assessment of the present Bill will be that of a layman, or as the hon. Minister has said, that of a habitual offender.

An Hon. Member: Political offender.

Shri N. Sreekantan Nair: As law is meant to protect the innocent, it has got to be tackled effectively; but, effectiveness does not mean arbitrariness. One of the cardinal tenets of criminal law is that even if a thousand guilty persons escape punishment, law should not be made the instrument of penalising an innocent person. We on this side would naturally say that the root of all evil, including crime, is social inequality and social competition. You have got to go into the root of this matter and pull out the root, otherwise this will continue and any amendment on a superficial basis will not bear any results. Of course, I for myself consider that the amendments that are before this House are amendments that come from an antiquated criminal lawyer of the 19th century who has recently acquired a totalitarian approach. If the hon. Minister had introduced an amendment to change the perspective of criminal law, to approach crime and criminals with a curative rather than punitive perspective, I would certainly have applauded him. But the present amendments are not meant to radically change the provisions, as my learned friend Shri C. C. Shah has said. Of course, we cannot agree fully with him as we do not know what his radical changes are after all. Even then, I may point out some of the most important objections that any leftist could have regarding these amendments.

The Statement of Objects and Reasons gives three grounds for introducing this Bill. The first is that the present Criminal Procedure Code does not encourage speedy disposal of cases, the second is that it leaves many loopholes to the guilty persons to postpone the evil day, and the third objective is to simplify the procedure.

I am all for simplifying the procedure, especially when the common man cannot afford to pay for protracted trials and conduct of cases. But, the simplification of procedure should not jeopardise the interests of the accused. Summary trials should not be allowed with a view to end in punishment. That is, after all, what is done by the police. That is, after all, what is meant when a case is taken to the magistrate for summary trial without sufficient opportunities being given to the accused to defend himself. Naturally, it means that he will be convicted. A conviction, of course, has an odium in modern society. He becomes an outcaste. He suffers. His profession is endangered and he becomes a parasite on society. The whole approach to the judicial administration has to change. When a man is convicted and sent to jail, he comes into contact with the most evil elements in society and there is every encouragement for him to fall back on evil ways. All those persons to whom summary punishments are meted out are made to mingle with other experienced criminals and anti-social elements. I pray for a reform of our entire outlook towards crime and punishment. Till that time, some salutary provisions should be put into practice.

For example, I have not much of an objection to the eliminating of the process of committal proceedings except in cases where murder charges are involved. Ordinarily, I can say that duplication is unnecessary. But, when a man is put to trial, the result of which may be losing his life and everything that is sweet and good in this earth, he must get as wide an opportunity to defend himself as possible. Except in such cases, I have no objection to this provision.

There is one aspect of the matter. So far as lawyers are concerned, I am not very much interested in them. But, the abolition of committal proceedings will take away a good portion of the work in the law courts. It will lead to unemployment in the legal profession which would again lead to discontent and anti-Government feelings. But, I am prepared to leave the lawyers to their fate. Let us go to the common man, and see how they are affected by the amendments in the present Bill.

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By shifting merely the venue of trial, I think nobody is going to place reliance on the courts and take them as the common man's courts. As long as the judges continue to have their bureaucratic, authoritarian and self-willed attitude, as long as they pretend that they are above the common man and approach the witnesses and the people with some sort of a disdain and contempt, no court, no magistrate, no judge and no judicial officer is going to get real sympathy and respect. Of course, they are being supported and aided in their functioning by the police. In our State, unfortunately, I know what the police is. I know from my experience what it is. The training of the police is such that they are made to feel that every case must end in conviction. So, they go out of their way and cook up false evidence. The magistrate naturally is expected to do whatever the policeman wants him to do. There have been very funny instances in the past where magistrates have been assaulted by the police because they let out X or Y on bail and the police did not like it. As you know, it has been pointed out also, that the police oppose bail on the ground that the accused will tamper with the evidence if he is let on bail. When there is the police force, when there is the military force, how can a poor individual tamper with the evidence? If he tampers with the evidence, prosecute him. Take out another case against him or try any other punitive method on the people who tamper with the evidence. In some of the Indian States,—they have come into the Indian Union now—people are put in lock-up for months together. I myself have been kept as an under-trial prisoner in the lock-up for seven months. It may be very interesting for you to know that the case

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in which I was tortured was one in which I, along with 52 other trade union leaders, was accused of having committed dacoity of Rs. 22 worth of coconuts, one rupee worth of milk. I would not have complained if it had been Rs. 22 lakhs. There would have been some basis at least. The magistrate who tried it, the sessions judge who heard the appeal and the High Court judge to whom it went up finally, knew that these charges are false and are deliberately concocted by the police. These persons were refused bail because our law is not based on facts, our law is not intended for doling out justice; our law is supposed to depend on evidence, they can cook up evidence. The Home Minister comes here and talks of perjury. I can challenge the Home Minister and tell him that eighty per cent. of the cases convicted in the police courts, in the magistrate courts are based and built on utterly false evidence and the preconceived notions of the police. Eighty per cent. of the cases are built on perjury. The Government comes and says that the magistrates can immediately give a summary punishment to the witness who comes and deposes counter to what he has already stated. What does that mean? It means that a police officer by threatening an ordinary man, a common man, a poor man that he will be incriminated in a murder case or some other criminal case, can compel him to go to a magistrate and give deposition in a certain way. When he is confronted by a clever advocate and when he is cross-examined, the truth comes out. He is ignorant of the whole thing. He does not know where the crime took place; he cannot know the details. He first gets jittery and then he loses his balance and then comes out with the truth. This Bill allows the magistrate immediately to convict him and send him to jail. That means that this Government, this Congress Government, this Gandhian Government is putting a premium on uttering falsehood in any court of law. It insists that falsehood should be adhered to because the case has been built on falsehood. That is the net result of these summary trials for perjury.

There is another aspect. The accused now gets a right to defend him by cross-examining the witnesses more than once. I say that even if, not two or three, but fifty chances are given, according to the present law, according to the present set-up of the police, the present approach of the police and the present training of the police, the accused cannot get justice. But, the present amendments take away the right of the accused to call back the prosecution witnesses after the charge-sheet is framed. Only when I am charge-sheeted will I take serious cognizance of the fact that the case is against me. Then it is not problematical. When I am definitely charge-sheeted for certain offences, then naturally my desire to protect myself and my right to protect myself become all the more serious. Then, as an accused, I must have the right to get back the prosecution witnesses and cross-examine them. The whole question has been so put in the new amendment that any poor citizen will be put to very great difficulty. The police, out of vendetta, or out of a desire to injure or molest somebody who is busy—of course, a poor man may be busy earning his bread—may cite him along with hundred others, as a witness; and he is bound immediately to appear before the court and record his statement, because the police officer has ordered it. Then, after recording the statement, he is bound to go and attend before the court whenever the court wants him. His other business the question of earning his daily bread, his duties and his responsibilities are no concern at all of the court or the police. He must dance to the tune of the court and the police. And then when he makes a misstatement, he will be sent to jail. The law at present allows him just to look to his convenience at the risk of facing a

warrant or being taken in police custody. At least he has that privilege now. But here the magistrate is given the power to immediately give summary punishment to those people who do not obey the summons, as if the summons of the magistrate is the only business this man has, as if the Court is looking after him and his family. You know how temperamental magistrates are. Even the sickness of his own wife is not cause sufficient, according to the magistrate, for an ordinary common man in the village to say that he could not obey the summons. So, the question of importance, comparative importance, from the outlook of the magistrate and that of the witness will be quite different, so that the common man's interest will be jeopardised. And the whole law is such that any citizen, any individual, can be made a tool of the police, can be made a police agent can be made to say anything against any respectable man. In my case itself I found ordinary men, men who know me in my every day life twenty, forty of them, coming, standing in the box, trying to perjure themselves—of course, looking around at my face and swallowing half of what they were instructed to say. In such cases—political cases, naturally every State is interested. No judiciary in India is free. There are even personal matters in which Ministers are involved, in which the magistrate may be interested, in which the police officer may be interested. You might have heard of the wonderful incident which recently took place in Mysore State. A member of the Legislative Council exposed some of the bad actions of a high police officer. An attempt on his life was made in the public street. This is the state of affairs. This is our police. This is our law and order. This is our justice. And then Government says the accused will not be permitted to call back the prosecution witnesses.

Over and above all this, they have added a new provision that the heaven-borns, the Ministers, Rajpramukhs and even Government officials should not be maligned. May I ask you, with this privileged position will any ordinary man dare to raise his voice against these heaven-born people? No. With their position, they cannot only favour people who support them, but also injure people who oppose them. So, no ordinary man dares raise his voice. But if taking the risk, a man comes forward because he feels that it goes to his heart—it is only then he comes forward against Ministers and important personalities and public servants—you have the Mysore incident, and you know what you may expect from the police normally. Even if he is arrested, what failed in the open street will materialise in the lock-up. I know in my own State in every lock-up you have got a picture of Mahatma Gandhi, and there you see all over it the spots of blood which has come out from the body of the innocent victims who came to the lock-up. That makes it a mockery. That is our jail and lock-up, and it is in such lock-ups that the poor victims are kept for weeks and months together. The hon. Minister said that if the allegation against a Government servant is found to be true, Government would institute a departmental enquiry. If the procedure for government servants is different, I could have understood it. If the police were allowed immediately to charge-sheet a Minister or Government official or Rajpramukh, we will be having some justice at least in contemplation, though, in fact it would not be there. Even that position made out is not here.

There are a hundred and one points, but I do not wish to take too much time of the House. I want to make one point clear. There is a provision in the amending Bill restricting revisions to purly points of law, excluding points of fact. A magistrate may go wrong in the assessment of facts. He may be prejudiced or he might not have given sufficient importance to the assessment of facts so that the most material aspects are left out. Who is going to look into this matter? If the High Court is not empowered to go into the factual side of the case

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as well, that would be limiting the functions of the High Court. It would be limiting the possibility of the ordinary-man getting justice. The magistrates and the lower judges are all people interested in the locality, are people who are bound to a certain extent to respect the personages in the locality. They may have their likes and dislikes of lawyers. All these come in and if you want to give a fair treatment to the accused, especially in criminal cases, the High Court must have the right to go into the facts of the case and decide the case on factual issues also. As the Supreme Court does not go into questions of fact, the High Court, at least, must have the right to do it.

पंडित ठाकुर दास भार्गव : जनाब चेयरमैन साहब, मैं आपका बड़ा मशकूर हूं कि आपने मुझे मेहरबानी करके बोलने का मौका दिया.....

Some Hon. Members: English.

Mr. Chairman: The hon. Member has by now known the wishes of the House. Now, he will choose his own language.

Shri Velayudhan: We demand that he should speak in English, as he is a respected member of the Bar.

Pandit Thakur Das Bhargava: I respect my friends too much not to yield to their wishes. I will, therefore, speak in English.

I was submitting that I thank the Chair very much for kindly allowing me to speak at this stage. I have given notice of a motion for circulation of this Bill. I have further given a motion for appointment of a Select Committee of this House. I am also in favour of the amendment of Shri Sinhasan Singh. In fact, I should have given notice of one more motion which I did not purposely give but which would have been quite appropriate in this matter. It is very unfortunate that the hon. Home Minister, whenever he brings a Bill, does not lay all his cards on the table. The hon. Home Minister has not given the factual information which he ought to have given to every hon. Member in the House, so that he could be able to judge about the merits of the case and also table the right motions. Now it so happens that after we gave notice of the motion for circulation of the Bill, the hon. Minister comes out in the House and gives a catalogue of information to us, without giving the actual information. He says, he has circulated this thing and that thing, and he has got so many replies. I may just submit that the motion that I omitted to give notice of ought to have been that the further progress of this measure be stopped, unless and until that information is supplied to the House. What is the use of this information being encased in the heart of the hon. Home Minister, or being kept in a safe? This information is public property and should have been given to every Member of the House, so that we could judge the merits of this Bill and also what the judges of the Supreme Court and the High Courts, the Bar Associations, the magistrates and other people had to say about it.

Shri Bansal: May I suggest that if the hon. Home Minister is not engaged in very urgent work, he should be called to the House?

Shri Debeswar Sarmah (Golaghat-Jorhat): He should be sent for.

Mr. Chairman: He is represented by his deputy, though I agree with the hon. Member that if the hon. Home Minister were here, it would have been much better.

Pandit Thakur Das Bhargava: I was submitting that the first question before us is this: What are we going to do with this Bill? I ignore whatever has been said by the hon. Minister in regard to the information which he has got, because I am not in possession of that information. Ordinarily, when a Bill is brought before the House, it is the usual practice that all this information is circulated to the hon. Members. But that has not

been done not only in the case of this Bill, but even in regard to the Preventive Detention Bill, where whatever was stated in the nature of statistical information was only in reply to the criticism of the hon. Members on this side of the House, and the hon. Minister had never said anything at the start of the case, and he never gave us that information in time. The same thing is happening again and again.

If we ignore that information, my humble submission to every Member of this House is this. This is not an ordinary Bill. This Bill deals with the rights—in their nature not less important than fundamental rights, I should say—of the thirty-six crores of people of this country. We have enacted in article 21 of the Constitution that:

> "No person shall be deprived of his life or personal liberty except according to procedure established by law."

What is that procedure established by law? If you remember aright, when we were debating this point in the Constituent Assembly, a good deal of the time of the House was taken on the discussion about due process, and this is the due process. We know that in Japan and many other countries, in the fundamental rights chapter, they have given in their Constitutions, certain rights to the accused, as for instance, the right to cross-examine, the right to produce defence, etc. These rights are a part of their Constitutions. Now, what do we find here? We have also put in some of these rights in our Constitution. For instance, we have article 21 which reads:

> "(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.. ."

As you know, section 167 as well as section 340 of the Criminal Procedure Code ordain the same thing. They enact the same thing in substance, so that there are some parts of the Criminal Procedure Code which are in the nature of fundamental rights. So far as the trial is concerned, I consider that the right to cross-examine and the right to produce defence are absolutely fundamental rights for the accused. It is not only that, but we are dealing here with section 107 and other sections of the Criminal Procedure Code, which are analogous to the rights given under this article 21 of our Constitution.

After all, what is preventive detention? Under section 107 of the Criminal Procedure Code, we have enacted a provision whereby any person who is likely to commit an offence or do a wrongful act. is asked to give security. This is nothing but something in the nature of preventive detention. If he cannot give surety, he can be imprisoned for a year. This is also nothing but preventive detention in extension, I should say.

These freedom-conferring rights are the subject-matter of discussion, so far as this Bill is concerned. To my mind, this Bill goes even further. We talk of democracy every day. We talk of fundamental rights. We speak of very big things here. But I must submit that the courts are the very pivot of democracy. If the courts are not free, if the courts are not able to give justice in the manner provided by law and according to the procedure that we want to see established in this country, there will be no guarantee for any kind of freedom in this country. So, I consider that this matter of the Criminal Procedure Code is of far greater importance than even the making of the Constitution or even perhaps the Hindu Code. Therefore, I should think that this question of amending the Criminal Procedure Code, and its enactment in the manner in which we are doing it now, is not justified.

First of all, I should think that when we are dealing with the judicial system of our country, we are dealing

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with a very vital and most delicate part of our Constitution. When we speak of the judicial constitution of this country, as my hon. friend from Bombay has said, we are really treading on a very delicate point, and I agree with him cent. per cent., that if you want to change the judicial system of this country, you cannot do it by just tinkering with the Criminal Procedure Code only. If the hon. Home Minister wants that we must become a truth-loving people, that we must begin to regard these courts as our own courts, in the sense in which he wants them to be our courts, and in a different sense in which they are even now our courts, if he wants to bring *Ramrajya* within these courts, he cannot achieve it just by tinkering with this Bill, in the manner in which he has done. Even before, whenever questions of this kind arose commissions were appointed to go into the entire matter. They took evidence, they roamed about the whole country, took the views of persons who knew something about it, and ultimately they made their recommendations. But what has happened in this case?

In this case, it so appears that in 1947, the Punjab Government sent a letter to the Government of India, wherein they had complained that commitment proceedings were too cumbrous and therefore, some steps should be taken to see that these commitment proceedings are dispensed with. That, perhaps, is the beginning of this legislation. Perhaps, the House will remember that in 1948 or thereabouts, we really had certain Acts, by virtue of which commitment proceedings were dispensed with. There were no commitment proceedings, and the cases were sent direct to the sessions judge. This is nothing new. When the Punjab Government wrote this letter, probably the Home Ministry sent this letter to the other State Governments, and some opinions were received. But that was only on the limited point whether commitment proceedings are to be taken, or perhaps also on the point whether the system of assessors was justified or not. I think it is only on these limited points that a letter was sent by the Home Ministry to the State Governments, and their opinions were invited.

Shri Raghavachari (Penukonda): May we know how these commitment proceedings were dispensed with?

Pandit K. C. Sharma: What was the alternative process?

Pandit Thakur Das Bhargava: The process was very clear. In such cases, instead of the commitment proceedings, the cases were sent direct to the sessions court.

Pandit K. C. Sharma: But how were the charges framed?

Mr. Chairman: Order, order. I would request hon. Members not to start this discussion, but to allow the hon. Member to continue.

Pandit K. C. Sharma: I was asking just on a point of information.

Shri Sadhan Gupta: May we know what law provided for dropping of commitment proceedings?

Pandit Thakur Das Bhargava: I will just refer my hon. friend to a law which was prevalent in the Punjab, in 1947 or 1948.

Certain Defence of India rules as well as rules subsequently made enacted like this. They made some changes in the Criminal Procedure Code and by virtue of them, a case of this nature was sent direct to the sessions judge without commitment. After all, we did not require the Punjab Government, or for the matter of that, any local government, to tell us that the commitment stage is unnecessary or that the commitment stage involves dilatoriness. We respect Dr. Katju very much, and I do not think that it could have escaped him while he was practising as a lawyer that these commitment proceedings were both unnecessary and dilatory. As he himself pointed out, in only one per cent. of the cases discharges were

secured. That was what he made out. Sir, I have also been practising in these law courts for a very long time, more than 45 years and I have known what these commitment proceedings mean. I congratulate the hon. Home Minister in making a suggestion of this kind in this Bill. He has done a very right thing and we are all very happy about it. Similarly, about assessors, we did not need the Punjab Government to stress them to the hon. Minister. Even long before, we have been submitting in this very House that the system of assessors should go, and it has also been defended by the Home Ministry in the past whenever we raised this question. But so far as these questions go, I think there is a consensus in the country and everybody would wish to congratulate the hon. Home Minister on these measures. But my complaint is quite different. Sir, I maintain that this Bill is not an unadulterated evil or good. This contains something which will be accepted by every person, but this also contains something which no person would accept, if he were to know what it contains. But the whole thing is so dexterously placed here that many people cannot know what is contained here.

Shri Nambiar: Skilfully done.

Pandit Thakur Das Bhargava: Not by design. But it so happens that it comes to be done in this way.

Shri Velayudhan: Ignorance.

Pandit Thakur Das Bhargava: An ordinary man, even an ordinary lawyer, I should say, will not be able to detect what mischief is being done behind this Bill so far as the administration of justice is concerned.

An Hon. Member: Mysterious.

Pandit Thakur Das Bhargava: So far as the administration of justice is concerned, I contend that if you allow this Bill to be passed, as it is, there will be many more acquittals and what is in the mind of the hon. Home Minister will not be achieved. I am at one with him when he speaks of the delays of law. I know it very much and I am very conscious of it. not less conscious than he is that this delay of the law should be attacked right and left, front and back but in the right manner. But at the same time, I submit in all humility for the consideration of the Select Committee that with all these provisions which the hon. Minister wants to be enacted, they may be able to dispense with perhaps some delays, but then they will also be able to dispense with justice, whatever there is left in the courts now. This will be the result. After all, Dr. Katju told us yesterday that he sent his Bill—the Bill of December—to 75 persons...

Dr. Katju: No, no. That was my memorandum of September. This Bill was published, broadcast throughout India in every State Gazette and everywhere.

Pandit Thakur Das Bhargava: It was sent in September to 75 persons.

Dr. Katju: Memorandum.

Pandit Thakur Das Bhargava: This Bill was sent to the country...

Dr. Katju: The Bill was broadcast.

Pandit Thakur Das Bhargava: 207 replies were received...

Dr. Katju: 207 sent their replies.

Pandit Thakur Das Bhargava: I read the speech of the hon. Minister even this morning with a view to see that I do not make any mistake. So I am submitting that 207 opinions have been received. I would have liked very much to be benefited by those opinions that he has already in his possession.

Shri Velayudhan: They will be supplied.

Pandit Thakur Das Bhargava: I must get them now. There is no use of saying 'I will be getting them'. Suppose I get them after this Bill is passed, what is the use of those opinions to me?

Dr. Katju: May I just point out to my learned friend that I said in answer to Mr. Bansal that the opinions received would be placed in the hands of members of the Select Committee before they embarked on their discussion, and would be in the hands of every Member of the House before the Bill came back to the House.

Pandit Thakur Das Bhargava: Do we want Mr. Bansal to raise this objection and give a suggestion to the hon. Minister at this stage? Is it that the Members of the Select Committee only are sacrosanct and they will get it, but we, the Members of this House, will not get it?

Dr. Katju: If you would listen to me, I said they would be supplied to every Member of the House. I said that five times.

Shri Nambiar: We want it now.

Pandit Thakur Das Bhargava: Why not give it now?

Mr. Chairman: The hon. Member's point is that if they had been supplied, it would have been to the benefit of the House as well as to the Select Committee, because Members participating at this stage could have given their suggestions after going through those opinions.

Shri Vallatharas: On a point of order, Sir. Under the Rules of Procedure of the House, there is a specific provision for circulating these Bills for eliciting public opinion or for referring them to Select Committees. It is within the entire province of this Parliament. This provision binds the Ministers and every Member concerned. That is the privilege of this House. Now, hon. Ministers in dealing with this Parliament, take responsibility of eliciting public opinion of their own accord in cases where they consider that public opinion is necessary. They do not care for this Parliament; they do not bring before this Parliament the necessity for eliciting public opinion. They take their own chance of eliciting public opinion according to their own leisure. Is this not a breach of privilege of this House?

Mr. Chairman: There is no point of order. It is not a breach of privilege. Because there is a provision, it is not essential that everywhere, in every case, that opinion is to be elicited. It is for the House when once a motion is moved to send it for eliciting public opinion, and it is for the Government to accept it.

So far as the hon. Member's point is concerned, I think he wants to emphasise that if all the opinions had been before the House and the Members had known them, it would have been for the benefit of those Members who wanted to give their suggestions to the Select Committee.

Shri S. V. Ramaswamy: On a point of information, Sir.

Mr. Chairman: Let the hon. Member proceed.

Shri S. V. Ramaswamy: This is on a point of information. The hon. Minister said that he would supply the papers. If they can be supplied in a day or two, could we adjourn the debate? Could I, through you, know from the hon. Minister whether those papers can be supplied in two or three days?

Pandit Thakur Das Bhargava: I was only submitting that this House would be well-advised to adjourn this discussion till such papers were supplied. That would have been the right thing.

An. Hon. Member: Quite right.

Pandit Thakur Das Bhargava: But since the hon. Minister has told us that he has got many opinions, opinions of very important persons, for instance, judges of the Supreme Court and High Courts etc. and they will be given subsequently, I do not want to stand on a point of procedure and do not make this request that the progress of this Bill should be adjourned to a later date. I would assume that those opinions are not non-existent. I am not now influenced by the fact that so many judges opined. 12 judges have opined in one way and 12 have not opined this way. Unless

the opinions and the actual cases in which they are given, I refuse to accept any of those opinions. After all, it is the reasoning of those judges which can influence us and not the names of those judges.

Now, to come to the argument again, the hon. Minister told us that he had sent this Bill to so many persons and 207 replies were received. And after those replies were received, he had taken care to see that some provisions were added and the original Bill was amended to an extent. May I humbly ask him if those 207 persons who have sent their replies and the hon. gentlemen who had the privilege of getting a copy from the hon. Minister are the sole persons in this country who have a right to express their opinion? Have the Members of this Parliament elected by the people at large no right to do so? Now, we know the fate of amending Acts. In an amending Act, we cannot amend any other provision except the ones which we have got here. We know that in a Criminal Procedure Code like this all the provisions are so interwoven, so vitally connected that one has got an effect upon the other and you cannot consider any provision in an isolated manner. Therefore, before the hon. Minister came to this House with a view to have some partial amendments, it would have been much better if he had opened the whole field to us and then the whole Code could have been amended. If he wants that the judicial system of this country should be changed in such a manner as he desires, he ought to have appointed a Commission or at least he ought to have made everything open to us so that we could give suggestions to him. Of course, some amendments have been incorporated here, but I want to ask whether the 500 Members of this House have got no right to make any amendments to have our say and to suggest anything to the hon. Minister. This is not right. My friend is perfectly right when he said that the law provides that the Bill may be sent to the country. Our country is too large and I do not want that 207 replies should be the only basis on which an amendment of the Criminal Procedure Code should be effected. This is a matter which concerns each and every person in the land, and, therefore, those who wish to take interest in the matter should have been enabled to offer their opinions. After all, what are these 55 Bar Associations? Even in one province you may have so many associations. We want that in a matter of this nature, which goes to the root of the rights of every person or citizen in the country, the opinions of each and every one, who wants to be given an opportunity of expressing his opinion, should have been consulted. Even at this stage, I would respectfully beg of the hon. Home Minister to take courage in both hands, as he had done in bringing the measure,—I consider that he has done the right thing and the bold thing in bringing the measure before the House and he has been actuated by the best of motives and I respect him all the more for bringing it; not all men would have dared to do so—to kindly take this measure back, send it to the whole country and then bring a radical measure in which all these provisions should be gone into and we should have a judicial system which should be worthy of the country. I would draw your attention to the fact that he has himself said this morning that it will be a notable day in his life when the changed judicial system is introduced in the country.

Shri M. D. Joshi (Ratnagiri South): On a point of information. Does the hon. Member think that the collective wisdom of the Members of Parliament is insufficient to do justice to the measure?

Pandit Thakur Das Bhargava: The hon. Member has not cared to follow what I said.

Mr. Chairman: The hon. Member has not evidently followed him. Pandit Thakur Das Bhargava stated that only 207 replies have been re-

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ceived and we have not had the opportunity of going into all the provisions and in consequence of those opinions, certain provisions have been added in the measure. The hon. Member stated that as we are considering only the amendments that have been brought forward here, it would not be possible for us to go into the other provisions, and we do not have that opportunity now.

Pandit Thakur Das Bhargava: Moreover, my friend failed to appreciate that there is a rule in regard to Bills that they may be sent to elicit opinion in the country. If 500 persons in the House are sufficient, why send any Bill to the country? The 500 Members are here always. My humble submission is that so far as this Bill is concerned, this is of a very important nature and I would urge the House to kindly accept, to say the least, the amendment of Shri Sinhasan Singh, when he says that the Members of the Select Committee should be at perfect liberty to make such amendments as they please that may arise out of the Bill. Section 497 will require to be drastically corrected or modified in the way in which some members want. At the moment, we cannot touch it. I had brought forward a Bill two years ago in this very House relating to sections 496 and 497, and I want that Bill to be passed. If that amendment is passed along with this Bill, the joint effects will be much more. The effect will be that you will have a complete system in which the summons cases, warrant cases, sessions cases and all kinds of cases can be properly dealt with, and there will be such an amendment of the law as would be perfectly consistent with our wishes and we will be changing the system of the country in a manner we like. Today, we can only change those sections which are given in this Bill and they are not very many. I would submit that the amendment of Shri Sinhasan Singh is most important and should, therefore, be accepted by the House. So far as this Bill is concerned, this House should have a Select Committee of its own and my reasons are these. In a Joint Select Committee, the total number of Members will be about 49 or so, as big as a legislature of a Part C State. In a Select Committee, the intention is that hon. Member will fully concentrate upon the particular matters before them and that is the real purpose of the Select Committee. That is the occasion when different minds confer, and discuss the entire matter threadbare. In a big House like this it is not possible to do that. We know the fate of amendments tabled by us; how they are discussed, how they are allowed to be moved, not allowed to be moved. But the atmosphere of the Select Committee is the one where things are thrashed out. I should think the number of 49, though it is divisible by 7 is a very bad one, and I do not think we would be able to devote as much attention to this Bill in the Joint Select Committee as we would like to do.

Sometime back my hon. friend Shri Gurupadaswamy brought a Resolution before the House and it was said in reply to him that the second chamber is a revising chamber. I beg to submit we want to take full advantage of that chamber. Sixteen Members out of a house of 250! Are they properly represented in the Joint Select Committee? They should be allowed to have a Select Committee of their own. If the other House is considered to be a revising chamber, we should take full advantage of it. After we discuss the Bill, let it go there, and if they have any amendments to suggest, let it come to us with their amendments. The logical consequence of constitution of a Joint Select Committee of 49 Members representing the two Houses with a total membership of 750 Members, is because both Houses are committee to a Joint Select Committee Motion there should be a joint sitting of

the Houses. Will it be fair? After all, the Constitution has provided for two Houses: the country pays so much for it; we should, therefore, take full advantage of the wisdom of the other House. It is not proper that we should have a Joint Select Committee in a matter like this. If you want to save money in ordinary matters, you can have a Joint Select Committee. But in an important measure like this, it is better we have the benefit of the independent opinion of the other chamber. So my humble submission is that this House constitutes a Select Committee of its own rather than have a Joint Select Committee of both the Houses.

Now, Sir, with your permission I come to some of the clauses of the Bill. Let me, first of all, submit that though I agree with much of what has been said by the hon. Home Minister in regard to overcrowding of jails, in regard to boys of 16 years being in jail, and such under-trial boys being a majority of the under-trial prisoners, may I submit to him that all this has nothing to do with this Bill? If this Government or the State Governments had enough imagination, it was brought to their notice much earlier that they ought to move in this matter. Now, Sir, in the Punjab, as you know, a Jail Committee was appointed in the year 1948 or 1949. I happened to be the Chairman of that Committee. I do not want to read from the Report of that Committee, but I would submit that the problem of overcrowding which is now agitating their minds was pointed out to the Government of Punjab. Punjab was not the only province which had appointed such Committee. Almost all the States had appointed such committees which submitted their reports. But what happens? In the blessed Criminal Procedure Code which was framed by the British Government there is a section, section 109 which says that if a person has no ostensible means of subsistence that person goes to jail. He is challaned, he cannot find security. And, I think if the hon. Home Minister takes into his head to give full effect to this section 109, half the country will go to jail. Where is the employment? That is the real problem in this country. Section 109 is the greatest blot upon this Criminal Procedure Code. Sir, the Committee which I referred to, observes as follows in regard to this:

> The Committee while visiting some of the jails, particularly Delhi and Ferozepore, found a large number of undertrial prisoners who were challaned under section 109."

What I want to bring to the notice of the House is that it came to the notice of the Committee that the police administration celebrates a particular week for rounding up people under section 109. The report further says:

> "In the opinion of the Committee this practice of challaning persons under section 109 of Criminal Procedure Code is neither justifiable on principle nor conducive to good administration. If a citizen has not got ostensible means of subsistence and could not find employment, though he is willing to work, the fault lies more with the State or the society, than with the individual. The exuberant use of the provisions of section 109 of Criminal Procedure Code is not defensible at any time. It is certainly reprehensible etc. etc."

Now, what happens to the ticketless travel? I visited the jails myself and I found that boys were kept for 15 days or more in jails because they had no money to purchase their tickets. They were absolutely naked and famished and any person would shudder to look at them. The poor pittance which is given to them in jail, perhaps, would have been pleasant to them. At the same time, we keep a man in jail for 15 days and when he goes to the court he is fined

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Rs. 2. Our jails are filled like this. The Government have not taken any steps to see that the jails are not filled by persons like this. The difficulty is that our big men, our Ministers, are actuated by very good motives. They want to see the country progress. The Congress Government want to see the country progress. But, in fact, what happens? Every local Government knows it and if you take the figures you will be pleased to find that even now the bail provisions are not properly used. It has been suggested that all persons may be put on bail. According to me, the magistrates are too timid to carry out the provisions. Even if you enact any kind of law considered best by the hon. Home Minister by way of Criminal Procedure Code, the difficulty and the trouble will never be removed. You have got the blessed police. The hon. Minister while speaking for two hours did not utter a word about the police. Now, can we dispense with this dilatoriness; can we have good justice done in our courts, as long as the system of recruitment and promotion in police is not changed? But, I must say, there is a change and there is some improvement. Now, we find our young men better equipped and they have got better sense of duty. Therefore, there is every hope for this country. At the same time,—I think many of my friends will agree with me—that the people in the countryside do not appreciate any visible change in the attitude of the local police. Even now many things happen and if they are brought to the notice of hon. Ministers they would have nothing but to hide their heads in shame. There are persons who live in the country; who know all these things; who know how cases are challaned and how cases are (*An hon. Member* Concocted.) concocted. That is perfectly true. My friend says, 'concocted'; I am yet to know of a country where cases are not concocted; yet to know of a country where false cases are not brought forward. It is human nature and let us not curse ourselves unnecessarily. At the same time, since we want that the confidence of the people may be established, I would respectfully urge upon the Home Minister to kindly turn his attention to the police side. If he turns his attention to the police side, I think it shall pay much bette dividends than the enactment of law like this. I maintain that, a the hon. Finance Minister said two days ago, there is great truth in what the hon. Home Minister has said about the lawyers in this country. I am one of them and I take my part of the blame. I think the hon. Home Minister will take a much greater part of the blame.

Shri Nambiar: Much bigger part.

Dr. Katju: What for?

Pandit Thakur Das Bhargava: For bringing about this result of no confidence in the courts. (*Interruptions*)

Mr. Chairman: I would request the hon. Members to exercise greater restraint. Let us hear the hon. Member. He may go on.

Pandit Thakur Das Bhargava: I do not want to blame the hon. Home Minister unnecessarily. Even if he is blameworthy, I won't blame him.

Dr. Katju: Blame as much as you can.

Mr. Chairman: No cross-talking, please.

Pandit Thakur Das Bhargava: He is doing a *prayaschitta* for all the old faults by bringing this Bill. In the olden days we were all doing the same thing, and we are ashamed of that.

Mr. Chairman: The hon. Member should also appear to be addressing the Chair.

Pandit Thakur Das Bhargava: I was submitting that since we want to change the old order of things, as my hon. friend from Bombay remarked, they have to be radically changed. I will not go into this question at this stage, because, though they are

germane and certainly they are quite relevant, at the same time, there is neither the time nor the inclination in me to go about saying about all those things. So far as this Bill is concerned, I was saying that in this Bill also there is an attempt on the part of the hon. Home Minister to put before our eyes a point of view with which I do not agree. The point of view is this. When I read the speech of the hon. Home Minister this morning, I found that he thought that it is as disastrous to the country if a guilty person escapes as it is if an innocent person is punished. This may be true so far as the hon. Home Minister is concerned. He is in charge of law and order. But, so far as I am concerned, I think that it is much more disastrous if an innocent man is involved rather than if a guilty man escapes. I say this not as a counsel only; I believe that this is the right point of view from which every honourable gentleman in this House should look at the matter. My fear is this. If the hon. Home Minister wants that every guilty man should be punished in this country, I am reminded of the story in the Bible, in which a person was accused of adultery and an order was given that only those who have not been guilty of adultery should pelt stones at this man. Now, Sir, if all guilty persons are to be punished in this country, I have yet to see whether there is any Member here who will escape this punishment.

An Hon. Member: Quite correct.

Dr. Katju: A very cultivating logic.

Pandit Thakur Das Bhargava: God has retained for himself all the great powers of punishing and rewarding human beings for their deeds. We are all, or most of us are believers in *Karma*. If I put my finger in the fire, it gets burnt. This is divine law for all. These laws are human laws, and they are imperfect. If you feel that every guilty person should be punished, it is a wrong thing, a thing which can never be done by this Government or by any other Government in this world. Therefore, I should submit that this Bill should be looked at from the standpoint whether innocent persons will be involved in it if we pass it into law.

With your permission, I wish to submit one particular aspect of the case, which is uppermost in my mind. While abrogating the provisions relating to commitment and assessors etc., the hon. Home Minister seeks to substitute section 207A. It is unfortunate that in this Bill we are not even abolishing this commitment procedure. He wants to abolish the commitment stage only in regard to police cases. In regard to private cases, he still wants to perpetuate it. If commitment is bad for police cases, it is equally bad for all cases. If he wants to do away with delay and dilatoriness with regard to police cases, I fail to see how it makes for speed and swiftness in ordinary cases. Before I come to section 207, I shall refer to section 528 in which new powers are sought to be given to the sessions judge. I congratulate the hon. Home Minister for this because it is part of the scheme of separation of the executive and the judiciary. At the same time, I fail to see why the hon. Home Minister is so much enamoured of the district magistrate. When he wants to separate the executive from the judiciary, in section 528, the district magistrate is kept armed with full powers. What is the separation if even the district magistrate is armed with these powers? There will be two sets of authorities and both will be able to say that the cases can be transferred. This would create confusion and conflict. Therefore, my submission is let him not take credit for separation of the judiciary from the executive, because he still wants to retain those powers with the district magistrate. Let him come out with a suggestion that the district magistrates' powers in this regard will be taken away. That will be the right thing.

Similarly, in regard to commitment, I would like it to be done away with

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so far as private cases are concerned. What happens in a commitment? My hon. friend the Home Minister, when I put a question to him yesterday, was pleased to say that a copy of the statement will be supplied to the accused. He was also pleased to say that a copy of the *post mortem* report will also be supplied, as also the statement, under section 164. I would very humbly beg this House to consider the position of an accused person in a murder case. What happens now? As soon as an offence takes place, a person goes to the police station and lodges an F.I.R. After the F.I.R. the sub-inspector goes to the place of occurrence. There the inquest report is made and other papers are prepared. Now the inquest report is not being attended to with the same amount of interest and caution as it used to be attended to before, but at the same time, the statements of the eye witnesses are recorded, ordinarily speaking, if they are available there. Afterwards, the investigation goes on, and if the sub-inspector finds that there are certain persons who can be won over, then they go to the magistrate and get some of these statements recorded under section 164. But the House will appreciate when I say that since a very large number of years, even in the Act of 1882 I assume, these statements of these witnesses before the police were not regarded as substantive or corroboration evidence. They were never used for purposes of corroboration. I am open to correction. I tried to get the Act of 1882 from the library, but I have not been able to get it, but from whatever I could see of the proceedings in 1882. I came to the conclusion that in 1882 the law was the same as it came to be enacted subsequently. In 1923, as the House knows, there was a change made in section 162. According to the present clause in section 162, a copy of that statement is now being supplied to the accused which he can use only for one purpose, and that is, of contradicting the statement of the prosecution witness. It cannot be used for any other purpose. It cannot be used for the purpose of corroboration. I am submitting this delicate point for the consideration of the House. What was said first of all by a witness is of the utmost importance in a criminal trial. When the discussion about this matter took place in 1923, the records will show that, as a matter of fact, great care was taken by the Members then present to preserve this right of the accused, and at present no statement made by an eye witness before the police can be used for the purpose of corroborating the witness while in the witness box. But, what has been done by the hon. Minister now? He has taken away section 162. If section 162 is taken away—I would like to be corrected—I assume that those restrictive provisions which said that the statement can only be used for the purpose of contradiction is no longer in force. It means that a statement made under section 162 can be utilised for the purpose of corroboration. Dr. Katju whom I respect so much nods his head, and I wish he would kindly correct me if my view is wrong. I would be most happy. In law also I respect him as much as I respect him as an elder.

Dr. Katju: I am younger than you.

Mr. Chairman: Let not that dispute be decided by themselves!

Pandit Thakur Das Bhargava: My friend does not know the adage:

بزرگی به عقل است نه بسال
تونگری به دل است نه به مال

Respectability is not determined by years of age but by wisdom and intelligence as magnanimity is not determined by possession of wealth as by possession of a big heart."

He is always my elder whether he is younger in age or otherwise. In fact, I regard all the Members in this

House as my elder brothers in wisdom.

Shri S. S. More: Except when you are in the Chair.

Mr. Chairman: Then the hon. Member does not give any credit to Dr. Katju.

1 P.M.

Pandit Thakur Das Bhargava: All the credit that I give to him, I give to every Member, because I respect them all. I want to give credit to everyone.

Is it true or not that after this Bill is enacted, the statement before the police by any eye-witness will be used for corroborating purposes? I want a categorical answer to this question.

Dr. Katju: The categorical answer is that it will not be used for such purposes. It will be supplied to the accused for the purpose of letting him know what the case he has to meet is. As soon as a witness goes into the witness-box, if the accused wants a copy of the statement in the police diary, it is supplied to him, so that he may know what the case is. It will not be used for corroborating purposes. It is being supplied to him, so that he may know what the case is.

Pandit Thakur Das Bhargava: The point is quite clear I am very glad that the hon. Minister has given a categorical answer in this way. If my hon. friend has got an authority to substantiate the statement, I shall be guided by that authority. If he has none, I shall be guided by his authority. I shall request him to kindly indicate here that it will not be used for such purposes.

Dr. Katju: The Select Committee will go into that matter, after the House refers the Bill to it.

Mr. Chairman: The hon. Member's point was that as soon as that restriction is removed, it can be used for that purpose also.

Pandit Thakur Das Bhargava: I maintain that according to the law, after this Bill is passed, it will be used for corroborative purposes.

Shri S. S. More: It will not be used for contradiction.

Shri Sadhan Gupta: May I enquire from the hon. Minister what provision of law debars it from being used as corroborative evidence?

Mr. Chairman: The hon. Minister has said that the Select Committee would consider it.

Pandit Thakur Das Bhargava: Now, the whole thing is clear. I am very glad to have participated in this debate only for securing this point. I know what is passing in the mind of the hon. Home Minister. He does not want any case to be prejudiced, he does not want that justice may not be done to any accused, and therefore, he says that this statement should not be used for corroborative purposes. There, I am at one with him. But my humble submission is that according to the law as it stands, if you take away section 162, it can be used for corroborative purposes also. But if you are so minded, now that you have given a categorical reply, I would respectfully beg of you to see that the Select Committee makes a provision that it will not be used for that purpose.

Shri R. K. Chaudhuri (Gauhati): Do you wish to use the statement in the diary for corroboration?

Pandit Thakur Das Bhargava: My hon. friend who is a practising lawyer knows that from 1923, the law has changed, and the statement can never be used for that purpose.

Shri R. K. Chaudhuri: So, your point is that it should not be used.

Pandit Thakur Das Bhargava: I now come to the second point, in regard to section 207 of the Act. The hon. Home Minister is arranging matters in this way...

Mr. Chairman: Will the hon. Member be able to conclude, before we rise for the day?

Pandit Thakur Das Bhargava: No, I cannot. There are as many as 110 provisions in this Bill, and some of them are very important. For instance, section 107 is there which affects the liberty of the subject. There are also other questions, which are very important, such as the question of revision, appeal, etc. So, I am very sorry that I shall not be able to conclude today.

Mr. Chairman: I realise that. But the hon. Speaker wanted some restraint on the part of the Members themselves.

Pandit Thakur Das Bhargava: I submit that as soon as you order, I shall sit down.

Mr. Chairman: The hon. Member may continue.

Pandit Thakur Das Bhargava: It is very kind of you.

In regard to section 164, the hon. Minister has himself pointed out that at the time of trials, it has always been argued by the defence counsels that this section has been misused by the police sub-inspector with a view to secure the witness and tie him down to a particular statement. This is generally used when a witness wants to go out of the clutches of the sub-inspector; and according to the defence, when the witness wants to stick on to truth and wants to make a statement which is not consistent with what the sub-inspector has recorded, the sub-inspector clutches at the witness, takes him to the magistrate, and asks him to make a statement, because the other party is not there to exercise its influence . An *ex parte* statement is taken down, and because it is made before a magistrate, and the witness signs it, he is tied to that statement. This is the usual complaint we have.

It so happens that the hon. Minister himself was pleased to point out in his speech, that it is used for this purpose. What will happen now? Today if all these statements taken by the sub-inspector go to a sessions court, without any statements under section 164, as is the usual case now, then a proper assessment of the evidence can be done. You have been pleased to say that the police statement has got no corroborative value. Therefore, when the case goes there the evidence of the person in the dock is the deciding factor. He can be contradicted by the evidence given before the police. But there is no statement under section 164 there—ordinarily. Now, what would happen? After two or three days, or perhaps a longer period—because the period is not mentioned here—the sub-inspector will catch hold of the person and ask him to make a statement which is recorded in *zimni* and then he will be bound. Today in the courts, very experienced judges have condemned this resort to section 164. The judges not in one ruling but in many rulings have declared that 'we suspect that this man was tied down to the statement. Therefore, his evidence loses its value'. Now, the hon. Minister wants that every witness, every possible witness, will go to a magistrate, put his statement there and will be bound down. My humble submission is that this is a travesty of justice. Experienced judges will hold that this man is not reliable. What is the difficulty? When you get a *ex parte* statement, when you take a man to a magistrate and ask him to make an *ex parte* statement, he does not give out the whole truth. There is no person who can get at the whole truth, and subsequently in cross-examination if he wants to say something, it will be taken that he is adding to his statement and the same credence will not be given to that statement, as it would have been if it was taken before a commitment magistrate. In this way if all the statements are taken under section 164, I think it will be quite wrong and will defeat the ends of justice.

Shri S. S. More: There will be many more cases of perjury.

Pandit Thakur Das Bhargava: I must submit that if recourse is had to this provision, no judge, no experienced judge will have any faith in a witness whose statement is tied down by virtue of recourse to a provision like section 164. That would be the result.

Then again there is a section in the Criminal Procedure Code itself—section 171—which says:

> "No complainant or witness on his way to the court of the magistrate shall be required to accompany a police officer or shall be subjected to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond:
>
> Provided that, if any complainant or witness refuses to attend or to execute a bond as directed in section 170, the officer in charge of the police station may forward him in custody....."

Now, what would happen? If the witness is suspected of not sticking to his statement, then the sub-inspector will be after him; he will catch hold of him and take him to the magistrate; section 170—at least the principle of of section 170—will be destroyed, and that man will be subjected to unnecessary restraint. He will be taken to the magistrate where he shall have to make a statement. Then at present what happens according to the provisions of 161, 162 and 163? It so happens under section 161 that the sub-inspector calls a witness and he can put a question to him. The section runs thus:

> (1) "Any police officer making an investigation under this Chapter or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.
>
> (2) "Such person shall be bound to answer all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge.....

Then sub-section (3) was added in 1941. It runs thus:

> "The police-officer may reduce into writing any statement made to him in the course of an examination under this section, and if he does so, he shall make a separate record of the statement of each such person whose statement he records."

I must submit that this section, that is, 161(3), is very much abused in practice. It is within the discretion of a sub-inspector to write the statement or not. If he does not choose to write, if a witness is recalcitrant and does not want to make a statement and the police inspector also does not want to record something wrong, if he does not want to be dishonest so far as records of his examination are concerned, he examines the men, but records no statement. According to the provisions of section 161(3), he must record a statement, if he records at all, on a separate piece of paper. What happens in the whole of India, excepting perhaps some good States, is that these statements are recorded on loose papers and can be very easily substituted. Statements which are alleged to have been taken on a particular date can be tampered with or substituted. I know of many cases, especially in Part B States, where even the *zimnis* are tampered with. A few days back I had the occasion to attend a case in a sessions court, and it was proved that at 9-30 a report has been made at the *Thana* and it was not sent from the spot even up till twelve. My point is that even

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though the *Thana* received the report at 9-30, a report from the spot was not sent even up till twelve. This is not a rare occurrence. It usually happens that the first reports are not recorded at the place where they are expected to be recorded. If the Home Minister wants that the accused should be rightly defended, I would respectfully beg of him to kindly enact a measure to the effect that the statement of all the eye-witnesses should be recorded by the police at the earliest possible step. In criminal cases we know that at one time a person chooses to make a statement, and two hours after the same person may think the other way and may not choose to give a statement. I therefore urge that the record of the police statements must be made at once and it ought to be made absolutely fool-proof so that it cannot be tampered with. This will go more in the way of enabling the accused to defend himself. In the Punjab we have got *zimnis* and every page is signed by one of the officers, but it is not so in other States, as for example, Rajputana.

Pandit K. C. Sharma: Even in U.P. we have it.

Pandit Thakur Das Bhargava: I do not know much about U.P. So far as the question of false cases is concerned, U.P. tops the list.

Shri Raghunath Singh: Punjab is first.

Pandit Thakur Das Bhargava: So far as false cases are concerned, we are very backward and we propose to remain backward (*Interruptions*).

Pandit Munishwar Datt Upadhyay (Pratapgarh Distt.—East): In the case of the Punjab there are more criminals, than anywhere else.

Pandit Thakur Das Bhargava: It requires grit and nerve to commit such offences.

Mr. Chairman: Let there be no discussion of a cross conversation nature.

Pandit Thakur Das Bhargava: I would submit for the consideration of the hon. Home Minister and for the consideration of the Select Committee that, so far as these statements are concerned, section 162 can very well be retained and should be retained, and, at the same time, it must cast an obligation upon the investigating officer to record the statement of every eye-witness at least, if not others, and the record must be of such a nature that it cannot be substituted subsequently.

Unless you get these done I do not think you will be able to say that you have shielded the accused from injustice or subsequent forgery.

Now, Sir, I was submitting about Section 207A.....

Mr. Chairman: The hon. Member may continue tomorrow.

The House then adjourned till a Quarter Past Eight of the Clock on Wednesday, the 5th May, 1954.