

Fifth Series Vol. XXXI - No. 28

Saturday, September 1, 1973
Bhadra 10, 1895 (Saka)

LOK SABHA DEBATES

(Eighth Session)



(Vol. XXXI contains Nos. 21 - 30)

**LOK SABHA SECRETARIAT
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LOK SABHA DEBATES

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LOK SABHA

Saturday, September 1st 1973/Bhadra
10, 1895 (Saka)

The Lok Sabha met at Eleven of the
Clock

[MR. SPEAKER in the Chair]

MESSAGE FROM RAJYA SABHA

SECRETARY: Sir, I have to report the following message received from the Secretary of Rajya Sabha:—

"In accordance with the provisions of Rule 111 of the Rules of Procedure and Conduct of Business in the Rajya Sabha, I am directed to enclose a copy of the Industries (Development and Regulation) Amendment Bill, 1973, which has been passed by the Rajya Sabha at its sitting held on the 30th August, 1973."

INDUSTRIES (DEVELOPMENT AND REGULATION) AMENDMENT BILL

AS PASSED BY RAJYA SABHA

SECRETARY: Sir, I lay on the Table of the House the Industries (Development and Regulation) Amendment Bill, 1973, as passed by Rajya Sabha.

श्री अटल बिहारी वाजपेयी (ग्वालियर):
अध्यक्ष महोदय हम प्रस्ताव करते हैं कि हाकी
में जो भारत की विजय हुई है, उसका
हवाला देते और अपना टाيم को बचाई
देंगे। हम फाइनल में भी जीतेंगे।

अध्यक्ष महोदय : हम सारे उन को
बधाई देते हैं और प्रार्थना करते हैं कि हम
फाइनल में जी जीतेंगे।

श्री एस० एम० बनर्जी (कानपुर) :
प्राप बधाई को मुलतवी रखिये, ताकि फाइनल
की बधाई सोमवार को दे सकें। इसके लिये
प्राप भी कोशिश कीजिये और हम भी
कोशिश करेंगे।

11.02 hrs.

QUESTION OF PRIVILEGE

MR. SPEAKER: I want to tell
Mr Limaye that I am keeping his
privilege motion. There is one no-
confidence motion also; I will take it
up later on. I am looking into the
privilege motion.

श्री मधु लिंगये (बाका) : प्राप मुझे
अर्ज करने बंजिये, निर्णय अभी नहीं चाहता
हूँ। अध्यक्ष महोदय, मैंने इस में जल्दबाजी से
काम नहीं लिया है। बात यह है कि कल
जिस विषय पर मैंने व्यवस्था का प्रश्न उठाया
था—मेरे प्रश्न सं० 5121 और 5231—
मैंने देखा, मैं लाइब्रेरी में भी गया, उसके जो
जवाब आते हैं, वे मुझे को नहीं मिले
प्रेसवालों से भी बातें की थी, उनको भी
नहीं मिले थे। फॉर्निक्स मिनिस्ट्री से
जो बच आया था, वह प्रेस
इन्फॉर्मेशन ब्यूरो के द्वारा प्रसारित किया जाता
है, जो उन का कर्तव्य माना गया है। मैंने
शकधर साहब की किताब से भी प्रेसिडेंट
कोट किया था और कहा था कि प्रेस कार्टून्स-

बैंड को इन सबालों के जवाब नहीं दिये गये। इस लिये मैं पहले जानना चाहता था कि क्या इस में हमारे पार्लियामेंट सैक्रेटेरियेट की कोई गलती है या फाइनेंस मिनिस्ट्री की कोई गलती है। पता चला कि पार्लियामेंट सैक्रेटेरियेट की इस में कोई गलती नहीं है और सबन की टेबल पर रखने के लिये, अभी मझ को बतलाया गया है, फाइनेंस मिनिस्ट्री ने भी समय पर भेजा था। अब मामला केवल प्रेस इन्फार्मेशन ब्यूरो और इन्फार्मेशन तथा ब्राडकास्टिंग मिनिस्ट्री का रह जाता है। हम लोगों ने प्रेस गैलरी में 30 लोगों के लिये पास दिये हैं और प्रेस इन्फार्मेशन ब्यूरो का यह दायित्व है कि जो भी कागजात सदन की मेज पर रखे जाते हैं, वे उन में वितरित करे। यदि वे उन कागजात को प्रेस काररपोडेंटस को नहीं बेगे तो उन के पास और कोई जरिया नहीं है कि वे उस को प्राप्त कर सकें। जो नागरिक प्रश्न पूछते हैं, उन के जवाब तो सदन में दिये जाते हैं, जिस का वे लोग सुन लेते हैं, लेकिन अंतरा-राष्ट्रिय प्रश्नों के जवाब देना पर ले लिखे जाते हैं, यदि उन की वापस उन को नहीं भिलेगी तो उन का क्या नतीजा होगा।

कान मैंने इस माता को उठाया तो डिप्टी स्पीकर महोदय ने मझ को आश्वासन दिया कि इस में त्रास करेगे। अब यह बात तो साफ हो गई है कि इस में पार्लियामेंट सैक्रेटेरियेट की कोई गलती नहीं है, फाइनेंस मिनिस्ट्री ने भी समय पर भेजा था। इस लिये अब मैं इन्फार्मेशन तथा ब्राडकास्टिंग मिनिस्ट्री, प्रेस इन्फार्मेशन ब्यूरो तथा उन के जो आफिसर, जिन का यह कर्तव्य है, उन के खिलाफ मैं विशेषकर अधिकार का मामला उठाना चाहता हूँ। आप इस मामले की जांच कर के फिर इस के ऊपर अपना निर्णय दें।

अध्यक्ष महोदय महोदय, कई दफा ऐसा हुआ है, लेकिन अब की भी दफा ये रेड-हैंडिड पकड़े गये हैं।

श्री अटल बिहारी वाजपेयी (ग्वालियर): श्री मधु लिमये ठीक कह रहे हैं। इस तरह का शक बहुत पहले से था सारी चीजें जो सैक्रेटरी डिप्टी द्वारा भेजी जाती हैं, वे समाचार-पत्रों को नहीं भी जाती। प्रेस इन्फार्मेशन ब्यूरो इस में गड़बड़ करता है, लेकिन यह तो रंगे हाथ पकड़ने का मामला है।

अध्यक्ष महोदय: मेरे पास तो यह शिकायत पहली दफा आई है, इस के पहले जो कोई शिकायत नहीं आई।

श्री मधु लिमये: हम लोगों को मानस नहीं था। हम लोग भोले-भाले लोगों की तरह व्यवहार करते हैं, लेकिन अब सचेत हो गये हैं। अब शरा और सन्देह की निगाह से सरकार के हर काम को और प्रेस इन्फार्मेशन ब्यूरो को देखा जायगा।

अध्यक्ष महोदय भोले-भाले तो हम सभी यहां बैठे हैं।

अध्यक्ष महोदय श्री वसु, यह आप को परसो देना था तो परसो देते। क्या बाद में कुछ पोछे देख कर फमला कर लिया है?

SHRI JYOTIRMOY BOSU (Diamond Harbour): I know whatever is given after 10 O'Clock will not be taken up on that day.

MR SPEAKER Why did you give it after 10 O'Clock? (Interruptions)

श्री शंकर दयाल सिंह (बतारा): ये भी भोले-भाले हैं।

श्री मधु लिमये (बांका): नहीं, अब ये भोले-भाले नहीं रहे।

SHRI S. M. BANERJEE (Kanpur):
I have a submission to make

श्री अटल बिहारी वाजपेयी : मोला-
भाये ।

SHRI S. M. BANERJEE: May I
make a submission?

अध्यक्ष महोदय याज और कोई
बीज नहीं आयेगी ।

श्री एस० एम० बनर्जी, अध्यक्ष महोदय,
मैं आप से निवेदन करता चाहता हूँ—एन-
एटन्शन नहीं आ रहा है लेकिन यह दंड
महत्वपूर्ण विषय है । कायों का बहुत
बड़ा सन्देह है, जिस की वजह से देश
आश्चर्यचकित बन्द हो रहा है । इस के सम्बन्ध
में मिनिस्टर माह्व का स्टेटमेंट आता है ।

श्री एस० एम० बनर्जी : मैं नोटिस दिया
कई दिनों पहले । उस के बारे में काम करा जा
ता है क्या आयेगा, लेकिन अभी तक कोई
बयान नहीं आया ।

(Interruptions)

MR SPEAKER Don't take the
time of the House Please write to
me and I will see.

SHRI S. M. BANERJEE: I have
already written to you. I sent it be-
fore 10 O' Clock

अध्यक्ष महोदय . लेकिन आज और
नोटिस नहीं आयेगे ।

श्री एस० एम० बनर्जी : मैं नोटिस
की बात नहीं कह रहा हूँ ।

MR SPEAKER: Nothing else ex-
cept passing this Bill today.

SHRI S. M. BANERJEE: This is a
very serious matter ...

MR. SPEAKER: I am not taking
notice of anything today except
passing this Bill. We have parted
with this holiday not for all these
purposes but only for the special
purpose of passing this Bill. Why do
you take the time out of the time
allotted for this purpose.

SHRI S. M. BANERJEE 5th is
the last day of the session. This is a
serious matter. (Interruptions)

MR SPEAKER: I am not taking
any cognizance of this. You please
write to me and I will send it to the
Minister. I am not going to call any-
body else except Shri Vajpayee, to
continue his speech.

11.15 hrs.

CODE OF CRIMINAL PROCEDURE
BILL—Contd.

MR SPEAKER: We were on
Clause 144 Shri Vajpayee to con-
tinue his speech

श्री अटल बिहारी वाजपेयी (स्वानियर) :
अध्यक्ष महोदय, हम इस समय मिनिस्टर
प्रोसीडर कोड बिल 1972 की 144 धारा
पर विचार कर रहे हैं । इस धारा का इतिहास
बड़ा पुराना है । ऐसा लगता है कि यह
धारा सहस्र मुखी धारा है जो किसी भी मर्ब
किसी भी जगह और किसी भी व्यक्ति या
व्यक्ति-समूह के खिलाफ काम में लायी
जा सकती है । इस का दुरुपयोग लोकता-
निक अधिकारों के दमन के लिए हुआ है ।
इसके द्वारा शांतिपूर्ण आन्दोलनों को कुचलने
की कोशिश की गई है और इसके आवरण
में देश के नागरिक जीवन को कहीं कहीं
रुद्ध करने का भी प्रयास हुआ । मैं यह
समझने में असमर्थ हूँ कि इस धारा की
शब्दावली लिखते समय बड़ी दरियादिली
से काम क्यों लिया गया ? हम कानून
बना रहे हैं जिस का संबंध व्यक्तिगत स्वा-
धीनता से है, नागरिक अधिकारों से है ।
लेकिन आप अगर इस की भाषा देखें,
मैं उद्धृत कर रहा हूँ :

[बी बटल बिहारी बाबुपेयी]

"If such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed...."

मैं जानना चाहता हूँ एनाएम का कानून में धर्च क्या है? मैंने कानून पढ़ा जकर है, मगर मैंने प्रिक्टिस नहीं की है। यह एनायंस का काइटीरिया सबजेक्टिव होगा या ऑब्जेक्टिव होगा? एनायंस का कौन ऊपर से दिखने वाली चीज नहीं है। कोई दावा कर सकता है कि उस के दिमाग में चिड़ पैदा हो गई है। वह नाराज हो गया है और इसलिए उसने इस प्रकार का निर्देश निकालना आवश्यक समझा। लेकिन किसी घदालत में जा कर इसे चुनौती दी जा सकेगी और इस को किसी तरह प्रमाणित किया जा सकेगा कि सबमुच मैं एनायंस के लिए कोई कारण बा या नहीं बा? हम इस धारा के मूलतः खिलाफ हैं। लेकिन इस प्रकार की शब्दावली तो इस धारा को और भी पातक बना देती है। आगे धाप देखें :

"....or a disturbance of the public tranquillity, or a riot, or an affray."

हाबापाई हो गई, धफा 144 लग सकती है। अब हाबापाई कितने लोगों में हुई, वह कितनी गंभीर थी, उसके कितने गंभीर परिणाम हो सकते थे, इस को कोई सीमा नहीं बाधी गई है, कोई रेखा नहीं खींची गई है। रायट में समझ सकता हूँ, उपद्रव धगर क्षाति धन के लिए बखराव पैदा हो तो वह भी एक दुर्यमान बस्तु है। लेकिन उस के धाने ऐंके भी जोड़ दिया गया है और ऐसा लगता है कि सब को इस धारा में समेटने की शब्दावली इस कानून में रख दी गई है।

मेरा निवेदन है कि इस में संतोषजन होना चाहिए और इस धारा को पैसा बनाना चाहिए जिसे हम स्वीकार करने ही न करें मगर कष्टों के धूट की तरह गले के नोषे उतार सकें।

SHRI DASARATHA DEB (Tripura East): This section 144 is misused everywhere. I support the amendment moved by Shri Dinesh Joarder. This provision regarding disturbance of public tranquillity, nuisance, etc., etc., is widely used against the poorer sections of the people. Particularly I find in my State that, whenever there is a little dispute between the poor tribals, poor peasants belonging to non-tribals also, and big jotedars, immediately Government impose this section 144 preventing the poor peasants from entering into their fields. This is what is taking place in my State. The tribal people have been cultivating their lands traditionally for years together and they have the legal sanction also from the Government. Suddenly some moneyed man, some big people, encroaches the land demanding that land belongs to him and he would take possession of that. The poor tribal people naturally would resent it. The matter would go to the court and then section 144 would be promulgated. Once it is promulgated, for years it continues and the poor peasants are prevented from cultivating their fields for years together. They are the worst sufferers. The big jotedars do not suffer because the land does not belong to them. That is why I say that, instead of preserving peace and tranquillity, this clause is creating more trouble to the poorer sections of the people. That is why I oppose it, and the amendment moved by Shri Dinesh Joarder should be accepted by the Government.

SHRI SOMNATH CHATTERJEE (Burdwan): So far as this Clause is concerned, apart from supporting the amendment moved by Shri Dinesh Joarder and what my hon. friends have spoken, I would ask the hon. Minister to take note other of two aspects also.

One is this. Power has been given to the Magistrate to issue the order by writing. The only requirement is

that there should be written orders stating the material facts of the case. But the most important part of the judicial duty is to state the reasons for making the orders. It becomes very difficult to challenge it in a higher court of law because reasons are never given. There is an amendment, Sir. Statutorily the Magistrate must be required to state the reasons, because here the people's rights are being affected, interfered with. Why should not the Magistrate exercising judicial functions record the reasons for making an order?

Secondly, so far as proviso to sub-clause (4) is concerned, this is very important. Although this is in the existing law, we have to change that law. Power has been given to the Magistrate to make an order which will remain in force for two months; that order cannot remain in force for more than two months. But the proviso gives power to the executive, i.e., the State Government, to enlarge the period of two months upto six months. Therefore, the executive is sitting over the decision of the Magistrate or judicial authority. These are judicial magistrates who will make these orders. And the executive is given power to override or to come to a decision contrary to the decision of the Magistrate. In this very clause itself there is a provision for stating reasons when an application is made under sub-clause (5) for rescinding or altering the order made under section 144; when rejecting the application by the aggrieved person, the reasons will have to be given. The reasons are not to be given for making the order. On the other hand, the State Government has been given the power of executive interference in the matter of discharge of judicial duties. Apart from the point that this is a matter vitally affecting the people, we know how it has been abused. We want that even if power is given, it should be a restricted power, not unrestricted as provided in this clause.

SHRI S. M. BANERJEE (Kanpur): I fully support the amendments moved by my friend, Shri Dinesh Joarder. We have bitter experience of the promulgation of Section 144.

Everyone of us have been twice, thrice or many times convicted under Sec. 188, that is, for defiance of Sec. 144.

You are aware that previously people were allowed, peaceful demonstrators were allowed very near the Parliament House. But, after certain incidents which took place, which were most unfortunate, a blanket ban has been imposed here in this area and demonstrations can come only upto the Boat Club. Sir, demonstration in the Boat Club is quite different from demonstration, before the Parliament. The Central Government employees, the State Government employees and others will hold demonstrations organised by various political parties. They are not allowed to come near the Parliament House. Despite the assurance given to them, they were precluded to come to you for presenting a particular memorandum.

So, Sec. 144 has been misused and abused by the executive and if these unlimited powers are given to them, I am sure they will misuse it again and again and genuine trade union movements or any other movements in the country which is the need of the hour to highlight the various problems of the people who are suffering in the hands of this Government, will be crushed completely. I would, therefore, request you also to kindly apply your mind to this and see that this blanket ban under Sec. 144 near-about Parliament House is relaxed. Of course, there is no question of demonstration within the precincts of the Parliament, but even upto the Patel Chowk people cannot come. They can come only upto the Boat Club. They cannot come outside

[Shri S. M. Banerjee]

Parliament House even upto the All India Radio. This is something unusual. I would, therefore, request you and through you the hon Minister, Shri Ram Niwas Mirdha. Let him realise the difficulties which the various political parties in the opposition and the trade union workers and the Kisan Sabha leaders and others are facing to-day and realise that once upon a time he must have also led some movements. Let him realise that this is a sharp instrument in the hands of these people who will misuse it. I can assure him that no amount of amendment, no amount of these nefarious amendments are going to compel us or persuade us to refrain from demonstrations. If prices go up like this, there will be demonstrations despite Sec 144. Any section may be there and naturally ultimately there may be a certain amount of violence. But if a peaceful demonstration is allowed to ventilate the grievances of the people there are less chances of violence.

With these words, I support the amendments of Mr Joarder.

SHRI INDRAJIT GUPTA (Alipore) This is a very serious matter because it affects the basic. I should say, the basic fundamental rights which are ensured in the Constitution itself, the rights of the citizens—the Minister should listen, he is not listening—guaranteed in the Constitution, the fundamental rights of the citizens, subject to certain restrictions which are reasonable. Unreasonable restrictions cannot be supported even in the context of the Constitution. Now, the right of the citizens to assemble peaceably, to hold demonstrations or meeting is a fundamental right and I would like to know from the Minister why they are coming forward now with new clauses amendments to the Bill, which are retrograde, just at this time when all over the country there is a terrible food crisis, a crisis of prices. The Government itself is appealing to

people to co-operate with them in detecting hoarders and catching the hoarders and all that and the people are taking part in huge demonstrations all over the country. But at this time, when they come forward with this type of amendment, I would say, the intentions of the Government are thoroughly suspect.

They are not bona fide but mala fide intentions. There was already a provision existing that an order promulgated under Section 144 could be in force upto 2 months after which it lapsed. After that it could be renewed. Here it is extraordinary they are extending the period of 2 months to 6 months. The State Government can promulgate an order which will remain for 6 months. What is the reason for this? It is retrograde. They must explain the circumstances and conditions which warranted them to bring in this kind of amendment. Friends have said that this is being misused frequently and deliberately to suppress the rights of trade unions and other organisations of the people for carrying on their peaceful activities. Mr Banerjee referred to restriction around State Capitals. In Calcutta the same thing is there. For months and years, a huge area, much bigger than this area, containing the Writers' Building, HQ of the State Government, the Assembly and Raj Bhavan etc remains permanently under the provision of Sec 144. Nobody can go there for peaceful demonstration for submitting any memorandum. Cordons of Police with lathis and tear gas are there to prevent anybody going near that area. Is this a reasonable restriction? You must explain this. Is this the spirit of the fundamental rights enshrined in the Constitution? People should have the right of peaceful assembly. There may be some exigencies like communal riot. I would support Mr. Limaye's amendment that in the first instance section 144 can be imposed for 72 hours and if it is found necessary it can be extended beyond period

of 72 hours. Even communal riots cannot go on indefinitely. Within 2 or 3 or 4 days it is brought under control. This provision we are afraid, can be used by State Governments according to their own whims and wishes as long as they like and there is no remedy against it.

So we are opposed to this provision. You must reconsider the position. We appeal to you to accept the amendments moved by Shri Madhu Limaye, Shri Joarder and others.

SHRI DINEN BHATTACHARYYA (Serampore): Sharecroppers are seriously affected by this sort of legislation. There is dispute between sharecropper and jothdar, the landlord and he goes to the local police station and gets an order declaring Section 144 on the particular land on which the sharecropper had been there for one or two or 10 years. There are thousands of cases like that I took up this matter last year with the Home Minister. Thousands of people were debarred from cultivating their land.

Because, the land-owners used to go even—not to the court—to the thana police station, and pay something to the officer-in-charge and get an order and prevent the sharecroppers from entering on those lands and cultivating. This will seriously affect the ryots. So, I would humbly request the hon. Minister, through you, to accept at least this single amendment. Sir, there are nearabout 400 amendments or so which have been moved. The Minister is not accepting a single amendment. Why is he so much rigid about this? Let him accept this amendment and wait and see the result. In case he finds it necessary, let him come forward with a new amendment at a later stage.

MR. SPEAKER: We are not considering clause 145; we are considering clause 144. You are talking about clause 145.

SHRI DINEN BHATTACHARYYA: Sir, orders under 145 are passed like anything.

MR. SPEAKER: I am not very sure about that. But, there is a specific provision.

SHRI DASARATHA DEB: In my State, Section 144 was used and forty-five hundred acres of land—paddy fields—were destroyed completely.

MR. SPEAKER: I do not know that. It may be like that in Bengal but not in other States.

SHRI DASARATHA DEB: In other States also the same is the position.

SHRI JAGANNATH RAO (Chatrapur): Under the existing Code, under Section 144, sub-section (6), 'No order under this section shall remain in force for more than two months from the making thereof, unless, in cases of danger to human life, health or safety, or a likelihood of a riot or an affray, the State Government, by notification in the Official Gazette otherwise directs.'

Therefore, the initial period during which an order under Section 144 shall remain in force is for a period of two months unless the State Government otherwise directs. The new clause also speaks that initially the order will remain in force for two months. Under the existing section there is no time limit. But, it can be extended for any time. But, the extended time is limited to six months where the emergency exists or where circumstances do warrant that a preventive order is necessary. It is the duty of the Executive and not the Judicial Magistrate to do so. The purpose of this section is to prevent, or it tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquility, or a riot, or an affray.

श्री मधु लिमये (बांदा) : एग्जिटिंग कौड कोः कर रहे हैं?

You do not know that it has been struck down by the Supreme Court.

SHRI JAGANNATH RAO: The reason for the amendment is this. This is in respect of time given to the State Government. That power is limited to six months. There is improvement in the provision.

SHRI DINESH JOARDER (Malda): I want to read out the two clauses—old and the new clauses in the Bill—so that there may not be any misunderstanding on this.

MR. SPEAKER: You will please sit down. I am not calling you. I have called Shri Naik after calling four from your side. I should call now from the other side.

SHRI DINESH JOARDER: The wordings of the clauses are to be clarified.

MR. SPEAKER: You have spoken already.

SHRI DINESH JOARDER: Sir, I have spoken on this clause.

MR. SPEAKER: Then why do you get up for the second time? This is not a Committee that you can get up at any time.

श्री मधु लिमये अध्यक्ष महोदय, परसों ऐसा हुआ कि यह फैसला किया गया कि हम लोग एक दिन और, बानी प्राय बैटने। तब यह पता नहीं था इसके बारे में। 144 वर अंतिम प्राय मेरा था। चूंकि पता नहीं था कि बाकी धाराओं का क्या होगा, गिलोटीन होमी, इन डर से मैंने उस प्राय को बल्दी खत्म किया था

MR. SPEAKER: This is not a committee where the hon. Member can get up at any time and speak. I am not allowing this.

श्री मधु लिमये : प्राय से प्रायना कर रहे हैं।

अध्यक्ष महोदय : मेरे साथ श्री बाबुल हो हैं।

श्री मधु लिमये : प्वाइंट ऑफ ऑर्डर कहिये, सबमिशन कहिये, कुछ भी कहिये इन्होंने बहुत चालाकी से—प्राय में नहीं करना चाहता—जो उपखण्ड सुप्रीम कोर्ट द्वारा अर्बैज करार हो गया है, उसको आधार बना कर एक नया प्राविजन जिस को ये बड़ी लिबरल प्राविजन कहते हैं जाये हैं और ऐसा बताने की कोशिश कर रहे हैं।

MR. SPEAKER: This is not a point or order. I am not allowing this. I am not going to introduce this practice. The hon. Member has raised the point and it is now for the hon. Minister to reply.

SHRI JAGANNATH RAO: It is open to us also to say that.

श्री मधु लिमये . एक वाक्य मेरा सुन लें फिर व्यवस्था दें। 1861 में कोड बना। उसके बाद लगातार केवल वर राजनीतिक मामलों के लिए या दंगे फवादों के लिए इसको इस्तेमाल किया जाता था। पब्लिक ट्रिब्युनल शब्द 1861 में से कर 1898 तक उस में नहीं था। कहते हैं कि 1920 में जब गांधी जी का आन्दोलन शुरू हुआ तो किसी के कर्टाईल ब्रैन में यह बात निकली और "पब्लिक ट्रिब्युनल" शब्द जोड़ा गया। कम से कम उसको नो कटवा दीजिये इस में से (व्यवधान) व्यक्तिगत स्वतंत्रता की प्राय रक्षा करेंगे ?

अध्यक्ष महोदय : करते हैं तो बैठते नहीं हैं।

SHRI B. V. NAIK (Kanara): I shall identify myself with what Shri Indrajit Gupta has stated, when

It comes to the question of communal and other riots. We have got very bad experience whether it be in Bhiwandi, or Malegaon or right up to Lucknow and Shahdara.

Whenever there is a peaceful demonstration led by responsible leadership, we have had experience about it that there is no fear of public tranquillity being disturbed. I have myself experience in regard to certain agitations by the landless peasants and landed peasants numbering about 5000 to 6000, and I have not found the policemen or the cops creating any trouble or disturbance. I have led about 5000 to 6000 people in such agitations and I have not found any trouble. But it is the element of the goonda that has been entering into politics and creating trouble. Whenever there is a large mob, the goonda elements try to take over the initiative and leadership and they are the vested interests in creating lack of public tranquillity and disturbance of peace. In these circumstances, this provision will hurt only those very people who are either used for political or other purposes or who have a vested interest in the creation of chaos. We have got examples of such cases right from Bhiwandi and Malegaon and up to Lucknow and Shahdara, as I said earlier. Therefore, I feel that there is nothing very harmful as far as responsible political action leading to peaceful demonstrations and agitations is concerned.

श्री राज रतन शर्मा (बादा) : मैंने इस 144 में से एनार्सेस शब्द को निकालने के लिए एमेंडमेंट दिया है। एनार्सेस शब्द डिकलर नहीं किया गया है सी आर पी सी में। मैंने आई पी सी को भी देखा है। इस में भी नहीं किया गया है। इसका जो डिकलर नरी बोलिय है उसको धाप देवें। यह मेरे हाथ में कॉलिज इंग्लिश जैम डिकलररी है। इसके मुताबिक यह ट्रांजे-टिब बर्ब है। इसके माने हैं, दुबल, बरी, टीज।

श्री छतल बिहारी बाबूदेवी : जैसे आपको कोई छेड़ दे।

श्री राज रतन शर्मा : यह एनार्सेस शब्द बुकि पुरानी नी आर पी सी में दिया हुआ है इन वास्ते मंत्री महोदय ने बिना कुछ साचे समझें और अपनी बुद्धि का प्रयोग किए, इसको ज्यों का त्यों रख दिया है। मेरी यह प्रार्थना है कि इस annoyance शब्द को हटा दिया जाय।

दूसरी प्रार्थना यह है कि मैं माननीय मधु लिमये जी से सहमत हूँ कि ज्यादा से ज्यादा दो महीने का जो प्रीबीजन जोड़ा है

"shall remain in force for more than two months from the making thereof".

इस को क्या जरूरत है? क्या दो महीने तक बीच आफ पोस का डर बना रहेगा? 72 घंटे ठीक है। इस से अधिक किसी को हासन में न रखा जाय। यह मेरे दो सजोशन हैं।

SHRI B. R. SHUKLA (Bahraich): The word 'annoyance' has been interpreted by various High Courts and it has got a settled connotation. This same word has found a definition in s. 441 IPC where it has been laid down that any person who enters on the property of another unlawfully with intent to intimidate, harass or cause annoyance and so on. So 'annoyance' is a term which is not subjective as the hon. Member has suspected. It means annoyance not of a person of a sensitive mind; it means annoyance likely to be caused and the standard would be of a reasonably prudent man. Therefore, there should be no suspicion on that score that it is something subjective and is liable to be interpreted according to the caprice of Government or of the judge.

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS AND IN THE DEPARTMENT OF

PERSONNEL AFFAIRS (SHRI RAM NIWAS MIRDHA): A number of amendments have been moved to this clause and even, if some of them are accepted, the whole purpose of this clause would vanish. It is true that the clause, as it existed, particularly sub-clause (6) was struck down by the Supreme Court on two counts. We have remedied these defects here. One was that there was no time limit upto which the State Government could extend the order. Secondly, there was no provision to hear the parties concerned in passing the order. Both these defects have now been rectified in the present clause. It means the State Government cannot extend the order beyond six months. Secondly the State Government or the magistrate who passes the order under the various sub-clauses will have to give an opportunity to the parties concerned. To that extent it is certainly an improvement (*Interruptions*) it is a definite improvement; it is not correct to say that it is retrograde or that we have gone back on the provision as it existed.

As regards the argument that the order should give reasons, it is well-understood that the order which will have to be a written order would state all material facts and has to be a speaking order.

SHRI SOMNATH CHATTERJEE: If that is the intention, agree to this amendment which is very clear.

SHRI RAM NIWAS MIRDHA: It is not possible for me to accept one word here or one word there because the clause as a whole is an integrated clause, as was pointed out by the hon. member, and the words, in the light of a large number of judicial pronouncements, have come to acquire a certain meaning. I do not think any harm would be done in retaining them. As a matter of fact, it would be better to keep them as they are.

One amendment says that only the district magistrate should have

power to pass orders. It is not possible for one district magistrate to cover all the situations that might arise and he may not be everywhere in the district. So, to give power only to the District Magistrate would not be in the interest of the objective for which his clause has been framed. My submission is that this clause is a definite improvement on the old clause and it has tried to remedy some defects.

SHRI SOMNATH CHATTERJEE: After the striking down of sub-section 6, there is no power of the State Governments to make such an order. How is it an improvement?

SHRI RAM NIWAS MIRDHA: We have made provision in pursuance of the Supreme Court Judgement. Therefore it is a definite improvement. It is not a retrograde step, as has been urged by the hon. Minister, if that satisfies him. We feel that this provision is very necessary. There are safeguards. The Magistrate has to satisfy himself that a situation exists of a serious nature where orders under this section ought to be passed. I am therefore unable to accept any of the amendment of the hon. Members.

श्री सच्चु लिखवे : मेरी बात का तो
जवाब ही नहीं दिया। मैंने तो कहा था :

In the first instance 72 hours, to be extended to 15 days.

इसका जवाब देना चाहिए था न।

MR. SPEAKER: There are so many amendments to clause 144. Shall I put all of them together?

SOME HON. MEMBERS: No

MR. SPEAKER: I shall put them one by one. I shall first put amendment No. 138 to the vote of the House.

Amendment No. 136 was put and negatived.

MR. SPEAKER: I shall now put amendment No. 198 to the vote of the House.

Amendment No. 198 was put and negatived.

MR. SPEAKER: I shall now put amendment No. 199 to the vote of the House... (Interruptions). You want a division on this. All right.

The question is:

'Pages 47 and 48,—

for lines 39 to 44 and 1 to 3 respectively,
substitute—

"(4) No order under this section shall remain in force for more than seventy-two hours in the first instance:

Provided that the District Magistrate may extend the order for a further period of fifteen days after holding public hearings in the manner prescribed on the necessity or otherwise of extending the order.''
(199)

The Lok Sabha divided:

Division No. 10]

[11.52 hrs.

AYES

Bade, Shri R. V.

Banerjee, Shri S. M.

Bhattacharyya, Shri Dinen

Bhattacharyya, Shri Jagadish

Bhattacharyya, Shri S. P.

Brahman, Shri Rattanlal

Chatterjee, Shri Somnath

Deb, Shri Dasaratha

Desai, Shri Morarji

Dutta, Shri Biren

Gupta, Shri Indrajit

Halder, Shri Madhuryya

Halder, Shri Krishna Chandra

Jha, Shri Bhogendra

Joarder, Shri Dinesh

Kalingarayar, Shri Mohanraj

Kalyanasundaram, Shri M.

Koya, Shri C. H. Mohamed

Limaye, Shri Madhu

Mehta, Shri P. M.

Narendra Singh, Shri

Pandey, Shri Sarjoo

Parmar, Shri Bhaljibhai

Pradhan, Shri Dhan Shah

Saha, Shri Ajit Kumar

Saha, Shri Gadadhar

Sangliana, Shri

Sen, Dr Ranen

Shakya, Shri Moha Deepak Singh

Sharma, Shri R. R.

Shastri, Shri Ramavatar

Vajpayee, Shri Atal Bihari

NOES

Ahirwar, Shri Nathu Ram

Arvind Netam, Snn

Awdhesh Chandra Singh, Shri

Babunath Singh, Shri

Barman, Shri R. N.

Barupal, Shri Panna Lal

Basappa, Shri K.

Basumatari, Shri D.

Besra, Shri S. C.

Bheeshmadev, Shri M.
 Bist, Shri Narendra Singh
 Brahmanandji, Shri Swami
 Buta Singh, Shri
 Chandra Gowda, Shri D. B.
 Chavan, Shri Yeshwantrao
 Chikkalingaiah, Shri K.
 Das, Shri Anadi Charan
 Daschowdhury, Shri B. K.
 Deo, Shri S. N. Singh
 Deshmukh, Shri K. G.
 Dixit, Shri G. C.
 Dixit, Shri Jagdish Chandra
 Gangadeb, Shri P.
 Gautam, Shri C. D.
 Gogoi, Shri Tarun
 Gomango, Shri Giridhar
 Goswami, Shri Dinesh Chandra
 Gotkhinde, Shri Annasaheb
 Hari Singh, Shri
 Ishaque, Shri A. K. M.
 Jadeja, Shri D. P.
 Jha, Shri Chiranjib
 Kadam, Shri J. G.
 Kader, Shri S. A.
 Kailas, Dr.
 Kamakshaiah, Shri D.
 Kamla Kumari, Kumari
 Karan Singh, Dr.
 Kavde, Shri B. R.
 Kedar Nath Singh, Shri
 Kotoki, Shri Liladhar
 Kotrashetti, Shri A. K.
 Krishnappa, Shri M. V.
 Lakkappa, Shri K.

Laskar, Shri Nibhar
 Mahajan, Shri Y. S.
 Mahishi, Dr. Sarejini
 Malhotra, Shri Inder J.
 Maurya, Shri B. P.
 Mohsin, Shri F. H.
 Murthy, Shri B. S.
 Naik, Shri B. V.
 Negi, Shri Pratap Singh
 Oraon, Shri Kartik
 Pandey, Shri R. S.
 Pandey, Shri Tarkeshwar
 Pandit, Shri S. T.
 Paokai Haokip, Shri
 Parashar, Prof. Narain Chand
 Patel, Shri Ramubhai
 Patil, Shri Krishnarao
 Patil, Shri S. B.
 Patil, Shri T. A.
 Patnaik, Shri Banamali
 Patnaik, Shri J. B.
 Prabodh Chandra, Shri
 Pradhani, Shri K.
 Raghu Ramaiah, Shri K.
 Ram, Shri Tulmohan
 Ram Surat Prasad, Shri
 Rana, Shri M. B.
 Rao, Shri Jagannath
 Rao, Shri M. S. Sanjeevi
 Rao, Shri Nageswara
 Rao, Shri Pattabhi Rama
 Rathia, Shri Umed Singh
 Raut, Shri Bhola
 Ravi, Shri Vayalar

Reddy, Shri K. Kodanda Rami

Reddy, Shri P. Bayapa

Reddy, Shri P. V.

Richhariya, Dr. Govind Das

Samanta, Shri S. C.

Sankata Prasad, Dr.

Shambhu Nath, Shri

Shankar Dayal Singh, Shri

Shankaranand, Shri B.

Sharma, Shri Madhoram

Sharma, Shri Nawal Kishore

Shastri, Shri Sheopujan

Shivnath Singh, Shri

Shukla, Shri B. R.

Siddheshwar Prasad, Shri

Singh, Shri Vishwanath Pratap

Sinha, Shri Nawal Kishore

Sinha, Shri R. K.

Stephen, Shri C. M.

Sudarsanam, Shri M.

Suryanarayana, Shri K.

Swaminathan, Shri R. V.

Swamy, Shri Sidrameshwar

Tarodekar, Shri V. D.

Tewari, Shri Shankar

Thakre, Shri S. B.

Tombi Singh, Shri N.

Tulsiram, Shri V.

Verma, Shri Ramsingh Bhai

Verma, Shri Sukhdeo Prasad

Virbhadra Singh, Shri

Yadav, Shri Karan Singh

MR. SPEAKER: The results of the Division is Ayes: 32; Noes: 110

The motion was negatived

MR. SPEAKER: The question is.

"Pages 47 and 48—

omit lines 41 to 44 and 1 to 3

respectively." (200)

The Lok Sabha divided:

Division No. 11]

[11.54 hrs.

AYES

Bade, Shri R. V.

Banerjee, Shri S. M.

Bhattacharyya, Shri Dinen

Bhattacharyya, Shri Jagadish

Bhattacharyya, Shri S. P.

Chatterjee, Shri Somnath

Deb, Shri Dasaratha

Desai, Shri Morarji

Dutta, Shri Biren

Gupta, Shri Indrajit

Halder, Shri Madhuryya

Joarder, Shri Dinesh

Kalingarayar, Shri Mohanraj

Limaye, Shri Madhu

Mehta, Shri P. M.

Narendra Singh, Shri

Pandey, Shri Sarjoo

Parmar, Shri Bhaljibhai

Saha, Shri Ajit Kumar

Saha, Shri Gadadhar

Sen, Dr. Ranen

*Shri Chapalendu Bhattacharyya also voted for NOES.

Shakya, Shri Maha Deepak Singh
 Sharma, Shri R. R.
 Vajpayee, Shri Atal Bihari

NOES

Anhirwar, Shri Nathu Ram
 Arvind Netam, Shri
 Awdhesh Chandra Singh, Shri
 Babunath Singh, Shri
 Barman, Shri R. N.
 Barupal, Shri Panna Lal
 Basappa, Shri K.
 Basumatari, Shri D.
 Besra, Shri S. C.
 Bhattacharyya, Shri Chapalendu
 Bheeshmadev, Shri M.
 Bist, Shri Narendra Singh
 Brahmanandji, Shri Swami
 Buta Singh, Shri
 Chandra Gowda, Shri D. B.
 Chavan, Shri Yeshwantrao
 Daschowdhury, Shri B. K.
 Deo, Shri S N Singh
 Deshmukh, Shri K. G
 Dixit, Shri G C.
 Dixit, Shri Jagdish Chandra
 Gangadeb, Shri P.
 Gautam, Shri C. D
 Gomango, Shri Giridhar
 Goswami, Shri Dinesh Chandra
 Gotkhinde, Shri Annasaneh
 Hari Singh, Shri
 Ishaque, Shri A. K. M.
 Jadeja, Shri D. P.
 Jha, Shri Chiranjib

Kadam, Shri J. G.
 Kader, Shri S. A.
 Kailas, Dr.
 Kamakshaiah, Shri D.
 Kamla Kumari, Kumari
 Karan Singh, Dr.
 Kavde, Shri B. R.
 Kedar Nath Singh, Shri
 Kotoki, Shri Lilladhar
 Kotrashetti, Shri A. K.
 Lakkappa, Shri K.
 Laskar, Shri Nihar
 Mahajan, Shri Y. S.
 Mahishi, Dr Sarojini
 Malhotra, Shri Inder J
 Maurya, Shri B. P.
 Mohsin, Shri F H.
 Murthy, Shri B S
 Naik, Shri B. V.
 Negi, Shri Pratap Singh
 Oraon, Shri Kartik
 Pandey, Shri R S.
 Pandey, Shri Tarkeshwar
 Pandit, Shri S T.
 Paokai Haokip, Shri
 Parashar, Prof Narain Chand
 Patil, Shri Krishnarao
 Patil, Shri S B.
 Patil, Shri T. A.
 Patnaik, Shri Banamali
 Patnaik, Shri J. B.
 Prabodh Chandra, Shri
 Pradhani, Shri K.
 Raghu Ramaiah, Shri K.

Ram, Shri Tulmohan
 Ram Surat Prasad, Shri
 Rana, Shri M. B.
 Rao, Shri Jagannath
 Rao, Shri M. S. Sanjeevi
 Rao, Shri Nageswara
 Rao, Shri Pattabhi Rama
 Rathia, Shri Umed Singh
 Raut, Shri Bhola
 Ravi, Shri Vayalar
 Reddy, Shri K. Kodanda Rami
 Reddy, Shri P. Bayapa
 Reddy, Shri P. V.
 Richhariya, Dr. Govind Das
 Samanta, Shri S. C.
 Sankata Prasad, Dr.
 Shambhu Nath, Shri
 Shankar Dayal Singh, Shri
 Shankaranand, Shri B.
 Sharma, Shri Madhoram
 Sharma Shri Nawal Kishore
 Shastri, Shri Sheopujan
 Shivrath Singh, Shri
 Shukla, Shri B. R.
 Siddheshwar Prasad, Shri
 Singh, Shri Vishwanath Pratap
 Sinha, Shri Nawal Kishore
 Sinha, Shri R. K.
 Stephen, Shri C. M.
 Sudarsanam, Shri M.
 Suryanarayana, Shri K.
 Swaminathan, Shri R. V.

Swamy, Shri Sidrameshwar
 Tarodekar, Shri V. D.
 Tewari, Shri Shankar
 Thakre, Shri S. B.
 Tulsiram, Shri V.
 Verma, Shri Ramsingh Bhai
 Verma, Shri Sukhdeo Prasad
 Virbhadra Singh, Shri
 Yadav, Shri Karan Singh

MR. SPEAKER: The result* of the division is:

Ayes: 24; Noes: 105

The motion was negatived.

MR. SPEAKER: I will now put amendment No. 201.

Amendment No. 201 was put and negatived.

MR. SPEAKER: The question is:

Page 47; lines 30 and 31,

omit "obstruction, annoyance or injury to any person lawfully employed, or", (236)

The Lok Sabha divided.

Division No. 12] [11.57 hrs.

AYES

Bade, Shri R. V.
 Banerjee, Shri S. M.
 Bhattacharyya, Shri Dinen
 Bhattacharyya, Shri Jagadish
 Bhattacharyya, Shri S. P.
 Brahman, Shri Rattanlal

* The following Members also recorded their votes :

AYES : Shri S. A. Shamim, Shri M. Kalyansundaram, Shri Bhogendra Rao, Shri Ramnagar Shastri and Shri Krishna Chandra Halder.

NOES : Shri Tarun Gogoi, Shri K. Chikkalingaiah, Shri Anadi Charan Das and Shri N. Tombi Singh.

Chatterjee, Shri Somnath
 Deb, Shri Dasaratha
 Dutta, Shri Biren
 Gupta, Shri Indrajit
 Halder, Shri Madhuryya
 Halder, Shri Krishna Chandra
 Joarder, Shri Dinesh
 Kalingarayar, Shri Mohanraj
 Kalyanasundaram, Shri M.
 Koya, Shri C. H. Mohamed
 Mehta, Shri P. M.
 Pandey Shri Sarjoo
 Parmar Shri Bhaljibhai
 Saha, Shri Ajit Kumar
 Saha, Shri Gadadhar
 Sen, Dr Ranen
 Shamin, Shri S. A.
 Shastri, Shri Ramavatar
 Vajpayee, Shri Atal Bihari

NOES

Ahirwar, Shri Nathu Ram
 Avind Netam, Shri
 Awdhesh Chandra Singh, Shri
 Babunah Singh, Shri
 Barman, Shri R. N.
 Barupal Shri Panna Lal
 Basapp, Shri K.
 Basumatari, Shri D.
 Besra, Shri S. C.
 Bhattacharyya, Shri Chapalendu
 Bheeshradev, Shri M.
 Bist, Shri Narendra Singh
 Brahmanandji, Shri Swami
 Buta Singh, Shri

Chandra Gowda, Shri D. B.
 Chavan, Shri Yeshwantrao
 Chikkalingiah, Shri K.
 Das, Shri Anadi Charan
 Daschowdhury, Shri B. K.
 Deo, Shri S. N. Singh
 Deshmukh, Shri K. G.
 Dixit, Shri G. C.
 Dixit, Shri Jagdish Chandra
 Gangadeb, Shri P.
 Gautam, Shri C. D.
 Gogoi, Shri Tarun
 Gomango, Shri Giridhar
 Goswami, Shri Dinesh Chandra
 Gotkhinde, Shri Annasaheb
 Hari Singh, Shri
 Ishaque, Shri A. K. M.
 Jadeja, Shri D. P.
 Jha, Shri Chiranjib
 Kadam, Shri J. G.
 Kader, Shri A. S.
 Kailas, Dr.
 Kamakshaiiah, Shri D.
 Kamla Kumari, Kumari
 Karan Singh, Dr.
 Kavde, Shri B. R.
 Kedar Nath Singh, Shri
 Kotoki, Shri Liladhar
 Kotrashetti, Shri A. K.
 Krishnappa, Shri M. V.
 Lakkappa, Shri K.
 Laskar, Shri Nikar
 Mahajan, Shri Y. S.

Mahishi, Dr. Sarejini
 Malhotra, Shri Inder J.
 Maurya, Shri B. P.
 Mohsin, Shri F. H.
 Murthy, Shri B. S.
 Nair, Shri B. V.
 Negi, Shri Pratap Singh
 Oraon, Shri Kartik
 Pandey, Shri R. S.
 Pandey, Shri Tarkeshwar
 Pandit, Shri S. T.
 Paokai Haokip, Shri
 Parashar, Prof. Narain Chand
 Patel, Shri Ramubhai
 Patil, Shri Krishnarao
 Patil, Shri S. B.
 Patil, Shri T. A.
 Patnaik, Shri Banamali
 Patnaik, Shri J. B.
 Prabodh Chandra, Shri
 Pradhan, Shri Dhan Shah
 Pradhani, Shri K.
 Raghu Ramaiah, Shri K.
 Ram, Shri Tulmohan
 Ram Surat Prasad, Shri
 Rana, Shri M. B.
 Rao, Shri Jagannath
 Rao, Shri M. S. Sanjeevi
 Rao, Shri Nageswara
 Rathia, Shri Umed Singh
 Raut, Shri Bhola
 Ravi, Shri Vayalar
 Reddy, Shri K. Kodanda Rama

Reddy, Shri P. Bayapa
 Reddy, Shri P. V.
 Richhariya, Dr. Govind Das
 Samanta, Shri S. C.
 Sangliana, Shri
 Sankata Prasad, Dr.
 Shambhu Nath, Shri
 Shankar Dayal Singh, Shri
 Shankaranand, Shri B.
 Sharma, Shri Madhoram
 Sharma, Shri Nawal Kishore
 Shastri, Shri Sheopujan
 Shivanath Singh, Shri
 Shukla, Shri B. R.
 Siddheshwar Prasad, Shri
 Singh, Shri Vishwanath Pratap
 Sinha, Shri Nawal Kishore
 Sinha, Shri R. K.
 Stephen, Shri C. M.
 Sudarsanam, Shri M.
 Suryanarayana, Shri K.
 Swaminathan, Shri R. V.
 Swamy, Shri Sridrameshwar
 Tarodekar, Shri V. D.
 Tewari, Shri Shankar
 Thakre, Shri S. B.
 Tombi Singh, Shri N.
 Tulsaram, Shri V.
 Verma, Shri Ramsingh Bhai
 Verma, Shri Sukhdeo Prasad
 Virbhadra Singh, Shri
 Yadav, Shri Karan Singh

MR. SPEAKER: The result* of the division is:

Ayes: 25; Noes: 112.

The motion was negatived.

SHRI S. M. BANERJEE: On a point of order, Sir. Under the rules, after every division the doors have to be

Shri Pattabhi Rama Rao also voted for Noes.

[Shri S. M. Banerjee]

opened and the lobbies have to be cleared again for the next division.

MR. SPEAKER: It is the same clause.

SHRI S. M. BANERJEE: I may be interested in some other amendment.

SHRI INDRAJIT GUPTA: This interpretation that the doors will remain closed during the voting on a particular clause is not borne out by the rules.

MR. SPEAKER: It is only for the sake of convenience. If you go by the strict interpretation of the rules, on every division I will have to ask you also whether you want a division or not. In fact, I asked in the beginning whether you want further divisions and you said, yes. That is why I did it. Otherwise, I would have asked for the doors to be opened.

SHRI INDRAJIT GUPTA: If you say it is for the sake of convenience, that is a different matter. In the past also, every time the Speaker used to ask, "Do you want the doors to be opened, and the lobbies cleared again?" and sometimes we used to say, it is not necessary. Convenience is a different matter. But that should not be given as an interpretation.

MR. SPEAKER: Don't take it as a very strict interpretation. It is only for the sake of convenience. If you go strictly by rules, then I need not contest what you say. That is why when I put the other amendments, I asked you whether you would be demanding more divisions and you said, yes. I asked Mr. Limaye also. I do not contest your interpretation.

12 hrs.

SHRI S. M. BANERJEE: Kindly bear my point of order. Under the rules which we have not amended yet, for each Division the Lobbies have to be cleared. You remember the incident when Mr. Sreekantam Nair wanted to go out after one division, but when he found the doors were closed, he banged the doors and said that he wanted to go out, and then the door was opened.

MR. SPEAKER: I do not contest it, how you interpret it. I put a straight question that there were more amendments, and would you be demanding more divisions and would it be all right if we continued with the same process, rather than opening the door again and ringing the Bell and doing it all again. It is for the convenience of the House. If you want it I can ask him to open the doors... (Interruptions) Rule 367 says that on the conclusion of a debate the Speaker shall put the question and invite those who are in favour of the motion to say 'aye' and those against the motion to say 'no'. The debate on this clause is over and now the amendments are being put to vote. It is a continuing process. The rule is very clear.

SHRI S. M. BANERJEE: It means that we have been told that if we wanted to go out, let us not ask for a division. Am I to take it like that?

MR. SPEAKER: That is why I expressly asked the Members whether they would be demanding more divisions? Why are you insisting? I do not contest anything against you.

SHRI NANUBHAI N. PATEL (Bulsar): The doors were closed; I could not come in. I went out just for five minutes. The doors are now open and I could come in just now.

MR. SPEAKER: The Division was going on already.

SHRI NANUBHAI N. PATEL: Many Members were also waiting outside to enter the Chamber.

MR. SPEAKER: When the rules are so clear, why are you taking up the time of the House unnecessarily. Will you be demanding a division on this?

SHRI S. M. BANERJEE: We shall demand a division whenever we like. We cannot give any undertaking.

MR. SPEAKER: I shall now put amendments Nos. 237 and 238, moved by Shri Dinash Joarder, to the vote of the House.

Amendments Nos. 237 and 238 were put and negatived.

MR. SPEAKER: Amendment No. 240...

SHRI MADHU LIMAYE: What about 239?

MR. SPEAKER: 239 is identical to 200 on which vote has been taken.

SHRI DASARATHA DEB: It is not the same.

SHRI DINEN BHATTACHARYYA: The language is different.

MR. SPEAKER: I shall now put Amendment No. 239 moved by Shri Dinesh Joarder to the vote of the House.

The question is:

"Pages 47 and 48:—

omit lines 41 to 44 and 1 to 3 respectively" (239)

Let the lobbies be cleared... I had called for both the amendments and now I find that Amendment No. 239 is identical to Amendment No. 200: it is exactly the same. Unnecessarily a division was called. I said it but Mr. Bhattacharyya contested it. So, I had to call for the file.

There will be no Division on this because it is out of order.

SHRI JAGDISH CHANDRA DIXIT (Sitapur): On a point of order, Sir. This particular Amendment was never moved at all.

MR. SPEAKER: We have already settled that. Amendment No. 239 is the same as Amendment No. 200. So, I am not putting that to vote.

I now put Amendment No. 240, moved by Shri Dinesh Joarder, to the vote of the House.

Amendment No. 240 was put and negatived.

MR. SPEAKER: Now, the question is:

"That Clause 144 stand part of the Bill."

The Lok Sabha divided:

Division No. 13

12.12 hrs

AYES

Aga, Shri Syed Ahmed

Ahirwar, Shri Nathu Ram

Arvind Netam, Shri

Babunath Singh, Shri

Barman, Shri R. N.

Barupal, Shri Panna Lal

Basappa, Shri K.

Basumatari, Shri D.

Besra, Shri S. C.

Bhattacharyya, Shri Chapalendra

Bheeshmadev, Shri M.

Bist, Shri Narendra Singh

Brahmanandji, Shri Swami

Chandra, Gowda, Shri D. B.

Chandrashekharaappa Veerabasaappa
Shri T. V.

Chaturvedi, Shri Rohan Lal

Chellachami, Shri A. M.

Chikkalingaiah, Shri K.

Dalip Singh, Shri

Daschowdhury, Shri B. K.

Deo, Shri S. N. Singh

Deshmukh, Shri K. G.

Dixit, Shri G. C.

Dixit, Shri Jagdish Chandra

Gangadeb, Shri P.

Gomango, Shri Giridhar

Gotkhinde, Shri Annasaheb

Häri Singh, Shri

Bhaque, Shri A. K. M.

Jadeja, Shri D. P.

Jha, Shri Chiranjib

Kader, Shri S. A.

Kailas, Dr.

Kamakshaiah, Shri D.

Kamble, Shri T. D.

Kamla Kumari, Kumari

Karan Singh, Dr.

Kedar Nath Singh, Shri

Kotaki, Shri Liladhar

Kotrashetti, Shri A. K.

Krishnappa, Shri M. V.

Lakkappa, Shri K.

*Lumaye, Shri Madhu

Mahajan, Shri Y. S.

Mahishi, Dr. Sarojini

Malhotra, Shri Inder J.

Mallanna, Shri K.

Marak, Shri K.

Maurya, Shri B. P.

Misra, Shri S. N.

Modi, Shri Shrikishan

Mohsin, Shri F. H.

Murthy, Shri B. S.

*Narendra Singh, Shri

Negi, Shri Pratap Singh

Orson, Shri Kartik

Pandey, Shri R. S.

Pandit, Shri S. T.

Panigrahi, Shri Chintamani

Pant, Shri K. C.

Peckai Haakip, Shri

Patel, Shri Ramubhai

Patil, Shri Krishnarao

Patil, Shri T. A.

Patnaik, Shri Banamali

Patnaik, Shri J. B.

Prabodh Chandra, Shri

Pradhan, Shri Dhan Shah

Pradhani, Shri K.

Raghuramaiah, Shri K.

Raju, Shri M. T.

Ram, Shri Tulmchan

Ram Sewak, Ch.

Ram Surat Prasad, Shri

Ram Swarup, Shri

Ramji Ram, Shri

Rana, Shri M. B.

Rao, Shrimati B. Radhabai A.

Rao, Shri Jagannath

Rao, Shri Nageswara

Rathia, Shri Umed Singh

Raut, Shri Bhola

Ravi, Shri Vayalar

Reddy, Shri K. Kodanda Rama

Reddy, Shri P. Rayapa

Reddy, Shri P. V.

Richhariya, Dr. Govind Das

Samanta, Shri S. C.

Sangilana, Shri

Sankata Prasad, Dr.

Sarker, Shri Sakti Kumar

Sen, Dr. Ranan

Sethi, Shri Arjun

Shambhu Nath, Shri

Shankar Datt Singh, Shri

NOES

Shankaranand, Shri B.

†Awdhesh Chandra Singh, Shri

Sharma, Shri A. P.

Bade, Shri R. V.

Sharma, Shri Madhoram

Banerjee, Shri S. M.

Sharma, Shri Nawal Kishore

Bhattacharyya, Shri Dinen

Sharma, Shri R. R.

Bhattacharyya, Shri Jagdish

Shastri, Shri Biswanarayan

Bhattacharyya, Shri S. P.

Shenoy, Shri P. R.

Brahman, Shri Rattanlal

Shivappa, Shri N.

Chatterjee, Shri Somnath

Shivnath Singh, Shri

Deb, Shri Dasaratha

Shukla, Shri B. R.

Dutta, Shri B. ren

Siddheshwar Prasad, Shri

Gaekwad, Shri Fatesinghiso

Singh, Shri Vishwanath Pratap

†Gogoi, Shri Tarun

Sinha, Shri Nawal Kishore

Guha, Shri Samar

Sinha, Shri R. K.

Gupta, Shri Indrajit

Suryanarayana, Shri K.

Halder, Shri Madhuryya

Swaminathan, Shri R. V.

Halder, Shri Krishna Chandra

Swamy, Shri Sidrameshwar

Hazra, Shri Manoranjan

Tarodekar, Shri V. D.

Jha, Shri Bhogendra

Tewari, Shri Shankar

Joarder, Shri Dinesh

Thakre, Shri S. B.

Modak, Shri Bijoy

Tiwari, Shri Chandra Bhai Mari

Parmar, Shri Bhaljibhai

Tombi Singh, Shri N.

Patel, Shri Nanubhai N.

Tulsi Ram, Shri V.

Saha, Shri Ajit Kumar

Vekaria, Shri

Saha, Shri Gadadhar

Verma, Shri Sukhdeo Prasad

†Stephen, Shri C. M.

Virbhadra Singh, Shri

MR. SPEAKER. The result* of the division is:

Yadav, Shri Karan Singh

Ayes: 123; Noes: 25

The motion was adopted.

†Wrongly voted for NOES.

* The following Member also recorded their votes.

AYES : Shri Pattabhi Rams Rao; Shri Paripoornanand Palauli; Shri B. V. Nait, Shri J. G. Kadam, Shri Tarun Gogoi, Shri C. M. Stephen and Shri Awdhesh Chandra Singh.

NOES : Shri Madhu Limaye, Dr. Ramen Sen and Shri Narendra Singh.

Clause 144 was added to the Bill.

Clause 145—(Procedure where dispute concerning land or water is likely to cause breach of peace)

SHRI R. R. SHARMA: I move:

Page 48, line 19,—

for "an Executive Magistrate" substitute—

"a Judicial Magistrate" (262)

Page 48, line 39,—

after "decide" insert—

"within a period of two months from the date of the appearance of the parties before him" (263)

अध्यक्ष जी, इस क्लॉज में एकजीक्यूटिव और जुडीशियरी में काफी भ्रमणाव किया गया है। जल्ता-फौजदारी का यह क्लॉज जुडीशियरी से सम्बन्धित है और इस में कब्जे का मूलभूत प्रश्न निहित है—इस लिये मैंने यह अमेन्डमेंट दिया है कि एकजीक्यूटिव मैजिस्ट्रेट के स्थान पर जुडीशियल मैजिस्ट्रेट द्वारा इस का निर्णय होना चाहिये और वे इस की जांच करें।

श्री मधु लिनये : अध्यक्ष महोदय, यह जो धारा 145 है, हमेशा भूमि सम्बन्धी मामलों में इसका इस्तेमाल किया जाता है। हालांकि मैंने इस में कोई संशोधन नहीं दिया है, लेकिन मैं सभी महोदय से यह जानना चाहता हूँ कि जब जमीन के झगड़े हो जाते हैं तो प्रकसर जो बड़े जमींदार होते हैं, वे इस धारा का इस्तेमाल करते हैं, जो बटाईदार हैं, टैनेन्ट्स हैं, गरीब किसान हैं, उन को दबाने का प्रयास करते हैं, उन की जमीन को हड़पते हैं। इस लिये मैं जानना चाहता हूँ कि इस धारा का इस्तेमाल करते समय कौन सी सावधानी बरतने जा रहे हैं? क्या इस के सम्बन्ध में वे राज्य सरकारों को हिदायत देने जिस से कि छोटे लोग हैं, बटाईदार हैं,

गरीब किसान हैं, उन के हितों की रक्षा हो सके। मैं आप का ध्यान पूर्णता दिलाने में और बिहार के दूसरे जिलों में जो हो रहा है, उस की तरफ दिखाना चाहता हूँ और यह कहना चाहता हूँ कि इस भ्रमणाव-बाजी में हजारों-हजार किसान फंस गये हैं, वे जमींदारों का मुकाबला नहीं कर पा रहे हैं। मैं मेरी महोदय से आश्वासन चाहता हूँ कि क्लॉज 145 का इस्तेमाल बटाईदारों के खिलाफ मोहर-कपर्स के खिलाफ नहीं होगा।

श्री रामचरतन शर्मा : अध्यक्ष महोदय मुझे क्षमा करें—इस में मेरी दो अमेन्डमेंट हैं—262 और 263, मैंने 262 के बारे में ही कहा है। 263 रह गई है, उस के लिये मुझे एक मिनट और देंगे।

अध्यक्ष महोदय : एक दफा ही कहना चाहिये—इस तरह से मेरे हाथ से क्लॉज का बैड़ा-गरक क्यों कराते हैं।

श्री भोजेश झा (जामनगर) : अध्यक्ष महोदय, जहां तक धारा 145 का सवाल है—यह सही है कि यह मामला एकजीक्यूटिव से सम्बन्ध रखता है, शान्ति की रक्षा के लिये इस का इस्तेमाल होता है और जास कर जमीन से इस का सम्बन्ध है। लेकिन यह भी दुर्भाग्यपूर्ण सच्चाई अभी तक रही है कि इस का इस्तेमाल घनवान लोग, बड़े भूस्वामी लोग प्रसन्न करते आये हैं। जहां बटाईदार, खेत मजदूर या अमजबीबी किसान हैं, वे कमजोरी होते हैं तो उन के खिलाफ इस को इस्तेमाल किया जाता है, जहां कमजोर होते हैं, वहां इस का इस्तेमाल नहीं किया जाता है।

मैं मही नहोवय का ध्यान बात कर एक बात की धरक दिजाना चाहता हूँ—
किशोर सरकार ने बटाईदारों के सम्बन्ध में
डेबिटी क्लर में प्राचीन किया है, 12 साल
तक जिस को बेदखल कर दिया गया है, अगर
वह साबित हो जाय तो उसे बखल वापस
किया जा सकता है, लेकिन यहां पर मंत्री
नहोवय दे रहे हैं कि वो महीने पहले तक बे-
बखल हुआ हो, तो उस को लिया जायगा।
मैं जानना चाहता हूँ कि एक राज्य में जो
कानून पास हुआ और राष्ट्रपति के हस्ताक्षर
से लागू हो गया, उस को दृष्टि में रखते हुए
यह यहां पर वो महीने रख रहे हैं, तो क्या
ये दोनों आपस में टकरायेंगे या नहीं।

मैं यह भी जानना चाहता हूँ—बड़े
भूस्वामी अभी तक इस का इस्तेमाल करते
आये हैं—इस के बारे में आप कौनसी गारंटी
देते हैं, क्योंकि यह दुधारू तलवार है, इस
में अभी तक नौकरशाही के जरिये बेड़ा गरक
होता रहा है। ऐसी स्थिति में आप क्या करने
चा रहे हैं ताकि उन की रक्षा हो सके।

SHRI DINESH JOARDER: I
support the amendment moved by
Shri R. R. Sharma. In place of
'executive magistrate' he proposes to
insert 'judicial magistrate' in the
amendment. After the separation of
the judiciary there are only a few
executive magistrates in district or
divisional headquarters. Only SDO
and few of the executive magistrates
are there. They are over-burdened
with executive matters and adminis-
trative matters.

They seldom dispose of these types
of cases. Also in semi or quasi-judi-
cial cases that power has been given
to such executive magistrates. But,
they seldom get time to dispose of
such cases also. In that context, the
aggrieved persons go to the courts
month after month and they do not
get any remedy from the magistrate
as regards disposing of the cases

under Section 145. In that case it
will be much more expedient if, in-
stead of Executive Magistrate, the
judicial magistrate is given the power
to dispose of such cases. As regards
amendment No. 263, in the present
Clause, sub-clause (4), the words
'within a period of two months' ap-
pears. There is no time limit as to
when and how this petition under
Section 145 will be disposed of.
Therefore, there should also be a
time-limit within which cases should
be disposed of. In cases of land
disputes, many a time the standing
crops which are there are not allow-
ed to be harvested. In the harvesting
season there are cases of theft or
loot. If the paddy crops are to be
harvested, it is the poor peasants who
suffer. In that case there must be
a time-limit and quick disposal of
the case. I also support these two
amendments moved by Shri R. R.
Sharma.

SHRI RAM NIWAS MIRDHA: Well,
Sir, one amendment is that the powers
to deal with the cases under this
Clause be executed by the Executive
Magistrate. But, in some States, the
powers under this Section have been
conferred on the judicial magistrates.
But, other States want that the
Executive Magistrate should have this
power. But, we have made provi-
sions in clause 478 that the State Gov-
ernment, after getting a Resolution
from the State Legislature, can trans-
fer it to the Judicial Magistrate if
they like. We have, therefore, kept
this open in view of the circum-
stances existing in that particular
State. They can make this change.

As regards the contention that some
provisions under this Clause come in
clash with the legislation passed by
the Bihar State Legislature, I am not
in a position to say on this as to what
the clash is and how it can be resolv-
ed. Neither it is possible for me to
give any assurance on behalf of the
State Governments as to how this
should be imposed and whether we
can give any directive to them. But,

[Shri Ram Niwas Mirdha]

we have, under the code, put a limit of six months by which security proceedings would be disposed of. Up-till now the proceedings drag on for months and years. This, I think, would not happen hereafter. And therefore, the amendments are not acceptable.

श्री मधु लिमये : यहां ठीक है लेकिन आप भी चाहते हैं कि भूमि कानूनों का सुधार हो तो आपको कोई इस्ट्रक्शन्स तो देना चाहिए । (अवधान)

क्या यह राज्य सरकारों को सर्कुलर नहीं दे सकते हैं ? यह तो समान सूचि का विषय है, कानकरन्ट सजेक्ट है ।

MR. SPEAKER: You must get my permission also. You have already made your point. Two amendments were moved by Shri R. R. Sharma, that is, 262 and 263 which I am putting to vote.

Amendment Nos. 262 and 263 put and negatived.

MR. SPEAKER: The question is:

"That Clause 145 stand Part of the Bill".

The motion was adopted.

Clause 145 was added to the Bill.

MR. SPEAKER: There is no amendment to clause 146.

MR. SPEAKER: The question is:

"That Clause 146 stand part of the Bill".

The motion was adopted.

Clause 146 was added to the Bill.

Clause 147—(Dispute concerning right of use of land or water).

MR. SPEAKER: Both amendments Nos. 30 and 31 are official amendments. Are you moving:

SHRI RAM NIWAS MIRDHA: Yes. Sir. I beg to move:

"Page 51, line 16, omit "of section 147" (30).

"Page 51, lines 17-18, omit "of section 147" (31).

श्री मधु लिमये : इस क्लॉज में पानी के झगड़ों का भी उल्लेख है । मेरे पुराने क्षेत्र में और नये क्षेत्र में भी इस तरह के काफी विवाद बढ़े हो जाते हैं । फिर म. मंत्री महोदय से कहूंगा कि हर चीज में संशोधन से काम नहीं किया जाता है । कानून का प्रकाशन कैसा है उसके ऊपर भी बहुत सी बातें निर्भर करती हैं । इसलिए जैसा मैंने जमीनों के झगड़े के बारे में कहा, इस पानी के झगड़े के बारे में भी कह रहा हूं चूंकि यह एक कानकरन्ट विषय है इसलिए दिना क्या हो, नीति क्या हो उसके बारे में निर्देश सर्कुलर देना चाहिए । छोटे किसान जो हैं उनके अधिकारों का ब्याल करना चाहिए । एग्जिक्यूटिव मैजिस्ट्रेट हैं इसलिये मैं कह रहा हूं कम से कम आप यह निर्देश जरूर दे दीजिए ।

श्री नारायण झा : जो तालाब हैं, पोखर हैं, नदी हैं, जो जल हैं उनके सार्वजनिक इस्तेमाल की रक्षा की जाये । अभी इसके बारे में वास्तविकता यह है कि बड़े बड़े भूस्वामियों ने सार्वजनिक जमीनों के बहुत बड़े हिस्से को हड़प कर लिया है । आजादी के बाद सार्वजनिक जमीनों को ग्राम सभा में रखा है लेकिन जो पोखर तालाब हैं उनको कुछ बड़े बड़े लोगों ने हड़प लिया है तो वह जो बारा है इसके बरिफ सार्वजनिक जमीनों के इस्तेमाल की रक्षा की जाये । लेकिन अभी की स्थिति यह है कि यह बारा ऐसा कुछ नहीं कर सकी है । इसलिए सीधे-सीधे से हम सार्वजनिक हक की रक्षा की जाये । मैं यही जी से चाहूंगा

कि इस धारा का जो मकसद है उसकी कारगर ईव से सम्बन्ध किया जाये जिससे सार्वजनिक सम्पत्ति की रक्षा हो, सार्वजनिक इस्तेमाल के अधिकार की रक्षा हो।

श्री रम निवास निवा : माननीय सदस्य ने कोई विशेष सशोधन का सुझाव तो नहीं दिया है लेकिन यह जानना चाहते हैं कि सरकार इसको ज्यादा कारगर ढंग से इस्तेमाल में ला सके उसके बारे में क्या विचार करेंगे। जैसा मैंने पहले कहा, हम इसपर विचार करेंगे कि इसके बारे में कोई विस्तृत हिदायत इस प्रकार की जारी की जा सकती है या नहीं की जा सकती है।

MR. SPEAKER: The question is:

"Page 51, line 16, omit 'of section'"; (30).

"Page 51, lines 17-18, omit 'of section 147'." (31).

The motion was adopted.

MR. SPEAKER. The question is:

"That clause 147, as amended, stand part of the Bill".

The motion was adopted.

Clause 147, as amended, was added to the Bill.

Clauses 148 and 149 were added to the Bill.

Clause 150—(Information of design to commit cognizable offences).

SHRI R. R. SHARMA: I beg to move:

Page 51, line 42, after 'information' insert 'of a reliable nature'. (284).

श्रीमान्, क्लॉज 150 में है :

"Every police officer receiving information of a design to commit

अभी तक का अनुभव यह है कि यह जो 150 है इसको बड़े आफिद्वेरी ढंग से पुलिस आफिसर प्रयोग में लाते हैं। जब भी किसी से व्यक्तिगत रजिस्ट्रार हुई या कोई ऐसी बात हुई तो घर जा करक पकड़ लाते हैं। मैंने इसमें छोटा सा अमेन्डमेंट दिया है, मन्त्री महोदय इसपर अच्छी तरह से सोचेंगे। मैंने केवल यह कहा है कि उनको रिलायबिल इन्फार्मेशन अगर मिले तो कदें ताकि धागे चल करके जब कोर्ट में मामला जाये तो उसकी रिलायबिलिटी कोर्ट में देखी जाये। पुलिस आफिसर पर चेक रहे आफिद्वेरी इसको प्रयोग में न लावें। इस प्रस्ताव के साथ मैंने अमेन्डमेंट मूव किया है। श्रीर मेरा ध्यान है कि मन्त्री महोदय इस छोटे में सशोधन को स्वीकार कर लेंगे।

SHRI RAM NIWAS MIRDHA: The hon. Member says that the information should be of a reliable nature. I do not think we can put in such an amendment to the clause. It would serve no purpose and would not help in the implementation.

MR. SPEAKER: I shall now put amendment No 284 to vote.

Amendment No 284 was put and negatived.

MR. SPEAKER: The question is:

"That clause 150 stand part of the Bill".

The motion was adopted.

Clause 150 was added to the Bill.

Clause 151—(Arrest to prevent the commission of cognizable offences).

MR. SPEAKER: The following amendments are moved; Nos. 122, 123, 124 and 285. No. 121 by Shri C. D. Gautam is the same as No. 122.

SHRI SHAMBU NATH (Saidpur):
I move:

Page 52,—for lines 5 to 7, substitute—

"(2) No person arrested under sub-section (1) shall be detained in custody for a period exceeding twenty-four hours from the time of his arrest unless his further detention is required or authorised under any other provisions of this Code or that of any other law for the time being in force."
(122).

SHRI DINESH JOARDER: I move:

Page 52, line 2,—after "arrest", insert "but not". (182).

Page 52, lines 5 and 6,—omit "by a police officer without a warrant" (183).

SHRI R. R. SHARMA: I move.

Page 52, line 1,—after "design" insert—"and after satisfying himself that the person is going". (265)

SHRI DINESH JOARDER: I have suggested an amendment Nos 182, 183 that no person should be arrested without orders from a magistrate or without a warrant. It is surprising that the clause says that a police officer knowing of a design to commit any cognisable offence may arrest without orders from a magistrate and without a warrant a person so designing if it appears to such an officer that the commission of such an offence cannot be prevented.

This is objectionable. From the very beginning, we are opposing this proposition and we held that no person should be arrested on the will or whim of a police officer. The ruling party, to wreak vengeance on the Opposition and to crush the movements of the Opposition, make use of this. At any time under instructions from the ruling party leaders or the

district officials, the police can arrest any leader or worker without warrant and without order of the magistrate. This sort of dangerous power should not be put in the hands of the police. What happens is that in the name of preventing any cognisable offence they generally arrest political leaders and peasants and workers whenever they think that a demonstration, procession or movement has to be organised and it goes against the interest of the ruling party. For such purposes, this provision is very liberally used by police officers.

I will mention a very recent instance in my constituency on the 16th August. There was a bandh. The Chief Minister and his Cabinet Ministers were there. They did not like the bandh. The Opposition party leaders were holding a meeting at a very distant place in a peaceful atmosphere in the upstairs of a building. But the Ministers wanted that there should be no bandh. With that intention and without any reason whatsoever, they ordered the arrest of those leaders who were sitting upstairs. This was done on the whim of the ruling party leaders.

There will be no protection of civil liberties and democratic rights if they are curtailed in this manner according to the whims of the police officers and if political rivalries are indicated in such a way, it will go a long way against the free functioning of democracy in our country. So, I oppose it vehemently. Therefore, I have moved an amendment suggesting the deletion of the words "without orders from the magistrate and without warrant". I request the Minister to accept it.

श्री लक्ष्मणसिंह (सैदपुर) : अध्यक्ष महोदय, क्या 151 में पुलिस को बहुत ज्यादा पावर है। वह बिना मैजिस्ट्रेट के ऑर्डर के और बिना वारंट के किसी को भी गिरफ्तार कर सकती है। वो ऐसी हालत में कुछ बेक होना चाहिये। मैं मैं इसके लॉकडाउन दिवा है :

"No person arrested under sub-section (1) shall be detained in custody for a period exceeding twenty-four hours from the time of his arrest unless his further detention is required or authorised under any other provisions of this Code or of any other law for the time being in force".

मैं समझता हूँ कि इस दफा के तहत अगर कोई आदमी गिरफ्तार हुआ है तो उस को 24 घंटे से ज्यादा न रखा जाय। मैं धागा करता हूँ कि मंत्री जी इसको स्वीकार करेंगे।

श्री राय रतन शर्मा अध्यक्ष महोदय, क्लोज 151 में शब्द design जोड़ दिया गया है। "Knowing of a design to commit any cognizable offence"

Design को डिजाइन नहीं किया गया है और design के डिक्शनरी में यह है

"Plan out, purpose, make working drawings for"

पहले भी कहा जा चुका है कि पुलिस अधिकाधिकारी के पास पहले से ही अर्नाइमटेड पावर्स थी। और अब और अधिक मिल जायेंगी। जैसा माननीय शम्भूनाथ जी ने कहा इन पावर्स को चैक करने की आवश्यकता है। इसीलिये मैं ने एक छोटा सा संशोधन दिया है :

"after satisfying himself that the person is going"

डिजाइन के बाद यह संतोष हो कि हाँ कोई आफेंस कमिट करने जा रहा है जो कि कान्सीजेबिल है। होता क्या है कि धीरे धीरे हम देखते हैं कि राजनीतिक पार्टियों के कार्यकर्ता जो अपने घर में हैं और सोच रहे हैं कि कोई बदला या शान्तप्रिय ढंग से कोई बात कहने के लिये इकट्ठे होने वाले हैं तो पुलिस उन को पहले ही अरेस्ट कर लेगी क्योंकि हमारी डिजाइन का पता चल जात

तो गंजे के हाथ नाखून दे रहे हैं। इसलिए बिना किसी सेफगाई में यह पावर पुलिस को दे रहे हैं जो कि एक बहुत बड़ा खतरा है, और मेरा विश्वास है कि प्रजा-तन्त्र के खिलाफ है। पुलिस के बल पर शासन करने की नीति है इसको हटाया जाना चाहिये और मेरा संशोधन मंत्री जी को स्वीकार करना चाहिये।

श्री ओमेश झा - 151 धारा में पुलिस को अघाघुध गिरफ्तारिया करने की छूट दी गई है। बिना किसी जूम के या सबूत के पुलिस जिस को भी चाहें गिरफ्तार कर सकती है। यह सही है कि आजादी मिलने के पहले अंग्रेज सरकार ने इसका बेजा इस्तेमाल किया। आज बी के बाद भी जन आन्दोलनों को, किसान मजदूर आन्दोलनों को कुचलने के लिये हजारों हजार लोगों को गिरफ्तार किया गया इस धारा के तहत। सर्वोच्च न्यायालय में और उच्च न्यायालयों में इस सम्बन्ध में जब चुनौती दी गई है तो परस्पर विरोधी रूलिंग हुए। बेहतर तो यही होना कि इस धारा को हटा दिया जाना। लेकिन अगर इन धारा को हटाने की आप में हिम्मत नहीं है और आप हिम्मत नहीं कर सकते हैं जो कि देश में जनतन्त्र के विकास के लिए जरूरी है, जब आप धारा 107 रद्द करते हैं तो 151 की कोई आवश्यकता नहीं रह जाती है और अगर आप इन हद तक नहीं जा सकते हैं तो कम से कम जो शम्भूनाथ जी ने संशोधन दिया है, उस में से

"No person arrested under sub-section (1) shall be detained in custody for a period exceeding twenty-four hours from the time of his arrest...."

इस हिस्से को आप स्वीकार कर लें और इसमें वहां आते यह है :

"Unless his further detention is required or authorised under any other provisions of this Code or of any other law for the time being in force."

[श्री भोगेन्द्र झा]

इसकी जरूरत नहीं है। कोई दूसरा जुर्म हो तो उस को इस में रखने की आवश्यकता नहीं है। अगर कोई दूसरा अभियोग है, कोई चारेंट है उसके लिए पूरा कोड बना हुआ है, पूरा कानून है और इसमें उसको स्थान देने की आवश्यकता नहीं है। इस वास्ते शम्भू नाथ जी को सशो-अन के पहले वाले हिस्से को तो आप कम से कम स्वीकार कर लें।

श्री क्षिरमन्ध सिन्हा (शुभानु) जैसा माननीय सदस्यो ने कहा है 151 धारा का उपयोग राजनीतिक कार्य करने वालों के विरुद्ध ही नहीं होता है। इसको आम गरीब आदमी के खिलाफ काम में लाया जा रहा है। इसका बहुत ही गलत उपयोग हो रहा है। पुलिस के हाथ में ऐसा हथियार देना जिस के खिलाफ चाहे इसका उपयोग करे ठीक नहीं है। इस में कहा गया है

"A police officer knowing of a design to commit any cognizable offence may arrest"

जनी; क मत में झगड़ होते हैं। एक आदमी च-ह नैडला; कहो, बड़ा जीवावर कहो उ-डा कहो जब जितन के बारे में झगड़ होता है तो एक पार्टी पुलिस से मिलकर 107 का इस्तेमाल उसमें करवा करके दूसरी को च-डवा देती है, एरेस्ट करवा देती है और पुलिस जमीन की काश्त करवा देती है। इस तरह के झगड़ों को लेकर झकड़ो रुक में आ गेलों में चल रहे हैं। इस तरह से 151 का हथियार पुलिस के हाथ में अवाञ्छित क से रखना ठीक नहीं है। हर किसी को अपनी जितन का डिफेंड करने का, अपनी प्र-टी को डिफेंड करने का हक है। ऐसा करते हुए उसको एरेस्ट करवा दिया जाता है और दूसरो से जमीन काश्त करवा दी जाती है। मैं चाहता हूँ कि इस तरह से अर्नफैटर्ड राइट पुलिस को नहीं दिया जाना चाहिए। अपनी कान्ट्री को डिफेंड करते हुए यदि कोई आदमी कामनिवेदन आर्कैड करता है, तो

उसको इसमें छूट मिलनी चाहिए। इस वास्ते मेरा सरकार से निवेदन है कि वह एम्बेडमेंट को स्वीकार कर लें और पुलिस पर आप कोडा चैंक लगाए, अर्नफैटर्ड राइट पुलिस को आप 151 में गिरफ्तार करने का न दें।

श्री अरुण बिहारी बाजपेयी - 151 धारा जो है इसके अन्दर आचार्य कृपलानी जैसे बयोवृद्ध और स्वतंत्रता सश्रम के सेनानी नेता को भी करनाल में पकड़ा गया। उनको इनलिये पकड़ा गया कि वह किसान सम्मेलन में भाषण करना चाहते थे। क्या कोई कल्पना कर सकता है कि आचार्य कृपलानी कहां भी शान्ति भंग कर सकते हैं? इसका दुरुपयोग इस धारा का हो रहा है। यह उदाहरण इसका साफ सबूत है।

श्री अरुण बाजपेयी (खारगोन) पुलिस को अशान्ति मत्ता इन धारा से मिल जाती है। एक तो मेरे गेन 144 है और दूसरा 151 है जो पुलिस को बहुत ज़ोदा अधिकार प्रदान करते हैं। जिस तरह से इनका दुरुपयोग हो रहा है इसका एक उदाहरण मैं बना च-हता हूँ मध्य प्रदेश में खारगोन डिस्ट्रिक्ट में भूखे लोग पोषाभिकार खाए चाहते थे उनको उनके घरों से ही गिरफ्तार कर लिया गया उन्होंने पूछा क्यों ऐसा किया है, हमने कौन सा अपराध किया है तो जवाब दिया कि शान्ति भंग करने की प्रशंसा है आप कुछ धाफेन करने वाले हैं उन्होंने पूछा कौन सा करने वाले हैं और हमें धाफका है तो उनको बताया गया कि पाने में चलने पर भाग्य पड़ गया, कोर्ट में जाओ। अन्ततः महाशय आप तो जाते ही हैं कि सारे मध्य प्रदेश में धारा 144 लगी हुई है। पुलिस राज कहां करवा हो चका है। कांग्रेस राज नहीं बल्कि पुलिस राज कहां करवा है। कहां तक 151 का सम्बन्ध है मेरे मित्र ने जो संकीर्ण रखा है उसको तो आप कम से कम मान लें। उससे इससे कुछ अशान्ति या च-डवा।

SHRI K. NARAYANA RAO (Bobili): My hon. friends have rightly expressed apprehension over the wide discretion given to the police officers to arrest. If you analyse the scope of this provision, you will find that there are possibilities for lot of mischiefs. It is not for any act committed but for 'design to commit'. Thus the personal liberty of the citizens is placed at the mercy of the police officers. In all the provisions relating to arrest, one thing is very clear. Even in the case of cognizable offences, the police take it for granted that arrest is a 'must' whereas the clause says 'may arrest'. Because it is deprivation of one's liberty, arrest must have relationship to a certain objective. In this case, what is the purpose or object of arresting a person? Here it is said, '... knowing of a design to commit any cognizable offence'. Then what are the limits for it? As my friend said, it only says 'may arrest'. Will any person be arrested indefinitely? On what particular facts will he be arrested? Will there be a necessity for any complaint from another party? These are the issues. After arrest under Cr. P. C. suppose the person has to be produced before a Magistrate, then what material will he have before him? Therefore, it is likely to be misused.

As my friend suggested, we should insist on these. First, the burden should be on the police officer to show on what facts he has arrived at the conclusion that a particular person should be arrested. Secondly, it should be made clear within what period of time that person should be liberated. As you know, Sir, fundamental right to personal liberty, given under the Constitution, is very precious. Therefore, while dealing with personal liberty, utmost care should be taken to see that police does not abuse this power. Therefore, I would request the hon. Minister to give consideration to the points raised by the various members.

SHRI SOMNATH CHATTERJEE: This is one of the preventive provisions;

"A police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate...."

In this country we are having so many laws of preventive detention. I do not know why we should give further powers to the police officers, the power to arrest only on the basis that somebody is allegedly designing to commit an offence. Even then it is without any orders from the Magistrate. He can do anything he likes. He may be released after two days or three days or twenty-four hours. Nobody to challenge or control the abuse of power on the part of the Police officer. He need not disclose the reasons. He is supposed to be able to fathom the mind of the man. He need not have to show that he has been satisfied on the basis of any overt act. Nothing has been asked for from the Police Officer.

There is a slight improvement in the amendment suggested by Shri Shambhu Nath. Even then I do not know whether he really wants that the improvement that is sought to be made is to be diluted by the subsequent addition i.e. the latter part of his amendment. He says that the time limit should be twenty-four hours. But thereafter some addition is being made which makes the powers still wider by saying 'unless his further detention is required or authorised under any other law for the time being in force'. If there is any provision of law in this Code or any other law, it is not necessary to mention it in Sec. 151 at all. So far as Sec. 151 is concerned at least finally a further time limit should be put, namely, 24 hours. If at all the Police has to exercise powers under Sec. 151, limit it to 24 hours and retaining the latter part of the amendment will only lead to abuse of the power and the hon. Members on the other side themselves have been saying that it has been abused, abused against the common people, against the poor people because it is very easy for a certain purpose to,

[Shri Somnath Chatterjee]

catch hold of persons and the Police is eager to oblige. Oblige—whom? The party in power and the rich people. Therefore, I submit that as the hon. Minister will not agree to the deletion of clause 151 altogether, at least the first part of Shri Shambhu Nath's amendment be accepted and the latter part may be omitted. I hope Shri Shambhu Nath himself will suggest that.

SHRI B. R. SHUKLA: This is a preventive measures and every hon. Member of this House would agree that prevention by the Police of the commission of a cognisable offence should be the duty of the State and, therefore, this provision has been retained in the Criminal Procedure Code. Now, it is true that this provision has been used more in the breath of duty cast on the Police than in its observance. But the fact that it has been misused very wantonly by the Police does not dispense with the necessity of retaining this provision in the statute book. The two things are different—the implementation of a law and the necessity of having such a law. So, if the Police is abusing it, then the proper remedy would be to tone up the Police administration. Many persons are hauled up in false or concocted cases. But that does not mean that there should not be in existence a provision for punishing the guilty. The two things should not be confused.

Now, there is another thing, that cases can be concocted in the exercise of this section. My submission is that the clear wording of the section says the Police officer, knowing of a design to commit a cognisable offence which cannot be otherwise prevented. So, if a warrant from a Magistrate is to be obtained, then perhaps the situation cannot be adequately met because by the time the warrant is obtained from the Magistrate the crime would have been actually committed and, therefore, the prevention would be rendered infructuous. Secondly, the amendment made by

Shri Shambhu Nath is that such a person would be produced before the Magistrate and shall be released on bail unless wanted in some other connection. The meaning of his amendment is this: A person is arrested under Section 151. Sometimes he may be proceeded under Section 107, 109 or 110. If he is to be detained then he would not be released. If he is to be released that would be under appropriate sections.

श्री शम्भु नथ: क्या 151 और 107 का प्रयोग साथ होगा ?

श्री बी० द्वार० शक्ल : यह होता है । आप को मालूम नहीं है ।

You may be authority on some other subjects; but not on point of law.

श्री मधु सिन्घे : यह कह क्या रहे हैं ? सुप्रीम कोर्ट का मेरे केस में जजमेंट है । मैं उद्दत करने के लिए तैयार हूँ ।

श्री बी० द्वार० शक्ल : उस के साथ 117 लगेगी तब वह डीटन किया जायगा ।

The person would be arrested under Sec. 151. When he is produced before magistrate evidence is recorded under Section. 117. After commencement of enquiry if it transpires that such a person is required to be of good behaviour, during the pendency of the enquiry, such a person can be detained. Suppose he has been arrested under Section 151, and he is also wanted in connection with some other case which he has previously committed, what will happen? I feel, there is no flaw in this section.

श्री मधु सिन्घे : अध्यक्ष महोदय, मुझे इस पर बोलना है । मैं पहले से बड़ा ही खड़ा हूँ । दूसरों के लिए इन्च करवा जा रहा हूँ । मैं इस का दर्जनों बार शिकायत कर चुका हूँ-मुझे आप जरा सुनिए ।

मैं श्री जोरदार से सहमत हूँ कि इस को समाप्त ही कर दिया जाय। लेकिन अगर किसी कारण आप इस को रखना चाहते हैं तो श्री शम्भूनाथ ने जो संशोधन रखा है उस संशोधन के साथ मंत्री महोदय उस को माने। मेरा ख्याल है :

‘unless his further detention is required or authorised under any other law for the time being in force.’

इसकी कोई जरूरत नहीं है।

अभी शुक्ला जी ने कहा कि 107 की जब कार्यवाही करनी होती है न तो पुलिस अक्सर 151 में गिरफ्तार करती है। यह बात सही है। मैं तथ्य से इनकार नहीं करता। 1968 में लखी सराय केस में मुझे दफा 151 में गिरफ्तार किया गया और फिर 107 की कार्यवाही हुई। यह केस सुप्रीम कोर्ट के सामने गैने स्वयं आगू किया और मैं आप का उस और ध्यान आकर्षित करना चाहता हूँ। इस के ऊपर मैंने प्रिविलेज का भी सवाल उठाया था। लेकिन चूँकि वह लोक सभा ही बीच में बरखास्त हो गई इसलिए वह बच गए। हमेशा वच जाते हैं। वह जजमेंट ओवर साहब ने लिखा है। शाह साहब की बेंच थी और उन्होंने स्पष्ट ढंग से कहा है कि “चैप्टर एट” एक सेल्फ-कैंटेन्ड कोड है और 151 में गिरफ्तार कर के 107 की कार्यवाही करना यह बिलकुल गैर-कानूनी है। 107 की कार्यवाही में मैजिस्ट्रेट वारंट निकालता है, 112 में शायद निकालता है, और कार्यवाही आगे होती है। जब 151 का इस तरह दुरुपयोग होता है तो मंत्री महोदय को बड़ी गंभीरता पूर्वक इस पर सोचना चाहिए।

1960-61 में जब रानी एलिजाबेथ यहाँ आई थी तो जो पैसे की बरबादी हो रही थी उस को ले कर हम लोगों ने शांतिपूर्ण प्रदर्शन का एक कार्यक्रम बनाया था। बम्बई शहर में अध्यक्ष महोदय, साढ़े तीन बजे सबरे पुलिस आ गई, एक या दो दिन पहले साढ़े तीन बजे आई और जगाया। बोले कि 151 में आप को गिरफ्तार किया जाता है। जब 24 घंटे पूरे

हो गए तो हम लोगों ने कहा कि न मैजिस्ट्रेट के सामने ले जा रहे हैं न हम को छोड़ रहे हैं।

151 में आप यह नहीं कर सकते हैं। तब पुलिस इन्स्पेक्टर कहता है कि आप हमारा क्या बिगाड़ सकते हैं, दो-तीन दिन में छोड़ देंगे। इस में रिट नहीं कर सकते, इन्फक्चुअस हो जायेगा। तीन-चार दिन तक उन्होंने बड़े आराम से उन लोगों के लिये आराम से, लेकिन हम लोगों के लिये तकलीफ से-रखा और तीन चार दिन बाद कहा कि चले जाओ। इसलिये मैं इसमें कुछ और जोड़ना चाहता हूँ। मैं शम्भू नाथ जी का संशोधन “अरेस्ट” तक कुबूल करता हूँ, यदि मंत्री महोदय मानें तो जोड़ दिया जाय-

‘Any violation of this provision by the police officer shall, itself, be a cognisable offence’.

और इण्डियन पीनल कोड में सजा का इन्तजाम किया जाय, तब मैं मानने को तैयार हूँ। काग-निजिबल आफेंस के नाम पर वे उसको तोड़ते जायें-यह बात अच्छी नहीं है। उस को रखना चाहते हैं तो आधा अमेण्डमेन्ट शम्भू नाथ जी का मान लें और मैं अपनी अमेण्डमेन्ट मौखिक दे रहा हूँ-अध्यक्ष महोदय की इजाजत से-

‘Violation of this provision should be made a cognisable offence.’

इण्डियन पीनल कोड में सन्स्टेन्टिव आफेंस कर दीजिये। आप सरकारी नोकरी को, मनमानी करने का मौका दें तो कानून का राज नहीं चलने वाला है।

13.00 hrs

SHRI RAM NIWAS MIRDHA: Shri Shambhunath's amendment on this clause indicates that the police man must satisfy himself before he acts under this Clause. No person can act under this Clause unless the conditions specified in this are fulfilled. He has to satisfy himself that these conditions exist and when taking such

action, he would not be able to prevent the commission of a cognizable offence. Another amendment is that no one should be arrested without obtaining a warrant from the Magistrate. The purpose of this Clause is to prevent a cognizable offence from taking place. So, there is no time to get a warrant of arrest. There are other provisions. But in a preventive section like this, it is meant to prevent the happening of a cognizable offence. Otherwise the whole purpose of this clause is defeated if the magistrate is brought into the picture.

As regards Shri Shambhu Nath's amendment, in my opinion, even the sub-clauses (1) and (2) taken together are sufficient to meet the fears mentioned by the hon. Member. One it is alleged that the persons arrested under 151 are kept indefinitely in jail, sub-clause (2) is there to take care of this. So, if a person is arrested, he has to be produced before the magistrate within 24 hours. This provision applies to this clause also. The vagueness might be an excuse for keeping the people in custody beyond 24 hours. And that is the purpose for which Shri Shambhu Nath has brought forward this amendment. The amendment has two parts as was mentioned. Whatever is stated by him is already there. What is stated in first part is already there. We feel that no person can be kept in police custody for more than 24 hours even without this substitute clause (b) being added.

SHRI JAGANNATH RAO: Clause 57 applies.

SHRI RAM NIWAS MIRDHA: All those clauses apply here also. But still, to remove all doubt, since Shri Shambhu Nath's amendment has received support from both sides of the House, I shall accept it. As regards removing the later part, I would only say that even this is merely restraining the situation as it exists now.

SHRI BHOGENDRA JHA: So, it is not necessary.

SHRI RAM NIWAS MIRDHA: To say that he shall be released after 24 hours would create some doubts. We want doubts to be removed. If we say that after 24 hours the person should be released, then there would be doubts whether any other provisions could also be invoked or not. Under this clause, we say that no one shall be detained for more than 24 hours. This is absolutely clear and if somebody is required to be kept in detention for more than 24 hours, then some other legal provision would have to be invoked, and it would not be done under this. The other legal provisions can even now be invoked. So, merely putting it, therefore, does not restrict the clause at all. It only makes it clear.....

SHRI BHOGENDRA JHA: It gives a hint to the police officer to find out some other section.

SHRI RAM NIWAS MIRDHA: Would they wait for such things?

SHRI MADHU LIMAYE: I had suggested that violation of this provision should be made a cognizable offence.

SHRI RAM NIWAS MIRDHA: I am not creating any cognizable offences here. I am sure the IPC committee would take note of that.

SHRI MADHU LIMAYE: At least add the words 'authorised by a magistrate'.

MR. SPEAKER: The question is:

Page 52, for lines 5 to 7 substitute:

"(2) No person arrested under Sub-section (1) shall be detained in custody for a period exceeding twenty-four hours from the time of his arrest unless his further detention is required or authorised under any other provisions of this Code or of any other law for the time being in force". (122).

The motion was adopted.

MR. SPEAKER: I shall now put the other amendments, namely amendments Nos. 182, 183 and 265 to vote.

Amendments Nos. 182, 183 and 265 were put and negatived.

MR. SPEAKER: The question is:

"That clause 151, as amended, stand part of the Bill".

The motion was adopted.

Clause 151, as amended, was added to the Bill.

Clauses 152 to 181 were added to the Bill.

MR. SPEAKER: Let not hon. Members be under the impression that we are going to have any lunch hour.

SHRI DINEN BHATTACHARYYA: On the request of the Government side, we had cooperated. Today is Saturday, and we have been sitting here from 11 A.M. onwards, and some of us had come at 9.30 A.M. So, I would request you to give at least one hour's lunch-break. We shall again re-assemble and we shall consider the Bill till it is passed.

MR. SPEAKER: We had allotted 10 hours originally, and that period was completed; again, for accommodating hon. Members, we cancelled the holiday today and we are sitting here....

DR. KAILAS (Bombay South): Do not cancel the lunch.

MR. SPEAKER:....with the full understanding that this will be passed today.

If you do not have lunch every day, why on this day?

श्री मधु सिमथे : अगर आज लंच नहीं होगा तो कैसे चलेगा ? आज तो हम चाय पीने भी यहाँ से नहीं जा सकते हैं ।

अध्यक्ष महोदय : 6 बजे तक इसको कर देना है ।

At 6 O'clock I will be guillotining all the remaining clauses.

श्री मधु सिमथे : पर्सनल लिबर्टी के मामले में गिलोटिन नहीं होना चाहिए ।

SHRI DINEN BHATTACHARYYA: No, no.

MR. SPEAKER: You gave us to understand 'Give us one day and we will pass it'.

SHRI DINEN BHATTACHARYYA: This is very bad, unfair.

SHRI DINESH JOARDER: Very peacefully, we have co-operated.

MR. SPEAKER: This will have to be passed today. We gave more than double the time.

जिस बात पर हम खड़े होते हैं उसपर खड़े रहना चाहिए । जो अडमिटेडिज की होती है उसको मान्य करना चाहिए । पहले टाईम दिया, फिर टाईम दिया, आज भी टाईम लिया ।

At 6 O'clock everything will be pushed through. I hope you will take the minimum time on these clause. There are so many of them.

अब बड़ी कन्वोल्यूशन बातें तो निकल गई है ।

SHRI DINESH JOARDER: You should also appreciate the feelings of members present here.

MR. SPEAKER: You should also appreciate that we have also cancelled by telegram some of our engagements fixed for today.

SHRI DINESH JOARDER: We requested that some other day be fixed.

MR. SPEAKER: We have cancelled our engagements for today.

SHRI DINESH JOARDER. We want to co-operate; but we also want a full-length discussion and lunch.

MR. SPEAKER: There has been maximum co-operation from the Treasury Benches on this issue. As much time as you wanted was fixed by the Business Advisory Committee. Again it was extended.

बी डीनेन बड़ाज्याय हम क्या करे,
यह बिल ही इस तरह का है।

अध्यक्ष महोदय अब ज्यादा कन्ट्रोल
बात नहीं रह गई है।

Now we adjourn for lunch to re-assemble at 2 p.m.
13.14 hrs.

The Lok Sabha adjourned for Lunch till Fourteen of the Clock

The Lok Sabha re-assembled after Lunch at Fourteen of the Clock.

[MR. DEPUTY-SPEAKER in the Chair]

CODE OF CRIMINAL PROCEDURE BILL—Contd

Clause 162—(USE IN EVIDENCE OF
STATEMENT TO POLICE)

MR. DEPUTY-SPEAKER We take up clause 162. There are some amendments.

(Amendments made).

Page 54, for the marginal heading, substitute:

"Statements to police not to be signed: use of statements in evidence" (32).

Page 54, line 40, for the word "no" substitute:

"shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any". (33).

Page 54, line 41, for "and no" substitute:

"or any". (34).

Page 54, line 42, omit "shall" (35).

Page 55, line 15, omit "of this section". (36).

(Shri Ram Niwas Mirdha)

MR. DEPUTY-SPEAKER. The question is:

"That clause 162 as amended, stand part of the Bill."

The motion was adopted

Clause 162, as amended, was added to the Bill.

Clause 163 was added to the Bill.
Clause 164—(Recording of confessions and statements).

SHRI DINESH JOARDER. I move my amendment No. 157 to this clause

I move:

Page 56 lines 15 and 16,—

Omit "and the Magistrate shall have power to administer oath to the person whose statement is so recorded." (167).

In clauses 161, 162, 163 and 164 provision is made for examining witnesses by the police officers and in certain cases by the magistrates also. Also, the procedures are laid down for recording the confessions and other things. Previously the witnesses generally would have been

examined by the police officers without taking any signatures on the paper on which the evidence of such a person has been recorded by the police officers and the accused persons would have the right to challenge that witness on the basis of the evidence recorded by the police officers by way of contradicting it before the trial magistrate or the judge as the case may be. There were also certain provisions as regards examining the witnesses by the magistrate. If there is a vital witness, and the police would have thought that his evidence would be important and subsequently he may not be available or he may change his views, in that case that witness would have been produced before the magistrate and the magistrate would record his evidence and allow the witness to go. But now in clause 164 (5) it is said,

'Any statement (other than a confession) made under sub-section (1) shall be recorded in such manner hereinafter provided for the recording of evidence as is, in the opinion of the Magistrate, best fitted to the circumstances of the case, and the Magistrate shall have power to administer oath to the person whose statement is so recorded.'

I object to this provision to administer oath to the person whose statement is to be recorded because it is not a trial. In the trial it is known to all that any witness would have to take oath and then depose. But at the time of investigation, if you administer oath to the persons deposing, this is too much. At the time of trial, again he shall have to take oath for deposing the same statement. I think the principle of justice is prejudiced by this sub-clause. There should be no administering of oath to a person for recording the evidence of such a person at the time of investigation. This is not trial proceedings. So, I want the deletion of the words "and the Magistrate shall have power to administer

oath to the person whose statement is so recorded" because if the police officer produces before the magistrate any witness by force or any other method and compels that witness to depose something wrong and against the interests of the accused persons, the magistrate would administer oath to him and record certain things. The witness will never be able to contradict it at the time of the fair trial. If he contradicts, he will be committed for perjury and some other offences. Why this compulsion on the part of a witness to take oath and depose at the time of investigation I object to this principle. This dangerous provision is a weapon in the hands of the police officer procuring false evidence and recording it by administering oath.

This is a very dangerous clause. So, I would request the Minister to consider it and accept my amendment.

SHRI R. V. BADE: I also support Mr. Dinesh Joarder's amendment. This clause 164 is a sword hanging on the witness. Here, before the trial, during an investigation, the witness is asked to make a statement on oath. Suppose he turns into a hostile witness and comes to the court and says, "At that time, the police was standing near the door and, therefore, I told a lie." This is what will happen. So, this is a sword hanging on him. This is a very dangerous clause.

श्री राज रत्न शर्मा : उपाध्यक्ष जी, 164 के विषय में मुझे को केवल दो बात कहनी है। पहली बात तो यह कि जो मेरे मित्र जोधारदार ने यह अमेंडमेंट प्रस्तुत किया है, ऐक्जुड के लिये तो एक्स्पटेड है, उसको थोड़ा पहले भी नहीं होती थी और अब भी नहीं है, लेकिन अगर किसी विटनेस को थोड़ा ऐडमिनिस्टर करनी है तो उसे कास एग्जामिनेशन की अपा—चुनिटी देनी चाहिये। मेरा ख्याल है कि यह

[श्री राम निवास मीरधा]

प्लाइड ला कमीशन को रैफर किया गया था और ला कमीशन ने अपनी यह रेकमंडेशन दी है कि अगर 164 में प्रान प्रोव स्टेटमेंट होता है किसी विटनेस का तो ऐक्ज्यूज को उसे क्रॉस एग्जामिन करने का मौका मिलना चाहिए। क्योंकि यह तो बड़ी विचित्र बात हो जाती है। उस पर आप रिलाई करेंगे और बाद में उस विटनेस को होस्टाइल डिक्लेयर करेंगे जब कि ऐक्ज्यूज को कोई भी अपार्युमिटी नहीं मिली, तो यह बात हमारी समझ में नहीं आती है।

दूसरे, प्रान क्लामेज आफ मैजिस्ट्रेट्स को आप ने 164 में स्टेटमेंट रेकॉर्ड करने की पावर दे दी। पहले जो प्राविजन्स थे एग्जिस्टिंग क्रिमिनल प्रोसीजर कोड में उसमें फस्ट क्लाम मैजिस्ट्रेट, प्रेमोडेंसी मैजिस्ट्रेट और दोन सेकंड क्लाम मैजिस्ट्रेट व्हा बेयर स्पेशली एम्पावर्ड बाइ दि स्टेट गवर्नमेंट, उन्ही को यह पावर थी। यह प्राविजन पहले था। मेरी प्रार्थना है कि इसमें मैजिस्ट्रेट फर्स्ट क्लाम के ही रखें, सेकंड क्लाम और दूसरे मैजिस्ट्रेट्स का कोई पावर न दें क्योंकि फर्स्ट क्लाम मैजिस्ट्रेट तब भी समझ बन कर और ला के प्राविजन्स को देखकर स्टेटमेंट लेगा और कन्फेसन रेकॉर्ड करेगा क्योंकि कन्फेसन और स्टेटमेंट 164 के अन्दर यह सब प्रान है।

SHRI RAM NIWAS MIRDHA There is a lot of difference between recording of a confession and recording of a statement by a witness. If the Magistrate is not authorised to administer oath to the witness, the main purpose of why the Magistrate has been called in to record the statement will vanish.

As regards the cross-examination, the right to cross-examine at that stage, I think, does not arise. At that stage, in many cases there will not be any accused. It is just at the stage of investigation that...

SHRI DINESH JOARDER: Who on oath?

SHRI RAM NIWAS MIRDHA: It is not a trial. Suppose a man voluntarily comes before the Magistrate and wants to say something on oath. Why should you prevent him from doing that? This will not be a final statement. He will be cross-examined at a later stage. After all, the purpose of the Code should be to come at the truth and we cannot always take an instance of the extreme cases of abuse which are in the minds of the hon Members. If we proceed to frame the Code on that basis, we cannot make any progress. Why should we say that every provision is going to be abused?

Here is a Magistrate and some person comes to him and says, "I want to make a statement on oath". If the Magistrate is satisfied that he is prepared to state so, why should he not administer oath to him? (Interruptions) Even in the course of the trial, this statement would not be used as such; they will have to make another statement and then the right of defence would be available to him.

SHRI DINESH JOARDER In that case, the offence of perjury will come up. If the witness says something against what he stated at the time of investigation under oath, if at the time of trial he wants to expose the truth, what was actually behind the crime, then at that time he will be committing perjury. That is the main weapon of defence. At the time of trial he wants to contradict the witness. That is the principle of defence.

SHRI RAM NIWAS MIRDHA: This is only from the point of view of providing a proper weapon of defence to the defence. The idea is, very near the event, a person is in a position to tell the truth.

MR DEPUTY-SPEAKER: I shall now put the amendment to Clause 164 to the House.

Amendment No. 157 was put and negatived.

MR. DEPUTY-SPEAKER: The question is:

"That Clauses 164, 165 and 166 stand part of the Bill."

The motion was adopted.

Clauses 164, 165 and 166 were added to the Bill.

Clause 167—*Procedure when investigation cannot be completed in twenty-four hours*).

MR. DEPUTY-SPEAKER: Mr. Shambhu Nath, are you moving your Amendments?

SHRI SHAMBHU NATH: Yes, Sir. I beg to move:

Pages 57 and 58,—

for lines 46 to 51 and 1 to 5 respectively *substitute*—

"(a) The Magistrate may authorise detention of the accused person beyond the period of fifteen days if he is satisfied that adequate grounds exist for so doing; but no Magistrate shall authorise the detention of the accused person in custody under this section for a total period (hereinafter referred to as the said period) exceeding (i) sixty days, when none of the offences under investigation is punishable with imprisonment for more than 3 years, and (ii) ninety days in any other case, unless, for reasons to be recorded by him in writing, he is satisfied that such detention for a period exceeding the said period is necessary in the interests of justice, and where the Magistrate does not authorise the detention of the accused person in custody for a total period exceeding the said period, he shall, if the accused person is prepared to give bail, release him on bail whether the offence or any of the offences under investigation is bailable or not". (123).

Page 58, after line 10 insert—

"Explanation:—The production of the accused person as required

under proviso (b) may be proved by the signature of the accused person on the order authorising detention" (124).

SHRI C. D. GAUTAM (Balaghat): rose—

MR. DEPUTY-SPEAKER: Your amendments are the same as those of Mr. Shambhu Nath. So, they need not be moved.

SHRI C. D. GAUTAM: It may be so stated, Sir. I may not be ignored.

MR. DEPUTY-SPEAKER: It has been stated.

Mr. Dinesh Joarder.

SHRI DINESH JOARDER: I beg to move:

Pages 57 and 58,—

omit lines 29 to 51 and 1 to 15 respectively. (184).

SHRI MADHU LIMAYE: I beg to move:

Pages 57 and 58,—

for lines 46 to 51 and 1 to 5 respectively, substitute—

"(a) no Magistrate shall extend the term of detention of an accused person in police custody beyond a total period of fifteen days on any ground whatsoever;" (202).

Pages 57 and 58,—

for lines 46 to 51 and 1 to 5 respectively, substitute—

"(a) the Magistrate may extend the term for a further period of fifteen days if he is satisfied that adequate grounds exist for doing so; but no Magistrate shall authorise the detention of the accused for a total period of thirty days in police custody on any ground whatsoever;" (203).

SHRI R. R. SHARMA: I beg to move.

Page 57, line 41 —

for "fifteen days" substitute—

"seven days" (266)

Pages 57 and 58 —

omit lines 45 to 51 and 1 to 10 respectively (267)

SHRI B. R. SHUKLA rose—

MR DEPUTY-SPEAKER. I will give you a chance later. There are no amendments in your name.

SHRI B. R. SHUKLA. I have an amendment to move.

AN HON. MEMBER. How can he move an amendment now?

MR DEPUTY-SPEAKER. I do not want to depart from the procedure.

श्री मधु निमये यह ऐजेंड प्रमोटमट ह बातचीत करने के बाद यह दिया गया है।

The Minister can clarify.

MR DEPUTY-SPEAKER. I do not understand this. If there has been an agreement, that should have been intimated to me. I know nothing of this sort.

SHRI RAM NIWAS MIRDHA. Yes Sir, he may be allowed.

MR DEPUTY-SPEAKER. Only now you are telling me. It should have been intimated to me in advance.

श्री मधु निमये ऐजेंडान इमनिए नहीं दिया कि बाहिर तक इस पर बहस होती रही।

MR DEPUTY-SPEAKER. Let me finish what I am going to say. I am concerned with the proceedings of the House and I do not want this practice to proliferate that every time at the last minute either a Member

or a Minister brings up amendments. We have had unfortunate experiences when we had to rush certain Bills and many amendments were moved by the Treasury Benches and later on members took exception to it. Of course there can be exceptions. There are rules because there are exceptions. If there is a consensus in the House that there has been a discussion between the Opposition and the Government and they have come to some agreement, the Chair has to take note of that. I am only saying that I should have been intimated about it.

SHRI MADHU LIMAYT. I told you personally.

MR DEPUTY-SPEAKER. It should have been intimated. Since this is what is being stated now, as a very special case, I will allow Mr. B. R. Shukla to move this amendment.

And this amendment is

SHRI SOMNATH CHATTERJEE. When was notice given?

MR DEPUTY-SPEAKER. Just now, to-day.

SHRI SOMNATH CHATTERJEE. In the case of my amendments, although there was three-hours' time, they were rejected.

MR DEPUTY-SPEAKER. This was received to-day at 10.56 a.m.

SHRI SOMNATH CHATTERJEE. Then, Sir, I withdraw my objection.

MR DEPUTY-SPEAKER. Now in view of this, I accept this amendment. I do not think Members are aware of it. So, for their benefit, I will read it.

The amendment of Shri B. R. Shukla—amendment No. 280 reads like this:

Pages 57 and 58,—

for lines 46 to 51 and 1 to 5 respectively, substitute—

“(a) The Magistrate may authorise detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days if he is satisfied that adequate grounds exist for so doing; but no Magistrate shall authorise the detention of the accused person in custody under this section for a total period exceeding sixty days, (hereinafter referred to as the said period) when none of the offences under investigation is punishable with imprisonment for more than three years unless, for reasons to be recorded by him in writing, he is satisfied that such detention for a period exceeding the said period is necessary in the interests of justice and where the Magistrate does not authorise the detention of the accused person in custody for a total period exceeding the said period, he shall, if the accused person is prepared to give bail, release him on bail whether the offence or any of the offences under investigation is bailable or not.” (280).

I have tried to read as clearly as possible. You must be receptive, very retentive, I hope you would have followed.

SHRI SOMNATH CHATTERJEE: As this is going to be accepted, may I suggest an amendment, Sir?

MR. DEPUTY-SPEAKER: No, please. Then we will run into a big trouble. I have made an exception on the basis that there has been a consensus. Now, if you open the door.... (Interruptions) I would request you not to insist. Otherwise, it will become very complicated.

SHRI B. R. SHUKLA: Sir, I move: Pages 57 and 58,—

or lines 46 to 57 and 1 to 5 respectively, substitute—

“(a) The Magistrate may authorise detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days if he is satisfied that adequate grounds exist for so doing; but no Magistrate shall authorise the detention of the accused person in custody under this section for a total period exceeding sixty days (hereinafter referred to as the said period), when none of the offences under investigation is punishable with imprisonment for more than three years unless, for reasons to be recorded by him in writing, he is satisfied that such detention for a period exceeding the said period is necessary in the interests of justice, and where the Magistrate does not authorise the detention of the accused person in custody for a total period exceeding the said period, he shall, if the accused person is prepared to give bail, release him on bail whether the offence or any of the offences under investigation is bailable or not.” (280)

SHRI DINESH JOARDER: This clause 167 deals with the procedure regarding investigation by the Police officers and detention of the accused persons. From the speeches made by members both from the Opposition side as well as the Treasury Benches, we find that every member has expressed his concern over the detention of the accused persons for an unlimited period. Nowadays, there are many, thousands and thousands of cases, not only in the State of West Bengal but in other State of West Bengal but in other States also, as mentioned by the previous speaker, Mr. Frank Anthony parts of India, there are cases pending investigation for years together.

(Shri Dinesh Joardar).

The Police have arrested persons indiscriminately and in one particular case there are as many as 50 or 60 or 100 or 200 or 1500 or 1600 accused persons involved in a case. The police officers are not submitting any charge sheets years after years and such things are happening and many of the accused persons are detained in jail years after years, having no opportunity of being heard either by the magistrate or the sessions court. Mr. Mirdha, at the time of his speech, tried to impress upon us that he has brought some radical changes in the different clauses of the Bill. In Clause 167 the position has not very much improved. Clause 167(2) says that the Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit. It is a very vague thing. 'Such custody' is a vague thing. It may mean judicial custody. It may mean police custody. You are again giving power to the Magistrate to decide under what circumstances he will remain under detention. Therefore, I take objection to sub-clause 2. The amendment moved by Mr. Shukla is a bit of an improvement but that is not sufficient. There is indefinite delay in completing of the investigations and trials. I do not know whether Government is inclined to accept Mr. Shukla's amendment or not. I object to this because we see that in practice these very special powers are very much applied and very often applied by the police officers to detain persons. He says in his amendment 'three years or more'. That is not the position. There are not only these cases, but there are cases like arson, rape and so on. You have increased the punishments of ordinary crimes also in the Indian Penal Code. Now you have come with this amendment. There are many provisions here. I will show to you how

you have increased the punishment of many of the crimes. I can tell you straightway that 75 per cent of the total penal provisions of the IPC provide for punishment for more than three years.

So, in this case, I think the special power of the magistrate to detain any person beyond sixty days, as mentioned in the amendment of Shri Shukla, will not help the poor accused person. If the police officers want detention of such persons, the Magistrates, as you know, sitting in the Court, have very little guts to go against the police officer because, their promotion depends upon the confidential report to be written. His promotion is based upon the report of the police officers on the functioning and his helping the Government in disposing of the prosecution case. Depending upon the circumstances of the case the magistrate will get his promotion. So, I say, the Magistrate shall have very little guts to go against the wishes of the police officers as also against the wishes of the ruling party and the Government. Even if the judiciary is separated, after all, the magistrates are functioning under the care of the District Administration and so, the impartial judiciary will go away in our country if you provide this sort of provisions in the Criminal Laws. So, I also object to that part of the amendment moved by Shri Shukla. Our amendment was that in any case and under any circumstances, why don't you pin down the police officer in completing the investigation in a particular period of time. You must compel them to do it. You are not compelling the police officers to complete the investigation when you are detaining an innocent person. Surely, the innocent persons are being detained as per the wishes of the police officer whereas you are not compelling the police officer to finish a particular investigation within a particular time. If he does not fulfil that obligation, I say, he must be punished whereas you are putting

the curtailment of democratic rights of the free citizens. So, I want that in any case and under any circumstances, after sixty days, whatever may be the offences and whoever may be the accused persons, he must be set free and he be given a bail after sixty days. This is my amendment and I think the Minister will accept it.

श्री मधु लिमये (बाका) उपाध्यक्ष महोदय, श्री जोधारदार ने जो बातें कही हैं मैं उन से सहमत हूँ, लेकिन शुक्ला जी के सशोधन का भी मैं इस लिये ममर्शन कर रहा हूँ कि इस बिल में जो प्रावधान है वे इतने अमानवीय हैं, दुष्ट प्रावधान हैं कि इन के चलते पुलिस कस्टडी में 90 दिन तक रहना ही पड़ता और अगर मैजिस्ट्रेट चाहते तो और भी ज्यादा दिन उस को पुलिस कस्टडी में रख सकते हैं। मैं इस को पढ़ कर सुनाता हूँ ताकि सब लोग इस के महत्व को समझें —

"The Magistrate may extend the term beyond the period of fifteen days if he is satisfied that adequate grounds exist for doing so; but no Magistrate shall authorise the detention of the accused in custody for a total period exceeding ninety days unless he, for reasons to be recorded by him in writing, as satisfied that the detention of the accused in custody for a total period exceeding the said period of ninety days is necessary in the interests of justice."

उपाध्यक्ष महोदय, भाव होता क्या है? 15 दिन के बाद मौजूदा क्रिमिनल प्रोसीजर कोड के नेहत किसी को भी पुलिस कस्टडी में नहीं रखा जा सकता था इस बीच जाच अगर पूरी नहीं होती है तो पुलिस वाले क्या करते थे—344 के तहत वे रिमाण्ड लेते जाते थे। हालांकि 344 का यह मतलब नहीं था। अब मंत्री महोदय की विषयक यह थी—यदि 15 दिन के अन्दर

इन्वेस्टीगेशन पूरा नहीं होगा तो क्या होगा? तो फिर जैसा जोधारदार जी ने कहा है—60 दिन की मियाद लगाइये, कोई सीमा बाधिये, लेकिन उस के लिये भी ये लोग तैयार नहीं थे। हम ने सोचा कि कुछ नहीं मिलता है तो जो शुक्ला जी के सशोधन के द्वारा जो मिलता है उसी को ले लें। उपाध्यक्ष महोदय, हम लोगों को पुलिस लाक-अप का अनुभव है, छोटे छोटे कमरों में, जहाँ बुनियादी सैनिटेशन भी नहीं है, दोस्तों तीन मी, चार मी आयामों को ठूस-ठूस कर भर दिया जाता है। ऐसी हालत में 90 दिन या उसमें अधिक पुलिस कस्टडी में रखने की बात होती तो पूरी तबाही हो जाती। जब आप इस बिल को ज्यादा उदार दृष्टिकोण से, इस का ज्यादा लोकतन्त्रीयकरण कर रहे हैं तो फिर अमेज़ो के जमाने में 100 साल तक जिस घारा के चलते तकलीफ नहीं हुई, 15 दिन का पीरियड काफी होता था, क्या देशी सरकार को वह भी काफी नहीं हो रहा है। मेरी समझ में नहीं आया कि ओरिजनल बिल में वह कैसा अमेण्डमेंट आया है?

इसलिये, उपाध्यक्ष महोदय मंत्री महोदय यदि जोधारदार जी के सशोधन को नहीं मानना चाहते और सिर्फ शुक्ला जी के सशोधन के लिये राजी हो गये हैं तो मैं उस को एक कदम मानता हूँ। अपनी यह लड़ाई हम सस्पेण्ड करने वाले नहीं हैं, यह तो चलेगी, लेकिन इस में सुधार की गुंजाइश है और मैं चाहता हूँ कि मंत्री महोदय जरूर इस पर विचार करें।

श्री राम रत्न वर्मा उपाध्यक्ष जी, 167 के अन्तर्गत दो प्रकार को कस्टडीज हैं—ज्यूडी-शियल कस्टडी और पुलिस कस्टडी। जैसा अभी मधु लिमये जी ने बतलाया जो वर्तमान कोड है, उसमें किसी भी आदमी को पुलिस कस्टडी में 15 दिन में अधिक नहीं रखा जा सकता। पूरे क्रिमिनल ला में इन्वोल्वेड आफ दी एक्ज्यूज्ड प्रिज्यूम्ड है, लेकिन पता नहीं अब वे बाइस-वर्क कैसे सोच रहे हैं। क्या धन

[श्री राम रत्न शर्मा]

यह सोचा गया है कि एक्यूज की इन्वोसेम को प्रिज्यूम नहीं करना है और उसको अपराधी मानकर चलना है। 15 दिन की कस्टडी जो पहले थी, वह भी ज्यादा थी, जिस के बारे में भुक्तभोगी लोग, इस तरफ के भी और उस तरफ के भी बतला रहे हैं, जिन्होंने 1947 के पहले और उसके बाद भी जेलों में यात्नाये भोगी हैं—

श्री मधु लिमये वे झूल गये हैं।

श्री राम रत्न शर्मा सभी ने जेलों में यात्नाओं की चर्चा की है। 1947 के पहले पूरा देश पुलिस अधिकारियों के विरुद्ध था और यह कहा जाता था कि जाना फौजदारी में जो पुलिस को इतनी आबिदारी पावर्स दी गई हैं, वे नहीं रहनी चाहिये, लेकिन आज जब हमारे हाथ में सत्ता आई, हम ने सरकार सम्भाली तो हम उस का भूल गये और हम पुलिस को ज्यादा पावर्स दे रहे हैं। मैं इसी बात को ध्यान में रखने हुए अपनी अमेण्डमेन्ट्स प्रस्तुत की हैं। मैंने, श्रीमन्, यह कहा है कि पेज 57 में लाइन 41 के बाद जहाँ 15 दिन का समय है उस को रात दिन कर दिया जाय। ईन्वेस्टिगेशन में कुछ दूध है या नहीं है—इस को 24 घण्टे में भी जाना जा सकता है। अगर पुलिस आफिसर के पास ज्यादा काम है तो भी सात दिन बहुत काफी हैं, इससे अधिक समय पहले भा बंकार था और आज के समय को देखते हुए भी बहुत ज्यादा है जब कि यह कहा जाता है कि इन्वेस्टिगेशन सिस्टम बहुत डबेसप कर गया है, तरह तरह की सुविधाएँ उपलब्ध हैं, हर दम मुलजिम का काम पता लगाया जा सकता है कि उसने कैसे आफेंस किया है। लेकिन फिर भी पुरानी पद्धति के अनुसार, बड़े-बिग्री मैग्जिस्ट्रेट के अनुसार पुलिस आफिसर को पावर्स देते जाते हैं। इसलिये मेरा ध्यान है कि इस को सात दिन कर दें।

दूसरी बात मैंने यह कही है कि 45 से 51 तक पेज 57 में और 1 से 10 तक पेज

58 में—ये सब प्रावधान दिये जायें। इसमें यह कहा गया था कि—

“the magistrate may extend the term beyond a period of fifteen days...”.

जिस पर मेरे लायक दोस्तों ने भी प्रकाश डाला है। मेरा यह कहना है कि ये बिल्कुल व्यर्थ है, 314 जो पहले था, वह भा जायगा जूडीशियल कस्टडी में दे दीजिये, इस में क्या परेशानी है? आप का आब करना कवन उद्देश्य है और यह चाहते हैं कि मनजिम भाग ना जाय।

श्री मधु लिमये ये उसको टारबन्दा करना चाहते हैं।

श्री राम रत्न शर्मा यह सब प्रिंसे मैग्जिस्ट्रेट लागू करना चाहते हैं, वही पुराना पद्धति जो 1857 में 1947 तक चली आई है उगी पद्धति के अनुसार राज्य करना चाहते हैं। पुलिस कस्टडी में रखकर माग्नीट कर लाने उसमें आफेंस किया हो या न किया हो उसमें कुबूल करना चाहते हैं। अगर प्रार्थना कि इसमें किसी बाय-मीडिया की आवश्यकता नहीं है आप इन प्रावीजन्स का हटा दें।

SHRI SOMNATH CHATTERJEE.
So far as the amendment of Shri Shukla's is concerned, I would request him to reconsider whether to retain a part of it or not; I am referring to the lines reading 'unless for reasons to be recorded by him in writing, he is satisfied that such detention for a period exceeding the said period is necessary in the interest of justice'.

Our experience is, and I am sure the unfortunate experience in future will be that whenever the police comes and asks for continuation of detention, the magistrate will act as a mere rubber stamp of the police. They will go on giving the extension. This will be a provision in support of the investigating officers and not in favour of the accused.

We have in West Bengal a very serious experience in the sense that a former M.L.A. has now been in detention for more than 3-1/2 years whose committal proceedings even have not started. The charge-sheet was submitted after two years. Bail has not been granted. Detention is going on and remand orders are being passed for 3-1/2 years now. It is the case of Binoy Konar, former M.L.A. This is the position regarding the misuse of a provision as is contained in the present Code. These powers should not be given because if the investigating officers are unable to complete the investigation within sixty days, at least a case for bail has been made out. One should have thought so. Nobody is asking that the accused should be discharged then and there if in 60 days a charge-sheet cannot be submitted. Here although the limitation of the period is welcome, the discretion now given for extending the period is unacceptable. As I said, it will be a mere rubber-stamping authority. As soon as the police comes, it will be agreed to; although reasons are to be recorded, the reasons will be 'in the interest of public safety' or 'public interest'. That will suffice for extending the period of detention.

Therefore, we support this amendment and I would request Shri Shukla to re-examine it so that the portion which dilutes his intention in bringing this amendment is removed and the other part is accepted. It will then be a definite improvement over the present provision.

श्री भोगेन्द्र झा उपाध्यक्ष मद्रास, त्रिम वस्तु से इन धारा का सम्बन्ध है वह जर्म क्या है, दोषी है या नहीं, गजा क्या होगी या नहीं होगी, इनसे इस का कोई सम्बन्ध नहीं है, निरर्थक अभियोग है। निरर्थक इत्जाम के आधार पर जो कोई जेल में पहुँचता है उससे इस का सम्बन्ध है। एक जो मधु जी ने कहा कि ब्रिटिश राज्य के

जमाने में पन्द्रह दिन का था, तो पन्द्रह दिन का तो था लेकिन तब भी पन्द्रह महीने, दो साल, डार्ड साल होता था। इसलिए होता था क्योंकि डिस्कीशन कोर्ट था। आज तक कोई मजिस्ट्रेट शायद दिमाग में नहीं रखता है, उनके संस्कार का यह हिस्सा नहीं है कि पन्द्रह दिन में किसी को छोड़ना भी है। क्यों कि दिमाग में किसी के नहीं है कि पन्द्रह दिन के बाद छोड़ना है इसलिए जो एक्स्पोजन दे दिया गया है वही एक्स्पोजन क्लस बन गया है। इस तरह से जो पन्द्रह दिन का क्लस था वह एक्स्पोजन भी नहीं रहा। किसी को दो दिन में बेल दे दें वह अलग बात है। लेकिन पन्द्रह दिन में हम को छोड़ना चाहिए यह उनके दिमाग में आज तक कभी नहीं रहा। इसलिए जो नब्बे का साठ आप करोगे तो बेहतर है लेकिन जो अनलेस वाला प्राविजन है उस में मधु जी से मेरा अनुभव कुछ दूसरा है। मेरे लिए यह निश्चित है कि जहाँ तक अभीर गरीब का सवाल उठते हैं उस में जितना ऊपर जाएं जहाँ में उतना ही अत्याचार का बड़ा सुप्रीम कोर्ट, हाई कोर्ट और जिले के जज हैं। मैं अत्याचार कह रहा हूँ क्योंकि मैं ने खुले आम जिला जज को कोर्ट में बोलते हुए सुना है कि किसी सरकार है जमीन तो हमारी है और बटाईदार को हक दे दिया गया। ओपेनली कोर्ट में वह बोलते थे। इस पर मैंने भी कुछ खुल कर कह दिया और कहा कि मेरे ऊपर क्रिमिनल केस चलाइए। लेकिन कायर थे इसलिए नहीं चलाया? बैंक वाला केम और प्रिबी पर्स वाला केस हम सब जानते हैं। ऊपर जाने पर मज्बाई से कोई सम्बन्ध नहीं होता है। पुलिस अफसर ईमानदार रहे तो सच्चाई का पता लगा सकता है। लेकिन जब अगर ईमानदार भी रहे तो भी सच्चाई और ईमानदारी का पता नहीं लगा सकता है क्योंकि वह कागज का मुलाम है, रिकार्ड

[श्री भोयेन्द्र झा]

का गुलाम है। उस का सच्चाई से कोई ताल्लुक नहीं है। ऐसी स्थिति में जो हम में रियायत की बातें कही जाती हैं और हम भी समझते हैं 60 दिन देने से कुछ रियायत होगी लेकिन यह उस के लिए हो रहा है जिस में ज्यादा लोग निर्दोष साबित होते हैं। मंत्री महोदय के पास पूरे देश का आकड़ा होगा। कितने लोगों पर तीन साल से कम सजा देने वाली कक्षाओं का अधियोग लगा उस में बहुमत आज तक रिहा हुआ है। लेकिन साल, दो साल, डेढ़ साल रह गए उस के बाद रिहाई हुई है।

अगर जुडिशियरी के बारे में कोई भ्रम हो तो मैं उदाहरण देता हूँ। लोक सभा के सदस्य की हैमियत से जिस ने कोई चोरी नहीं की लेकिन जो भूमि आंदोलन हमारा चला था उस में जब मैं गिरफ्तार हुआ था तो एग्जीक्यूटिव की तरफ से, जिला मैजिस्ट्रेट की तरफ से कह दिया गया कि पाच केमेज उठाने की बात है। इनको एक दिन में वोट देने का मंत्राल होगा। मुमिफ मैजिस्ट्रेट के यहां मकदमा चला गया। तो दिन से कर दिया। और पुनिम ने 24 घंटे से नार्ज शीट दे दी। मुमिफ मैजिस्ट्रेट जो जुडिशियरी का हिस्सा है वह बोला कि वोट देने जाएंगे प्रिवी पर्मे पर। नैट हिम रिमेन हियर। केम विदइआल का पेटोशन पर गया। उस में पन्द्रह दिन की तारीख दे दी गई कि उस तारीख पर विचार किया जायगा। उस में वोट के बाद की तारीख दे दी। उस के बाद जमानत की दरखास्त ले कर पहुंचे तो कहा गया कि प्रिजनर से लिखा कर लाइए, वह आस तीर से नहीं होता है। नतीजा यह हुआ कि वहां पर हमारे साथी लोग कैस जमा करने के लिए तैयार हो गए कि हम कैस जमा कर देते हैं। एक स्पेशल टीमली

कर के आए, दरखास्त से साइन करा कर ले गए और किसी तरह से मैं यहाँ पर पहुंच सका। इसलिए यह जो अनलैस आप दे रहे हैं हम से पन्द्रह दिन, सात दिन वह इरेलिकेंट हो जाता है। आप सत्तर भी कर दीजिए लेकिन अनलैस वाला प्रावीजन हटा दीजिए यह मेरा आग्रह है।

फिर साठ दिन में भी आप रिहा कर देंगे वह आप की ताकत नहीं है इस सिस्टम में। मिनिस्टर मैं हो जाऊंगा कोई भी हो, किसी की भी ताकत नहीं है कि सात दिन में रिहा कर दे। ऐबोल्यूट भी कर दीजिएगा और जो मैं कह रहा हूँ अनलैस वाला हटा दीजिए तब भी जेल बाईं भरेगा और वह जायगा वैरिफिकेशन के लिए और उस में अभी अभी तीन तीन महीने लगे हैं। फिर वैरिफिकेशन के बाद कही यह रिपोर्ट आ गई कि इन के पास 25 एकड़ जमीन है, इतने लाख की है और बेल है पांच हजार की, लेकिन उस में यह आ जायगा कि वह इम्प्रूवेबल प्रापर्टी है, उस को नुर्गन नीलाम नहीं कर सकेंगे है, और अगर डेढ़ महीने में यह रिपोर्ट आई कि इम्प्रूवेबल प्रापर्टी है तो उस में होना कि यह तो चल सम्पत्ति है जब चाहेगा अलग कर देगा, इस का कैसे भरोसा किया जाय ? मैं पन्द्रह सोलह कागज हम के दाखिल कर सकता हूँ कि यह तो चल सम्पत्ति है जब चाहेगा अलग कर देगा। उस के बाद भी बेल माइन करने में हमना डेढ़ हमना लगता है।

रिलीज आर्डर साइन होने के बाद भी डेढ़ महीना लगा दिया। और 1967 से लेकर आज तक जब से मैं एम० पी० हूँ मेरे जेल में एक दिन नहीं बीता कि जफ 700, 800 से कम लोग जेल में रहे हैं।

इन्वेन्शन एजेंट को बाहर नहीं जाने दिया जूडिशियरी के लोगों ने। इसलिए मेरा कहना है कि कम से कम "unless" शब्द को हटा दे, नहीं तो चाहे 60 दिन हों या 90 दिन हों, वह इर्रैबल है। आप चाहें तो 90 दिन रखने दीजिए, लेकिन "unless" को हटा दीजिए।

"unless he, for reasons to be recorded by him in writing, is satisfied that the detention of the accused in custody for a total period exceeding the said period of ninety days is necessary in the interests of justice"

इस को अगर नहीं हटाते हैं तो 60, 90 या 15 दिन वाली बात इर्रैबल है। अगर चाहे 60 के बजाय 61, 62 कर दीजिए लेकिन "unless" हटा दीजिए।

श्री धार० बी० बड़े सेक्शन 167 के अनुसार 15 रोज का रिमान्ड मांगते हैं तो मैजिस्ट्रेट द्वारा 4, 5 दिन का दिया जाता है, फिर कहते हैं कि जूडिशियल लोक अप में रखो। यदि मंत्री जी जेल में जा कर देख तो पुलिस कम्पटी और नरक में कोई फल नहीं है। और पुलिस कम्पटी में 15 दिन के बाद आप कहते हैं कि 90 दिन या 60 दिन हों तो यह पीरियड बहुत ज्यादा है। इसलिए पुलिस कम्पटी के बारे में आपको विचार करना चाहिये।

unless he, for reasons to be recorded by him in writing" He will say, the magistrate thinks it is a fit case to remand him.

यह तो हमेशा करते हैं। पत्थर से ईंट नरम तो जरूर होती है, लेकिन बिक वैटिंग में दोनों ही काम आते हैं, खोद दोनों में ही लग सकती हैं। इसलिए माननीय गृहस्था श्री से कहता हूँ कि 60 दिन के बजाय कुछ कम करे तो अच्छा रहेगा। अन्यथा ईंट तो बोलो ही हैं।

श्री शम्भूनाथ उपाध्यक्ष जी, मेरे सशोधन पर काफी साधियों ने जो कहा है मैं उस से सहमत हूँ। मेरा सशोधन नम्बर 124 है जो (बी) के बाद है

"no magistrate shall authorise detention in custody under this section unless the accused is produced before him"

इसके बाद ऐक्स्प्लेनेशन है

"Explanation: The production of the accused person as required under proviso (b) may be proved by the signature of the accused person on the order authorising detention"

यह मैं इसलिये कह रहा हूँ कि अभी एक सप्ताह पहले मेरी कास्टीकुऐसी से एक सज्जन श्री सुधाकर चतुर्वेदी मुझ से मिलने आ रहे थे और कनाट प्लेस में पार्लियामेंट स्ट्रीट जाने की पुलिस ने उन को पकड़ लिया। उस ने कहा कि हमारे पास रोजी नहीं है हम एम० पी० से मिलने जा रहे हैं। पुलिस ने उस को बैगिंग ऐक्ट की दफा 5 में बन्द कर दिया और पूछा हाउम में भेज दिया। वह बेचारा डवल एम० ए० है उस ने अपने मार्टफकेट दिखाये। मैंने पूछा कि तुमने मैजिस्ट्रेट के सामने अपने मार्टफकेट क्यों नहीं दिखाये तो उसने कहा कि दस्तखत तो मुझ से करा लिये लेकिन मैजिस्ट्रेट के सामने पेश नहीं किया गया। इसलिये मैं चाहता हूँ कि मैजिस्ट्रेट के सामने उसके दस्तखत जरूर लेने चाहिये ताकि मैजिस्ट्रेट को पता लग सके कि किस लिये ऐक्ज्यूज्ड को मैजिस्ट्रेट के सामने लाया गया है।

श्री शिव नाथ सिंह उपाध्यक्ष जी क्लक 167 की प्रालोचना की गई। कुछ धन में मैं इस का स्वागत करता हूँ और वह इसलिये कि मुझे ने जो हमारी बिक्रिय की क्रिमिनल प्रोसीजर कोड की उस में जोड़ा सुझा हुआ

[श्री शिव नाथ सिंह]

है। पहले थोरिजनल क्लॉक में कोई लिमिटेशन नहीं थी, लेकिन अब 60 दिन या 90 दिन तक अगर इन्वेस्टीगेशन नहीं होगा तो उस को बेल आउट किया जा सकता है, जब तक कि कोई स्पेशल रीजनस न हों। मतभेद इस में हो सकता है कि 90 दिन तक पुलिस कस्टडी में या जूडिशियल कस्टडी में रखा जायगा। मेरे खयाल से जैसा पुराने कोड में था 15 दिन से अधिक पुलिस कस्टडी में नहीं रखा जायगा, वह इस बात को स्वीकार करेगा, और जैसा शुक्ला जी का संशोधन है उस को स्वीकार करता हूँ और किसी भी हालत में 15 दिन से ज्यादा पुलिस कस्टडी में नहीं रखा जाना चाहिये।

MR. DEPUTY-SPEAKER: I readily granted that this is a very important legislative measure and that many Members have had personal experience and they have suffered. So, the Members feel very exercised about it. Even then, if every clause becomes a general debate by itself, there is no end to it. Of course, I will go by the consensus of the House. But there has to be some limit. If you want to finish by 6 O'Clock, as you have agreed, I do not see any chance of it at all being passed by 6 p.m. Unless the Members confine themselves to the clause and only those who have given amendments speak, unless the Members cooperate, it is very difficult. I am quite prepared to listen to you. Don't think I want to shut you out, in any way. But there is a limit.

श्री मधु निमये: गन् ही हम लोगो का तर्जना है "unless" शब्द के धारे क हिस्से में के बारे में सभा एक राय है उस को मान लिया जाय

श्री शिव नाथ सिंह: माननीय शक्ला जी ने दूसरा संशोधन रखा है कि जिन धाक्रेसेज से गजा तीन साल से कम हो उन केसेज का इन्वेस्टीगेशन यदि 60 दिन में खत्म नहीं होता

है तो 60 दिन से अधिक कस्टडी में नहीं रखा जाय, इसका मैं विरोध करता हूँ। मैं उन से निवेदन करता हूँ कि वह इसको प्रेस न करें। साठ दिन का इनका यह वक्त दिया हुआ है और नब्बे दिन के बाद चाहे किसी प्रकार का अपराध हो वह प्रावधान रहना चाहिये और 15 दिन का जो एमेडमेंट है उसका मैं समर्थन करता हूँ, दूररे का विरोध करता हूँ।

15 hrs.

SHRI RAM NIWAS MIRDHA: This Clause refers to the procedure when investigation cannot be completed within 24 hours. Even a reading of the present clause would suggest that it was never the intention that a person should be kept in police custody for more than 15 days. This period of 90 days is about custody as such, not in police custody. Still because doubts were raised about this that this is not so, I am accepting the amendment moved by Shri B. R. Shukla which makes it clear and beyond all doubt.

As regards:

"...unless he, for reasons to be recorded by him in writing, is satisfied that the detention of the accused in custody for a total period exceeding the said period of ninety days is necessary in the interests of justice, and where the Magistrate does not authorise the detention..."

this has been put there because there may be some very exceptional cases where detention may be necessary. So, the idea behind this amendment is that, as a rule, he must be released on bail except for special reasons which the Magistrate will have to record in writing. He has to feel satisfied that the detention is necessary in the interest of justice beyond this period. He will apply his mind, think over it and give reasons which would be further considered by

higher courts. So, he will have to give the reasons. It cannot be for perfunctory reasons or for reasons which are not convincing. The superior courts would go into those reasons. This Clause itself provides the safeguards. I am sure it will only be in exceptional cases that the Magistrate would be required to detain him for a longer period. However much I would like to accommodate hon. Members, there are certain....

SHRI SOMNATH CHATTERJEE: Sir, this is being made applicable only in the case of some of the offences where the punishment will be for three years. What about other cases?

SHRI RAM NIWAS MIRDHA: Considering everything, except the amendment which I have agreed to accept, it is not possible to go beyond that. (Interruptions) As regards 'Explanation', Amendment No. 124, it again clarifies the situation, as I said. Personally I feel that it is not necessary in the present law itself. I accept this for the sake of greater clarity.

SHRI SOMNATH CHATTERJEE: What will happen if the offences under investigation are punishable with imprisonment for more than three years? Then this Clause will not apply to investigation with regard to such offences. Then what is the provision in the Cr. P.C. which will be applicable in respect of detention in such cases?

SHRI RAM NIWAS MIRDHA: There may be serious offences. Therefore, we do not make any provision....

SHRI SOMNATH CHATTERJEE: So, they can continue indefinitely to be in detention.... (Interruptions).

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SHRI BHOGENDRA JHA: What about cases involving 15 years and life imprisonment? Is there any limit?

SHRI RAM NIWAS MIRDHA: To believe that Magistrate will take such extreme positions... (Interruptions).

These are questions relating to extreme cases which cannot be provided for in any Code.

SHRI DINESH JOARDER: We shall very humbly request the hon. Minister with regard to this clause. This is a very important clause. You should rise above the wishes and dictates of the bureaucrats... (Interruptions).

SHRI BHOGENDRA JHA: Otherwise, it will be irrelevant. You better delete it altogether.

SHRI RAM NIWAS MIRDHA: There is no question of my deleting the thing. This Procedure Code is going to be implemented by the State Governments who have very strong views on certain matters... (Interruptions). There is a certain limit beyond which you cannot go.

SHRI SOMNATH CHATTERJEE: Kindly see clause 167. Kindly see the marginal note—"Procedure when investigation cannot be completed in twenty-four hours"—within the time limit as in the present clause 167 as it stands in the Bill and which has been passed by the Rajya Sabha. It puts a time limit of 90 days subject, of course, to the discretion of the Magistrate on which we have made our submissions.

Now, if the other part remains, namely, that this clause will not apply in cases of offences which are punishable for a term beyond three years, then there will be no provision in the Code itself. There will be no provision at all.

SHRI RAM NIWAS MIRDHA We have made a further provision which says that the period of remand and detention will be deducted from the ultimate sentence that is another thing (Interruptions).

SHRI BHOGENDRA JHA But if people are acquitted, who will compensate them (Interruptions)

SHRI DINESH JOARDER I will request the hon Minister to use his personal intelligence and he should reconsider it, not at the dictates of the bureaucrats. (Interruptions) The position is going from bad to worse

SHRI BHOGENDRA JHA Is there any time limit or not? (Interruptions)

SHRI SOMNATH CHATTERJEE The Minister is not replying? (Interruptions).

MR. DEPUTY-SPEAKER You have made your submissions (Interruptions). Please tell me what else can I do

SHRI MADHU LIMAYE You can persuade him

MR. DEPUTY-SPEAKER Is it the duty of the Chair? You must write a new Rules of Procedure

SHRI MADHU LIMAYE We are all united on this point

SHRI BHOGENDRA JHA We are not opposing for the sake of opposition

MR. DEPUTY-SPEAKER Although the Minister has completed his speech, yet I have allowed you to put certain queries (Interruptions) I cannot help.

SHRI SOMNATH CHATTERJEE Kindly express displeasure that the Minister is not answering this point

MR. DEPUTY-SPEAKER. That is not the duty of the Chair.

SHRI BHOGENDRA JHA. Let him say as to what will be the limit

SHRI SHIV NATH SINGH. Only one word, Sir.

MR. DEPUTY-SPEAKER. You are creating more difficulties for the Minister now From this side you want to intervene when there was enough between the Minister and the Opposition.

SHRI MADHU LIMAYE. This is not a party matter

SHRI SHIV NATH SINGH I want for offences which are punishable with more than three years imprisonment there should be some limit (Interruptions)

MR. DEPUTY-SPEAKER Order, please

Because I have allowed queries, if everybody proposes to make a speech, it is against the Rules

SHRI SHIV NATH SINGH No, Sir, we are seeking clarifications

MR. DEPUTY-SPEAKER But from your tone, it was a speech and not a query at all

SHRI SHIV NATH SINGH It is a submission.

MR. DEPUTY-SPEAKER. Then put your question straight to the Minister straightaway

SHRI SHIV NATH SINGH. In the original clause you have fixed 90 days limitation for all offences Now, by this amendment you are restricting this limitation to 60 days only for certain offence For other offences also there should be some limitations as in the original clauses—90 days or any other limitations But there should be some limitation

SHRI B. R. SHUKLA: If you allow me for a minute, I will make one clarification. I have given the amendment

MR. DEPUTY-SPEAKER: Why do you want the Chair to do irregular things? You will fling this on my face on some other occasion. (*Interruptions*).

SHRI MADHU LIMAYE: No precedent. We shall not treat it as a precedent.

MR. DEPUTY-SPEAKER: I allowed everybody. You did not get up. When I saw that nobody wanted to speak I called the Minister and the Minister has replied too. Now you want to say something.

SHRI B. R. SHUKLA: This point will not be clarified unless I speak.

SHRI BHOGENDRA JHA: Again this Bill may run into difficulties, as adopted by the Joint Committee and again by the Upper House. Ninety days limit was applicable to all the cases. Here it is substituted. Ninety days provision should remain as it is. Mr Shukla's amendment should be in addition to that. That limit should be there. (*Interruption*).

SHRI RAM NIWAS MIRDHA: Sir, either we accept this amendment or the existing thing remains. I thought, this is a better formulation and it has been arrived at after long consultation. This will stand. I accept Shri Shukla's amendment.

MR. DEPUTY-SPEAKER. The hon. Minister said that he accepts the amendment of Shri Shambhu Nath and Shri Shukla. The respective numbers of these amendments are No. 124 and No. 280.

Now, I will put these amendments separately to the vote of the House. (*Interruptions*).

श्री मधु लिमये : उपाध्यक्ष महोदय, मेरा कहना है कि शम्भूनाथ जी के अमेन्डमेंट के ऊपर जो शब्दावली 76 और 57 के लिए हुई है उसी में इस को रखा जाय । कल मंत्री महोदय ने जो माना है उसी को कह

रहा है । वह तो आप की पावर है । जो बडिंस 76 और 57 के लिए आप ने मान लिया है सिमनेवर वाला वह एक कर दीजिए । जो आप ने माना है उसी को कह रहा है । . . (इटरप्शंस)

AN HON. MEMBER: Please reserve the amendment; we may take up this Clause later.

SHRI SHIV NATH SINGH: Withhold it

MR. DEPUTY-SPEAKER: I go by the consensus of the House.

SHRI RAM NIWAS MIRDHA: We don't withhold it at all. It is all right. Mr. Shambhu Nath gave an amendment which we also discussed. There is an amendment, a small one, if you like, to that amendment (*Interruptions*) All right, I will not press it.

SHRI DINEN BHATTACHARYYA: Why are you hurtying things? (*Interruptions*).

MR. DEPUTY-SPEAKER: I am not hurrying anything. Order please. (*Interruptions*).

Order, please. Mr. Bhattacharyya, please do not get excited.

SHRI DINEN BHATTACHARYYA: No question of excitement, Sir.

SHRI MADHU LIMAYE: Please allow me to clarify... (*Interruptions*).

MR. DEPUTY-SPEAKER: Please do not get excited. Let us discuss it calmly and coolly.

SHRI BHOGENDRA JHA: Should we take that the Minister is totally impervious? He cannot understand? (*Interruptions*).

MR. DEPUTY-SPEAKER: Order, please. Let me clarify the position. The Minister....(Interruptions) Please listen carefully..(Interruptions) What is all this? Why don't you listen?

Now, the Minister has indicated in the course of this speech that is he was prepared to accept two amendments: (1) the amendment of Shri Shambhu Nath (Amendment No. 124), and (2) that of Shri Shukla (Amendment No. 280).

No. 2—He has also stated that he wanted to make some changes in the amendment of Shri Shambhu Nath which he has accepted. That is what he was saying.... (Interruptions). Order, please. I would like to ascertain from this House. Instead of hurrying this Bill, if you want to make certain changes, I think, nothing would be lost—this is my personal opinion, not a ruling—if we hold it over for some time and give the Minister and the leaders some time to meet together and make some changes. I am prepared to accept if you agree to it....(Interruptions).

SHRI C. M. STEPHEN (Muvattupuzha): There are two amendments before us....(Interruptions) I am afraid everybody is under confusion. It is felt by certain members that Mr. Shukla's amendment is an improvement on the original draft. Going through the amendment, I feel that it is not an improvement excepting for the provision that it will be a judicial custody. In the original clause detention beyond three months....

MR. DEPUTY-SPEAKER: What do you want to say?

SHRI C. M. STEPHEN: I want that it should not be rushed through. Let it be held over.

SHRI RAM NIWAS MIRDHA: We are not rushing through. It was agreed to after a lot of discussion.

SHRI C. M. STEPHEN: Judicial custody is an advantage but with respect to the other, "excepting the

offences punishable with three years', now under the amended form, there is no limit for the detention whereas in the original Bill there was a limit of 90 days irrespective of the character of the offence. If that could be improved upon, it will be good.... (Interruptions).

MR. DEPUTY-SPEAKER: Order, please. The Minister should tell me what he wants to do.

SHRI RAM NIWAS MIRDHA: These two amendments ..(Interruptions).

MR. DEPUTY-SPEAKER: Mr. Jha.. (Interruptions) Order, please. I want to listen to the Minister. You would not allow me to listen to him?

SHRI RAM NIWAS MIRDHA: As a matter of procedure, both these amendments including this slight drafting amendment in the Explanation as well as the one moved by Shri Shukla were done after mutual consultation which lasted late in the night yesterday. Therefore, this Explanation is also an agreed one. So, if you permit me, I will read it out. It is a slight change and this would also be incorporated.

So far as I am concerned. Shri Shambhu Nath's amendment is quite all right and it was mutually agreed to... (Interruptions). My amendment is:

Page 58,—

After line 10, insert—

"Explanation.—If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorising detention."

SHRI MADHU LIMAYE: Very good.

SHRI K. NARAYANA RAO: There cannot be an amendment to an amendment, Sir ... (Interruptions).

SHRI MADHU LIMAYE There can be

MR DEPUTY-SPEAKER We are all trying to do very irregular things. What the hon Minister has read just now amounts to a new amendment. I would rather prefer that he himself moves this new amendment even at this late hour and I shall accept it even at this late hour.

SHRI RAM NIWAS MIRDHA I shall move it.

MR DEPUTY-SPEAKER He has to give something in writing.

SHRI RAM NIWAS MIRDHA I have given it. It is already cyclostyled.

MR DEPUTY-SPEAKER Then, let him give it to me.

SHRI RAM NIWAS MIRDHA I beg to move.

Page 58,—

After line 10, insert—

'Explanation—If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorising detention'. (281)

MR DEPUTY-SPEAKER This is the new amendment moved by Shri Ram Niwas Mirdha.

So, there are two amendments now, one moved by the hon Minister and the other moved by Shri Shukla, which the hon Minister says he would accept. Therefore, I shall put those amendments to vote first.

SHRI BHOGENDRA JHA Shri Mirdha's amendment may be put to vote separately.

MR DEPUTY-SPEAKER That is what I am saying. I shall put them

separately to vote, one after the other. First, I shall put Shri Shukla's amendment to vote. I shall go by the serial number of the amendment.

SHRI BHOGENDRA JHA : I feel cheated. The hon Minister has said that this amendment has come after mutual consultations. But that 'unless' provision is there. Therefore, we feel cheated.

MR DEPUTY-SPEAKER I am concerned with the serial number..

SHRI BHOGENDRA JHA It was not the intention of the Joint Committee either. Through a subterfuge this amendment has been brought in. We feel we are being cheated. Neither the Joint Committee nor the Rajya Sabha had thought of such a thing. They are bringing this in stealthily.

MR DEPUTY-SPEAKER Let him please not cheat me of the right of running the House. .

SHRI BHOGENDRA JHA: He should delete the words 'unless..' and maintain what was there formerly.

MR DEPUTY-SPEAKER: What should we do then?

SHRI BHOGENDRA JHA: It is for the whole country.

MR DEPUTY-SPEAKER. What should be done then?

SHRI DINESH JOARDER : What is our remedy?

MR DEPUTY-SPEAKER: If he asks me what the remedy is, then I shall tell him the remedy.

SHRI BHOGENDRA JHA : On this issue he should take a sympathetic attitude....

MR. DEPUTY-SPEAKER: Now, let me go on. If he wants to know the remedy, then the remedy is known to him and it is known to me also. The remedy is to go to the people, get himself elected in a majority here and change this whole thing. That is the remedy. (*Interruptions*) I shall now put Shri Shukla's amendment to the House, namely amendment No. 280.

The question is:

Pages 57 and 58,—

for lines 48 to 51 and 1 to 5 respectively, substitute—

(a) The Magistrate may authorise detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days if he is satisfied that adequate grounds exist for so doing; but no Magistrate shall authorise the detention of the accused person in custody under this section for a total period exceeding sixty days, (hereinafter referred to as the said period) when none of the offences under investigation is punishable with imprisonment for more than three years, unless, for reasons to be him in writing, he is satisfied that such detention for a period exceeding the said period is necessary in the interests of justice, and where the Magistrate does not authorise the detention of the accused person in custody for a total period exceeding the said period, he shall, if the accused person is prepared to give bail, release him on bail whether the offence or any of the offences under investigation is bailable or not." (280).

The Lok Sabha Divided:

Division No. 14]

[15.29 hrs.

AYES

Ahirwar, Shri Nathu Ram

Ambesh, Shri

Banamali Babu, Shri

Barman, Shri R. N.

Basappa, Shri K.

Besra, Shri S. C.

Chakleshwar Singh, Shri

Chandra Gowda, Shri D. B.

Chandrika Prashad, Shri

Chawla, Shri Amar Nath

Chikkalingaiah, Shri K.

Choudhary, Shri B. E.

Darbara Singh, Shri

Daschowdhury, Shri B. K.

Desai, Shri D. D.

Dharia, Shri Mohan

Dixit, Shri G. C.

Gautam, Shri C. D.

Gomango, Shri Giridhar

Gotkhinde, Shri Annasaheb

Hari Singh, Shri

Jaffer Sharief, Shri C. K.

Jayalakshmi, Shrimati V.

Kadam, Shri J. G.

Kailas, Dr.

Kamakshaiah, Shri D.

Kapur, Shri Sat Pal

Kavde, Shri B. R.

Kedar Nath Singh, Shri

Kotoki, Shri Liladhar

Krishnan, Shri G. Y.

Kureel, Shri B. N.

Kushok Bakula, Shri

Lakshminarayanan, Shri M. R.

Lutfal Haque, Shri

Mahishii, Dr. Sarojini

Maurya, Shri B. P.

Mirdha, Shri Nathu Ram

Mishra, Shri Bibhut
 Mishra, Shri G S
 Misra, Shri S N
 Mohapatra, Shri Shyam Sunder
 Mohsin, Shri F H
 Naik, Shri B V
 Negi Shri Pratap Singh
 Oraon Shri Kartik
 Painuli, Shri Paripoornanand
 Pandey, Shri Krishna Chandra
 Pandey, Shri Tarkeshwar
 Pandit, Shri S T
 Parashar Prof Narain Chand
 Parikh Shri Rasiklal
 Patil, Shri T A
 Pradhan, Shri Dhan Shah
 Pradhan, Shri K
 Raghu Ramaiah, Shri K
 Rajdeo Singh, Shri
 Ram Prakash, Shri
 Ram Sewak, Ch
 Ram Swarup, Shri
 Rao, Shrimati B Radhabai A
 Rao, Shri Jagannath
 Rao, Shri K Narayana
 Rao, Shri M S Sanjeevi
 Rao, Shri Nageswara
 Rao, Shri Pattabhi Rama
 Rathia, Shri Umed Singh
 Reddy, Shri P Ganga
 Reddy, Shri P Narasimha
 Richhariya, Dr Govind Das

Roy, Shri Bishwanath
 Sanghi, Shri N K
 Sankata Prasad, Dr
 Sathe, Shri Vasant
 Shambhu Nath, Shri
 Shankar Dayal Singh, Shri
 Shankaranand, Shri B.
 Sharma, Shri A P
 Shetty, Shri K K
 Shukla Shri B R
 Sohan, Lal Shri T
 Stephen, Shri C M
 Suryanarayana, Shri K
 Tarodekar, Shri V D
 Tewari, Shri Shankar
 Tiwary, Shri K N
 Tula Ram, Shri
 Tulsiram, Shri V
 Unnikrishnan, Shri K P
 Verma, Shri Sukhdeo Prasad
 Yadav, Shri Karan Singh

NOES

†Das, Shri Anadi Charan

†Patil, Shri S B

MR DEPUTY-SPEAKER. The result* of the division is-

Ayes 91, Noes 2

The motion was adopted

*The following Members also recorded their votes for Ayes Shri Nawal Kishore Sharma, Shri Ram Singh Bhai Verma, Shri S. B Patil, and Shri Anadi Charan Das

†Wrongly voted for NOES.

MR. DEPUTY-SPEAKER: I shall now put amendment No. 281. The question is:

Page 58,—

after line 10, insert—

“Explanation.—If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorising detention.” (281)

The motion was adopted.

MR. DEPUTY-SPEAKER: I will now put the rest of the amendments to vote.

Amendments Nos. 123, 124, 184, 202, 203, 266 and 267 were put and negatived.

MR. DEPUTY-SPEAKER: The question is:

“That clause 167, as amended stand part of the Bill.”

The motion was adopted.

Clause 167, as amended, was added to the Bill

Clauses 168 to 171 were added to the Bill.

Clause 172—(Diary of Proceeding in investigation).

SHRI R. R. SHARMA: I move my amendment No. 268.

Page 58,—

for lines 36 to 42, substitute—

“(3) The complainant or accused persons shall be entitled to have certified copies of the police

diaries subject to an application and) payment of requisite court fees in this behalf.” (268)

MR. DEPUTY-SPEAKER: I shall put amendment No. 268 to the vote of the House.

Amendment No. 268 was put and negatived.

MR. DEPUTY-SPEAKER: The question is:

“That clause 172 stand part of the Bill.”

The motion was adopted.

Clause 172 was added to the Bill.

Clause 173—(Report of police officer on completion of investigation).

SHRI DINESH JOARDER: I move my amendments Nos. 158, 159 and 160.

Page 60,—

omit lines 33 to 39. (158).

Page 60,—

for lines 40 to 42, substitute—

(7) The Police Officer investigating the case shall furnish to the accused free copies of all the documents and papers including those already sent to the Magistrate during investigation referred to in sub-section (5) at the time of forwarding the case to the Magistrate.” (159)

Page 61, line 7,—

for “(b)” substitute “(5)” (160)

SHRI R. R. SHARMA: I move my amendment No. 269. I move:

Page 60,—

for lines 40 to 42, substitute—

“(7) After forwarding the report under this section the police

officer investigating the case shall before the commencement of the trial furnish or cause to be furnished to the accused free of cost copies of all the documents referred to in sub-section (5)," (269)

SHRI DINESH JOARDER: This clause deals with the report of police officer on completion of investigation. It is the general practice that after completion of the investigation the police officers have got to submit their reports and a charge sheet or a final report as the case may be. If he submits a charge sheet along with that he shall also submit to the magistrate papers and documents on which he has based his case and relies for trial. These documents, charge sheet and relevant evidence have got to be disclosed to the accused persons before the trial starts. The accused are entitled to get copies of those papers and documents including the statements of the witnesses and other relevant papers. Sub-clause 6 of this clause says:

"If the Police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request."

This is a dangerous provision because the police officer may withhold or send a note to the magistrate for withholding some information from the accused person. One case is still pending in the Calcutta courts. A few years back in December 1969, two political leaders, Syed Badrudduja and another, were arrested under MISA and were tained for months without trial as the police could not

make out a case against them. Members of Parliament expressed their concern over the detention of such responsible leaders of the people indefinitely and ultimately it was reported that they would be released and set free under the provisions of MISA. They were set free but again they were arrested at the gate of the jail under Acts other than MISA, for divulging official secrets etc. Since then they are producing no papers. Their cases have been referred to the High Court also. The police officers simply sent a note to the effect that the papers are so confidential that it will not be expedient to disclose them to the accused. So, their trial has not yet commenced and they are not allowed to look into the papers. This is a very dangerous provision that the police will arrest without warrant, detain them and even during the investigation or trial or even through the High Court judges or their lawyers, they will not be able to go through the contents of those papers, and the police officers are withholding those papers from the case file. There are several other cases like this. There are two grounds on which I object to this: Firstly, no papers or documents should be withheld from the case records. Free copies should be given to the accused persons of those papers, because the accused persons are entitled to get copies of all the documents, papers, chargesheets etc. So, I want that sub-clause (6) should be removed because no material evidence should be withheld from the case record and free copies of the papers should be given to the accused persons.

श्री राज रतन शर्मा : उपाध्यक्ष जी, अदालत में चार्ज शीट सबमिट करने के बाद एक्ज्यूज्ड परॉन से सम्बन्धित पुलिस की जिम्मेदारी खत्म हो जाती है। परन्तु इस प्रेजेन्ट प्राबिजन में देखने को मिलता है, सब-क्लाज (7) को ग्राय पड़े।

[श्री राम रतन शर्मा]

"where the police officer investigating the case finds it convenient to do so, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5)"

सब क्लॉक (5) क्या है

"when such report is in respect of a case to which section 170 applies, the police officer shall forward to the magistrate along with the report—

- (a) all documents or relevant extracts thereof...
- (b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses"

अभी तक इन्वेस्टिगेशन के बाद जो भी डाकुमेन्ट्स आये उनकी कॉपीज फ्री आफ कास्ट ऐक्ज्यूज्ड पर्सन्स को दी जाती थी और कोर्ट की जिम्मेदारी होती थी कि वह देख ले कि जब तक ऐक्ज्यूज्ड पर्सन्स को कॉपीज नहीं मिले तब तक ट्रायल प्रारम्भ न करे। लेकिन इन बातों को ताख में रख दिया गया और पुलिस अधिकारी को अधिकार दे दिया गया कि वह जो देना चाहे, यदि उस का कनवीनियेंट हो। तो यह प्रीवीजन कैसे जाना है इस को नहीं समझ पाया। जिन लोगों को रोखमरी की बकालात का अनुभव नहीं है वह भी इस में सहमत नहीं होंगे। मैं तरफ आप कहते हैं कि न्याय सस्ता होना चाहिये और दूसरी तरफ यह अधिकार पुलिस वालों को दे रहे हैं कि अगर उन को कनवीनियंस हो तो ऐक्ज्यूज्ड को कॉपी दे। मैंने कहा है

"for lines 40 to 42, substitute—

"(7) After forwarding the report under this section, the police officer investigating the case shall before the commencement of the trial furnish or cause to be furnished to the accused free of cost

copies of all the documents referred to in sub-section (5)."

इसलिये मेरे सशोधन को स्वीकार करने में ऐक्ज्यूज्ड पर्सन का बहुत हित है। दरना पुलिस आफिसर्स को कभी कनवीनियंस नहीं होगी कि ऐक्ज्यूज्ड को कॉपीज दे।

SHRI SOMNATH CHATTERJEE:
Kindly see sub-clauses (5), (6) and (7) of Clause 173. It makes it incumbent, under sub-clause (5), upon the police officer to forward to the Magistrate the documents mentioned there. Then, you see how that is watered down completely by sub-clause (6). It says—

"(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interests, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request."

Therefore, the police officer is made the complete master and the authority to decide what is relevant and what is not relevant; what will be in the public interest and what will not be in the public interest. It is only up to him to send a request to the Magistrate. That is all. The Magistrate has no such power any where.

Then, sub-clause (7) says:

"Where the police officer investigating the case finds it convenient to do so, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5)."

What type of convenience? Is it a physical convenience or is it that copies are available or not? That will

be decided by the police officer. The Magistrate has got nothing to do. It is as if the accused is a person who has not to get any advantage of the trial and he is completely at the mercy of the police officer. Everybody knows in this country how the police administration is behaving. Therefore, I request the hon. Minister to accept the amendment with regard to this. This does not affect the scheme of the Clause.

SHRI S. N. MISRA (Karimganj): Under sub-clause (5), the police officer, when the matter has been entrusted to him, should be the judge whether a particular document should or should not be made available. After sub-clause (5), I think, the power has been given to the Magistrate and the papers placed in his hands. The police should have no power. So, both sub-clauses (6) and (7) should be deleted.

SHRI R. V. BADE: My submission is that the copies of the police diary should be given to the accused. The copies of the witnesses should also be given to the accused. In order to do justice to the accused, all the statements which are in the police diary should be given to the accused free of cost. The sub-clauses (6) and (7) are contradictory. I do not know how this provision is made here. I want the hon. Minister to throw some light on this.

SHRI RAM NIWAS MIRDHA: The apprehensions of the hon. Members are not well-founded. Clause 173 is the stage when the police files a charge-sheet in the court. Formerly, it was incumbent upon the police to give copies of the witnesses. But there was a lot of difficulty in this. The Law Commission went into this and it said that the copies are not legible and, therefore, when it comes to the court, it should give all the copies of the police statement, etc., to the accused. Therefore, in pursuance of that recommendation, the decision was made.

As regards the power to exclude, I would request the hon. members to read it along with Clause 207 which clearly says that it will be the Magistrate who will decide whether the objections raised by the police are correct or not with respect to those statements. Actually the old Code gave no such discretion to the Magistrate. The police officer could give or withhold whatever he liked. The improvement that has been made is that we have not left it to the discretion of the police officers as to what documents would be given. We have put in clause 207 that the Magistrate would go into the objections raised by the police, go into the reasons why they want to withhold and then say whether they should be given to the accused or not. All the points referred by the hon. members are taken care of in this.

SHRI DINESH JOARDER: Here you have given the police the power to report to the District Magistrate and send a request or note for withholding the documents. So, the Magistrate will act upon such report. Therefore, the police officers should have nothing to do about withholding the documents. You omit the 'police officers' there.

SHRI B. V. NAIK (Kanara): They are omitted in Clause 207.

श्री रामरत्न शर्मा : मैं एक क्वेरिफिकेशन चाहता हूँ। क्वेसमेंट आफ प्रोसीडिग्स बीफोर मैजिस्ट्रेट के अन्तर्गत 207 बलाज आता है।

"In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused..."

यह कमिटल प्रोसीडिग्स खत्म कर दे, सेशन में दायल जायगा, उसके लिए एक बहुत बड़ा नुक़ाना हो जायगा। सेशन में जिनका दायल होना है उस एक्ज्यूज्ड पर्सन को वह कावा नहीं देगा और उसका फायदा पुलिस वाले उठावेंगे।

SHRI RAM NIWAS MIRDHA: Clause 207 is very clear.

"In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following..."

SHRI K. NARAYANA RAO: Sir, the 'police report' has been defined in Clause 173. The point that has been made in the House is this. The discretionary power....

MR. DEPUTY-SPEAKER: You can only put a question.

SHRI K. NARAYANA RAO: The 'police report' has a particular definition. It has been defined in Clause 173....

SHRI RAM NIWAS MIRDHA: The Magistrate will have to give not only the police report but also the other things mentioned in Clause 207. (Interruptions)

MR. DEPUTY-SPEAKER: What do you want, Mr. Narayana Rao? You never spoke before the Minister was called. Now you speak, I really do not understand. The point is that members sit here and suddenly some ideas strike their mind and they get up at any time. This is most irregular. You should have spoken before the Minister was called upon to reply.

You should have spoken before the Minister was called upon to reply which you did not do. The Minister is not accepting any amendments. So, I shall put all the amendments together to vote.

Amendments Nos. 158 to 160 and 269 were put and negatived

MR. DEPUTY-SPEAKER: The question is:

"That clauses 173 and 174 to 195 stand part of the Bill."

The motion was adopted

Clauses 173 and 174 to 195 were added to the Bill.

Clause 196—(Prosecution for certain Officers).

MR. DEPUTY-SPEAKER: Now, we take up clause 196. There is one amendment by Shri Mirdha. Are you moving?

SHRI RAM NIWAS MIRDHA: I move:

"Page 67, for the existing marginal heading, substitute "Prosecution for offences against the State and for criminal conspiracy" (37)

MR. DEPUTY-SPEAKER: The question is:

Page 67, for the existing marginal heading, substitute "Prosecution for offences against the State and for criminal conspiracy" (37)

The motion was adopted

MR. DEPUTY-SPEAKER: The question is:

"That Clause 196, as amended, stand part of the Bill."

The motion was adopted.

Clause 196, as amended, was added to the Bill.

Clause 197—(Prosecution of Judges and public servants).

MR. DEPUTY-SPEAKER: There are amendments to this Clause. Are you moving?

SHRI RAM NIWAS MIRDHA: I beg to move:

"Page 68, line 6, for "shall" substitute "shall take" (38)

SHRI DINESH JOARDER: I beg to move:

"Page 67, lines 42 to 44,—

Omit "or a public servant not removable from his office save by or with the sanction of the Government." (139)

"Page 67, line 46,—

for "no Court" substitute—

"the Court of a Magistrate

First Class" (241)

Page 67, line 46,—for "except with" substitute—

"and order for investigation and commence trial thereafter if there is any *prima facie* case as per procedure provided in this Code for trial of similar offence" (242)

"Pages 67 and 68,—

Omit lines 47 to 49 and 1 to 21 respectively." (243)

Sir, I want to speak on this Clause which is also similar to the clause which we have discussed. The Government officers should not be given protection against their abusing of power and in certain cases, in excess of their power, when, particularly, the democratic rights of the people are involved. Here, in this Clause, it has been stated that 'When any person who is or was a judge or magistrate'. I have no objection to that portion. When the words 'or a public servant' not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction—

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government; and

[Shri Dinesh Joarder]

- (b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State of the State Government' put in that means you are going to protect such officers.

15.58 hrs.

[SHRI K. N. TIWARY in the Chair]

They are mainly the high ranking police officers and others who are not removable, save by or with the sanction of the Government. The ordinary people then shall have no power to prosecute them against the commission of any offences purported to have been done while he is discharging his official duty. Sometimes what we see is that out of vengeance or out of some grudge, the police officers very often abuse their power and with the help of their position that they hold and the arms and ammunitions which they always carry with them, they always are in such a high spirit that they have the feelings that they can do anything and everything they like. They not only possess the arms and ammunitions behind them but the entire State power is there. They are assured that in respect of whatever they will do, they will be Protected by the Government. That is why such things are happening. With this sense of security they commit offences much beyond their power. They cause injury to the general public which runs against the free-play of democratic rights and privileges. They attack the general public with the help of this power. They bring girls, they bring women to the police station and rape them in the name of investigation. They beat ordinary people. They shoot innocent people. There are cases of CRP, SRP, military officers and police officers, high ranking officers, etc., committing such offences. You are going to protect them. You are giving them more power. They will commit such offen-

ces more often. Any man who is going there for realising dues, who goes there with an attachment order, may go to excesses and commit all sorts of offences. So, my view is that wide powers should not be given to them at all. I have moved certain amendments and I request the Minister to accept them.

MR. CHAIRMAN: Please be brief. At this stage of moving amendments and considering the Clause, I would request hon. Members to be very brief. There should not be any lengthy speeches at this stage please.

—Now, Shri Somnath Chatterjee.

SHRI SOMNATH CHATTERJEE: In Clause 197 there are two fundamental points which are worth consideration. There is a distinction made between Government servants, one who is removable with sanction and the other who is not. A distinction is made and I know this is a continuation of the existing law. Why should we continue a law which leads to abuse and misuse? This is my respectful submission. I know of a case of the Deputy Commissioner in Calcutta against whom a charge of murder was made. Sanction was not given. He cannot be prosecuted at all. This is my first point. My second point is this. There are no guidelines which have been given. It is not stated on what basis sanction will be given and on what basis sanction will not be given. It is entirely left to the discretion of the Central Government or the State Government, as the case may be. They may give it in some cases; they may not give it in some other cases. No guidelines have been laid down. No principles have been laid down.

It has been used for the purpose of protecting those officers who are amenable and who are found to be very useful to the administration or government as such.

16 hrs.

Some guide lines should be laid down in this regard. But, nothing has been done. These are matters which

should be taken note of by the Minister. We are changing this law after seventyfive years. Still all the loopholes still have been maintained.

श्री मधु लिखवे मैं मंत्री महोदय से यह जानना चाहता हूँ कि जब हम लोगों को या हमारे लोगों को गैर-कानूनी ढंग से पुलिस अफसर और मैजिस्ट्रेट जेल में बन्द कर देते हैं तो हम लोगों के लिए क्या उपाय है ? एक मैं अपना केस दे रहा हूँ कि 1968 में जब मुझे गैर-कानूनी ढंग से जेल में रखा गया उस वक़्त से अभी तक मेरा डेमेन्ड का सूट चल रहा है और वह चलाते जा रहे हैं मैजिस्ट्रेट लोग । सरकारी खर्च पर साग केम चल रहा है डिस्ट्रिक्ट मैजिस्ट्रेट मुंगेर वा । कितने माल हो गए ? 1968 का केम और 1973 तक विटनेसेज तो छोड़िए प्रेलिमिनरी चीजे तब में भी वह मामले को नहीं आने दे रहे हैं । सरकारी खर्च में केस कर रहे हैं । अब क्रिमिनल केम करने की बात आयेगी तो 197 और बाधा के रूप में बन जायगा । इसलिए मैं मंत्री महोदय से जानना चाहता कि जिस मजा या गिरफ्तारी का हार्डि कोर्ट या सुप्रीम कोर्ट ने अवैध घोषित कर दिया है ऐसी गिरफ्तारी करने वाले, ऐसी मजा देने वाले अफसर या मैजिस्ट्रेट जो हैं उनको कौन भी सजा आप देने जा रहे हैं ?

बनारस में 9 अगस्त 1970 को मुझे गिरफ्तार किया । गैरकानूनी ढंग से मुझे रखा । सुप्रीम कोर्ट का जो मैंने फैसला सुनाया उसमें साफ लिखा है कि 9 अगस्त के आगे से इनकी गिरफ्तारी इल्लिगल है । लेकिन उम सिटी मैजिस्ट्रेट को सजा देने के बजाय उसकी पदोन्नति कर के राय बरेली में डिस्ट्रिक्ट मैजिस्ट्रेट उसे बना दिया जो 1971 के चुनाव में प्रधान मंत्री के क्षेत्र में एलेक्शन का रिटर्निंग आफिसर बना । यह कोई तरीका है ? मनमाने ढंग से मैजिस्ट्रेट और पुलिस के लोग

आचरण कर रहे हैं । मैं मंत्री महोदय से चाहता हूँ कि जिनके बारे में सुप्रीम कोर्ट और हार्डि कोर्ट ने कहा है कि अवैध है क्या ऐसे लोगों को डिमोट करने और सजा देने का कोई प्रावधान आप रखेंगे ?

SHRI RAM NIWAS MIRDHA. Well, Sir, this protection which is available to high officers and which is covered under this Clause is necessary so that they may be able to discharge their official duties fearlessly

There is a section which has been held by the Supreme Court to be rational and constitutional. If there are excesses committed, they may be punished administratively. Unless this protection is available, it would be very difficult to carry on some of the aspects of governmental activities. This is an old section which has stood the test of judiciary so long. I think we should not change it.

| श्री मधु लिखवे मिनिस्टर साहब ने हमारी बातों का कोई जबाब ही नहीं दिया । (गवर्नर) प्रोमोशन देत जायें आप इल्लिगल काम करने वालों को ?

MR CHAIRMAN: There is an amendment to Clause 197 by Shri Ram Niwas Mirdha. I am putting it. The question is

"Page 68, line 6, for "shall" substitute "shall take" (38)

The motion was adopted.

MR CHAIRMAN There is an amendment No 139 to this Clause by Shri Dinesh Joarder. I am putting it separately to vote

SHRI DINESH JOARDER: Sir, I would like to press my amendment for a division

MR. CHAIRMAN: The question is.

"Page 67, lines 42 to 44.—

Omit "or a public servant not removable from his office save by or with the sanction of the Government" (139).

The Lok Sabha divided:

Division No. 15]

[16.10 hrs.

AYES

Bade, Shri R V
 Bhagirath Bhanwar, Shri
 Bhattacharyya Shri Dinan
 Bhattacharyya, Shri S P.
 Chandra Shekhar Singh, Shri.
 Chatterjee, Shri Somnath.
 Deb, Shri Dasaratha
 Goswami, Shrimati Bibha Ghosh
 Halder, Shri Krishna Chandra
 Jharkhande Rai, Shri
 Joarder, Shri Dinesh
 Limaye Shri Madhu
 Madhukar, Shri K M.
 Modak, Shri Bijoy
 Pandey, Shri Sarjoo
 Sen, Dr Ranen
 Sharma, Shri R. R
 Shastri, Shri Ramavatar

NOES

Ahirwar, Shri Nathu Ram
 Ambesh, Shri
 Appalanaidu, Shri
 Banamali Babu, Shri
 Barupal, Shri Panna Lal

Bassappa, Shri K.
 Basumatari, Shri D.
 Bist, Shri Narendra Singh
 Brij Raj Singh-Kotah, Shri
 Chakleshwar Singh, Shri
 Chandrika Prasad, Shri
 Chawla, Shri Amar Nath
 Darbara Singh, Shri
 Daschowdhury, Shri B. K.
 Gomango, Shri Giridhar
 Gotkhinde, Shri Annasaheb
 Hansda, Shri Subodh
 Hari Kishore Singh, Shri
 Hari Singh, Shri
 Hashim, Shri M. M
 Jha, Shri Chiranjib
 Joshi, Shri Popatlal M.
 Kadam, Shri J G
 Kader Shri S. A.
 Kailas, Dr
 Kapur, Shri Sat Pal
 Kavde Shri B R.
 Kedar Nath Singh, Shri
 Kotaki Shri Laladhar
 Krishnappa, Shri M. V.
 Kureel, Shri B. N.
 Kushok Bakula, Shri
 Lakkappa, Shri K
 Lakshminarayanan, Shri M. R.
 Lutfal Haque, Shri
 Malhotra, Shri Inder J.
 Maurya, Shri B P.
 Mirdha, Shri Nathu Ram
 Mishra, Shri G S
 Misra, Shri S N

Mohan Swarup, Shri

Mohapatra, Shri Shyam Sunder

Mohsin, Shri F. H.

Naik, Shri B. V.

Negi, Shri Pratap Singh.

Painuli, Shri Paripoornanand

Pandey, Shri Krishna Chandra

Pandit, Shri S. T.

Packai Haokip, Shri

Patil, Shri T. A.

Pradhani, Shri K.

Raghu Ramaiah, Shri K.

Ram Sewak, Ch.

Ram Surat Prasad, Shri

Ram Swarup, Shri

Rana, Shri M. B.

Rao, Shrimati B. Radhabai A.

Rao, Shri Jagannath

Rao, Shri K. Narayana

Rao, Shri M. S. Sanjeevi

Rao, Shri Nageswara

Rao, Shri Pattabhi Rama

Reddy, Shri K. Ramakrishna

Reddy, Shri P. Ganga

Reddy, Shri P. Narasimha

Roy, Shri Bishwanath

Samanta, Shri S. C.

Sarkar, Shri Sakti Kumar

Sathe, Shri Vasant

Shambhu Nath, Shri

Shankaranand, Shri B.

Sharma, Shri A. P.

Shetty, Shri K. K.

Shukla, Shri B. R.

Sinha, Shri R. K.

Sohan Lal, Shri T.

Stephen, Shri C. M.

Sudarsanam, Shri M.

Suryanarayana, Shri K.

Tewari, Shri Shankar

Tula Ram, Shri

Tulsiram, Shri V.

Unnikrishnan, Shri K. P.

Venkatasubbaiah, Shri P.

Verma, Shri Sukhdeo Prasad

Yadav, Shri Karan Singh

MR. CHAIRMAN: The result* of the division is:

Ayes: 18, Noes: 86

The motion was negatived.

MR. CHAIRMAN : I shall now put amendments 241 to 243 to vote.

Amendments Nos. 241 to 243 were put and negatived.

MR. CHAIRMAN : The question is :

"That clause 197, as amended, stand part of the Bill".

The motion was adopted.

*The following Members also recorded their votes for NOES: Shri Karthikeyan and Shri T. S. S. S. S.

1995-10-15-16

[Mr. Chairman]

Clause 197, as amended, was added to the Bill.

Clauses 198 to 201 were added to the Bill.

Clause 202—(Postponement of issue of process)

SHRI RAM NIWAS MIRDHA : I move :

Page 71, line 7, for "offence" substitute "offence of" (39)

SHRI DINEN JOARDER: I move:

Page 71, lines 12 and 13,—

for "for the purpose of deciding whether or not there is sufficient ground for proceeding"

substitute "for the purpose of ascertaining the truth or falsity of the complaint" (161)

Here I want to change the wording as above. The magistrate sometimes may postpone the issue of process for deciding whether there is any truth behind the complaint before him. The object of this amendment is that the magistrate shall have the discretionary power only for the purpose of ascertaining the truth or falsity of the complaint. But as the clause is worded in this part, a wide power is given to him "for the purpose of deciding whether there is sufficient ground for proceeding". Even if there is truth behind the complaint, the magistrate may think that there is no necessity of proceeding. So I want to change the wording as indicated here. This is a simple amendment.

SHRI RAM NIWAS MIRDHA : This was in the old Code. The Law Commission went into it and said that the old phraseology should be changed. They recommended this and we have put it in.

MR. CHAIRMAN: The question is:

"Page 71, line 7, for "offence" substitute—
of". (39)

The motion was adopted.

MR. CHAIRMAN : I shall now put amendment No. 161 to vote.

Amendment No. 161 was put and negatived.

MR. CHAIRMAN : The question is :

"That Clause 202, as amended, stand part of the Bill".

The motion was adopted

Clauses 202, as amended, was added to the Bill.

Clauses 203 to 206 were added to the Bill.

Clause 207—(Supply to the accused of copy of police report and other documents).

SHRI DINESH JOARDER: I move my amendments No. 162 and 163.

"Page 72, lines 47 to 49.—

Omit "excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub-section(5) of section 173." (162).

"Page 73,—

Omit lines 6 to 14.(163)

This corresponds to section 173. Mr. Mirdha said that in clause 207 the ambiguity of clause 173 had been clarified. Here we see that the accused persons are entitled to some of the important documents and papers on which the prosecution is going to rely. Although Mr. Mirdha said that the Magistrate would examine thoroughly the report of the police officer whether there was any need

for withholding some paper or not, my point is that there should be no provision at all that any paper or any document should be withheld from the accused persons. Here the proviso says:

"Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused:

Provided further that if the Magistrate is satisfied that any document referred to in clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court."

My request is that each and every paper and document on which the prosecution relies should be shown to the accused and copies of such documents should be given to the accused persons irrespective of any secrecy or any other restriction.

SHRI RAM NIWAS MIRDHA: While we discussed clause 173, I made some observations relating to this matter. This type of discretion with the Magistrate is necessary and I am sure he will exercise it in a proper way. If the policeman wants to withhold some documents, he will not even send it, therefore, there is no question of relevant documents being withheld, but there can be something of a delicate nature or of confidential nature. In such cases the Magistrate also may feel that they should not be divulged to the accused, and such things might be kept back. As regards voluminous documents, in some cases like embezzlement, a large number of account books are produced and the relevant portions will be half a page from the whole book.

There could be other cases also where voluminous documents are involved; that is why this proviso is also necessary.

MR. CHAIRMAN: I shall now put amendments 162 and 163 to the vote of the House.

Amendments Nos. 162 and 163 were put and negatived.

MR. CHAIRMAN: The question is:

"That clause 207 stand part of the Bill".

The motion was adopted.

Clause 207 was added to the Bill.

Clause 208—(Supply of copies of statements and documents to accused in complaint case triable by Court of Sessions)

Amendment made

Page 73, in the marginal heading, for "complaint case" substitute "other cases" (40) (Shri Ram Niwas Mirdha)

SHRI DINESH JOARDER: I beg to move :

"Page 73, omit lines 25 to 28". (164)

I want that the same arguments I advanced in clause 207 should be applied to this clause also.

MR. CHAIRMAN: I shall now put amendment No. 164 to the House

Amendment No. 164 was put and negatived.

MR. CHAIRMAN: The question is:

"That clause 208, as amended, stand part of the Bill"

[Mr. Chairman]

The motion was adopted.

Clause 208 as amended, was added to the Bill.

Clause 220—(Commitment of case to Court of Session when offence is triable exclusively by it.)

SHRI DINESH JOARDER : I beg to move :

"Page 73, line 32 add at the end "within a period of sixty days from the date of taking cognizance of the case" (221)

Page 73, omit lines 34 to 36. (222)

Here the procedure has been laid down as to how the committal procedure should be followed and the case sent to the sessions court. But within which period of time the proceedings should be completed and the case sent to the sessions court has not been mentioned. I want that unnecessarily the committal proceedings should not be delayed because the accused persons will have to go and come back to the court and they will be harassed. I want to put a time limit of 60 days and I have said that within period of 60 days from the date of cognizance of the case by the magistrate, the committal proceedings should be completed and the case sent to the sessions court so that the accused may not be harassed for an indefinite period of time.

Sub-clause (b) says:

"subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of the trial".

Here you contradict the other provision of the Code.

You have stated that in any circumstances the accused person shall not be detained beyond a period of 60 days. You have accepted that amendment. But here, in Clause 209 (b), you say:

"subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of the trial;"

That means, if the trial takes 3 to 4 or 6 months or even 1 or 2 years, he shall be remanded to custody till then. I want that this should be removed. The time limit of 60 days of sending commitment proceedings to the sessions court be fixed.

श्री रम निवास निरुद्धा : यह एक बहुत अच्छा प्रावधान है जिस में कमिटमेंट प्रोसीडिन्ग खत्म की गई है, इससे वास्तव में राहत मिलेगी लेकिन मैं मंत्री महोदय से आग्रह करना — भविष्य दि केस टू दि सेलन्स कोर्ट— यह लिख दे नहीं तो फिर भी परे-मानिया रहेगा क्योंकि इन्टेन्स यह है कि 6 महीने, 8 महीने केस चला करते थे वह खत्म हो जायेगा ।

SHRI RAM NIWAS MIRDHA: Shri Dinesh Joarder's amendment arises out of misunderstanding which has been cleared by Shri R. R. Sharma. Now, there are no committal proceedings. This Magistrate will only take the bail or collect the papers. Therefore, this amendment cannot be accepted.

MR. CHAIRMAN: Now, I put Amendment Nos. 221 and 222 to the vote of the House.

Amendments Nos. 221 and 222 were put and negatived.

MR. CHAIRMAN : The question is :

"That Clause 209 stand part of the Bill."

The motion was adopted.

Clause 209 was added to the Bill.

Clause 220 — (Power of Magistrate to send inquiry or trial)

Amendment made:

Page 74,—

for the existing marginal heading, substitute—

"Procedure to be followed when there is a complaint case and police investigation in respect of the same offence." (41) (Shri Ram Niwas Mirdha)

MR. CHAIRMAN : The question is :

"That Clause 210, as amended, stand part of the Bill"

The motion was adopted.

Clause 210, as amended, was added to the Bill

Clause 211—(Contents of charge)

SHRI MADHU LIMAYE : I beg to move :

Page 74,—

for line 33, substitute—

"(6) The charge shall be written in the regional language or in Hindi or in the language which the accused understands" (259)

सभापति महोदय, क्लार्क यह है

"The charge shall be written in the language of the court"

मैं इस को साफ करना चाहता हूँ इसलिए मैं ने यह संशोधन दिया है :

"The charge shall be written in the regional language or in Hindi or in the language which the accused understands."

इस को मान लेने में कोई दिक्कत नहीं होनी चाहिये। चार्ज अगर उन की ऐसी भाषा में नहीं मिलेया जिसको वे समझते हैं—मैं इस सम्बन्ध में कम्भी चौड़ी बहुत में नहीं जाना

चाहता कि वास्टादूशन ने भाषा के बारे में प्रोटेशन दिया है—आप उन के ऊपर अभियोग में लगायेगे, केस की चलायेगे, तो ऐसा भाषा में चार्ज दजिए जो वह समझ ले। क्या मर्ज़ा महोदय इस को भा नहीं मानेंगे ?

सभापति महोदय आप पहले से कंठे मानकर चलते हैं कि नहीं मानेंगे।

श्री मधु लिमये मैं इस बिल के बारे में कहना चाहता हूँ कि उन्होंने हमारे कई सुझावों को माना है इसलिए मैं उन से अपील करना चाहता हूँ कि इसको मानें।

SHRI RAM NIWAS MIRDHA: The language of the court has to prevail everywhere. Therefore, the amendment of Shri Limaye cannot be accepted.

MR. CHAIRMAN: I now put Amendment No. 259 to the vote of the House.

Amendment No. 259 was negatived.

MR. CHAIRMAN: The question is:

"That Clause 211 stand part of the Bill".

The motion was adopted.

Clause 211 was added to the Bill.

Clauses 212 to 219 were added to the Bill.

Clause 220—(Trial for more than one offence)

Amendment made:

Page 79, line 13,—

omit "Illustrations to sub-section (4)". (42)

Page 79,—

after line 17, insert—

"Illustration to sub-section (4)". (43)

(Shri Ram Niwas Mirdha)

MR. CHAIRMAN: The question is:

"That Clause 220, as amended, stand part of the Bill."

The motion was adopted.

Clause 220, as amended, was added to the Bill.

Clauses 221 to 227 were added to the Bill.

Clause 228—(Framing of charge)

Amendment Made:

Page 81, line 34,—

after "he may," insert—

"frame a charge against the accused and," (44)

Page 81, line 43,—

for "offence", substitute "offence charged". (45)

(Shri Ram Niwas Mirdha)

MR. CHAIRMAN: The question is.

"That Clause 228, as amended, stand part of the Bill"

The motion was adopted.

Clause 228 as amended, was added to the Bill.

Clause 229—(Plea of guilty)

Amendment Made:

Page 81, in the marginal heading,—

for "Plea of guilty", substitute—

"Conviction on plea of guilty" (46)

(Shri Ram Niwas Mirdha)

MR. CHAIRMAN: The question is:

"That Clause 229, as amended, stand part of the Bill."

The motion was adopted.

Clause 229, as amended, was added to the Bill.

Clauses 230 to 234 were added to the Bill.

Clause 235—(Judgment)

Amendment Made:

Page 82, in the marginal heading,—
for "Judgments" substitute—

"Judgment of acquittal or conviction". (47)

(Shri Ram Niwas Mirdha)

MR. CHAIRMAN: Now, the question is:

"That clause 235, as amended, stand part of the Bill."

The motion was adopted.

Clause 235, as amended, was added to the Bill.

Clauses 236 to 245 were added to the Bill.

Clause 246—(Procedure where accused is not discharged)

MR. CHAIRMAN. There is an amendment by Mr. Goswami. He is not here.

So, the question is:

"That clause 246 stand part of the Bill"

The motion was adopted.

Clause 246 was added to the Bill.

Clauses 247 to 253 were added to the Bill

Clause 254—(Procedure when not convicted)

SHRI R. R. SHARMA: I move:
Page 83,—

for lines 9 to 11, substitute—

"(3) The Magistrate may summon any witness on such application by the accused and order that the reasonable expenses of the witness incurred in attending the

Court for the purpose of the trial may be deposited by the State Government." (270)

श्री राज रतन शर्मा : मान्यवर न्याय गरीबों को मिलेगा यह आप ने एक्सेप्ट किया है और इस लिये सेशन्स ट्रायल तक आपने उन आदमियों को जो वकील नहीं कर सकते हैं उन को ऐमिक्स क्यूरी देने का वायदा है, ऐसा प्रोवीजन है। लेकिन यहाँ पर आप ने ऐसा प्रोवीजन कर दिया है कि जिस से न्याय मिलने की आशा नहीं है। आप ने क्लॉज 254 के सब-क्लॉज (3) में लिखा है .

"The Magistrate may, before summoning any witness on such application, require that the reasonable expenses of the witness incurred in attending for the purposes of the trial be deposited in Court."

अगर कोई गरीब आदमी है अगर वह अपने डिफेंस में किसी गवाह को तलब करना चाहता है तो उस का खर्चा जमा करना पड़ेगा। जिसका मतलब यह हुआ कि वह कमी तलब ही नहीं कर सकता है क्योंकि मान लीजिये डॉक्टर को तलब करना पड़ता है तो मैंकई २० जमा करने पड़ने हैं। इसी तरह से इस्पेक्टर को तलब करने के लिये पचासों २० जमा करना पड़ता है। इस लिए आप इस की जगह पर यह कहें .

"The Magistrate may summon any witness on such application by the accused and order that the reasonable expenses of the witness incurred in attending the Court for the purpose of the trial may be deposited by the State Government."

SHRI MADHURYA HALDER (Mathurapur): May I pointed out, Sir, that there is no quorum in the House?

MR. CHAIRMAN: Let the bell be rung....

Now there is quorum. The hon. Minister.

SHRI RAM NIWAS MIRDHA: The amendment, if accepted, will unpose heavy burden on the Exchequer, We have provided some assistance for legal aid and if the State Government feels more opportunity for legal aid should be provided, it is open to them to do so. I cannot accept the amendment.

MR. CHAIRMAN: I will now put Amendment No. 270 to the vote of the House

Amendment No. 270 was put and negatived.

MR. CHAIRMAN: Now the question is:

"That Clause 254 stand part of the Bill"

The motion was adopted.

Clause 254 was added to the Bill.

Clause 255 to 259 were added to the Bill.

Clause 260—(Power to try summarily)

SHRI DINESH JOARDER: I beg to move:

Page 89, line 24,—

after "offences" insert—

"provided the accused shall have no objection to be tried as such" (244)

Page 90, line 1,—

after "it summarily," insert—

"or the accused has raised any objection against such trial or has demanded not to be tried summarily." (245).

(Shri-Dinesh Joridar)

As a matter of principle there should be no summary trial of any offence against any accused person. In the summary trial we see that no charge sheet is given and no witnesses are examined. No copies of the documents are given and they are not given opportunity to go through the allegations and prepared defence. This is the position. I oppose the idea of summary trials. Senior lawyers and advocates have expressed their concern about it. Mr. Frank Anthony has spoken against the principle of summary trials. It is the consensus of the majority of practising lawyers throughout the country that no provision of summary trials should be there in the Criminal Procedure Code. I do not know under what considerations and grounds, under what circumstances, the hon. Minister has incorporated these principles of summary trial in the Bill. I request him to reply to this point. If there should be any provision for any trial, this amendment which I have given should be accepted. In Amendment No. 244 I have stated: "Provided the accused shall have no objection to be tried as such." You want that there should be a speedy disposal of the petty offences cases. The idea of the summary trial is this. If the accused person thinks that he is not being given an opportunity to prepare his defence in consultation with the papers on which the prosecution relies. He does not get the papers; he does not even get a copy of the charge-sheet framed. Even if a worker of a factory or an employee of an establishment is going to be retrenched or if any penal action is to be taken against him, a charge-sheet is framed against him and a copy of the same is given to the delinquent employee. But, in this case, that is going to be taken against an accused person on charges. The accused person is not being favoured with the charge-sheet. They are not even framed sometimes. Government has not given an opportunity to know on which he should prepare his

defence. So, the idea of the summary trial should go and if you want to retain that, then the following words should be added:

"provided that the accused has no objection also".

Sir, in my amendment Number 244, I have stated as follows:

"Provided the accused shall have no objection to be tried as such".

My amendment number 245 reads as follows:

"or the accused has raised any objection against such trial or has demanded not to be tried summarily".

I also want to add the following.

"if the magistrate thinks that he should be tried summarily and also at any stage of the summary trial the accused has raised any objection that he should not be tried summarily".

The process of summary trial should be stopped.

श्री लखू लाल (गाजीपुर) : जो संसोधन श्री जोरदार ने पेश किया है इसका मैं समर्थन करता हूँ। सरकार इस तरह का अधिकार देश में जो मुनाफाखोरी करती है और इस तरह के उत्पात करते हैं, उन के खिलाफ करने के लिए मांगती तो हमें कोई एतराफ नहीं था। आप तो जानती ही हैं कि मनुष्य का स्वायत्त अधिकार है। जैसे हमारी व्यवस्था है, उसमें इस तरह का अधिकार सरकार के हाथ में देना बहुत खतरनाक होगा। मनुष्य का पता नहीं लगाया जा सकेगा। गरीबों का जेल में डालने का मौका आप को मिल जाएगा और उन को सजाई देव करने का मौका भी नहीं मिलेगा। हमारी सरकार होती तो इन प्रकार मुनाफाखोरों को जेल में डालने के लिए इस

सरकार के अधिकार का इन्तैनाल करती। हम उन को धादमी नहीं समझते। कानून के सामने उन को बराबरी का अधिकार मिले यह भी हम नहीं चाहते। हमें मान्य है कि आप ऐसा नहीं करेंगे। इस वाक्य में मेरी प्रार्थना है कि आप इस मसौदा को स्वीकार कर लें। यह आप के और देश के हित में होगा।

श्री राम निवास मीरधा : न्याय सब को मिलना चाहिये, समान रूप से मिलना चाहिये, हम सिद्धान्त को सरकार भी मानती है और सभी इस को मानते हैं। ऐसी अवस्था में समरी ट्रायल के लिये कोई स्थान नहीं होना चाहिये। इस वाक्य जो श्री जोरदार ने मसौदा रखा है उसका हम समर्थन करते हैं और प्रार्थना करते हैं कि इसको स्वीकार कर लिया जाए और समरी ट्रायल को खत्म किया जाए।

SHRI RAM NIWAS MIRDHA: This was to speed up the procedure. And there is plenty of safeguard available to the accused. Only selected magistrates are given summary powers—only limited powers. The offences are specified. The sentence to be awarded is also limited. There are other safeguards also. Actually, there are proposals on hand suggesting that anti-social and other criminals should be tried summarily. A large number of suggestions have come from some hon members on this. And so, I feel that the summary trials are necessary and that the clause should be retained as it is.

MR. CHAIRMAN: I am putting amendment Nos 244 and 245 to the vote.

Amendment Nos. 244 and 245 were put and negatived.

MR. CHAIRMAN: The question is:

"That Clause 260 stand part of the Bill".

The motion was adopted.

Clause 260 was added to the Bill.

Clause 261—(Power to invest Magistrates invested with less powers)

Amendment made:

"Page 90, for the existing marginal heading,—

substitute "Summary trial by magistrate of the second class"
(48)

(*Shri Ram Niwas Mirdha*)

MR. CHAIRMAN: The question is:

"That Clause 261, as amended, stand part of the Bill."

The motion was adopted.

Clause 261, as amended was added to the Bill.

Clause 262—(Procedure for summons and warrant cases applicable).

Amendment Made:

Page 90, in the marginal heading omit 'for summons and warrant cases applicable'. (49).

Shri Ram Niwas Mirdha.

MR. CHAIRMAN: The question is:

"That clause 262, as amended, stand part of the Bill".

The motion was adopted.

Clause 262, as amended, was added to the Bill.

Clause 263 to 266 were added to the Bill.

New Clause 266A.

SHRI DINESH JOARDER: I beg to move:

Page 91, after line 3, insert—

"266A. (1) Any High Court may, whenever it thinks fit, direct—

- (a) that a person within the limits of its appellate criminal jurisdiction be brought up before the Court to be dealt with according to law;
- (b) that a person illegally or improperly detained in public or private custody within such limits be set at liberty;
- (c) that a prisoner detained in any jail situate within such limits be brought before the court to be there examined as witness in any matter pending or to be inquired into in such Court;
- (d) that a prisoner detained as aforesaid be brought before a Court-martial or any Commissioners for trial or to be examined touching any matter pending before such Court-martial or Commissioners respectively;
- (e) that a prisoner within such limits be removed from one custody to another for the purpose of trial; and
- (f) that the body of the defendant within such limits be brought in on the Sheriff's return of *cepi corpus* to a writ of attachment.

(2) The High Court may, from time to time, frame rules to regulate the procedure in cases under this section." (140).

While moving this amendment, I would like to say a few words. My hon. friend Shri Somnath Chatterjee will explain it in detail and say under what circumstances this should be again incorporated in the Bill.

Under section 491 of the existing Code, we find that:

"Any High Court may, whenever it thinks fit, direct—

(a) that a person within the limits of its appellate criminal jurisdiction be brought up before the Court to be dealt with according to law;

(b) that a person illegally or improperly detained in public or private custody within such limits be set at liberty...."

It also contains certain other provisions in the nature of *habeas corpus* and writ of *certiorari* and other such writs. So, the High Court had certain powers to ask the lower courts or the police officer of the Government to produce the accused persons or persons detained unlawfully or illegally and also order them to set that person at liberty. In the present Bill, those valuable provisions have been deleted. I do not know under what circumstances and under what grounds they have been omitted. These are very vital provisions. So, I request that the powers of the High Court in the nature of *habeas corpus* and writ of *certiorari* etc. should again be incorporated in this Bill. With this intention, I have moved my amendment seeking to introduce a new clause in the Bill, called clause 266A. I want to have a much more improved clause than what was there in the old Code. In view of this, I urge that this new clause should be adopted by the House, and the hon. Minister should accept this amendment.

SHRI SOMNATH CHATTERJEE: May I say a few words?...

MR. CHAIRMAN: He has spoken already.

SHRI DINESH JOARDER: I have not spoken about the implications of this in the context of the other relevant clauses. These also have to be explained properly. This is an important clause.

MR. CHAIRMAN: There are so many important clauses.

SHRI SOMNATH CHATTERJEE: This is a very important clause. I shall take only two or three minutes.

Section 491 of the existing Code contains provisions for issue of directions in the nature of a *habeas corpus* which the High Court is empowered to give.

It is no doubt true that articles 32 and 226 empower the Supreme Court and the High Courts respectively to issue writs of *habeas corpus*. But there are certain limitations in the constitutional provisions. The Supreme Court has construed the different provisions with regard to *habeas corpus*. In *Makhan Singh* case, which is the leading decision on this, reported in 1964, the Supreme Court majority judgment itself says

"There is no doubt under s. 491-(1)(b), a stranger can apply for the release of detenu improperly or illegally detained or the court itself can act *suo motu*".

This is a very valuable right. Mr. Justice Subba Rao, although in the minority, made this observation which is valid in all cases

"Whereas s. 491 of the Code assumes the existence of the rule of law and confers a power on the High Court to direct persons in illegal detention to be set at liberty, it is not bound by any technical procedures envisaged by the Constitution. If a person approaches a High Court alleging that he or some other person has been illegally detained, the Court calls upon the detaining authorities to sustain the validity of the action. The onus of proof lies on the custodian to establish that the person is detained under legal process".

So far as articles 32 and 226 are concerned, only the person who is detained can make the application. There are many practical difficulties in getting *wakalatnama* and getting a petition signed from the person actually in detention. Under 491, any member of

the family or a friend of the detenu can make an application. All these procedural restrictions are not there. Secondly, in appropriate cases, the High Court can on its own motion, without an application, also move in the matter in the case of a wrongful detention of a person other than under the preventive detention law and act under s. 491 for issuing a release order. That is now being taken away and the restrictive provisions as contained in the Constitution which have been construed by the Supreme Court to have a narrower limit than s. 491 are being retained. Why should s. 491 be deleted? No explanation has been given. What harm will be there if s. 491 is kept? I would request the hon. Minister to accept the amendment

The other point is that under s. 491, no court fee is payable, whereas the High Courts have provided that in cases of criminal jurisdiction in 226 matters court fees have to be paid; in the Supreme Court, also, court fees have to be paid. So this is a provision which was somewhat beneficial in the present code and it should not have been deleted.

श्री स्व. सिन्धु - अध्यक्ष महोदय, मैं बहुत जोरदार शब्दों में इन के संगोषण का समर्थन करता हूँ। मैं तो घाने जा कर कहूंगा कि रिट के अधिकार घाय हिस्ट्रिक्ट जजों को भी दीजिए। लेकिन इतना वह घाने जाने के लिए तैयार नहीं हैं तो जो मौजदा सुविधा है उस को तो छीने नहीं। और मेरे सुझाव पर क्या वह विचार करेंगे कि हिस्ट्रिक्ट जजों को रिट ईजू करने का अधिकार वह इस कानून के तहत है ?

SHRI RAM NIWAS MIRDHA: In the old Code there was a provision as suggested in the amendment but that was before the Constitution came into effect. The Law Commission considered this matter and came to the

conclusion that since ample provisions exist under the Constitution, this should not remain. It was as a result of this recommendation that we brought forward the amendment to delete it.

SHRI SOMNATH CHATTERJEE: I have indicated the nature of the distinction and read the Supreme Court judgment.

श्री सवर्ण सिंह: मैंने जो कहा उस का जवाब दे। जिला जजों को रिट ईस करने का अधिकार देने के सुझाव पर विचार करेंगे? ... (व्यवधान) ... वह जवाब दें।

समापति सहोदय: अब उन्होंने जो कहना था वह कह दिया।

The question is:

"Page 91, after line 3, insert--

"266A. (1) Any High Court may, whenever it thinks fit, direct:—

- (a) that a person within the limits of its appellate criminal jurisdiction be brought up before the Court to be dealt with according to law;
- (b) that a person illegally or improperly detained in public or private custody within such limits be set at liberty;
- (c) that a prisoner detained in any jail situate within such limits be brought before the Court to be there examined as witness in any matter pending or to be inquired into in such Court;
- (d) that a prisoner detained as aforesaid be brought before a Court-martial or any Commissioners for trial or to be examined touching any matter pending before such Court-martial or Commissioners respectively;
- (e) that a prisoner within such limits be removed from one custody to another for the purpose of trial; and
- (f) that the body of the defendant within such limits be brought in on the Sheriff's return of *capit corpus* to a writ of attachment.

(2) The High Court may, from time to time, frame rules to regulate the procedure in cases under this section". (140).

The Lok Sabha divided:

17.00 hrs.

Division No. 16]

[17.04 hrs.

AYES

Bade, Shri R. V.
Bhattacharyya, Shri Dinen
Bhattacharyya, Shri S. P.
Chatterjee, Shri Somnath
Deb, Shri Dasaratha
Goswami, Shrimati Bibha Ghosh
Joarder, Shri Dinesh
Limaye, Shri Madhu
Modak, Shri Bijoy
Pradhan, Shri Dhan Shah
Saha, Shri Gadadhar
Sen, Dr. Ranen
Sharma, Shri R. R.

NOES

Ahirwar, Shri Nathu Ram
Ambesh, Shri
Awdhesh Chandra Singh, Shri
Babunath Singh, Shri
Banamali Babu, Shri
Barman, Shri R. N.
Barupal, Shri Panna Lal
Chakleswar Singh, Shri
Chawla, Shri Amar Nath
Daschowdhury, Shri B. K.
Dixit, Shri G. C.
Ganesh, Shri K. R.
Ghosh, Shri P. K.
Gill, Shri Mohinder Singh
Hansda, Shri Subodh
Hari Singh, Shri
Jaggiwan Ram, Shri
Jeyalakshmi, Shrimati V.

Jha, Shri Chiranjib
 Jitendra Prasad, Shri
 Kadam, Shri J. G.
 Kallas, Dr.
 Kedar Nath Singh, Shri
 Kotoki, Shri Liladhar
 Kumbhak Bakula, Shri
 Laskar, Shri Nihar
 Mirdha, Shri Nathu Ram
 Mishra, Shri Bibhuti
 Mishra, Shri G. S.
 Misra, Shri S. N.
 Modi, Shri Shrikishan
 Mohan Swarup, Shri
 Mohsin, Shri F. H.
 Negi, Shri Pratap Singh
 Pahadia, Shri Jagannath
 Painuli, Shri Paripoornanand
 Pandey, Shri Krishna Chandra
 Panigrahi, Shri Chintamani
 Parashar, Prof. Narain Chand
 Patnaik, Shri J. B.
 Raghu Ramaiah, Shri K.
 Ram Surat Prasad, Shri
 Ram Swarup, Shri
 Ramji Ram, Shri
 Rana, Shri M. B.
 Rao, Shri Jagannath
 Rao, Shri K. Narayana
 Rao, Shri M. S. Sanjeevi
 Rao, Shri Nageswara
 Rao, Shri Pattabhi Rama
 Rathia, Shri Umed Singh
 Reddy, Shri K. Ramakrishna
 Reddy, Shri P. Ganga
 Richhariya, Dr. Govind Das
 Roy, Shri Bishwanath
 Samenta, Shri S. C.
 Shankar Prasad, Dr.
 Sarkar, Shri Bakti Kumar
 Sengupta, Shri P. M.
 Shalini, Shri Chandra

Shambhu Nath, Shri
 Shankaranand, Shri B.
 Sharma, Shri A. P.
 Sher Singh, Prof.
 Shukla, Shri B. R.
 Sinha, Shri R. K.
 Sohan Lal, Shri T.
 Stephen, Shri C. M.
 Sudarsanam, Shri M.
 Suryanarayana, Shri K.
 Tewari, Shri Shankar
 Tula Ram, Shri
 Tulsiram, Shri V.
 Venkatasubbanah, Shri P.
 Verma, Shri Ramsingh Bhai
 Verma, Shri Sukhdeo Prasad
 Yadav, Shri Karan Singh

MR. CHAIRMAN: The result* of the division is:

Ayes. 13, Noes. 77.

The motion was negatived.

17 hrs.

MR. CHAIRMAN: The question is:

"That Clauses 267 to 274 stand part of the Bill."

The motion was adopted.

Clauses 267 to 274 were added to the Bill.

Clause 275—(Record in warrant cases)

Amendment made:

Page 93, line 8, after "himself" insert "or by his dictation in open court" (125)

(Shri Shambhu Nath)

MR. CHAIRMAN: The question is:

"That clause 275, as amended, stand part of the Bill"

The motion was adopted.

Shri Teekeshwar Pandey also voted for NOES.

Clause 275 as amended, was added to the Bill.

Clause 276—(Record in trial before Court of Session)

Amendment made:

Page 93, line 22, after "himself" insert—

"or by his dictation in open court" (126)

(Shri Shambhu Nath)

MR. CHAIRMAN: The question is:

"That clause 276, as amended, stand part of the Bill"

The motion was adopted.

Clause 276, as amended, was added to the Bill.

Clauses 277 to 280 were added to the Bill.

Clause 281—(Record of examination of accused)

Amendment made:

Page 94, line 35, for "Magistrate" substitute—

"presiding Judge or Magistrate" (50)

(Shri Ram Niwas Mirdha)

MR. CHAIRMAN: The question is:

"That clause 281, as amended, stand part of the Bill"

The motion was adopted.

Clause 281, as amended, was added to the Bill.

Clauses 282 and 283 were added to the Bill.

Clause 284—(When attendance of witness may be dispensed with and commission issued)

Amendment made:

Page 95, line 20, after "Governor of a State" insert—

"or the Administrator of a Union territory" (51)

(Shri Ram Niwas Mirdha)

MR. CHAIRMAN: The question is:

"That clause 284, as amended, stand part of the Bill"

The motion was adopted.

Clause 284, as amended, was added to the Bill.

Clauses 285 to 293 were added to the Bill.

Clause 294—(Proof of documents)

Amendment made:

Page 98, for the marginal heading,— substitute "No formal proof of certain documents". (52)

(Shri Ram Niwas Mirdha)

MR. CHAIRMAN: The question is:

"That Clause 294, as amended, stand part of the Bill"

The motion was adopted.

Clause 294 as amended, was added to the Bill.

Clauses 295 and 296 were added to the Bill.

Clause 297—(Authorities before whom affidavits may be sworn).

Shri S. N. MISRA: I beg to move: Page 98,—

after line 38, insert—

"Provided that any Commissioner of Oaths as described under clause (b) of sub-section (1) of this section shall not verify any affidavits:

(a) under section 145 of the Code;

(b) under sub-section (3) of section 146 of the Code re-

lating to sufficiency or fitness of the sureties where amount of bail bonds exceeds Rupees five hundred;

Provided further that where a Notary verifies any affidavit under clause (c) of sub-section (1) of this section, stamp duty under section 42 of the Indian Stamp Act, 1899 shall be exempted." (8).

Here, I say, in respect of the Commission of Oaths, their powers should be limited. Some of the powers must be given to the Notary Public. The reason is that we have appointed Notary Public and in respect of the larger responsibility, they must go to the Notary Public. The ordinary affidavits must be done by the Commissioner of Oaths.

SHRI RAM NIWAS MIRDHA: This amendment will create a lot of difficulties. For example, under Section 145 of the Code, there is no need of an affidavit as it used to be before. It is not only redundant but it will create difficulties. I think, along with the Notary Public, the Oath Commissioner should also have the powers.

MR. CHAIRMAN: Now, I put Amendment No. 8 to the vote of the House.

Amendment No. 8 was put and negatived.

MR. CHAIRMAN: The question is:

"That Clause 297 stand part of the Bill"

The motion was adopted.

Clause 297 was added to the Bill.

Clauses 298 and 299 were added to the Bill.

Clause 300—(Person once convicted or acquitted not to be tried for same offence)

Amendment made:

Page 100, line 25,—

for "the" substitute "this". (53)

(Shri Ram Niwas Mirdha)

MR. CHAIRMAN: The question is:

"That Clause 300, as amended, stand part of the Bill"

The motion was adopted.

Clause 300, as amended, was added to the Bill.

Clauses 301 and 302 were added to the Bill.

Clauses 303—(Right of person against whom proceedings are instituted to be defended)

SHRI DINESH JOARDER: I beg to move:

Page 101, line 5,—

add at the end—

"and if he is not an assessee or a family member of an assessee of the Indian Income-tax or Agricultural Income-tax and has no means to defend himself as such, he shall be defended at the expense of the State by a competent pleader from amongst the panel to be prepared for this purpose by the High Court or the District Judges' Court, as the case may be in consultation with the respective pleaders' Bar." (234).

The Minister, I think, will say that a new idea, a new provision, has been incorporated to cater to the legal aid to be given to the poor accused persons. But it is in a very restrictive way. The scope is very limited. Already, in the existing Act, where the accused person may be sentenced to life imprisonment or may be awarded death sentence, there is a provision of Amicus Curiae. But, here, clause 303 says:

"Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code, may of right be defended by a pleader of his choice."

Really there is no question of legal aid. There, only the principle of right of defence has been enunciated.

In the next Clause, 304, there is a provision for legal aid.

"Where, in a trial before the Court of Sessions, the accused is not represented by a pleader and where it appears to the Court that the accused has not sufficient means...."

This is very limited. Only very few number of cases are transferred to the Courts of Session. Almost all other cases where the poor peasants and poor people are involved, those who have no means to defend themselves, those cases have not been provided here; it is to those cases that legal aid should be given. You mention only 'Court of Sessions'. That means, the other cases would be left outside the purview of legal aid. That should be the case.

Sub-clause (3) of Clause 304 says:

"The State Government may, by notification, direct that, as from such date as may be specified in the notification, the provisions of sub-sections (1) and (2) shall apply in relation to any class of trials before other Courts in the State as they apply in relation to trials before Courts of Session."

This depends on the sweet will of the State Government. There is no certainty; when and from what day, after 50 years or 100 years, the State Government will specify that; that is not very clear.

I want to move this amendment to Clause 303. At the end of:

"Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code, may of right be defended by a pleader of his choice.."

the following may be added:—

"and if he is not an assessee or a family member of an assessee of the Indian Income-tax or Agricultural Income-tax and has no means to defend himself as such, he shall be defended at the expense of the State by a competent pleader from amongst the panel to be prepared for this purpose by the High Court or the District Judges' Court, as the case may be, in consultation with the respective pleaders' Bar."

Here I have provided that in all criminal cases legal aid should be given to the accused persons who have no means to defend themselves. This is an important provision. I hope, the Minister will accept this.

SHRI RAM NIWAS MIRDHA :
I am in complete agreement with the sentiments expressed by Shri Dinesh Joshi....

SHRI DINESH BHATTACHARYA :
No point in saying what you have agreed.

SHRI MADHU LIMAYE : Only with the spirit.

SHRI RAM NIWAS MIRDHA: As I said earlier, we shall have to go slow in extending the ambit of legal aid. Here we have made a sufficient advance; we have made a provision enabling the State Governments, whenever they so choose and when circumstances permit to expand to other cases than Sessions Court cases. While agreeing that this should be done, I would like to point out that when it should be done and in what manner would have to be decided by the State Government.

MR CHAIRMAN : I shall now put Amendment No. 234 to the vote of the House.

Amendment No. 234 was put and negatived.

MR. CHAIRMAN : The question is :

"That Clause 303 stand part of the Bill".

The motion was adopted.

Clause 303 was added to the Bill

Clause 304—(Legal aid to accused at State expense in certain cases)

SHRI DINESH JOARDER : I beg to move :

Page 101, line 9,—

add at the end—

"in the manner as provided in section 303." (235)

SHRI MADHU LIMAYE : I move :

Page 101,—

for line s 10 to 13, substitute—

(2) The High Court may, in consultation with the State Government, prepare a panel of

pleaders for each district from among whom the accused may select a pleader for his defence under sub-section (1); and also make rules providing for—" (280)

SHRI R. R. SHARMA: I move:

Page 101, line 6,—

for "the Court of Sessions" substitute—

"any Courts". (271).

Page 101.—

omit lines 17 to 21. (272)

श्री मधु लिमये : सम्भाषित जी मेरी समझ में नहीं आया कि इन्होंने क्लॉज 303 क्यों रखा है जो अभी पाम किया है हम ने क्योंकि सशोधन की 22वीं धारा में यह अधि-कार है ही । अगर माननीय जोधारदार का सशोधन नहीं मानना था तो 303 क्लॉज डुप्लीकेशन है । और 491 किम बिना पर रटाया वह भी मेरी समझ में नहीं आ रहा है क्योंकि वह भी वास्टीटयूशनल राइट है । तो कुछ अनगिनिया नजर आ रही है ।

अतः 304 क्लॉज को देखिये । मैं इस बात का स्वागत करता हूँ कि क्योंकि इसी सदन में कुछ वर्ष पहले लोगल एड के बारे में मैंने दो विधेयक पेश किये थे पिछली लोक सभा में । इन्होंने मिद्दान्त को मान लिया है, लेकिन मिद्दान्त को माना है इन्होंने फिर यह भी कहा कि धीरे धीरे करेंगे । किन्तु किन केमेज में करेंगे यह अधिकार भी राज्य सरकारों को दिया गया है । उस में बड़े बकीलो के ऊपर निर्बंध लगाना पड़ेगा कि वह ऐसे केमेज को ले । लेकिन मेरी समझ में नहीं आता । इसकी परिभाषा देखिये :—

"Where, in a trial before the Court of Sessions, the accused is not represented by a pleader, and where

[श्री मधु लिमये]

it appear to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State."

आगे यह कहते हैं कि :

"The High Court may, with the previous approval of the State Government, make rules providing for—"

क्या यह उचित है कि हाई कोर्ट के ऊपर राज्य सरकारों का बीटो चले ? आप एकदम हाई कोर्ट को भी ग्लाम बनाना चाहते हैं राज्य सरकारों का ? इसलिए मैंने एक सीधी-सादा सशोधन दिया है जिस में मैं यह कहना चाहता हूँ :

"The High Court may, in consultation with the State Government, prepare a panel of pleaders for each District from among whom the accused may select a pleader for his defence under sub-section (1); and also make rules providing for—"

इस की बिना पर पैनल राज्य सरकारों द्वारा नहीं लगाया जायगा । हा मलाह लेनी चाहिये उस में कोई एनगज नहीं है । लेकिन कौन वकील हो पैनल में यह हाई कोर्ट के लोग तय करें । पैनल बनाने समय टेड-बॉकेट ऐक्ट में परावरन की आवश्यकता हो तो वह किया जा सकता है । लेकिन राज्य सरकारों को पैनल बनाने का अधिकार सौंपने के लिये मैं तैयार नहीं हूँ । जहां तक पैनल बनाने का मवाल है वह स्वयं उच्च न्यायालय राज्य सरकार की मलाह में करें । अब (बी) को देखिए :

"(b) the facilities to be allowed to such pleaders by the Courts."

इस पर मेरा एनगज नहीं है ।

"(c) the fees payable to such pleaders by the Government, and generally for carrying out the purpose of sub-section (1)

पर भी मैं आक्षेप नहीं कर रहा हूँ ।

"The State Government may, by notification, direct that, as from such date as may be specified in the notification, the provisions of sub-sections (1) and (2) shall apply in relation to any class of trials before other Courts in the State as they apply in relation to trials before Courts of Session."

यह सब ठीक है । लेकिन मेरा जो संशोधन है उसको मंत्री जी माने ताकि जो वकीलों का पैनल बनेगा उस में कोई कमचारी नहीं होगी और योग्य वकील ही पैनल में आयेगें !

17.24 hrs.

[MR. SPEAKER in the Chair]

आजकल बड़े बड़े वकील हैं, जैसे पाल-खीवाला जो फुडामेंटल राइट्स की बात करत है । तो एक सार्वजनिक मभा में मैंने कहा था कि आप राजा महाराजा लोगों के ही केमेज करेंगे या सभी में जैसे निर्धन के केमेज भी लेंगे ? तो जितने बड़े वकील हैं, बहुत पैसा कमाने हैं, और कई लोग इन्सिस्टेंट भी नहीं देते हैं ऐसे लोगों के लिए प्रतिनियुक्त होना चाहिए कि साल में दो चार केमेज ऐसे करें और उन केमेज की उन का मामूली फीस लेनी चाहिए ।

श्री राम रतन शर्मा अध्यक्ष महादय गरीबों को न्याय मिले इसके बारे में सब लोग ने कहा है और मंत्री जी ने आश्वासन दिया है, और मंत्री जी ने अभी बर्ट प्रावीजन पर जब डिस्कशन हुआ तो ला कमीशन का रेफरेंस देकर उन का नहीं माना । इस के बारे में ला कमीशन का क्या कहना है मैं अपने प्रेमियेट के सदस्य में उस को पढ़ना उचित समझता हूँ

"In making this recommendation we do not pause to consider the technical question whether a literal interpretation of the language of Articles 14 and 22(i) of the Constitution requires that the State

should arrange for counsel in particular classes of cases. The philosophy underlying the Constitution, reflected in the provisions for equal protection of laws and in the Chapter on Fundamental Rights, shows that the Constitution is imbued with respect for Human Rights. That philosophy is sufficient to furnish inspiration for a provision that will put an end to the invidious discrimination that otherwise arises between person to person because of poverty. Where a poor man has to defend himself without counsel there is lacking that equality which is demanded by the spirit of the Constitution.

Denial to the indigent of the benefit of counsel's examination of the record and marshalling of arguments on his behalf is nothing less than denial of justice. The indigent, where the record is unclear, or the errors are hidden, has only the right to meaningless ritual."

अ. ३

इस सदस्य ने मैं यह सन्तोष व्यक्त है
और कहा है कि कांटे काफ़ी मेहनत होता है
आर "any Courts" कर दे आर उस में
17 में 21 तक की लाइन खत्म कर दी जाए।

SHRI SOMNATH CHATTERJEE : We are happy that the Government has included this proposal in the Bill. First, I want to say that the High Court's power to frame rule should not be subject to the approval of the State. Can Under Secretary or Deputy Secretary be allowed to disapprove of the High Court's recommendations? This is not proper. This is not showing proper respect to the Court. This should not be there. Secondly, it should be incumbent that a panel should be prepared. Those guidelines which Mr. Limaye's amendment proposes should be given. We know how certain appointments are made, which are quite undesirable, and there are extraneous considerations which come into play. I can give any number of examples but I do not want to give names of persons. The High Court is best suited to decide

about the ability of the lawyers. Let them select a panel, let consultation made, if necessary, with the State Government but no overriding power should be given to State Government.

SHRI RAM NIWAS MIRDHA : There has been some misunderstanding. As per the provisions of the Bill there is no intention that the State Government should prepare the list or should have any say in the preparation of the list. It says only 'The mode of selection of pleaders for defence'. It is not list but only mode of selection, fees, expenses, facilities etc like library, chamber and such other things.

So, since it involves financial commitment of a quite considerable order, it has been stated that it should be done by the State Government. It is not the intention that the list should be prepared but only the mode of selection. A list would be available and all high courts can do it. Since financial commitment is involved, it is not necessary to accept this amendment.

MR SPEAKER : I am putting amendment No. 235 moved by Shri Joarder to the vote.

Amendment No. 235 was put and negatived.

MR SPEAKER : Are you pressing your amendment No. 260?

SHRI DINEN BHATTACHARYYA : Are you going to guillotine it?

We will never agree.

MR SPEAKER : We will never also agree in future.

SHRI DINEN BHATTACHARYYA : You cannot thrust it on us.

SHRI MADHU LIMAYE : I want a division on my amendment No. 260.

MR SPEAKER : The question is :

"Page 101.—

for lines 10 to 13, substitute—

"(2) The High Court may, in consultation with the State Government, prepare a panel of pleaders for

[Shri Madhu Limaye]

each district from among whom the accused may select a pleader for his defence under sub-section (1); and also make rules providing for—” (260)

The Lok Sabha is divided.

Division No. 17]

[17.35 hrs.

AYES

Bade, Shri R. V.

Bhagirath Bhanwar, Shri

Bhattacharyya, Shri Dinen

Bhattacharyya, Shri S. P.

Chatterjee, Shri Somnath

Deb, Shri Dasaratha

Goswami, Shrimati Bibha Ghosh

Joarder, Shri Dinesh

Limaya, Shri Madhu

Madhukar, Shri K. M.

Modak, Shri Bijoy

Pradhan, Shri Dhan Shah

Saha, Shri Gadadhar

Sen, Dr. Ranen

Shakya, Shri Maha Deepak Singh

Sharma, Shri R. R.

NOES

Ahirwar, Shri Nathu Ram

Awdhesh Chandra Singh, Shri

Babunath Singh, Shri

Banamali Babu, Shri

Raman, Shri R. N.

Barupal, Shri Panna Lal

Bisr, Shri Narendra Singh

Buta Singh, Shri

Chakleshwar Singh, Shri

Chavan, Shri Yeshwantrao

Chawla, Shri Amar Nath

Chhotey Lal, Shri

Chikkalingaiah, Shri K.

Darbara Singh, Shri

Daschowdhury, Shri B. K.

Engti, Shri Biren

Ganehs, Shri K. R.

Ghosh, Shri P. K.

Gomango, Shri Giridhar

Hansda, Shri Subodh

Hari Singh, Shri

Hashim, Shri M. M.

Jagjivan Ram, Shri

Jitendra Prasad, Shri

Kadam, Shri Dattajirao

Kadam, Shri J. G.

Kailas, Dr

Kotoki, Shri Liladhar

Kushok Bakula, Shri

Mahishi, Dr Sarojini

Malaviya, Shri K. D.

Mirdha, Shri Nathu Ram

Mishra, Shri G. S.

Misra, Shri S. N.

Modi, Shri Shrikishan

Mohapatra, Shri Shyam Sunder

Mohsin, Shri F. H.

Negi, Shri Pratap Singh

Oraon, Shri Tuna

Pahadia, Shri Jagannath

Painuli, Shri Paripoornanand

Pandey, Shri Krishna Chandra

Pandey, Shri Tarkeshwar

Panigrahi, Shri Chintamani

Parashar, Prof. Narain Chand

Patnaik, Shri J. B.

Pradhani, Shri K.

Raghu Ramaiah, Shri K.

Rani Swatup, Shri

Ramji Ram, Shri

Rao, Shri K. Narayana

Rao, Shri MS. Sanjeevi

Rao, Shri Nageswara

Rao, Shri Pattabhi Rama

Rathia, Shri Umed Singh

Reddy, Shri K. Ramakrishna

Richhariya, Dr. Govind Das

Roy, Shri Bishwanath

Rudra Pratap Singh, Shri

Samanta, Shri S. C.

Sarkar, Shri Sakti Kumar

Shailani, Shri Chandra

Shambhu Nath, Shri
 Shankaranand, Shri B.
 Sharma, Shri A. P.
 Sharma, Shri Nawal Kishore
 Shivnath Singh, Shri
 Shukla, Shri B. R.
 Sinha, Shri Nawal Kishore
 Sinha, Shri R. K.
 Sohan Lal, Shri T
 Stephen, Shri C. M.
 Sudarsanam, Shri M.
 Suryanarayana, Shri K
 Tewari, Shri Shankar
 Tula Ram, Shri
 Tulsiram, Shri V
 Verma, Shri Ramsingh Bhai
 Verma, Shri Sukhdeo Prasad
 Yadav, Shri Karan Singh

MR. SPEAKER. The result* of the division is :

Ayes : 16; Nos 80.

The motion was negatived.

MR. SPEAKER I shall now put amendments Nos 271 and 272 moved by Shri R. R. Sharma to vote

Amendments Nos. 271 and 272 were put and negatived.

MR. SPEAKER: The question is:

"That clause 304 stand part of the Bill."

The motion was adopted

Clause 304 was added to the Bill.

Clause 305 to 313 were added to the Bill.

Clause 314— (Written arguments)

SHRI RAM NIWAS MIRDHA: I beg to move:

Page 105, for the marginal heading,

substitute

'Oral arguments and memorandum of arguments'. (54).

SHRI DINESH JOARDER: I beg to move:

Page 105, omit lines 31 and 32. (185).

MR. SPEAKER: These amendments are now before the House.

SHRI DINESH JOARDER: The court has been given the power to interfere with the arguments to be made by the defence lawyer I want that the court should not have that power to interfere with the mode of arguments to be put forth by the defendants or the accused person or by the lawyers of the accused person. So, I want to omit sub-clause (4) of this clause

SHRI RAM NIWAS MIRDHA: I think the court should have the power to regulate If the oral arguments are not concise or relevant, then the court should have the power to regulate such arguments. Otherwise, it will go on for days and days.

MR. SPEAKER The question is:

Page 105 for the marginal heading substitute

'Oral arguments and memorandum of arguments'. (54)

The motion was adopted.

MR. SPEAKER I shall now put amendment No 185 to the vote of the House.

Amendment No 185 was put and negatived.

MR. SPEAKER: The question is:

"That clause 314. as amended, stand part of the Bill".

The motion was adopted.

Clause 314, as amended, was added to the Bill.

*Shri S. R. Damani also voted for NOES.

श्री शिव नाथ सिंह अध्यक्ष महोदय, दो चीजों को यह मिला रहे है। 315 में यह अधिकांश दिया गया है, प्रावधान किया गया है कि एक्यूज्ड भी आन ओथ स्टेटमेंट दे सकते हैं जो उसके खुद के खिलाफ है या उसके पक्ष में है। यह तो हम मान सकते हैं। लेकिन यदि को-एक्यूज्ड है तो इस में प्रावधान रखा गया है कि उसके स्टेटमेंट को भी डिफेंस के काम में लाया जा सकता है। हो सकता है कि दोनों के इंटरव्यू आपस में क्लेश करते हों। उस हालत में एक एक्यूज्ड के आन ओथ स्टेटमेंट को दूसरे के खिलाफ काम में लाया जा सकेगा। ऐसा नहीं होना चाहिए? 315 में जो प्रावधान है उसके मुताबिक दूसरे के खिलाफ भी उसको काम में लाया जा सकता है। मैं चाहता हूँ कि आप बताएं कि इसके बावजूद आपन सेफेगार्ड क्या रखा है? कहा आपने कहा है कि दूसरे एक्यूज्ड के खिलाफ काम में नहीं आ सकेगा। यह बड़ा जुरिस्टिक प्वाइंट है।

श्री राजू निवास मिश्रा मुझसे दत्त, एम्बेडमेंट नंदे तो सावत।

श्री शिव नाथ सिंह आपने कुछ ओर की भी हैन्ड ओवर किया है, इसका भी ताब मिनट के लिए हैन्ड ओवर कर दें।

इसको डेफर कर दीजिए। 76 को डेफर किया है, 57 का डेफर किया है, तो पांच मिनट के लिए इसको भी रोक दीजिए और स्टूडेंट्स वगैरह इसको कर दीजिए।

MR. SPEAKER. This is very rarely done

SHRI SHIV NATH SINGH: But it is very dangerous.

SHRI RAM NIWAS MIRDHA: It is not possible for me to accept an amendment. He has neither given an amendment nor given a concrete idea of on what basis he wants an amendment to be made. We cannot accept an amendment on the spur of the moment. Therefore we may proceed.

MR. SPEAKER. The question is:

'That clauses 315 to 319 stand part of the Bill'

The motion was adopted

Clauses 315 to 319 were added to the Bill

Clause 320—(Compounding of offences)

SHRI B. R. SHUKLA. I move

Page 110,—after line 39, insert—

"(10) In case of death or disappearance of the persons mentioned in column 3 of the Tables appended to sub-sections (1) and (2) of section 320, the legal representative of such a person shall be eligible to compound the offences mentioned hereinafter with or without the consent of the Court as the case may be according to sub-sections (1) and (2) —

under sections 323, 334, 341, 342, 352, 355, 358, 426, 427, 447, 448, 491, in sub-section (1) and 324, 325, 335, 337, 338, 343, 344, 346, 357, 379, 381, 403, 406, 407, 408, 411, 414, 418, 420, 421, 422, 423, 424, 428, 429, 430, 451, 481, 483, 486, in sub-section (2)". (191)

Under s. 320, certain offences have been made compoundable with or without the permission of the court by the victims of the offences. But there is a serious lacuna that in case the victim dies, there is no provision for the compounding of such offences. My amendment is to fill in this gap

and it states that in case of persons who are competent to compound the offences die afterwards, their legal representatives should be eligible to compound the offence. This is its substance I would request the hon Minister to accept it in the form in which I have submitted it or in some other form which he may think proper.

SHRI RAM NIWAS MIRDHA: I myself have got an amendment which I want to move.

MR SPEAKER: There is no such amendment before me—I have just received a copy. He may move it. It may be numbered 191A.

SHRI RAM NIWAS MIRDHA: I move:

Page 110, in line 22, for "(4)", substitute

"(4)(a)".

Page 110, after line 25, insert—

"(b) When the person who would otherwise be competent to compound an offence under this section is dead, the legal representative, as defined in the Code of Civil Procedure 1908, of such person may, with the consent of the Court, compound such offence". (191A)

SHRI B R SHUKLA: In view of this amendment, mine has become superfluous. I seek leave of the House to withdraw my amendment No 191.

Amendment No 191 was, by leave, withdrawn.

MR SPEAKER: The question is:

"Page 110, in line 22, for "(4)" substitute.

"(4) (a)".

Page 110, after line 25, insert.

"(b) When the person who would otherwise be competent to compound an offence under this section is

dead, the legal representative, as defined in the Code of Civil Procedure, 1908, of such person may, with the consent of the Court, compound such offence". (191A).

The motion was adopted.

MR. SPEAKER: The question is:

"That clause 320, as amended, stand part of the Bill".

The motion was adopted.

Clause 320, as amended, was added to the Bill.

Clause 321--(Withdrawal from prosecution).

Amendment made:

Page 111, lines 16—18,—

for the words "its permission" occurring at two places, substitute "consent" (55)

(Shri Ram Niwas Mirdha)

MR SPEAKER The question is:

"That clause 321, as amended, stand part of the Bill"

The motion was adopted.

Clause 321, as amended, was added to the Bill.

Clauses 322 to 340 were added to the Bill

Clause 341—(Appeal).

SHRI DINESH JOARDER. I move amendments 165 and 166

Page 117, lines 12 and 13,—

for "Court other than a High Court", substitute—

"Civil or Criminal Court including a High Court". (165).

Page 117,—

omit lines 22 and 23 (166).

The right of revision has been taken away in this clause. If the court refuses to consider the application made on behalf of any

[Shri Dinesh Joarder]

person, an appeal could be made to a higher court. But sub-clause (2) of this section now says that an order under this section, and subject to any such order, an order under section 340 shall be final and shall not be subject to revision. Indirectly the right of revision, the right of appeal has been taken away by sub-clause. I want that this clause should be omitted so that the right of revision is available to the accused person, as well as the complainant, because even to the opposite side there should be a right to ask for a revision in a higher court.

SHRI RAM NIWAS MIRDHA: It is not acceptable because it will lead to more and more appeals. It was actually to cut short this, that this provision was introduced.

MR SPEAKER: I shall put amendments 165 and 166 to the vote of the House.

Amendments Nos 165 and 166 were put and negatived.

MR SPEAKER: The question is:

"That clause 341 stand part of the Bill."

The motion was adopted.

Clause 341 was added to the Bill.

Clauses 342 and 343 were added to the Bill.

Clause 344 — (Summary procedure for trial for giving false evidence).

SHRI RAM NIWAS MIRDHA: I move amendment No 56.

Page 117, line 36,—

for "in the course of", substitute—

"at the time of delivery of". (56)

श्री मधु लिमये मैं इस पर कुछ कहना चाहता हूँ। इस में फाल्स एविडेस को, झूठ सबूत को, ले कर सभरी दायल करने का अधिकार मैजिस्ट्रेटों को और जजों को दिया गया है। लेकिन फाल्स एविडेस की कोई परिभाषा नहीं की गई है। बहुत सत्यवादी आदमी भी जब उस की जिरह होती है, क्रॉस एग्जामिनेशन होता है, तो अपना बयान बदलता है। मैं अपनी बात बताता हूँ। मैं एक उदाहरण देता हूँ। ये पत्रकार बन्धु हमारी कार्रवाई को सुनते हैं लेकिन सभी अखबारों में देखें हर एक का बर्तान अलग अलग होता है जबकि मूल्य एक ही है। मैंने बम्बई में भाषण दिया—टाइम्स आफ इंडिया में आया—

'Madhu Limaye optimistic about the future of democracy'

इंडियन एक्सप्रेस में आया—

"Prospect of democracy black says Madhu Limaye".

बात एक ही है। इसलिए कुछ इसमें ऐसा करें—बड़ी बार ऐसा होता है कि मैजिस्ट्रेट या जज पूर्वाग्रह में प्रेरित हो कर गुस्से में सजा दे जाते हैं। मैं किसी का नाम नहीं लेता। लेकिन मंत्री जी का ध्यान मैंने एक सुप्रीम कोर्ट के राजनारायण वाले जजमेंट के बारे में खींचा है जहाँ केवल गुस्से में जजमेंट दिया गया था। जब सुप्रीम कोर्ट के जज भी गुस्से में इस तरह के जजमेंट दे सकते हैं तो मैजिस्ट्रेट या जिला जजों की क्या बात है? इसलिए मैं इसका विरोध करता हूँ। मैं चाहता हूँ कि जो झठा बयान दे उसको सजा मिले। लेकिन

क्रास एग्जामिनेशन को एक्सक्यूड करे।
सब इस बात को मानेग कि सत्यावादी भी
क्रास एग्जामिनेशन में अपना बयान बदल
लेता है मिश्र जी जानते है।

श्री एस० एम० बनर्जी : मिश्र जी
आज तक झूठ नहीं बोले।

अध्यक्ष महोदय : मिश्र जी तो क्या
कोई वकील कभी झूठ नहीं बोलता।

श्री शम्भू लिवडे : मैंने मुना है मैं
उस समय ससद में नहीं था, कि पहले
क्रास एग्जामिनेशन इस में से हटा दिया गया
था लेकिन अब पता नहीं इस में कैसे आ
गया है। मैं चाहता हूँ कि सबी जी इस
पर विचार करे और इसका एक्सक्यूड
करे तो अच्छा है।

SHRI RAM NIWAS MIRDHA. At
one stage it was thought that two
contradictory statements by them-
selves would be regarded as some sort
of perjury actionable under this
section. But that was given up and
this new formulation is before us
which says:—

"knowingly or wilfully given
false evidence or had fabricated
false evidence with the intention
that such evidence should be used
in such proceeding"

These are well-known expressions
and the offence of perjury and what
constitutes perjury is well establish-
ed.

MR SPEAKER: The question is

Page 117, line 36, for "in the course
of" substitute—

"at the time of delivery of" (56).

The motion was adopted.

MR SPEAKER: The question is:

"That clause 344, as amended, stand
part of the Bill"

The motion was adopted

Clause 344, as amended, was added
to the Bill

Clauses 345 to 350 were added to
the Bill.

Clause 351—(Appeals from con-
viction in contempt cases)

Amendment made:

Page 119, in the marginal heading,
for "in contempt cases".

substitute "under sections 344, 345, 349
and 350". (57).

(Shri Ram Niwas Mirdha)

The motion was adopted

MR SPEAKER: The question is:

"That clause 351, as amended, stand
part of the Bill".

The motion was adopted.

Clause 351, as amended, was added
to the Bill

Clauses 352 to 359 were added to
the Bill

Clause 360—(Order to release on
probation of good conduct instead of
sentencing to imprisonment)

Amendment made:

Page 123, in the marginal heading.—
for "instead of sentencing to im-
prisonment"

substitute "or after admonition"
(58)

(Shri Ram Niwas Mirdha)

MR SPEAKER: The question is:

"That clause 360, as amended,
stand part of the Bill"

The motion was adopted.

[Mr. Speaker]

Clause 360, as amended, was added to the Bill.

Clauses 361 and 362 were added to the Bill.

Clause 363—(Copy of judgment to be given to the accused and other :əpnu ɪnʊpɪəsuɪy suosɪəd

Page 126, line 7, for "give" substitute "give it" (59)

(Shri Ram Niwas Mirdha)

MR. SPEAKER: The question is:

"That Clause 363, as amended, stand part of the Bill"

The motion was adopted.

Clause 363, as amended, was added to the Bill

Clauses 364 to 372 were added to the Bill.

Clause 373—(Appeal from order requiring security or refusal to accept or rejecting surety for keeping peace for good behaviour)

SHRI DINESH JOARDER: I beg to move:

Page 127,—

after line 25, insert—

"(1) who is aggrieved by any direction made under sub-section (6) of section 116 permitting the continuance, after the expiry of the period specified therein, of any inquiry against him under Chapter VIII, or" (141)

Here, I want to add one new provision, that is, an appellate provision. Many appellate provisions have been provided in Chapter XXIX. In case any proceedings or any time is extended under sub-clause (6) of Clause 116, in regard to proceedings where a person will be asked to execute a bond, how long the proceedings will continue? It has been

stated in sub-clause (6) of Clause 116:

"The inquiry under this section shall be completed within a period of six months from the date of its commencement, and if such inquiry is not so completed, the proceedings under this Chapter shall, on the expiry of the said period, stand terminated unless, for special reasons to be recorded in writing, the Magistrate otherwise directs;"

So, if the Magistrate otherwise directs, if the Magistrate extends the time of inquiry proceedings, under sub-clause (6) of Clause 116, in that case, the delinquent persons or the opposite party must have a right to appeal to the higher courts. I want that this should be added

"Any person who is aggrieved by any direction made under sub-section (6) of section 116 permitting the continuance, after the expiry of the period specified therein, of any inquiry against him under Chapter VIII,"

SHRI RAM NIWAS MIRDHA: The orders about which the hon. Member mentioned are of an emergent nature and only revision would be appropriate in such cases. That is why they have not provided appeals against those orders. We do not feel that this amendment should be accepted because the revisionary powers are already there.

18 hrs.

MR. SPEAKER: I put Amendment No 141 to the vote of the House.

Amendment No 141 was put and negatived.

MR. SPEAKER: The question is:

"That Clause 373 stand part of the Bill"

The motion was adopted.

Clause 373 was added to the Bill

Clause 374— (Appeals from convictions)

SHRI RAM NIWAS MIRDHA: I beg to move:

Page 127, line 38,—

after the word "Judge" insert—

"or on a trial held by any other court in which a sentence of imprisonment for more than seven years has been passed;" (283)

Page 127, line 39,—

for the words "Any person",
substitute—

"Save as otherwise provided in sub-section (2), any person". (284)

SHRI S M BANERJEE: These amendments have not been circulated

SHRI DINESH JOARDER: We should get a copy of those amendments.

MR. SPEAKER: The practice is that when Government amendments come, these are allowed to be moved.

SHRI SOMNATH CHATTERJEE: The other day I gave notice of amendments three hours before the matter was taken up, but I was not allowed. In the present case, Sir, copies should have been given to us

MR. SPEAKER: This is the practice. We allow Government amendments even at the last moment

SHRI DINEN BHATTACHARYYA: We are now tired. Let us study these in a better atmosphere on Monday.

MR. SPEAKER: There was a special sitting today for this purpose

SHRI DINEN BHATTACHARYYA: Also, Sir, when there have been amendments, he cannot move the motion that the Bill as amended be passed the same day. There is a specific rule to that effect:

"Where a Bill has undergone amendments, the motion that the Bill as amended be passed shall not be moved on the same day on which the consideration of the Bill is concluded, unless the Speaker allows the motion to be made."

You have not yet allowed that, Sir, so far as I know.

Also, it is with a minority vote that they are trying to pass this Bill. Last time when there was division, there were only 90. You must consider this also. We have tried to accommodate them.

श्री मधु लियवे : आपने देखा होगा बहुत सारे क्लॉजिंग आज पास हो गए और किसी ने भी कोई अटग टालने का प्रयास नहीं किया लेकिन कुछ श्री क्लॉजिंग बचे हैं, बेल के जमानत के बारे में और रिफाइटरी जल के बारे में—यह 15 मान के लडको का भी जेल भेजेंगे, यह जानते हैं लडको का क्या हालत जेल में होती है—इसलिए मैं अज करता चाहता था कि जब कोई ऐसा विधेयक आता है जिसमें व्यक्ति स्वतन्त्रता का मामला है तो चेयर ने इस सदन में कई बार ऐसा कहा है कि उसमें गिलोटिन बगैर नहीं होनी चाहिए, सदस्यों का पूरा मौका मिलना चाहिए। इसलिए आप ऐसा इम्प्रेसन देना मैं मन फलाये कि व्यक्ति स्वतन्त्रता वाले बिल को गिलोटिन और पाशवी बहुमत के बल पर पास किया गया। इसलिए आज इसको आप 10-15 मिनट चलाये, जितना पास हो जायेगा, हो जायेगा और बाकी अगले सोमवार को ले लिया जायेगा—इसमें कोई आपत्ति नहीं है।

अध्यक्ष महोदय : गिलोटिन बगैरह की बात तो नहीं है लेकिन उस दिन आपने जो बक्स विजनेम एडवाइजरी कमेटी में मांगा उसमें मिनिस्टर ने एग्री किया, उसके बाद आपने कहा नहीं प्रीर समय चाहिए। उसके बाद आज छुट्टी का दिन भी ले लिया। मुझे यकीन दिलाया गया था कि आज यह बिल जबतक पास नहीं होगा हाउस बैठा रहेगा। अगर आप इस तरह से बाने करेंगे कि अन्दर कुछ बात है और बाहर कुछ बात है तो मुझे ही आगे विश्वास नहीं आयेगा कि जो बात कहन है उसको मानेंगे। इसलिये अनसर्टेन बात नहीं कहनी चाहिए।

श्री एस० एम० बनर्जी : दो चार की बाने मुन लीजिए।

अध्यक्ष महोदय : अपने आन्वर्बेजन् को थोड़ा मोच समझ कर किया करें।

You should make your observations in a polite manner, in a good language. After all, you are addressing the Chair.

अभी देखते हैं जितना हां मके अच्छा है। आप बताये सोमवार को एक घंटे में हो जायेगा ?

श्री बबु लिये : अब बहुत ज्यादा अमेडमेन्ट नहीं है हो जायेगा एक डेन घंटे में।

THE MINISTER OF PARLIAMENTARY AFFAIRS (SHRI K. RAGHU-RAMIAH): If it is not passed today, it may not be passed by the Rajya Sabha.

MR. SPEAKER: The Minister of Parliamentary Affairs says that, if it is not passed today, it cannot be considered by the Rajya Sabha because they are also adjourning.

यह जब पिछले से पिछले सेशन में आया तब टाइम नहीं मिला, पिछले सेशन में आया तब टाइम नहीं मिला—यह अच्छी बात नहीं है (अवधान) थर्ड को तो ले रहे हैं जो मोजन आप नो काफिडेन्स आप लाये हैं। यह मोजन दिया गया है।

SHRI S M BANIRJEE: You are taking that as 'admitted'

It may be admitted or may not be admitted.

अध्यक्ष महोदय : अगर नहीं एमिट होगा तो इसका कोरन उस दिन ले लेंगे। अभी तो इसको चलाने हैं। इसमें कुछ इनकी मर्जी का लेना होता है।

When I admit something on your request at the end of the day, you all welcome it and go right into 9.00; 9 or 10.00 p.m. But when there is an official work, you get tired at 6 O'Clock work, you get tired at charyya, you never get tired.

SHRI DINEN BHATTACHARYA: We are very tired To every Clause we have been paying our attention.

अध्यक्ष महोदय : उस दिन तो मर्जी जो आप को काई अमेडमेन्ट नहीं देना है। जो देना है वह आज आ जाना चाहिए।

Is it decided by the House that on Monday immediately after the Question Hour we take up this Bill and finish it? Please do not later on have any reservations. We should finish all the stages of the Bill that day.

SHRI K. RAGHURAMIAH: There is no Question Hour on that day.

MR. SPEAKER: Then, right from the beginning we will take this up and finish it in two hours.

Agreed?

SEVERAL HON. MEMBERS: Yes.

MR. SPEAKER: So, this is the decision of the House.

No objections, no reservations.

Thank you very much.

Now, I will put the amendments of Mr. Mirdha to the vote of the House.

The question is:

Page 127, line 38,—

after the word "Judge" insert—

"or on a trial held by any other court in which a sentence of imprisonment for more than seven years has been passed", (283).

The motion was adopted.

MR. SPEAKER: Now, the question is.

Page 127, line 39—

for the words "any person",
substitute—

"Save as otherwise provided in sub-section (2), any person" (284)

The motion was adopted.

MR. SPEAKER: Now, the question is:

"That clause 374, as amended, stand part of the Bill."

The motion was adopted.

Clause 374, as amended, was added to the Bill.

Clause 375 was added to the Bill.

Clause 376.—(No appeal in Petty case)

Amendment made:

Page 128, line 32,—

for "a payment", Substitute
"payment". (60).

(Shri Ram Niwas Mirdha)

MR. SPEAKER: Now the question is:

"That clause 376, as amended, stand part of the Bill."

The motion was adopted.

Clause 376, as amended, was added to the Bill.

MR. SPEAKER: I am not going to accept any amendment on Monday. What all amendments you want to give, you should send them on to-day itself.

SHRI RAM NIWAS MIRDHA: All right, Sir. (Interruptions).

MR. SPEAKER: Every amendment you have given to-day will be considered, given even right upto now

The question is:

"That clause 377 stand part of of the Bill".

The motion was adopted.

Clause 377 was added to the Bill.

Clause 378.—(Appeal in case of acquittal)

Amendment made:

Page 129, line 12, —

for "to appeal", substitute—

"to present an appeal". (61)

Page 129, line 20—

for "to appeal", substitute—

"to present an appeal". (62)

Page 129, line 28, —

for "leave", substitute "special leave". (63)

Page 129, line 34, —

for "leave", substitute "special leave". (64)

[Mr. Speaker]

Page 129, line 35,—

After a sub-section (1)" add—"or under sub-section (2)", (65). tion (2)". (65).

(Shri Ram Niwas Mirdha)

MR. SPEAKER: The question is:

"That clause 378, as amended, stand part of the Bill."

The motion was adopted.

Clause 378, as amended, was added to the Bill.

Clause 379—(Appeal against conviction by High Court reversing an order of acquittal by persons sentenced to imprisonment for life)

Amendment made :

Page 120, for the existing marginal heading,—

substitute "Appeal against conviction by High Court in certain cases," (66)

(Shri Ram Niwas Mirdha)

MR. SPEAKER: Now the question is:

"That clause 379 as amended, stand part of the Bill."

The motion was adopted

Clause 379—as amended, was also added to the Bill ,

Clause 380 was added to the Bill

Clause 381—(Appeal to Court of Session how heard)

Amendment made.

Page 130, line 11,—

for "or", substitute "or a" (67)

(Shri Ram Niwas Mirdha)

MR. SPEAKER :The question is : stand part of the Bill.

"That Clause 381, as amended

The motion was adopted.

Clause 381, as amended, was added to the Bill.

Clauses 382 and 383 were added to the Bill.

Clause 384—Summary dismissal of appeal)

MR. SPEAKER: There are some amendments.

Amendments made:

Page 130, line 35,—

for "inconvenience" substitute—

"such inconvenience as would be" (68)

Page 130, line 43,—

after "Session or" insert "of the" (69)

(Shri Ram Niwas Mirdha)

MR. SPEAKER : The question is:

"That clause 394 as amended, stand part of the Bill."

The motion was adopted.

Clause 384 as amended, was added to the Bill.

Clause 385—(Procedure for hearing appeals not dismissed summarily)

Amendment made:

Page 131, line 20—

for "Court", substitute "that Court". (70)

(Shri Ram Niwas Mirdha)

MR. SPEAKER: The question is:

"That Clause 385, as amended, stand part of the Bill".

The motion was adopted.

Clause 385, as amended, was added to the Bill.

Clauses 386 to 393 were added to the Bill.

Clause 394—(Abatement of appeals)

Amendment made:

Page 134, line 16,—

for the word "or" substitute "or of" (71)

(Shri Ram Niwas Mirdha)

MR. SPEAKER: The question is:

"That Clause 394, as amended, stand part of the Bill".

The motion was adopted.

Clause 394, as amended, was added to the Bill.

Clause 395—(Reference to High Court)

Amendment made:

Page 134, line 35,—

for "State concerned", substitute "a State" (72)

(Shri Ram Niwas Mirdha)

MR. SPEAKER: The question is:

"That Clause 395, as amended, stand part of the Bill".

The motion was adopted.

Clause 395, as amended, was added to the Bill.

Clause 396 was added to the Bill.

SHRI DINESH JOARDER: Let us stop here, Sir

MR. SPEAKER: Let us still go further. Let us cross Clause 400.

SHRI S M BANERJEE: Let us proceed upto Clause 420.

MR. SPEAKER: I welcome this. We will stop at Clause 420.

SHRI S. M. BANERJEE: After that controversy will start; immediately after that, there is controversy.

MR. SPEAKER: There is controversy really after 420....

Now, we go to Clause 397.

Clause 397—(Power to call for records of inferior courts)

SHRI RAM NIWAS MIRDHA: Sir, I beg to move:

Page 135, for the existing marginal heading,—

substitute "Calling for records to exercise powers of revision". (73)

SHRI DINESH JOARDER: I beg to move:

Page 135,—

(i) omit lines 20 to 23.

(ii) line 23, for "(3)" substitute "(2)" (142)

Page 135,—

omit lines 20 to 25. (186)

Clause 397(2) says that the powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

Here the power is to call for records of the inferior court by the superior court. So, some sort of appellate provisions should be there in clause 397. There should be a right of appeal in clause 397(2) in introductory matters. Clause 397(3) says that:

'If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.'

There is another clause also for the second appeal. I would request the Minister that this appellate right of the applicant or the prosecution should not be taken away. So, I say that this sub-clauses (2) and (3) should be omitted from this clause.

MR. SPEAKER: On amendment No. 73 moved by you, Shri Mirdha, are you going to say something on this?

SHRI RAM NIWAS MIRDHA: Sir, Clause 397, sub-clause (2) takes away the powers to go in revision against inter-locutory orders. It was stated before the Select Committee that a large number of appeals against interlocutory orders are filed with the result that the appeals got delayed considerably. Some of the more notorious cases concern big business persons. So, this new provision was also welcomed by most of the witnesses as well as the Select Committee. The people who can go on revision on some pretext or the other are those that have money to go to the High Courts. So, this was deliberately provided. This was a well-thought out measure so we do not want to delete it.

MR. SPEAKER: The question is:

"Page 135, for the existing marginal heading,—

substitute "Calling for records to exercise powers of revision". (73)

The motion was adopted.

MR. SPEAKER: I am putting amendment Nos. 142 and 186 moved by Shri Joarder to the vote.

Amendments Nos. 142 and 186 were put and negatived.

MR. SPEAKER: The question is:

"That Clause 397, as amended, stand part of the Bill".

The motion was adopted.

Clause 397, as amended, was added to the Bill.

MR. SPEAKER: I come to Clause 398. There is no amendment.

The question is:

"That clause 398 stand part of the Bill."

The motion was adopted.

Clause 398 was added to the Bill.

Clause 399.—(Session Judges power of revision).

SHRI DINESH JOARDER: I beg to move:

Page 136, lines 12 to 14,—

for "in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court".

substitute—

"may further be challenged at the High Court by the aggrieved party in the manner as provided in this Code for revision" (143)

Sir, I have stated that lines 12 to 14 should be omitted and in their place, the following wordings should be substituted :

"may further be challenged at the High Court by the aggrieved party in the manner as provided in this Code for revision"

Here also, in clause 399, the right of going in for revision has been taken away. Actually the delay is caused by the police officers in preparing the charge-sheets and in the lower courts. I say that in the appellate courts, in some interlocutory matters or other matters, the party goes in for revision. There is a similar delay. It is not a very acceptable argument for taking away the right of appeal. It should not be taken away. I would therefore request that these lines should be omitted.

SHRI RAM NIWAS MIRDHA: Shri Joarder's amendment seems to be to omit the provision whereby when revision is filed before the sessions court, the revision to the high court is prohibited. This provision is quite necessary when two authorities have the same powers, and if that is omitted, then there will be multiplicity of revisions and there will be a lot of confusion. So, the present provision should stand.

MR. SPEAKER: I shall now put amendment No. 143 to vote.

Amendment No. 143 was put and negatived.

MR. SPEAKER : The question is :

"That clause 399 stand part of the Bill."

The motion was adopted

Clause 399 was added to the Bill.

Clause 400 was added to the Bill.

Clause 401—(High Courts' powers of revision)

Amendment made:

Page 136, line 34. omit the word 'thereto' (74)

(Shri Ram Niwas Mirdha)

MR. SPEAKER : The question is :

"That clause 401, as amended, stand part of the Bill".

The motion was adopted

Clause 401, as amended, was added to the Bill.

Clause 402 to 404 were added to the Bill.

Clause 405—(High Courts' order to be certified to lower Court or Magistrate)

Amendment made:

Page 137, line 29 and also in the marginal heading omit 'or Magistrate' (75)

(Shri Ram Niwas Mirdha)

MR. SPEAKER : The question is :

"That clause 405, as amended, stand part of the Bill".

The motion was adopted.

Clause 405, as amended was added to the Bill.

Clause 406, was added to the Bill.

1819 LS—7.

Clause 407—(Power of High Court to transfer cases and appeals)

SHRI B. R. SUKLA: I beg to move:

Page 130

after line 38, insert—

"(10) If in any inquiry under Chapter VIII, Part D of Chapter X or in any trial, any party interested intimates to the Court at any stage before the defence closes its case that he intends to make an application under section 408, the Court shall upon his executing, if so required, a bond without sureties of an amount not exceeding two thousand rupees that he will make such application within a reasonable time to be fixed by the Court, adjourn, subject to the payment by the party seeking such adjournment such costs as may be fixed by the Court, the case for such a period as will afford sufficient time for the application to be made and an order to be obtained thereon:

Provided that nothing herein contained shall require the Court to adjourn the case upon a second or subsequent intimation from the same party if the application is intended to be made to the same Court by which the party has been given an opportunity of making such application or where an adjournment under this sub-section has already been obtained by one of several accused, upon a subsequent intimation by any other accused

(11) Notwithstanding anything hereinbefore contained the Sessions Judge shall not be required to adjourn a trial under sub-section (10) if he is of opinion that the person notifying his intension of making an application under this section had a reasonable opportunity of making such application has failed without sufficient cause to take advantage of it.

Explanation.—Nothing contained in sub-section (10) or sub-section (11) shall restrict the power of a court under section 309.

[Mr Speaker]

(12) If before the argument, if any for the admission of an appeal begins, or, in the case of an appeal admitted, before the argument for the appellant begins may partly interested intimates to the Court that he intends to make an application under this section, the Court shall, upon his executing, if so required a bond without sureties of an amount not exceeding two hundred rupees, that he will make such application within a reasonable time to be fixed by the Court postpone subject to the payment by the party seeking such postponement such costs as may be fixed by the Court the appeal for such a period as will afford sufficient time for the application to be made and an order to be obtained thereon (192)

The deletion of these provision from the unanimous report of the Joint Committee would go down as the most retrograde chapter in the history of the administration of criminal justice. Even during the time of the Britishers, a provision was made that in case an accused felt any apprehension that fair justice would not be done to his case then on his intimation to the court concerned and on his execution of a personal bond he could obtain an automatic order of stay. This provision is sought to be taken away by the Government which stands for the liberty of the people and the cause of the people. The Government and the party to which we belong have always been advocating the cause of freedom in this country. Therefore I feel very strongly on this matter and I press my amendment, and I request the hon Minister to accept my amendment and not be guided by the Department.

SHRI RAM NIWAS MIRDHA
There is no question of my being guided by the Department. The Law Commission made a very strong

recommendation on this. Not only the Law Commission in this report but even the previous commissions and committees which had been appointed very strongly felt that this provision which provided for automatic stay on an application for transfer had been abused in most instances and it led to dilatory proceeding and since it was the opinion of the Law Commission and also the earlier committees appointed on the subject therefore, we have brought forward this provision.

MR SPEAKER I shall now put amendment No 192 moved by Shri B R Shukla to the vote of the House.

Amendment No 192 was put and negatived.

MR SPEAKER The question is

That clause 407 stand part of the Bill?

The motion was adopted.

Clause 407 was added to the Bill.

Clause 408—(Power of Sessions

Judge to transfer cases and appeals)
Amendment made

Page 140 lines 3-4,—

for "direct (a) substitute order" (76)

Page 140—

omit lines 6 and 7 (77)

(Shri Ram Niwas Mirdha)

MR SPEAKER The question is

"That clause 408, as amended stand part of the Bill."

The motion was adopted.

Clause 408, as amended, was added to the Bill.

Clause 409—(Withdrawal of Sessions Judges)

Amendments made:

Page 140, line 17,—

for "case" substitute "case or appeal". (78)

Page 140,—

for line 18, substitute—

"case or appeal which he has made over to, any Assistant Sessions Judge or Chief Judicial Magistrate subordinate". (79)

(Shri Ram Niwas Mirdha)

MR. SPEAKER: The question is:

"That clause 409, as amended, stand part of the Bill".

The motion was adopted.

Clause 409, as amended, was added to the Bill.

Clauses 410 to 427 were added to the Bill.

Clause 428—(Period of detention undergone by the accused to be set-off against the sentence of imprisonment)

Amendments made :

Page 145, line 19, for "accused," substitute: "accused person". (80)

Page 145, line 20, after the words "by him" add :

"during the investigation, inquiry or trial of the same case and". (81)

(Shri Ram Niwas Mirdha)

MR. SPEAKER: The question is:

"That clause 428, as amended, stand part of the Bill".

The motion was adopted.

Clause 428, as amended, was added to the Bill.

Clause 429 to 434 were added to the Bill.

Clause 435—(State Government to act with the concurrence of Central Government in certain cases)

Amendment made.

Page 147, in the marginal heading, for "with the concurrence of" substitute "after consultation with" (82)

(Shri Ram Niwas Mirdha)

MR. SPEAKER: The question is:

"That clause 435, as amended, stand part of the Bill".

The motion was adopted

Clause 435, as amended, was added to the Bill.

SHRI DINESH JOARDER: Copies of the new amendments which have been placed by the Treasury Bench or some other members may be distributed to us on Monday.

SHRI MADHU LIMAYE: Also amendment No. 76 which has been agreed to.

MR. SPEAKER: It is already circulated:

SHRI MADHU LIMAYE: Not yet. It has been agreed to by the Minister.

MR. SPEAKER: Yes Do we adjourn now?

SOME HON. MEMBERS: Yes.

MR. SPEAKER: The House stands adjourned till 11 A.M. on Monday, 3rd September, 1973.

18.33 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Monday, September 3, 1973/Bhadra 12, 1895 (Saka).