[Shri Pranab Mukherjee]

3 P.M.

But one point I would like to tell him and it is this that merely having legislative competence or more powers may not avoid a situation like this. I have mentioned in my introductory remarks myself that we have legislative competence to enact laws according to our own designs and desires, but sometimes we may have to revalidate them because of the situation created by either court judgments or by the different interpretations and classification of certain things. As mentioned by me in my introductory remarks, in the case of the Central Sales Tax Act, we had to do that. That is why the problem of revalidation perhaps cannot be sorted out merely by enhancing the powers or by delegating more powers to the authorities. But that is a separate issue and, obviously, it has its merits and demerits and I hope that the Home Minister who is in charge of it has taken note of it.

Sir, 1 do agree with you and with the other honourable Members of this House on this point that the last point which was mentioned by Mr. Bhard-waj may be very important and all of us may be interested in it. But I do feel that we should not provide pension to the Members of Parliament out of the proceeds of the Delhi Sales Tax. But, Sir, I can pass on the' suggestion of Mr. Bhardwaj to the Minister of Parliamentary Affairs. Thank you, Sir.

MR. DEPUTY-CHAIRMAN: Th= question is:

"That the Bill to amend retrospectively the law relating to sales tax as in force in the Union territory of Delhi during a past period and to validate taxes on the sale or purchase of certain goods during such period, as passed by the Lok Sabha, be taken into consideration.

The *motion was adopted.*

MR. DEPUTY-CHAIRMAN: We shall now take up the clause-by-clause consideration of the Bill.

Clauses 2 *and* 3 *were added to the Bill. Clause* 1, *the Enacting Formula and the Title ivere added to the Bill.*

SHRI PRANAB MUKHERJEE; Sir, I beg to move:

"That the Bill be returned."

The *question was put and the motion was adopted.*

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT), BILL, 1976.

THE DEPUTY MINISTER IN THE MINISTRY OF HOME AFFAIRS (SHRI F. H. MOHSIN): Sir, I beg to move:

"That the Bill to amend the Cede of Criminal Procedure, 1873, be taken into consideration."

Sir, the provisions of the Bill are intended to remove the doubts and difficulties felt in the actual working of the new Code. As the honourable Members are aware, the new code which replaced the 75-year-old basic law of Criminal Procedure in our country was enacted with all care and attention and after considering the views of all the persons concerned. Honourable Members of both Houses evinced considerable interest and devoted their best attention to the various provisions of the Bill and I will only be reflecting the views of everyone if I say that we can be legitimately proud of the new Code which is one of the solid achievements of our Parliament. However, it cannot be denied that a new law of this complexity could not be made foolproof straightaway. The intention was, therefore, to watch its working for some time and to come up-with amendments found necessary to remove the

doubt$_s$ and difficulties actually felt. The present Bill seeks to do this

The Notes on Clauses appended to the Bill explain the reasons for making the various changes and I would only refer to a few of the important changes proposed in the Bill.

The provision made under section 13 and 18 of the new Code for appointment of Special Magistrate was intended t$_0$ remove from the regular courts the burden of a large volume of petty cases by having them disposed of by these Special Magistrates so that the regular courts may concentrate on more important cases. In practice, this arrangement, which was in vogue in some States under the old Code, ha$_s$ proved to be a blessing. However, the fullest benefit of these provisions could not be secured because of the restrictions in regard to the powers and local jurisdiction of these Special Magistrates as stipulated in these pro. visions. Thus, the restriction of the local jurisdiction of the Special Magistrates to a district precluded such Magistrates from being appointed *or Railway cases, etc. arising throughout the State. Occasions also arise for setting up special courts of judicial magistrates to try specific categories of cases like C.B.I, cases. Provisions have, there-lore, been made to define the local jurisdiction of these magistrates and courts to cover any area in a State. The power$_s$ to be exercised by Special Magistrates are those of a Second Class Magistrates. To enable them to dispose of certain cases under special laws requiring First Class Magistrates, it is proposed to remove this restriction. The services of experienced Executive Magistrates could also be utilised for disposal of these petty cases wherever necessary and provision has accordingly been made for this hut they will have only a limited jurisdiction to try cases punishable with imprisonment for not more than one year under certain chapters of the IPC and under special laws.

The new Code provided for the appointment of Assistant Public Prosecutors to conduct cases before Magistrate's courts. There was a doubt as to whether the administrative control and supervision over their work could, if the State Government so desires, be given to the I.G. of Police. The Code does not deal with such administrative matters but a view has been expressed that Assistant Public Prosecutors should be totally independent of the police. This view created practical difficulties In the efficient conduct of investigation and some State Governments wanted liberty to vest administrative jurisdiction in the I.G. of Police. The amendment proposed in clause 9 make$_s$ an enabling provision in this behalf.

Statements and concessions under section 164 of the Code can now be recorded only by a Judicial Magistrate. At times, such as in remote areas it may happen that no Judical Magistrate is near at hand Or a situation may arise when the Judicial Magistrate recording such statement or confessions also has to try the case. On this last point some courts have expressed the view that it will be an illegality. To remedy this difficulty, provision has been made that Special Judicial Magistrates with first class powers may also record such statements.

The new Code makes a provision in section 167 that if the investigation i$_s$ not completed within 60 days, the accused person if in custody shall be entitled to be released on bail. This is no doubt a salutary provision intended to check delays in investigation. However, in serious cases relating to offences punishable with death, imprisonment for life, or Imprisonment for not less than 10 years, it is often difficult to complete the investigation within 60 days and if the accused is released on ball as provided, serious damage may result. To remedy this, the amendment in clause 13 seeks to extend the period ' of 60 days to 120 days in those cases.

[Shri F. H. Mohsin]

It has also been provided in that clause that an Executive Magistrate on whom powers of a Judicial Magistrate have been conferred can also order the remand of a person produced before him, for a period of not more than 7 days. This provision is intended to provide for cases where the Judieial Magistrate is not readily available.

The Committee on Status of Women in India recommended that to remove difficulties faced by women in launching prosecution for bigamy, it should be provided that a complaint may be made on behalf of the wife by any relative of hers and that such complaint can be made at the place where she resides, instead of her being compelled to go to the place where she lived with the husband. This recommendation has been accepted and the amendments in clauses 15 and 17 are intended to give effect to this.

A salutary provision has been mode in the new Code for giving the accused person an opportunity for having his say in the matter of punishment. This should not, however, be allowed to protract the trial uneees-sarily and so the position has been clarified by the amendment in clause 25.

It sometimes happens that committal proceedings, though routine, take more than one day in some cases by reason of the large number of accused persons, etc. Under the existing Code there is no provision authorising the committing Magistrate to remand the accused person during the committal proceedings. This defect is being removed in clause 20.

The new Code provided for what is known as anticipatory bail. Unfortunately, experience shows that this provision has been availed of mostly by rich people, white-collar criminals and others. It has, therefore, been proposed in clause 31 that this provision should be deleted. I have toucted on some of the important changes proposed in the Bill. Most other changes are mainly of a cJarifi-catory nature.

I am sure hon. Members will • agree tnat after these amendments are approved, the new Code will become-more perfect and secure its intended purpose of ensuring efficient and speedy justice.

The question *was proposed.*

SHRI BIR CHANDRA DEB BURMAN (Tripura); Mr. Deputy Chairman, Sir, the Code of Criminal Procedure oi*1973 is a product of great deliberation of the Joint Committee which took into consideration the suggestions and evidence from all parts of the country for a number of years to make it perfect. I think it is surprising that within a short time, we are going to amend it abruptly. I use the word 'abruptly'. This Cede of Criminal Procedure has been introduced once in this House and then withdrawn. Then it was introduced on 24th of August and it is going to be considered and passed abruptly. In my opinion, it should not be done. It should be sent to a Joint Committee for consideration as the parent Bill had been fiven to the Joint Committee for consideration.

Sir, the Code of Criminal Procedure is based on one consideration, that is, complete separation of judiciary from the executive. We are committed that judiciary should be separated from the executive. A whole panel of judicial magistrates has been brought into existence for this purpose. Their control has been placed under the High Court. As lawyers, we experienced that there had been some sort of vacuum because this panel of judicial magistrates had to be appointed and there was a deadlock for some time. In spite of the fact that the judicial magistrates have been appointed and they are functioning, we are going to go back to the old position, that is, those magistrates who have got con-nections with executive matters and with matters of law and order should

not be entrusted with judicial functions. That is the main criterion over which the Code of Criminal Procedure is based. The magistrates having connection with police, with executive matters and with law and order should not be placed for the disposal of judicial matters. There should be separate magistrates for judicial matters who will be under the control of the High Court. Now, clauses 13 and 18 are the main relevant clauses. Previously, the power had been given to the High Court to appoint judicial magistrates from amongst executive magistrates. Clause 13 reads:

> "The High Court may, if requested by the Central or State Government so to do, confer upon any person who holds or has held any post under the Government, all or any of the powers conferred or conferrable by or under this Code on a Judicial Magistrate of the second class, in respect to particular cases or to particular classes of cases or to cases generally, in any district, not being a metropolitan area:
>
> Provided that no such power shall be conferred on a person unless he possesses such qualification or experience in relation to local affairs as the High Court may by rules, specify."

I could understand if the power has been given to the High Court to confer the powers of a first class Magistrate instead of a second class Magistrate, on an Executive Magistrate having such and such qualifications. If we confer the powers of a first class Magistrate, then I could understand that there is some sort of logic behind it because, after all. it is the High Court which will give this power to an Executive Magistrate provided he has the requisite qualifications to discharge the functions he is entrusted with. But the present amendment is that the State Government, '"Notwithstanding anything contained in sub-section (1) or elsew here in this Code ..."—the power of the High Court has been snatched away and given to the State Government—". . . may confer on any gazetted officer functioning as an Executive Magistrate." The qualification bar is no longer there. Even if he has got no legal experience, he can be appointed as a Judicial Magistrate, and ne is conferred with "powers of a Judicial Magistrate of the first class, or of the second class to try such offences Or classes of offences as are punishable ..." So, the power that has been given to the High Court under the Criminal Procedure Code of 1973 was that they can confer upon an Executive Magistrate the power of a Judicial Magistrate of second class provided that Magistrate has got sufficient qualifications, in the opinion of the High Court, to discharge the functions of a Judicial Magistrate. But under the present amending Bill, the power has. been snatched awa3r from the High Court and it is given to the State Government. And the State Government can appoint any gazetted officer, whatever his qualification may be. He may be completely devoid of judicial knowledge, but he can be appointed as a Special Magistrate having the powers of a Judicial Magistrate of a first class. So, I think, by introducing '•his clause. we are going backwards. The Criminal Procedure Code of 1973 has separated the judiciary from the executive. But, by this clause, we are conferring the Executive Magistrate with the power of a first class Judicial Magistrate, provided he is a gazetted officer and nothing else. It is not required whether he has got sufficient legal knowledge to function as a Magistrate or not. So, I think, this amendment is of far reaching consequences. Opinion should be gathered as to whether we are going backward, far behind the old position. In the old Criminal Procedure Code, there is no distinction between an Executive Magistrate and a Judicial Magistrate. The Executive Magistrate can do all functions. So, we are going towards the old position which is a retrograde step. Even the Criminal Procedure Code of 1973 has gone forward by separating the judiciary from

[Shri Bir Chandra Deb Burman]

1he executive. Same is the position with section 18. The High Court has been given the power, under section 18 of the Criminal Procedure Code of 1973, to appoint any Metropolitan Magistrate provided he has got sufficient qualifications and experience in relation to legal affairs. But, in the present amending Bill, we are giving the power to the State Government again. "Notwithstanding anything contained in sub-section (1) or elsewhere in this Code, the State Government may confer on any gazetted officer functioning as an Executive Magistrate, the powers of a Metropolitan Magistrate to <ry such offences...." etc. So, und*>r this Bill we are[1] giving power to the State Governments to appoint as a metropolitan magistrate any ga?etted officer. The previous power of the High Court has been snatched away and has been given to the State Governments. Under the earlier Code it had been provided that such a person must have certain qualifications and that he must have sufficient knowledge and experience to perform judicial "functions. But under the present amendment such a thing is not at all necessary. So, I consider that this is a retrograde step. Opinion should be elicited whether it is at all necessary to change the Code which is the product of a great deal of deliberation of the Joint Select Committee as well as of suggestions received from all over the country and whether it is a forward step or whether we are going backward.

Then, Sir, I want to say a few words about clause 10 of the Bill. This relates to section 107 of the Code. Clause 107 of the Code runs ". . . when the executive magistrate receives information that any person is likely to commit breach of peace. ..he may require such person to show cause why he should not be...for keeping peace… for such period not exceeding one year as the magistrate may think fit". Now we are adding the words "with or without sureties". I know that the Joint Select Comrrittee after a great deal of deliberations had omitted the words "with or without sureties"' because the person is required to execute a bond for keeping good behaviour. If he does not keep good behaviour he will be punished accordingly. Why with or without sureties? Why should a third person be linked with a man who is of a bad character. Why should he not be asked to execute a bond for keeping good behaviour? Why some other persons should be linked with him? It was a -deliberate omission by our Joint Select Committee. But now you are going to provide those words "with or without sureties".

Now, I come to clause 13 of the Bill. This relates to section 167 of the Code. Under the existing Code very progressive provisions have been laid down and it has been stated that if any investigation by police is not completed within sixty clays, the person who is arrested or who is under arrest must be released on bail. I know from my experience that most of the police cases failed because of delay in investigation, deliberate delay in investigation. I know that before this Code of Criminal Procedure of 1973 was passed, accused persons were under arrest for years and years if investigation could not be completed. So, it has been specially provided that within sixty days the investigation should be completed and if investigation is not completed within that period the accused person should be released on bail. It had a salutary effect because if investigation could not be completed within sixty days, it could not be completed within 120 days. For completing investigation collection of evidence is essential and if that Is not possible within sixty days it will not be possible within 120 days. Now we are making differentiation. We are providing one hundred and twenty days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years and sixty days where the investigation relates to any other offence. I think that this amendment making a distinction between two classes of cases, namely, 120 days for

those involving death, imprisonment for life or imprisonment for a term of not less than ten years and sixty days in other cases, is not a good amendment and that our earlier amendment had a very great salutary effect because investigation must be promptly made and if investigation is not promptly made everything will collapse. And I can say that most of the police cases fail because of delay in investigation, because the police is not alert to finish the investigation within a certain time and sixty days are enough to finish any investigation.

Then about clause 19, that is, amendment of section 208. The proviso that has been inserted now is;

> "Provided further that no inspection, referred to in the foregoing proviso, shall be allowed if the head of the department, having custody of such document, claims on affidavit that the disclosure of such document would be prejudicial to the public interest or the security of the State."

I fail to understand it. It is not a case under MISA or something that it could be taken as 'prejudicial to the public interest or the security of the State.' It is a clear open case in a court and if the document cannot be given to the accused, how that document can be relied upon against him? I fail to understand how this provision has been made and I do not know how that document can be relied against him without giving copies of that document to him and without giving him access to that document. I do not understand what this amendment means.

Then there is clause 21, amendment of section '276. It says :

> "Such evidence shall ordinarily be taken down in the form of a narrative, but the presiding Judge may, in his discretion, take down, or cause to be taken down any part of such evidence in the form of questions and answers."

It is stated that such evidence shall be taken in the form of a narrative but the presiding judge may, in his discretion, take down, or cause to be taken down, any part of such evidence in the form of questions and answers I do not understand what is the effect of this amendment. Actually, in the sessions court, all evidence is taken in narrative and when it is necessary, it could be in questions and answers. So, the former amendment of the Code may be binding which says: . ordinarily be taken down in the form of questions and answers but if the judge thinks that it should be in the narrative, he can do so. But here it is stated; "It will be in the form of a narrative but the presiding judge may, in his discretion, take down, or cause to be taken down, any part of such evidence in the form of questions and answers." It is the same thing. So I think, Sir, that by these certain changes in the Code of Criminal Procedure which is of far-reaching consequences, and by this amending Act we are going to throw aside the very pillars and the foundations on which the Code of Criminal Procedure of 1973 was based and we are going to throw aside the principle on which the Code of Criminal Procedure was based, that is, separation of judiciary from the executive, and, Sir, we are making a retrogressive amendment, taking the whole position as it was in the old Code. Sir, I think, instead of passing this Act, in a hurry and in such urgent manner, it should be referred to the Joint Select Committee for eliciting the opinion of the legal branches, Bar Associations and other men of legal understanding.

With these words, Sir, I conclude.

SHRI SYED NIZAM-UD-DIN (Jammu and Kashmir): Mr. Deputy Chairman, Sir, the hon. Minister deserves our congratulations on one account. The Government have been fully alive to the situation. Taking into account the doubts raised and I the difficulties encountered during the-

[Shri Syed Nizam-Ud-Din]

course of the working of the Criminal Procedure Code during these two years, they have suggested certain amendments.

Some of the amendments which have been suggested in the Bill are very much desirable. The hon. Minister has already drawn the attention of the House to these amendments. {(The Vice-Chairman (Shri Lokanath Misra) in the Chair.]

Sir, the change made in clause 15 is very much desirable. Here, after the words "by the first marriage", the words "or the wife by the first marriage has taken up permanent residence after the commission of the offence" are *to* be inserted. This is a very desirable amendment.

In clause 16, the words "cognizable offence" are to be substituted by the words "an offence". This is again a desirable change. Similarly, in clause 17, after words "mother's brother or sister", the words "or, with the leave of the court, by any other person related to her by blood, marriage or adoption" are to be inserted. These «re very desirable amendments.

But I am sorry to observe that there is definitely some deviation. I cannot say that there is total retrogression from the principle of separation of the judiciary from ihe executive. But there is definitely a devia-'tion from this policy. This could be seen when we look at some of the amendments suggested in the Bill. Therefore, I would like to emphasise that these amendments which have been suggested should be gone into thoroughly again and then only they should be brought forward.

Sir. as far as sections 13 and 18 are concerned, reference to which has been made by my hon. friend, I would say these are drastic changes which :are proposed here. My hon. friend has quoted from the sections. This is really a sorry state of affairs. The Code now provides that the High Court will confer powers upon a particular magistrate to function as a judicial magistrate. Now, these words 'High Court' have been omitted. It is now the Government which will confer the powers of a magistrate on a gazetted officer and that too without any condition. There is now a condition in the Code which says:

> "provided that no such power shall be conferred on a person unless h_e possesses such qualifications or experience in relation to legal affairs as the High Court may, by rules, specify."

Sir, I would like to know from the hon. Minister, when this condition was very essential with regard to a judicial magistrate, why does not the present Bill provide for this condition at least in the case of a gazetted officer? It is not known whether such persons would be really qualified to discharge the duties of a judicial magistrate.

Similarly, under section 18, any person upon whom the powers of a •judicial magistrate are conferred should possess the qualifications required to discharge the duties of a judicial magistrate. But this Bill is silent about it. We do not know whether the gazetted officers will have such qualifications. The powers will be conferred by the State Government, not by the High Court. Therefore, my submission is that this is really a deviation. It may not be a complete deviation from the principle of separation of the judiciary from the executive. But even then, this is an undesirable deviation because we have seen the functioning of the gazetted officers and the Police in this country. Keeping in view ho_w the police in this country acts, keeping in view the working of the police authorities in this country, I think the hon. Minister should give due consideration to these changes which he is proposing *to* make by the present Bill.

Sir, by clause 12. section 164 is going to be amended. And for what purpose? It is for making a confession before a Judicial Magistrate. Now, that statement can be recorded

even before an Executive Magistrate. Sir, as every lawyer who has worked in any district court lBiows, even a •confession before a Judicial Magistrate, sometimes, is not really beyond doubt because the man is directly brought from police custoday before the Magistrate and then he makes a statement, that is a confession under section 164. In ninety-nine per cent of the cases we have seen that the accused does not stand by the confession he makes before the Magistrate and his first plea would be that it was under the coercion by the police that he made the statement before the Magistrate. Now, Sir, the position is quite different. The police will be bringing a man before an Executive Magistrate who is again under the control of the Executive and, in a way, indirectly under the police. Sir, [do not like to use harsh words and there is a difficulty with me because T do not know much of English. Therefore, I would say that then this will be a police Judiciary run by the police, a Judiciary hammered by the police and I cannot say what kind of B judiciary it will be. Therefore, my submission would be that the hon. Minister must give due consideration *to* these facts. Of course definitely there are certain clauses in the Bill which can be appreciated but these clauses which I referred to will go against the spirit of the Constitution.

The Constitution provides for the separation of the Judiciary and the Executive and we have been craving for separation of the Judiciary and the Executive during pre-Independence period and post-Independence period also. It was after a long struggle that we could achieve the separation of the Judiciary and the Executive. The Executive has its own limits and I know what will be the fate of those people who have to face the consequences if the Executives stens into the territory of the Judiciary.

Then "f come to clause 13. I do not know what has necessitated this amendment. The policv should be that investigation should be as speedy as possible. And what does this amendment provide for? It provides for a longer investigation; the 'nan can be with the police for a preuy long time. 1 agree that the remano. order can be made by the Executive Magistrate but the Executive Magistrate must be kept within a particular limit. The Executive Magistrate must have his own job to do. There may be a plea that stringent laws are needed for economic offenders. We have in this country many laws 1o deal with the economic offenders. We have the Essential Commodities Act, we have MISA, we can use DIR against those people. But against an innocent person who is already harassed by the functioning of the police in this country, there should not be much more harassment by these provisions.

Sir, my friend has also referred to clause 19. I also refer to clause 19. Clause 19 deals with the providing of a copy to the accused. It says:

> "...or is of such a nature that it is not practicable to furnish a copy thereof".

Why is it not practicable? I cannot understand. If a person is not provided with a copy, what will be his defence? It is an open court trial. I am not talking of those cases where the MISA and DIR can be used. It is an open trial. Somebody is appearing on behalf of the defence. Somebody is appearing on behalf of the prosecution. The prosecution knows what the case is. The word "practicable" not is so vast that anything can be practicable.

Secondly, the proviso says:

> "Provided further that no inspection, referred to in the foregoing proviso, shall be allowed if the Head of the department, having custody of such document, claims on affidavit that the disclosure of document, claims on affidavit that the disclosure of such document would he prejudicial to the public interest or the security of the State".

LShri Syed Nizam-Ud-Dinj Sir, it is not proper. The lawyer at least must be allowed to inspect, may be on affidavit not to disclose it's contents. But at least in the interest of his own client, the lawyer must know what the contents of the document are, on the basis of which a particular person is being convicted, on the basis of which a particular person is being accused. Therefore> I think these two provisions '"not practicable" and about production of a copy of the record should be deleted. Secondly, the accused should have some access to the documents on the basis of which he is being charged before a court of law.

Sir, at least I can suggest one thing more. If it is not possible that the document can be disclosed—though 1 disagree with it hundred per cent that it will not be inspected by anybody— at least the court should be allowed to inspect • the document. The court should satisfy itself before convicting a particular person. Where the plea is taken before the court that it is not in public interest to divulge what the document contains, at least these words' may be added:

> 'provided further that where the court feels that it shall not be in • public interest ..... the court should be allowed".

The court of a Judicial Magistrate, and not of an Executive Magistrate should be allowed to go through the document to see what the document is on the basis of which a particular person is being charged.

Sir with these observations with regard to this Bill, I would again submit humbly before the Minister in charge of the Bill t'nat the Bill is not so simple, the Bill is not as innocent as the hon. Minister wanted to put before this House. Sir, the hon. Minister being himself a very eminent lawyer, can well imagine a particulars of a gazetted officer without anV legal knowledge, sitting over the judgment, accusing a person, convicting a person.

With regard to clause 13 pertaining to section 167, the aggregate period is proposed to be extended to 120 days. This will in a way lengthen the investigation. The position in the country is such that the number of under-trial criminals in detention is much greater than the convicts. This is not what I say; this is what the figures say. Therefore, if this amendment is going to be put through,, it will definitely increase the number of under-trial criminals in detention. It is in the interests of justice that the investigation should take as less time as possible.

With regard to the objection raised by my friend so far as section 107 is concerned, I do not agree with that. With regard to the other objection which is raised about section 2*76, which says:

> "Such evidence shall ordinarily be taken down in the form of a narrative, but the presiding Judge may, in his discretion, take down, or cause to be taken down, any part *pi* such evidence in the form of questions and answers".

Sir. it is really practicable that it should he in the narrative form, and not in the form of questions and answers, and that only in a case where the Judge feels that it should be in the form of questions and answers, it should be so. because the witness feels at ease when he narrates the story as he knows it. and not in the form of questions and answers.

With these observations. Sir, I would like to request the hon. Minister again, at least to have a second look at the amendment to section 13, amendment to section 18 and amendments to sections 164 and 167. AD other clauses I support fully.

THE VICE-CHAIRMAN (SHRI LOKANATH MISRA): Mr. Banerjee.

SHRI B. N. BANERJEE (Nominated): Sir, I had no intention to speak, but I thought that I would be failing

in my duty if I do not invite the attention of the hon. Minister—and to which I invited his attention yesterday in the lobby—to one recent judgment of the Supreme Court which has created difficulty and which will be creating difficulties on the part of the administrator of this particular law.

Sir, I must make it very clear that 1 am a little familiar with the Criminal Procedure Code but I have never practised criminal law. I had worked only for three months as a Magistrate—not more than that. This judgment has already appeared in the newspapers, and if a clarification is given I have no objection.

The particular section to which I would like to invite the attention of the hon. Minister is the new section 248, sub-section (2), which has the subject-matter of interpretation by the Supreme Court in a iudgment only last week. This section reads like this:

> "Where, in any case under the Chapter, the Magistrate finds the accused guilty, but does not proceed in accordance with the provisions of section 325 or section 360, he shall, after hearing the accused on the question of sentence, pass sentence upon him according to law."

In this particular case, the Supreme Court was interpreting what is the meaning of the words "after hearing the accused". Sir, I am not clear. I have not been able to check up. Possibly, "after hearing the accused" in a situation like this was an innova tion in the Code of 1974. I think the hon. Minister will enlighten me on this. Am I correct, Sir? ----------

THE VICE-CHAIRMAN (SHRI LOKANATH MISRA): He will state in his reply.

SHRI B. N. BANERJEE: It was not there in the original Code. The principal behind it is not seriously objec-tlonabla because if we are going to sentence a particular person we should hear him. But one should be very careful about the intention as it is expressed in the language of the Act and as ultimately interpreted by the highest court of the land, that is, the Supreme Court. They ' have said, Sir—I do not have the original judgment with me; I have a newspaper report which has reproduced it in detail—that at least hearing the accused would not be simply hearing his lawyer. The Magistrate himself would not say: Well, I have found you guilty; now I want to know what have you got to say? That won't do. It has been said that at this stage the accused is entitled to give evidence, produce materials and the prosecution should do the same thing. That would mean, Sir, that it would further delay the trial. Was that the intention of the Parliament or the intention of the Government which introduced the Bill? A criminal case goes on; evidence taken and the trial is concluded. I write the judgment on a particular day. I discuss the entire case, facts, law, etc., and end my judgment by saying, "I find the accused guilty under Section 339 of the Indian Penal Code. Put up for such and such day for hearing the accused for sentence. "On that particular day, I ask the accused. He is entitled to produce evidence; the prosecution is allowed to produce evidence. And then a mini trial about the sentence is held and thereafter the sentence is passed. If the Government wants that that should be the law, then, well and good. But if the Government feels that it will create difficulties and delay the trial, something has to be done to remedy it. That is my only submission.

SHRI H. S. NARASIAH (Karna-taka): I generally support the Bill. This Bill has got several very good features which call for such support Many of them have been very clearly explained by the hon. Minister. I also add that Section 182 which is being sought to be amended enables the complainant—for example, a woman who has sustained an action for bigamy to

[Shri H. S. Narasiah] sustain that action in the place where she permanently resided after the commission of the offence and in the court of the jurisdiction. As it is, the woman subjected to this misery has to go in search of a court at the place where the husband probably works for gain, a court which is far away from the' place where the lady has been abandoned. So, to that extent, this is a very welcome amendment.

Similarly, Sir, we find that Section 323 is also being amended to dispense with what is familiarly known as the 'de nono' trial in criminal tiials, which enables an accused to claim a fresh trial every time a magistrate is transferred. Veryt often, magistrates are transferred on account of administrative convenience and every time a magistrate is transferred, the accused wants a *de novo* trial with the result the succeeding magistrate will have to record the evidence afresh. Now, this amended provision enables the succeeding magistrate to proceed with evidence already recorded by his predecessor and that enables the curtailment of the prolongation of criminal trials. Otherwise, we find that it takes a considerable time for the administration of justice.

Sir, as the previous speakers emphasised, there are unfortunately some very unhappy features in this Bill which the lawyer Members of this House cannot fail to bring to the notice of the Mover of this Bill. For example, empowering the State Government to confer on a gazetted officer functioning as the executive magistrate the power of a judicial magistrate is virtually annulling the doctrine of the separation of the executive from the judiciary. And that has been very well emphasised by one of the previous speakers, and I need r.ot labour upon that much. That point may be seriously considered by the hon. Mover.

Again, Sir, there is another sad feature of this Bill placing the Assistant Public Prosecutor under the administrative and supervisory control of the police chief of the State, the Inspector-General of Police, and thereby robbing these Public Prosecutors of the character of a Public, Prosecutor and converting them into virtually police prosecutors. Sir, there is danger of involving these prosecutors at the investigation stage for consultancy purposes. This means that an officer who involves himeslf at the investigation stage disables himself from conducting the prosecution, a cardinal principle of criminal jurispu-dence which has to be observed. It requires serious consideration on the part of the mover of the Bill to see how far these Assistant Public Prosecutors can be placed under the supervisory and administrative control of a Police Chief of the State.

Lastly, Sir, I feel rather unhappy that the very salutary protection which had been afforded to every citizen of this country to secure what is called anticipatory bail—that is moving a court of law for bail when apprehending that one might be arrested on some non-bailable oifence—is being totally omitted and abolished. This is rather regrettable. It may be that a few anti-social elements like black-marketeers and smugglers get away with the benefit of this anticipatory bail, but that should not go to deprive the honest citizens of this country, millions in number, of this protective measure. I appeal to the hon. mover to reconsider whether this salutary right that is now conferred on every citizen should be totally taken away. It is a valuable right which should not. be easily tampered with. Otherwise what happens is that a citizen is forced to go before a court of law to securp his bail only after his arrest and not before. We know what happens in those police stations. Any person who is arrested has to be produced before a magistrate within 24 hours from the time of his arrest, but normally he would have been arrested and detained in police custody for two or three days

before he is produced before a magistrate. The taking away of this salu-. iary provision will lead to a considerable abuse of the police powers so far as detention of innocent persons is concerned. This, Sir, I seriously emphasise, must be duly considered by the hon. mover.

One other suggestion that might arise incidentally in considering this amendment. Biil is that in the creation of several categories of magistrates and in the composition of various courts contemplated under sec. 5 of the •Criminal Procedure Code, they could lhave as well conceived the creation of •special magistrates for the trial of these economic and social offences, with the - amended Code also duly providing fnr a summary procedure for the trial of these socio-economic offences, a thing which has been recommended by the Law Commission. With these suggestions and again requesting the hon. Minister to consider these valuable .suggestions, I support this Bill.

SHRI GOVINDRAO RAMCHANDRA MHAISEKAR (Maharashtra): Mr. "Vice-Chairman, Sir, I welcome the Bill and support it because it is a progressive piece of legislation. It is high time we had a rethinking about $^{+v}$>r> basic principles of jurisprudence which have become outdated and outmoded for a society the economv of which has completely changed both in its s*ructure and in its principles. Sir. many times I feel as a layman—1 am just a law degree-holder; I have revpr practised even for one day—that our jurisprudence has become very tunny. Tor example, we follow the principle -of letting off 99 criminals to save one innocent person from being convicted. .And the result is that the society is full of criminals who use modern craft and th<; modern art of committing crime$_s$ i$_n$ the society.

S.r, tliere wsre certain objections just nrv. I personally believe that ifhey haue been made on the basis of dogmatism, conservatism and traditionalism in the field of law and jurisprudence.

4 P.M.

It is because I can cite some examples. For instance, in the past, it was a practice to appoint the ICS officers as Judicial Magistrates or as Sessions Judges and even the Civil Service Officers, Gazetted Officers and other in the States were appointed as Judicial Magistrates, Sessions Judges, etc. and they never had any legal qualification. I do not, therefore, see anything wrong in appointing the Gazetted Executive Magistrates as Judicial Magistrates by the State Governments for which a provision has been made in this amendment and 1 welcome this Bill 'once again and I feel that the whole Criminal Procedure Code requires a complete revision followed by deletions, modifications and additions.

Coming to the Bill as such, Sir, I feel as a layman that there are four different guidelines under Which, or foui objectives for which, all the amendments have been suggested and 1 would like to enumerate them as follows;

(1) Justice to women, (2) Amend ments to make punishments deterren and effective, (3) Providing for ex pediting procedures and avoidinj delays for a poor man, and (4) Streng thening the State Governments witl more powers wherever the State Legis lature's consent has been ..stained anc in certain matters, where the consen of the High Court is practically redun dant.

Now. Sir. I come to the details. Man; honourable Members have pointed ou that according to clause 15, section 18! stands amended and this clause enable a woman, it entitles a woman, t register her complaint about an offenc in a case of bigamy at the place of he residence and this is a provision whic was not there before. Then, we had

[Shri Govindrao Ramchandra Mhaisekar]

provision under section 198 for a third person, but related through blood to such a lady, to register her complaint in a case of bigamy in a court of law. Now. clause 17 amends this section to provide for a relation through marriage and adoption to file such a complaint on her behalf.

Then, Sir, there are amendments, as I have already said, to make punishments deterrent and effective. Clause 10 amends section 107 providing for powers to be given to the Exectutive Magistrates to require a person to execute a bond to prevent a breach of peace. Now, this is important and this is amended with the addition of the words "with or without" which means that this bond will be with or without security. This provision was not there. I do not understand what is wrong in this. Clause 30 amends section 428 permitting no period of detention to be set $_0$ff against imprisonment in default of payment of fine. This is a provision in the previous Code according to which imprisonment could be set off against the term of detention. But, according to the new amendment now under consideration, the section will not apply to an imprisonment in default of payment of fine.

Clause 31 amends section 433 of the Code which provides for anticipatory bail before arrest. I do not see what Is wrong in this amendment. Sir. for an ordinary man. it is really difficult even to go in for a bail because it is the luxury of the rich who indulge in many activities and employ dilatory tactics and then create delays in the matter of administration of justice in the courts. Then, Sir. the amendment which provides for expediting procedures is clause 12. amending section 174. and empowering the Special Judicial Magistrates to record confessions or statements to avoid the need for a Magistrate having jurisdiction over that particular area. I do not know what is wrong i$_n$ this also. Where there are neither Judicial Magistrates nor Executive Magistrates nor Executive Magistrates to record confessions, this sort of extending the-provision for recording confessions by Special Magistrates to be appointed under this provision of the Code is to be welcomed because they are being empowered to do this. That would provide the ordinary man just a place to make confessions or statements. Again, I do not see anything wrong in this also. Clause 13 amending section 167 empowers" the Executive Magistrates, now becoming Special Judicial Magistrates, to authorise detention up to 60 days or 120 days and this is only a consequential amendment.

Clause 21. amending section 276, is very important. Sir, for a man like me. Now, the procedure of evidence has been changed by this amendment. Ordinarily, the evidence would be narrative and in extraordinary circumstances, if the-Magistrate or the Judge feels so, it will be by question and answer. Sir, till today it is ordinarily by question and answer baffling the common man giving evidence before a court of law. Therefore.. I think this also-stands correct.

Clause 24, amending section 299 empowers Judges of the competent court to record evidence in the absence of the accused, an accused who is absconding, an accused who has: been delaying the procedure for years. The rationale behind this, to my mind, appears to be that there is every possibility that the evidence may be destroyed by the time the accused goes to the court; after years and years, the evidence that is there is likely to be destroyed. I cart understand honourable Banerjee's objection to this, but the courts can prevent the whole thing after evidence is available and still take a stand till the accused comes. But then the fact remains that the evidence will have to be recorded in view of the fact that jt is likely to be destroyed or damaged. Clause 28

which amends section 326, of course, empowers the Judge to continue with the evidence that has already been recorded by his predecessor, giving him power so that, if he *o wishes, he ^can recall the evidence of a person where he thinks fit.

Then, fourthly, Sir, the authority •of the State Governments has been strengthened. Under clause 2, section 2 stands to be amended giving the State power to define the jurisdiction of the Magistrate, thus providing for a s°rt °f machinery or a mechanism that should be available to the State Government to see that "the procedures of law or the mechanism of law work smoothly in different areas.

Clause 2 provides amendment to section 9, and that is about the venue of the sitting of the Judge. This is a very imporant thing, because formerly this was being done by the High Courts with the mutual consent of both the parties and this was done In the interest of the security of the State or for protection of the person or for any other public cause. But now this will not be done by the High Court on its own accord. It v/ill be done only at the request of the State Government. This is one amendment that hias been introduced. I do not want to offer any remarks, but we know that there are Benches in the courts that are famous for so many things which I do not want to mention here.

Then clause 5 provides an amendment to section 13, empowering the State Governments to appoint gazetted officers as Executive Magistrates. I have already spoken about this. So I won't say anything now.

Clause 19 amends section 208. Now it prevents actually even the inspection of documents which are bulky in character. This was being permitted, but now the inspection will not be permitted if the head of the department having custody of such document claims on affidavit that this inspection is not good in the public interest.

Then there Is clause 33 which amends section 478. Now, according to this section, Sir, it was necessary for the State Governments, in spite of getting empowered by the State Legislature, to consult the High Court in referring cases under sections 108, 109, 110, 145 and 147 to Judicial Magistrates or to Executive Magistrates or vice *versa.* It was obligatory on the part of the State Governments to consult the High Courts. Now, this consultation is really redundant and has been removed in view of the fact that the State Government is guided by the decisions of the State Legislature. Therefore, it has been felt that this consultation is redundant and so it has been dropped. Sir, I feel that, for the first time, we are bringing out a really progressive legislation in this House when the whole society is talking of legal clinics and legal literacy. Everybody wants that there should be legal literacy in this country, and that there should be simplification of legislation, its procedures and its crafts. Sir, I welcome this Bill and I support it wholeheartedly.

SHRI KRISHNARAO NARAYAN DHULAP (Maharashtra): Sir, with your permission, I would like to make some remarks on Bill No. 36 of 1976, *i.e.,* the Code of Criminal Procedure (Amendment) Bill, 1976. In the Statement of Objects and Reasons, it has been stated:

> "The Code of Criminal Procedure, 1973 came into force on the 1st day of April, 1974. The working of the new Code has been carefully watched and in the light of experience, it has been found necessary to make a f^ew changes for removing certain difficulties and doubts."

[Shri Krishnarao Narayan Dtaulap]

I heard the speech of the hon. Minister who piloted this Bill. He spoke about the Act of 1973. He was very proud about this piece of legislation which was passed into an Act in 1973 after long and protected deliberations in the Joint Committee. The Government also gained certain experience from 1st of April, 1974 to this day and now they have come forward with certain amendments. He said that these amendments are salutory and that he tried to make them fool proof as far as possible. Sir, after going through certain amendments in the Bill, I was greatly distressed. Not only that, I was shocked in certain respects to read certain amendments in this Bill. The previous speaker who gave his views on the Bill, was very outspoken in the beginning. He said that he was not a man in the legal line and that he was not in touch with the Code of Criminal Procedure and therefore he welcomes the amending Bill. I can bring to, his notice certain provisions which are against the settled principles of jurisprudence. In particular, I refer to clause 5 regarding appointment of gazetted officers as judicial magistrates. This is against the Constitution. Our Constitution lays down that there will be three organs of the State, each different altogether and the rule of law runs through the entire scheme of our Constitution. The rule of law cannot be sustained without an independent, impartial and vigilant judiciary. There is separation of powers in the Constitution. The three main organs of the State are the executive, the legislature and the judiciary and they have been entrusted with separate powers. Each is independent of the other. No organ of the State has a right to encroach on the powers of the other organ.

The judicial power of the State is exclusively entrusted to the judiciary.

SHRI B. N. BANERJEE: Are you so sure that it is absolutely a watertight compartment?

SHRI KRISHNARAO NARAYAN DHULAP: It is not a water-tight compartment. But whatever provisions are there in this Bill, they are going to prove that the executive is being given the powers of judiciary. And not the petty offences alone. The hon. Minister said in his speech that cases of some petty offences are being entrusted to these Judicial Magistrates who are going to be appointed under clause 5 of the Bill. If you go through the provisions, sub-clause (ii) of clause 5(2) says, "Under section 34 of the Police Act, 1831, or under any other special law for the-time being in force, with imprisonment for a term not exceeding one-year, or with fine, or with both." So, the offences which will be punished with an imprisonment of one year are to be tried by these Judicial Magistrates. So, these gazetted officers who have no legal acumen, who were only executive officers till this appointment, who have no knowledge of the subtleties of the Evidence Act, who do not possess a judicial mind as such, are being .given these powers. Sir, in certain StaTes, for example in Maharashtra, they have started a refresher course for the judicial magistrates and the judges so that they may be acquainted with the latest decisions of the High Courts and the Supreme Court, so that they would know the Case Law and other legal subtleties. Those who are already in the judicial line are being given the refresher course. It has been started at Nagpur, and those who are in the legal line have been given this refresher course. And here, Sir, the hon. Minister comes before the House giving judicial powers to the Executive Magistrate or a gazetted officer who is not at all closely acquainted with the Evidence Act and other subtleties of the legal proceedings. S"' my hon. friend referred to the British rule. At that time, those officers who were executive officers were entrusted with the judicial powers and duties. We were quarrelling against that, and" we were fighting for the separation of the judiciary from the executive for a very long time. Therefore, Sir,

my request to the hon. Minister would be that they should give a second thought to this. Sir, in the original Act, this provision was conditional. There was a proviso: "Provided that no such power shall be conferred on a person unless he possesses such qualifications or experience in relation to legal affairs as the High Court may by rule specify." That was the condition there. But here that has been done away with. Therefore, Sir, I strongly object to this provision in the Bill, and the Minister should give a second thought to it. *(Time bell rings').*

Sir, about the supply of copies to the accused persons here a new provision has been added because of which if the Head of the Department, the custodian of that document, claims that the disclosure of such a document would be prejudicial to the pub. blic interest or the security of the State, then the copy of that document would not be supplied to the accused person. Sir, in the original Act there is a provision regarding supply of copies. It is provided that if the document is voluminous then there is a right to the accused person to get those documents inspected and examined. Sir, an accused person, according to jurisprudence, when he is brought before the court is innocent unless and until it is proved contrary in a court of law. So, it is the duty of the prosecution to see that the offence is brought home to the accused person and it is proved beyond all reasonable doubt. But, at the same time, it is also the right of the accused person to prove his innocence and for that purpose whatever evidence is there against him must be shown to the accused person. But, here, Sir, an officer, a head of the department, makes an affidavit and claims that such and such a document should not be shown to the accused person or his advocate. This is something against the fundamental principles of jurisprudence and principles of natural justice. Who is the judge sitting in judgment in these cases? rt is the head of the department. It is his sweet-will to show the documents or not. The judge has no right. The accused person has no right. This is something where we are giving more powers to executive officers than the court and the innocent person who is before the court is not given his right to get all the documents examined in his defence. This is something, Sir, which is going against the principles of natural justice. Under the third sub-clause of section 208 it has been provided that the documents have to be produced before the magistrate on which the prosecution proposed to rely.

I would like to make my next point about section 107—preventive measures to be taken by the police. Here, Sir, the procedure is like this. The party which makes the complaint is the complainant and the party against whom the complaint is made is the opponent. So, they are not even accused persons. Anybody can go to a police officer and lodge a complaint against somebody. And, if he is brought to the court of an executive magistrate, then, according to this provision, he may take a surety or he may not take a surity. A provision to this effect was made but it was dropped in the original Act. It was dropped deliberately. The position obtaining in mofussil areas was that complaints were lodged against poor persons by vested interest in the villages and the police immediately proceeded against them under section 107. They were arrested under section 151 on a Friday and brought to the police station. They were not taken to a judicial magistrate or an executive magistrate for a surety or a bond. They were kept in police custody for more than two days and on Monday they were produced before a magistrate. If you are again putting some more hurdles and some more restrictions on this, then, naturally, Sir, these people will be behind the bars for so many days because they are not in a position to give surety. These are the preventive measures If police are going to

[Shri Krishnarao Narayan Dnulap] misuse their powers, take money from both sides and put innocent persons behind bars, what is going to happen? The hon. Minister should take a note of this and instead of making these provisions stringent, the facts of the case should be taken into consideration by the executive magistrates and, if necessary, they will themselves ask for sureties. And surety means more hurdle in the way of independence of the poor persons living in the village side.

With these remarks, Sir, I conclude.

SHRI D. P. SINGH (Bihar): Mr. Vice-Chairman, Sir, I see this Bill with a mixed reaction. There are various provisions in this Bill which are commendable and which are really a good effort at improving the nature of the trial, giving better facility to an aggrieved person, like clause 6 which enables the holding of sittings in jail for the protection of the accused, if necessary. Clause 11 deals with section 123 which relates to power to release persons imprisoned for failure to give security. I feel that this i_s a very commendable measure and it is really one progressive step where a person, for paucity of resources, is not in a position to secure release even though, in law he was able to get it by an order. Likewise, clause 12 which amends section 164, deals with the power of recording confession anywhere. And the best of all is clause 15, dealing with section 182, which empowers a woman to file a complaint of becoming a permanent resident. In fact, in the past, this had created a lot of problem and a lot of confusion. Evidence to be taken in Hindi and English, if not possible in the language of the withess, as introduced in clause 22 is also a further welome meausre.

Having said this, Sir, I will. be failing in my duty if I do not bring to your notice the fact that the three aspects of this measure found in clauses 5, 14 and 19 really surprised u_s and I am astounded that at the present time, a present Parliament of this nature should think of an amendment of this magnitude which would be such a retrograde step. Sir, to my mind, civilisation had grown from the early years and there has been n_0 change in the substantive law. Tooth for a tooth, eye for an eye, neck for neck still remains a law in substance in various forms, and so on, but, substantively, if a man kills, he loses his life and so on If a man hurts, if a man deprives anybody of the property, then he has to suffer the consequences. This is the mock at civilisation that all that we have achieved through these thousands of years i_s the development in the procedure. Now a man gets an opportunity, now a man gets a .-hance to substantiate that he is innocent, by looking at the documents, producing evidence he is heard, he is given a chance, he is given an opportunity, he is given a full trial and he is given full scope to defend himself. In fact, he is given a chance even though he has committed a blatant murder in the presence of and before the eyes of so many people, in order to establish that he was not of a mentally sound disposition, and so on. When we have today a Constitution, a Constitution giving the Directive Principles which we are so anxious to extol, where it is one of the cardinal principles that there shall be a separation of executive and the judiciary, to confer more and more powers on the executive, is really astounding.

Now the power in clause 5, section 13, empowering an executive magistrate the powers of a judicial magistrate goes against the very spirit of that Directive Principle which evisa-ges that there shall be separation between the executive and judiciary.

Not that people who are appointed to executive posts are necessarily bad people. No one says that in fact, my hon. friends have just now said that the ICS Officers are equally good and so on. But the nature of the crimes and the nature of the society is such that we cannot entrust them

with judicial functions. The Constitution-makers were not unaware of the abilities and the competence of the members of the Civil Service. In spite of that, they said that there has to be a separation of the judiciary from the executive. That was because they took into account the functioning of the executive. The disposition and the mind is such that it is trained to look at things in a particular manner. When a job is to be done, it has got to be done in spite of any resistance. It looks to the implementation aspect of it. That is the emphasis. The judicial mind balances it. It looks at the pros and cons, considers the various aspects, weighs the evidence and ultimately, if the balance is even, throws into it a grain of mercy. This is the judicial training. If we are expanding the arena of the judicial trial to include the executive magistrates, God knows what will happen. There was a possible method to achieve some results. I quite appreciate the desire of the hon. Minister to devise expedients and means by which the accumulated cases could be disposed of. There are not enough courts and so on. The expenses are mounting. This is really too much. The method was this, a very simple method. We have achieved the results even at the lowest level. Today, in a gram panchayat, there is a Mukhiya who performs the executive function. There is a panchayat which looks after the judicial functions. Their power is limited today. But they are able to disperse justice. We have records of people working in the villages who, in their own innocence and in their own simplicity, are able to deliver the goods and give judgements and so on. Now, the power is limited to the extent that they can impose a fine up to Rs. 100. I am speaking . about the law in Bihar. I suppose the position is the same in other places also. Some results could be achieved by increasing their powers to trying of cases in which sentences can be imposed up to three months. Thereby, one could reduce the pressure on the courts. "hey are performing the judicial functions now.

You can confer higher judicial powers upon a person who is already performing some judical functions. By this, you do not increase the cost. You reduce the burden without bringing in the disodium of vesting the executive with the power of deciding cases. This is my objection in regard to clause 5.

Then, I would like to refer to clause 14 which relates to section 167. The limit today is 60 days. If the investigation is not completed within 60 days, the accused would not be entitled to a bail. From 60 days, the proposal is to raise the period to 120 days. This is a premium on inefficiency. This is a blatant admission of our incapacity to investigate a crime. I am not saying about some of the complicated cases, which are very few. If an investigation cannot be completed within 60 days, it becomes increasingly difficult to complete the investigation later on. I know the percentage of cases which could be completed later on, after 4 months or two years and so on, is very less. They are few and far between. I know there are difficulties. There is the difficulty in regard to resources. There is paucity of funds. The number of persons to take up the work is limited and so on. You may be able to increase the number of investigating persons. But there also, the question of separation of the Police that maintains law and order from the Police that investigates cases is there. But we could solve the problems in regard to investigation of cases by adopting the same method which has been tried in some of the independent, civilised and advanced countries. Therefore, in my submission this is an aspect which I would recommend to the hon. Minister with a request to have a second thought and a second look because this needs a reconsideration in the interest of a speedier trial and in the interest of speady liberty to a citizen who may ultimately be found to be not guil*v »* all-

[Shri D. P. Singh]

Finally I have only one submission to make and that is about clause 19. Honourable Members here have placed their points of view and, Sir, I can do no better than adding my voice. Obtaining of copies and the right of inspection in a criminal case is a valuable right under section 208. In the previous section this was carefully worded and it says that if the document is voluminous, then no copy shall be permitted and that he shall not be allowed to obtain a copy. Well, good enough if a person could inspect a document, and not everybody is insisting on his right to have a document if it is otherwise impossible to have it. But, Sir, that right now is soueht to be curtailed, curbed, in fact almost destroyed by giving an unfettered, vague and omnibus power to the authority to say whether it is otherwise not riractieable. Now if the volume is the criterion, then "otherwise not practicable" brings about an element of uncertainty, brings about also an element of authoritarianism in this. Who will be the judge whether it is practicable or not?

SHRI B. N. BANERJEE: If these words "or otherwise not practicable" are not available, what will you argue before the Supreme Court and other courts also? These are in your favour.

SHRI D. P. SINGH: I am grateful to my learned fried. Mr. Banerjee for thinking of my chances before the Supreme Court. Well, I may remind him that a person who is convicted or a person who has to suffer the company of a spouse whom he cannot get rid of by a mode of divorce are the people who come to the Supreme Court in any case, and with their purses open. These are the two types of cases COFEPOSA of course was another thing but my learned friend has been able to plug it.

Sir. I will not take more than two minutes; I am finishing. So far about obtaining a copy and worse still is the inspection. Now, Sir, this right must be jealously guarded. The mere fact that the head of the department says "Well,, this is not in public interest" ought not to be enough. In fact the time has come when this House must put its foot down on that clause; the time has come when a distinction ought to be made. There are disclosures of certain documents which shall not be beneficial or in the interest of the security of the' State and an alien, an enemy benefits by such disclosures and it may jeopardize Defence efforts and so on. "But otherwise if not in public interest", we know how these documents are being withheld, how these documents pre misused and an arbitrary decision is taken by the court. We have seen in many cases that in the departments, wherever there are notings on a file, wherever there are inconvenient matters, there is a tendency to withhold' those documents from the court. It is a question of balancing the competing right. You are going to shut one person behind the bars and before you do that if a person relies on a document in the possession of the Government, then the Government would not be justified in withholding that document completely.

As was decided by the Supreme Court in 1961 and in various other cases, they have said that the minimum that is necessary is that the court must have the right to look into that document and decide whether it is in the interest of justice or in the public interest. So, all these are the-only manners in which the right of the accused person can be limited.

Finally, I submit that these are the various matters which have come by way of this amendment. A comprehensive Criminal Procedure Code was enacted only the other day and when such amendments are sought to be made. I suppose a deeper consideration ig required in these matters.

SHRI SHYAM LAL YADAV (Uttar Pradesh): Mr. Vice-Chairman, Sir, this Bill coming so soon after the revision of the Code does speak of two

things. One is, the experience that has been gained during all these days by thg Administration or by the Courts, the pronouncements made by the Courts or the difficulties faced by the people in the administration of justice, those things have been brought to the notice of the Government, f think seme amendments are based on these considerations. Such amendments by and large are welcome and necessary. But there are certain amendments which go to the root of the jurisprudence, just as very rightly enunciated by my learned friend, Shri D. P. Singh, an eminent lawyer of the Supreme Court. As we understand it in this country since our struggle for freedom days, it has been the cardinal principle of justice that there should be separation of the judiciary from the executive. That is why this principle has been laid down in the Directive Principles of our Constitution. I think the time has not yet come to do away with that principle. If the Government thinks or the executives are of the view that now the time has come to do away with the Directive Principle, I have nothing to say, but from the statement made by the Minister. I think, he still agrees to that principle and by and large our procedure is based on that orinciple. The judiciary is appointed by the Government. They also receiv$_e$ their salaries from the Government. But the people have still faith in the judiciary when it dispenses justice between a citizen and the State. Therefore, Sir, my submission for consideration to the Government is that matter should be gone into. This is not a welcome feature of this Bill.

I know that the Deputy Minister, Shri Mohsin, has been labouring very hard and taking keen interest in the framing of this Code. The Code that was framed anew is a monumental work and for that the credit must go to Mr. Mohsin, to his predecessor, Mr. Ram Niwas Mirdha, to Mr. Balkrishnan and to Mr. Maitra. All these persons framed the Code.

SHRI B. N. BANERJEE: You have also got a share in it.

SHRI SHYAM LAL YADAV; That Code was framed on the various recommendations received from the Law Commission. The members of the Joint Select Committe$_e$ considered every sentence of the Code and then that Code was passed by both Houses of Parliament. The Government was also gracious enough to acceot the sug^ gestions and the recommendations made by the Committee. But so soon after coming into force of that Code such vital changes, I think, are not called for. If some problems had arisen and they required some solution, that could be done through a temporary measure. I do not object to that. But placing it on a statutory law permanently, I think, will do great harm to the institution of justice. The executive is being given judicial powers.

I appreciate the sentiments of my learned friend who said that this executive is manned by competent people. I have nothing to say on that. But the point is whether the Executive has got the time to do justice. Sir, I practised in lower courts, mofussil courts. I know- the Executive that is posted there has no time to devote to judicial work. They are so heavily loaded with work relating to the welfare of the State, with so many floods and droughts relief works, with development works, with other administrative works and so many other jobs—they have multifarious activities—that it is not possible for the$_m$ to do any judicial work. It is very unfortunate, Sir, that the Home Minister has never cared to come to the House or to the Joint Select Committee *to* hear the views of the Members. Only the Deputy Minister has been with us throughout and I do not know how far he will be able to carry our views to the Government. I can tell from my own experience—and if can be stated without fear of any

fShrl Shyam Lai Yadav]

. contradiction—that the Executive Magistrates or the Executive Officers working in districts have no time to do justice. That is why all these
. powers were withdrawn from them
. and given to the judicial Magistrates who work throughout the day in courts. If you give powers to the Executive Magistrates, I am afraid the poor clients will go to the
. courts and come away and they will suffer a lot. I know that the cases under sections 107, 109 and 110 of Cr. P. C. are heard in such courts, they linger on for years. That is why the
' Select Committee put a seal on that end rsaid that they should be decided within a period of six months; if they are not decided within six months, the proceedings will be dropped. I do not know what are the reasons v/hich have compelled the Government to come forward with such radical changes. Friends who say that this measure will help the poor people, I am afraid, have no touch with the law courts. It is only the rich people who will benefit by it. They will benefit because the Executive Officers are in touch with these rich people. They have to get things done in the markets, in the cities. They go to the landlords. So
. actually this judicial system v/ill only help the landlords, the big business people and the rich people, whereas the poor people will suffer because they cannot afford to welcome the Executive Magistrates, the Executive Officers. If you are going to confer judicial powers on gazetted officers, I am afraid this is going too far. An engineer may have judicial power, an agricultural officer may have judicial power, a school teacher may have judicial power. So it will not be doing justice if we just go on giving work to somebody to get it done. So I think the Executive Magistrates should not he given judicial power. There is no use denying that this experience has failed till the Code was amended, p-lor to that, in many of the States, the Executive was separated from the Judiciary. Now, here, the District Magistrate is again being given power to do some judicial work regarding bail, acceptance of sureties or releasing people on sureties. What is the Chief Judicial Magistrate doing in the same compound? Why should he not be entrusted with this job? Now, houses the District Magistrates are usually, far away from the courts. We know that the District Magistrates do not attend their offices regularly. They have to do many other things. They have to implement economic and social programmes and other things. I have known that the people have to wait for weeks and weeks there for the District Magistrate to come to his office. Now, if you empower them with judicial work, how are they going to do it? It is not that we are in any way interfering with their work Or that they should not be given any powers. But the practical difficulty is that we know in districts how the courts work. Everywhere in the districts there are Magistrates, Judicial Magistrates, Chief Judicial Magistrates. They can be entrusted with this type of work. Now, Sir, this is a very cardinal principal which I would urge the Government to reconsider and not to empower the gazetted officers or Executive Magistrates with more judicial powers than the powers that have been conferred in the Code which was recently revised and welcomed in both Houses of Parliament as a very progressive measure. Then I come to the clause dealing with section 24 of the principal Act pertaining to Public Prosecutors. They are being placed under the Inspector-General of Police. I do not think there is any reason for placing them administratively under him because the Inspector-General of Police is concerned with police administration and the investigation of the case. Actually, there was a proposal from several States that there should be a Director of Prosecution under whom these Public Prosecutors can be placed. But placing them under the Inspector-General of Police, in my opinion, will not help the prosecution or administration of justice. That will <mly delay the matter and hamper the course of justice. They

should work, as they are working now, under the control of the district judge coupled with the district magistrate.

Sir, speaking about section 107, the old Code prescribed that personal bonds and sureties can be taken. This matter was gone into in great detail by the Joint Committee; it was again discussed in the Lok Sabha very much and the Government agreed tnat the accused can be ordered to execute a bond without surety. The Deputy Minister knows very well that this business of sureties involves a lot of corruption. I can say from my knowledge that no surety will be accepted or verified without paying money in any part of the country. Why should there be the question of surety? If he furnishes a bond, he is released. If he commits an offence or if he does not obey the conditions laid down in the bond, he can be rearrested and punished for that. And he cannot be released again. I may submit that this will give encouragement to corruption, it will not help. I do not agree with the theory that the accused persons will be getting free because in how many cases the accused went away or jump their bail? There are very few cases in which the accused jump bail. So, this is an unnecessary addition. This matter was also gone into. There is no justification for increasing corruption. We have tried to remove it.

Coming *to* the observations that were made by the learned Mr. Banerjee regarding Section 248 about the interpretation given by the Supreme Court, 1 think that point has been taken care of in this Bill under clause 23. Section 309 of the principal Act has now been amended because that is the section which allows the court to grant an adjournment. In clause 23 it is said—

> "Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him."

Therefore, this will be a limiting: factor for the court to hear the accused: and pass the sentence that is going to* be awarded.

Sir, regarding anticipatory bail, mucfcr can be said both ways. I need not say: anything because perhaps that experiment has not succeeded.

Regarding the last section 478, according to that, a resolution was to be passed by the State Legislature and then the Government can confer the power to try cases under sections 108,. 109 and 110 under the Criminal Procedure Code upon the Executive Magistrate after consultation with the High Court. That was also provided for. I do not think there is any reason to do-away with that consultation. In special circumstances, they can be given, power, otherwise, there is no question of giving power to the Executive Magistrates. They can be free to work for and implement the tasks that are allotted to them by the Government. Sir, I have given notice of certain amendments. They will be discussed later*. Thank you.

श्री नत्थी सिंह (राजस्थान) : उप-सभाध्यक्ष महोदय, इस बिल पर विचार करते समय मैंने विशेषतौर से मंत्री जी इसमें लिखे गये उद्देश्यों और कारणों के कथन को देखने की चेष्टा की है। इसमें उन्होंने कहा है कि यह दण्ड प्रक्रिया संहिता, 1973, 1 अप्रैल, 1974 को प्रवृत्त हुई। नई संहिता के क्रियान्वयन पर बारीकी से निगरानी रखी जा रही है। अनुभवों के आधार पर कठिनाइयों को और संदेहों को दूर करने के लिये कुछ परिवर्तन करना आवश्यक समझा गया है। इसमें कोई दो राय नहीं हैं कि मंत्री जी ने बहुत बारीकी से इन बातों की निगरानी रखी है। मैं समझता हूं कि जो संशोधन सुझाये गये हैं वे इसी उद्देश्य से सुझाये गये हैं कि लोगों को जल्दी से न्याय मिल सके और कोर्टों में केसेज पेंडिंग न रहें। कुछ मामलों के अन्दर मजिस्ट्रेटों के अधिकार क्षेत्र बढ़ाने के लिये सरकार ने हाई कोर्टों

[श्री नत्थी सिंह]

को पावर्स दी हैं। मैं समझता हूं कि यह सही कदम है। उनकी नजर महिलाओं की ओर भी गई है। उन के सम्बन्ध में भी कुछ अधिकार बढ़ा दिये गये हैं। और उनके रिश्तेदारों आदि को भी कुछ अधिकार दिये गये हैं। यह सब सही है। सबको ठीक प्रकार से न्याय प्राप्त हो सके, इसकी व्यवस्था की गई है। लेकिन मुझे लगता है कि जो एक बहुत बड़ा कंसीडेरेशन दण्ड प्रक्रिया संहिता 1973 में संशोधन करने का और बारीकी से उस पर निगाह डालने का था, वह आंखों से बच गया है। इसमें जो यह बात कही गई है कि अनुभवों के आधार पर संशोधन किये गये हैं, लेकिन मुझे लगता है कि शायद यह अनुभवों के विपरीत बात है। यह बात सही है कि न्यायपालिका को कार्यपालिका से अलग रखना चाहिये। हमारे देश से विदेशी शासन के जाने के बाद भी हमारे देश में पुलिस द्वारा जो एट्रोसीटीज और ज्यादतियां की जाती थी उनसे राहत पहुंचाने के लिये कानूनों में बहुत से परिवर्तन किये गये। यह बात भी सही है कि पुलिस के व्यवहार में भी परिवर्तन आया है। इन बातों में कोई दो रायें नहीं हैं। लेकिन मैं समझता हूं कि कानूनों में जो संशोधन लाये गये हैं उससे नागरिकों को बहुत ज्यादा राहत नहीं मिल पाई है। ऐसी स्थिति में आज आवश्यकता इस बात की है जो संशोधन आज पेश किये गये हैं उनको बारीकी से देखा जाना चाहिये। इस बिल में जो सेक्शन 167 है, उसमें जो सुझाव दिया गया है उसकी तरफ मैं माननीय उप-मंत्री महोदय का ध्यान आकर्षित करना चाहता हूं। आपने इसमें कहा कि 60 दिन के बजाय 120 दिन तक रिमांड बढ़ाने का अधिकार मजिस्ट्रेट को मिलना चाहिये। उनको यह भी कहना है कि अगर कोई गम्भीर अपराध है और उसमें जल्दी से इंवेस्टीगेशन पूरा नहीं होता है तो इस प्रकार के मौके पर इस अवधि की जरूरत पड़ती है। लेकिन मैं पूछना चाहता हूं कि क्या मंत्री जी इस बात को नहीं जानते हैं कि पुलिस अगर किसी आदमी को गिरफ्तार करती है तो कितने दिनों तक अपराधी को पुलिस थाने में रखा जाता है? इस सम्बन्ध में हमारा अनुभव है कि जब अदालत में दर्खास्त की जाती है और पुलिस से रिपोर्ट मांगी जाती है तो पुलिस द्वारा कहा जाता है कि वह आदमी हमारे पास थाने में गिरफ्तार नहीं है और उसको दूसरे थाने में भेज दिया जाता है। इस प्रकार के एक नहीं सैकड़ो कैसेज हो गये हैं। केवल पूछताछ करने के नाम पर अपराधी को एक थाने से दूसरे थाने में भेज दिया जाता है। इस प्रकार 60 दिन का प्रावधान होते हुये भी 60 दिनों से भी ज्यादा दिनों तक अपराधी को थानों में रखा जाता है। ऐसी स्थिति में इस अवधि को 120 दिन तक बढ़ाने की आवश्यकता नहीं है। यह ठीक है कि हमारे देश में बहुत से काम जल्दी से जल्दी किये जाने चाहिये, लेकिन न्याय एक ऐसा क्षेत्र है जिसमें अगर जल्दी में कोई फैसला कर लिया गया तो उससे नागरिकों को नुकसान हो सकता है। इसलिये मैं चाहता हूं कि सेक्शन 167 में 120 दिन करने का जो प्रावधान है उस पर पुनर्विचार कर लिया जाय।

दूसरी बात यह कहना चाहता हूं कि अब तक यह प्रावधान है कि अगर किसी अपराधी को पकड़ लिया जाय और उसको मजिस्ट्रेट के सामने पेश किया जाय तो इस सम्बन्ध में लिखित रूप से बयान लेने के बाद रिमांड की अवधि बढ़ाई जा सकती है।

5 P.M.

मैं आज आपको केवल चेतावनी देना चाहता हूं। मंत्री महोदय के इस प्राविजन का बहुत बड़ा मिस यूज हो रहा है। आपने इस तरह पेश कर दिया कि अब अपराधी को मजिस्ट्रेट के सामने भी नहीं लाया जावे और हम जानते हैं कि जो वकालत के पेशे में हैं आप भी पहले वकालत के पेशे में थे, आपने

वकालत छोड़दी अब हम लोगो को भी कम समय अदालतों में जाने के लिये मिला है परन्तु आपसे पीछे तक जाते रहे हैं, हमें मालूम है कि सेटरेशन आफ जुडिशियरी के बाद भी पुलिस की ताकत में कोई कमी नहीं आई है, यह तथ्य है। हमारे साथी कह रहे थे एक्जीक्यूटिव में ज्यादा होगा, जुडिशियल में कम । मैं यह जानता हूं कि किन्हीं मामलों में मिलजुलकर जो मीटिंगें होती हैं, मंत्री जी को पता होगा कि जब एक दूसरे से सवालात होते हैं जुडिशियल वालों के और पुलिस वालों के तो यह भी कहा जाता है कि हमारा मुलजिम वहां पर गया था आपने उसके लिये सोचा नहीं । मुश्किल हो जाती है। ज डियशरी वाले काशस होकर चलते हैं। इसलिये अगर इस वातावरण में आपने इस प्रावधान को इसमें स्वीकार कर लिया तो पुलिस की ज्यादती बढ़ने का खतरा रहेगा चाहे वह मजिस्ट्रेट के नाम पर ज्यादती हो चाहे किसी और रीजन पर, नागरिकों के साथ ज्यादती होगी । इसका केवल एक आधार हो। वह बीमार हो, ऐसी स्थिति हो तो कह दिया जाएगा कि नहीं लाया जा सकता है लेकिन बाकी दिन उसको न लाया जाय तो यह उसके साथ ज्यादती हो जाएगी।

एक दूसरी बात मैं इस सम्बन्ध में आपसे कहना चाहता हूं । मैं आपसे यह अर्ज करना चाहता हूं कि अभी जब माननीय यादव साहब बोल रहे थे इन्टीसिपेटरी बेल के बारे में, हमारे एक मित्र उधर से भी बोल रहे थे और कह रहे थे कि यह बड़ा प्रोग्रेसिव लेजिस्लेशन है। मैं कहता हूं कि एन्टीसिपेटरी बेल के बारे में बोलने से पहले माननीय सदस्य इसके इतिहास को भी ध्यान में रखें । अदालतों ने एन्टीसिपेटरी बेल के आधार पर कई तरह के निर्णय दिये थे और वे निर्णय एक दूसरे के विपरीत जाते थे। उसके बाद एन्टीसिपेटरी बेल का प्रोविजन आपने 1973 में रखा था। आर्थिक अपराधों के नाम पर आज जिनके साथ ज्यादती होती है वे कौन होते हैं उनका कोई हिमायती नहीं होता, उसकी ही गिरफ्तारी का अंदेशा रहता है जिसका कोई हिमायती नहीं होता। आज आप स्थिति देखें कि बाहर क्या हो रहा है ? आज पुलिस उसको ज्यादा पीड़ित कर सकती है जिसका अदालत के सिवाय और कोई नहीं है, वह बाकी पर हाथ नहीं डाल सकती है। इसलिये एन्टीसिपेटरी बेल में पुलिस जिसे परेशान करती है और वह अदालत में बेगुनाह साबित हो यह आपने प्रोविजन लगाया है। 437 के अन्तर्गत आपने यह लगाया है कि उसका कहीं भागने का अंदेशा नहीं है और कुछ नहीं है। इसलिये यह प्रोविजन प्रोग्रेसिव था।

आपने 2 से 8 धारा में संशोधनों की बात कही है कि राष्ट्र के हित में, पब्लिक के हित में हो तो इन्स्पेक्शन नहीं कराया जाएगा। मैं आपसे पूछना चाहता हूं कि फिर आप कनविक्शन कैसे करेंगे। केवल उसे जज देखेगा, प्रासीक्यूशन देखेंगे या पेश करेंगे और अपराधी अपना किसी तरह से डिफेन्स नहीं दे पायेगा। जिस आधार पर आपको यह करना हो उसी आधार पर उसकी भी पूरी सफाई देने का अधिकार होना ही चाहिये। हमें एक ऐसे समाज का निर्माण करना है जहां न्याय मिल सके। न्याय का सिद्धान्त है कि जब तक कोई दोषी नहीं होता तब तक वह बेगुनाह है। गुनाहगार वह तभी है जब कि दोष साबित हो जायें। इसलिये जब पुलिस उसको अपराधी करार दे या अक्यूज करार दे तब यह कनविक्शन होगा ही। यह आधार निश्चित रूप से बदलना चाहिये और जो नागरिक हैं उनको किस तरह से न्याय मिल सके और किसी तरह से पुलिस उन लोगों के साथ अन्याय न कर सके। इसमें हमें सावधानी बरतनी चाहिये। आज जो परिस्थिति देश में बनी है, इमरजेन्सी से तो सभी नागरिक यह बात कहते हैं कि सब कुछ ठीक हुआ लेकिन पुलिस की पावर्स ज्यादा बढ़ गई हैं। पुलिस की ज्यादती ज्यादा बढ़ गई है और बार बार हमारे मंत्री लोग कहते हैं कि हम अंकुश

[श्री नत्थी सिंह]

रखेंगे, हम ज्यादतियों को बढ़ने नहीं देंगे लेकिन क्रिमिनल प्रासीजर कोड में जो इस तरह का प्रावधान रख रहे हैं वह इसके विपरीत जाता है, ऐसी आशंका है ।

एक बात मैं और कहना चाहता हूं कि आपने कहा धारा 107 में सेक्योरिटी वाली बात निकल गई। मुझे मालूम है, इस पर देश में बड़ा विवाद था, आज भी है। कई लोग चाहते थे कि 107, 109 और 110 जैसी धारायें हमारे क्रिमिनल प्रोसीजर कोड में रहनी नहीं चाहियें, अगर हमें समाज को बनाना है तो इन धाराओं को निकाल देना चाहिये। कौन आदमी काम नही करता है, कौन आदमी के पास जीवन-यापन का साधन नहीं है--यह बात किस के कारण है ? उस आदमी की मजबूरी है। हमने कहा है, हर एक को हम रोजगार देंगे और इस आधार पर पुलिस को जो अधिकार दे रखा है उसके बारे में शंकायें थीं और उनको निकालने की बात कही गई थी और किस तरह से उसके समझौते के रूप में 107 में सेक्योरिटी वाली बात के प्राविजन को हटा दिया गया था। जब आप पुलिस के पावर्स बढ़ा रहे हैं, मजिस्ट्रेट को डिस्क्रीशन दे रहे हैं। बारीकी से निगाह जाती तो देखते कि एक रास्ते चलते आदमी को कैसे पकड़ लिया जाता है ? धारा 110 में क्या कोई आर्थक कार्य वह कर रहा है, इस पर सोचें। धारा 107 में हम और तरह से भी पीस और ला एण्ड आर्डर रख सकते हैं लेकिन वहां निगाह न जाकर आपकी निगाह 107 धारा में सेक्योरिटी देने की बात पर गई है। इसीलिये मैं एक बात कहना चाहता हूं कि जो एक बात चली थी और चली है कि नागरिक की आजादी को सुरक्षित बनाने के लिये हम जुडिशियरी और एक्जीक्यूटिव का सेंपरेशन करें, तो उसमें पहले भी तो प्रासीक्यूटर्स थे वे पुलिस के पास रहते थे और उनको हटा कर पुलिस के प्रशासन से अलग कर दिया गया। आज मजिस्ट्रेट को पावर देने की बात स्टेट गवर्नमेंट से होती है; सिर्फ हाई कोर्ट की नहीं; और उसके साथ साथ असिस्टेंट प्रासीक्यूटर्स को आई० जी० के नीचे रखना चाहते हैं। यहां श्रम मंत्री जी को भी है; उन्होंने कहा है कि इनको हम रख रहे हैं लेकिन वास्तव में आई० जी० की कोई पावर नहीं रहेगी। एक बार पुलिस के पास पावर दे दी तो असर उसका ही ज्यादा रहेगा। इसलिये मेरा निवेदन है कि जो बिल लाये हैं उसके प्रोविजन अच्छे हैं, स्वागत योग्य हैं, वे मंजूर किये जाने चाहिये लेकिन जो दूसरी चीजें हैं जिनके ऊपर मैंने ध्यान आकर्षित किया है, मेरा निवेदन है आप थोड़ा ठहरें; सोचें और ठंडे मन से सोचने के बाद देखें कि कहीं हम ऐसी बात तो नहीं कर रहे—कि जैसा उद्देश्य है स्पीडी जस्टिस हो लेकिन उसके साथ जस्टिस सही तौर पर हो--- उसमें कोई कोताही तो नहीं हो रही है ? इसलिये जो मैंने निवेदन किया उस पर आप दोबारा विचार करें और इस बिल के सम्बन्ध में अन्तिम निर्णय लें ।

SHRI S. W. DHABE (Maharashtra);: Sir, while considering this Bill, a number of points have been raised, and....

AN HON. MEMBER; A non-practising lawyer would support it; a practising lawyer would definitely oppose it.

SHRI S. W. DHABE; Sir, it has teen stated by some people that the Bill is very progressive and it has also been stated that it will lead to' better justice. I have been practising at the Bar for the last thirty years. It is an accepted principle that separation of judiciary and executive is a cardinal principle of our Parliamentary democracy. Sir, when this practice of executive officers doing justice was there, I know of a case where a man from my place in old Madhya Pradesh was appointed He decided I80 cases, criminal cases. His judgment was of one line: convicted or acquitted; no reasons were given in the judgment. Thev all came back for retrial by the High Court. When an

executive officer is going to be appointed as a magistrate, is it not necessary that to discharge the judicial functions he must have legal acumen or at least know what is the judicial system. Sir, when an 1CS man was appointed to render justice, even at that lime the 1CS man had to undergo training with the Assistant Judge for two years before he could function as a jadge. No ICS man was made a District Judge directly even during the British time. Training is very essential, and judicial training in Nagpur is a model for that. The gazetted officers will not be able to dp any justice unless judicial training is given to them from time to time. The whole idea of giving powers to the executive magistrates or the gazetted officers in clause 5 seems to be to give tfiem powers to try minor offences under section 160 or under Chapter XIII or under Chapter XIV of Ihe Indian Penal Code with imprisonment for a term not exceeding one year, or with fine, or with both. I would like to read clause 7. There is a similar provision in sub-section (2). It reads:

> "Notwithstanding anything contained in sub-section (1), or elsewhere in this Code, the State Government may confer on any gazetted officer, functioning as an Executive Magistrate...."

In the notes on clauses it has been stated under Clause 7:

> "The proviso to sub-section (1) of section 18 is being amended to clarify that persons, on whom the powers of Metropolitan Magistrates are conferred under sub-section (2), *1* need not have the prescribed qualification."

This is really a strange thing. The executive officer is to be made a magistrate without prescribed qualifications. It seems to me to be a wrong notion that anybody can do justice. Even for minor offences, other systems can be adopted as has been done in Bihar by having Naya Panchayats. The village people are harassed by the police. Sometimes even groups of people are 781 R.S.—9

1 arrested, A lot of time is wasted in going to the Taluka or district. Also, they do not get justice. If justice is to be given at village level or at a lower level, the idea which has been given in the Directive Principles is that we must create a new judiciary or what we call Nyaya Panchayat which can try minor offences. The remedy is not that it should be given to executive officers as provided in this Bill. The Bill says that they need not have prescribed qualifications. I suggest to the Home Minister to train the persons whom he wants to be eppointed as magistrates. At least, they should be law graduates and not graduates with medicine or science as their subjects-The practice which was prevalent in Maharashtra is well known. The Divisional Commissioner used to have powers of deciding appeals and there was a very funny provision. They could be given Judgment Writers who used to be law graduates. This system was dispensed with by the Maharashtra High Court after 1956. The, Divisional Commissioner uesed to say 'allowed or 'not allowed' and the Judgment Writer used to write the judgment. All these things amount to negation of justice. I will join with Mr. D. P. Singh that the idea of the gazetted officers working as trying officers should not be pressed with. I will appeal to the Home Minister to withdraw that provision. If they want a machinery to be created at a lower level, they should have Naya Fancha-yats just as in Bihar and they 'may be given the powers of trying minor offences.

The second cardinal principle of administration of justice is that prosecution, investigation and administration of justice should be independent of each other. Here, the Assistant Public Prosecutors are placed under the control and administrative jurisdiction of the Inspector General of Police. I think that it will be necessary to consider this matter very seriously and the present system which is in vegue is much better than the pryision that is being made. Lastly, Sir, 1 would only

[Shri S. W. Dhabe]

like to say that judicial reform is a very important question and one of the reforms is to remove the longer delays. If this is to be the main objective, the way is to appoint more judges and create more seats of justice even at the village level which alone can solve this question. Today the position is that in the judiciary many posts are vaeant and they are not being filled in.

Sir, very good provisions are here about the status of women. Recommendations of the Committee on the status of women have been accepted here. I congratulate the Home Minister for the same. And also about the assistant public prosecutors and prosecutors some good provisions are there that when the assistant public prosecutors work as prosecutors they will be treated on par. That will give more promotional chances. And there are certain other good features.

With these words, Sir, I conclude my speech.

SHRI F. H. MOHSIN; Sir, I am glad that so many Members have taken part in this debate. Quite an interesting discussion has taken place and {he Members have contributed well on almost all the provisions of this Bill.

Shri Yadav made a reference to the Select Committee which sent Its Report on the Criminal Procedure Code which resulted in the passing of the new Criminal Procedure Code of 1973. I do remember that I was also a member of that Committee and several others of this House were also associated with that Committee. They have done really a commendable job and the Code of 1975 is the result of that hard work of that Select Committee. Sir, after we saw the working of this Act for a couple of years, some lacunae and some defects were reported by the State Governments. Oi course, no law can be foolproof and this was no exception. Certain lacunae were found, certain difficulties were experienced, and we had to bring this Bill to get away from those difficulties. So, Sir, many hon. Members have spoken, some with passion, some with vehemence and some, of course, mildly about the provisions of this Bill. The main attack seems to be that we are going back to the old pattern of giving judicial powers to the executive and going back from the principle of the separation of judiciary from the executive. Many have called it a retrograde step. Sir, it is a mistake to say that we are going back to the old pattern of the judicial system. It is not correct to say that the judiciary is not separate from the executive and that now we are compromising that idea. It is only to secure that there is less work on' the some relief is given to the Judicial Magistrates, and some petty offences are transferred to the Executive Magistrates. The Executive Magistrates who are *to* be empowered by the State Government or by the High Court would be under the control of the judiciary and not under the control of the executive as the hon. Members [The Vice-Chairman (Shri Ranbir Singh *In the Chair]* may think. The old pattern was like that. Of course, before the 1973 Code was enacted, there was no supervision no control over those Executive Magistrates by the judiciary. Now it is not like that. It is only the gazetted officers or the Executive Magistrates who are empowered by the State Government and they will continue to be under the supervision, under the control of the judiciary.

SHRI B. N. BANERJEE: They will be under the temporary control of the judiciary.

SHRI F. H. MOHSIN: As far as the judicial work is concerned, whatever work they do in connection with the judiciary, will be under the control ef the judiciary.

SHRI B. N. BANERJEE: The point is like this. If I am a Judicial Magistrate, I am a judicial officer all

the time, looking for my promotion and everything to the High Court. But, if I am an executive officer and temporarily given the judicial work, for my judicial work, I will be under the control of the High Court. But I look for my advancement to my parent office; the executive.

SHRI F. H. MOHSIN: That is a different matter. As far as the judicial work is concerned, you can see section 15 of the Criminal Procedure Code.

Section 15 of the Criminal Procedure Code Says that every Chief Judicial Magistrate shall be subordinate to the Sessions Judge and every other Judicial Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Judicial Magistrate. The Chief Judicial Magistrate may from time to time make rules or give special orders consistent with this Code as to the distribution of business among the Judicial Magistrates subordinate to him.

Sir, for all these purposes he would be called Judicial Magistrate and not Executive Magistrate. Sir, the misconception that the hon. Members have that this Executive Magistrate is controlled by the executive is not correct. As far as his judicial function is concerned, he would be under the control of judiciary.

SHRI B. N. BANERJEE: We do not have that lack of intelligence. That intelligence we have. We know what we are passing.

SHRI P. H. MOHSIN: Mr. Banerjee I am not having you in mind. But some Members had that misconception. And, what powers are given *to* them? As I have already made Clear, they will be only dealing with petty offences which are punishable for a maximum period of one year or those falling under the provisions of special Acts, just like the Motor Vehicles Act, As a Judicial Magistrate he will be dealing only with petty offences under the Motor Vehicles Act or under the Food Adulteration Act, or any other special law. That will reduce much of the wdrk df Judicial Magistrates Whereve, they are appointed. I think only today a question was asked in this House about under-trial prisoners. How many under-trial prisoners, how many convicts are there in the jails? Jails are overcrowded because cases are ndt disposed of. The courts are few. This is another way of lessening the burden on the Judicial Magistrates taking away petty offences and entrusting them to these special magistrates or Judicial Magistrates drawn from the executive cadre and appointed by the State Government. They would be trying only these petty offences.

SHRI SANAT KUMAR RAHA (West Bengal): What about workers in the rural areas, peasants in the rural areas and workers in factories? They will be victims of these procedures.

SHRI F. H. MOHSIN: They cannot be exempted from the provisions of the Indian Penal Code or any other law if they contravene their provisions. Even M.Ps. are not spared. Why only workers?

SHRI SANAT KUMAR RAHA: I am talking about the majority of Indian people.

(Interruption*)

SHRI F. H. MOHSIN: Law is ap-licable *to* everybody, not only to workers. J have listened to you very patiently please listen to me.

(Interruptions')

THE VICE-CHAIRMAN (SHRI RANBIR SINGH): Minister is not yielding. You have already explained.

SHRI F. H. MOHSIN: Sir, another plea was made that these officers may have no legal qualifications. Of course, my friend who is now rising there says that all lawyers will object to this law and all non-lawers will support it. (Interruptions) Well, let me meet the points raised. It is not

[Shri F. H. Mohsin] that every practising lawyer will oppose it. For his information I may say that I was also a practising lawyer. Not only that. Aii laws are for the welfare of the people. Of course, some lawyers may think that by getting one acquittal from the court they have succeeded. I_s it not our duty to see that bad people are punished also and that these antisocial elements are brought to book? We should not rejoice if a bad man gets acquittal. Of course, if he is innocent he must get acquittal. If he is a bad man, if he has really done a bad thing, should we not think that he is a man fit to be convicted, fit to be punished?

My friends, perhaps, have forgotten what was the system prevailing before this 1973 Act was enacted, in some States, Executive Magistrates were there and they had all the judicial powers. The judiciary was not separated from executive who had all the powers of the judicial magistrate first-class. But we are not giving all those powers to them. Only the powers to try petty offences are being given to them. Sir, for this job. I do not think any special legal knowledge, or experience as a lawyer or a barrister, is necessary for appointment as a magistrate for this purpose.

SHRI B. N. BANERJEE: We have also seen Supreme Court Judges who were never lawyers.

SHRI F. H. MOHSIN: I have to mnet the points of others.

Then, the other point that was made was about the Assistant Public Prosecutors being brought under the control of the police. Sir, after this new Code was enacted, the Assistant Public Prosecutors came directly under the judiciary but then they were connected with the prosecution of the cases in the courts and also sometimes they were required to advise in the investigation work. Assuming that under no circumstances they were subordinate to the police or the executive! they thought themselves to be independent and sometimes the investigation work also got' held up and they could not do proper investigation. I am not speaking of all Assistant Public Prosecutors. Some 6f them did not even cooperate with the prosecuting agencies. Therefore, a need was felt that some kind of control over these Assistant Public Prosecutors who are in charge of the prosecution in ths court, was called for.

SHRI R. NARASIMHA REDDY; Is there no control now?

SHRI F. H. MOHSIN: In the present Code, there is no provision for control.

SHRI R. NARASIMHA REDDY: You mean there is no control at present?

SHRI F. H. MOHSIN: Tlrcre is no control of the executive; they assume that they are only subject to judiciary.

SHRI R. NARASIMHA REDDY: But they are controlled by the judiciary.

SHRI F. H. MOHSIN: Yes, they are given the work of prosecuting. They were the prosecutors; they were in charge of the cases but they did not co-operate with the police or the executive. So, it was thought necessary that some kind °* supervision, some kind of control of the I.G.P. should be there. The provision is like this;

> "Nothing contained in this section shall preclude the State Government from conferring on the Inspector General of Police the powers of administrative control and supervision over the Assistant Public Prosecutors appointed by it."

We ar_e ^{not} conferring powers here by this enactment; we are only enabling the State Government to confer on th_e Inspector General of

Police the powers of administrative control. Some State Governments wanted it and we are giving that power to the State Governments.

Also, even the appointment of executive magistrates is an enabling provision. We are not creating a special class of magistrates.

> "Notwithstanding anything contained in sub-section (1), or elsewhere in this Code, the State Government may confer on any gazetted officer functioning as an Executive Magistrate, the powers of a Judicial Magistrate of the first class or of the second class to try such offences or classes of offences as are punishable..."

This is only an enabling clause, enabling the State Government to confer powers.

Sir, the other point that was made was about investigation. Many hon. Members referred to that. It is clause 13. Now, instead of sixty days, which was the time given for investigation, now it has been extended to 120 days. Many hon. Members had objection to it. Sir, this proposed extension of time up to 120 days is only regarding certain offences which are punishable with death or imprisonment for life or for an offence which is punishable with ten years' imprisonment, and not for all offences. This period of 120 days is given only in such cases where the investigation could not be completed. Many times, heinous offences are committed and it becomes very difficult to get the real accused. We know about it. It becomes difficult sometimes to investigate the whole thing, within a short-time. New means of communication would be also at the disposal of the accused. In some cases, we have seen that it was really difficult to complete the investigation within CO days. Only in the case of heinous offences like murder, dacoity with murder and such other offences, which are punishable with 10 years imprisonment, this provision would come in; not in all cases.

SHRI B. N. BANERJEE: Shall I make a suggestion? We can arrive at a reasonable compromise. There is no sanctity in raising it to 120 days. Earlier, you had 60 days. There can be a 50 per cent rise. Make it 90 days.

SHRI F. H. MOHSIN: But it is not necessary that in every case....

SHRI B. N. BANERJEE: You are raising it from 60 to 120 days. There is no sanctity in this. You must respond to the wishes of the House.

SHRI F. H. MOHSIN: Mr. Baner-jee, it is not necessary that in every case, they would take 120 days. This is only the maximum period which has been prescribed. The investigation may be completed within 60 days, even within one month. The provision has been made to meet certain exigencies.

SHRI SANAT KUMAR RAHA: When there is such a provision, the tendency would be to take advantage of such a provision.

SHRI F. H. MOHSIN: Another point was made about the inspection, in clause 19. The proviso says:

> "Provided further that no inspection, referred to in the foregoing proviso, shall be allowed if the head of the department having custody of such document, claims on affidavit that the disclosure of such document would be prejudicial to the public interest or the security of the State."

Some Members objected to this new provision. This is nothing new. The principle is already there in the Evidence Act. The provision which is there in the Evidence Act is being incorporated in the Criminal Procedure Code. They cannot have the inspection of a document, if the dis-

[Shri F. ft Mohsin]

closure of such a document is prejudicial to the public interest. Such a provision exists in the Evidence Act and this has been simply incorporated in the Criminal Procedure Code alsd.

Then, reference was made to section 107 where, after the words "ordered to execute a bond", the words "with or without sureties" are proposed to be inserted. Many Members spoke on this. It is necessary in the interest of keeping peace. Members are aware that this is a very salutary provision for prevention of offences. Of course, this is a matter to be decided by the magistrate himself. Of course, he may take only a personal bond and leave him or he may take a surety. The discretion is given to the magistrate. It is not incumbent or obligatory on him to take sureties in all cases.

. I think I have covered all the points that have been' made. Another point was made in regard to section 164. This is only because, in certain areas, judicial magistrates are not easily available. In remote areas, it is very difficult to get judicial magistrates for recording the confession or the statement of an accused. In such a case, the investigation of the case may be hampered and even the processing of the case may be hampered. It is only with a view to meet such situations that it has been provided here that special judicial magistrates may record the confession of an accused. But there is also another reason. The magistrate who records the confession may not be able to try that case. Some courts have already given such a ruling. So, if there is only one Judicial Magistrate in that area, he must record the confession and he may not be able to try that case at all and so it may have to be transferred to some other Magistrate which will be some-what difficult. To remove this difficulty it has been provided that Special Judicial Magistrates could take the confessional statement.

With these words, Sir, I commend the Bill for the acceptance of the House.

SHRI SYED NIZAM-UD-DIN; Sir, on a point of information. I would like to know something from the hon. Minister about clause 18 which says:

> "The State Government may, by notification, specially empower any Magistrate to exercise the powers coriferred by sub-section (1) in relation to any offence punishable with imprisonment for a term not exceeding three months, or with fine, or with both, where the Magistrate is of opinion that, having regard to the facts and circumstances of the ease, the imposition of fine only would meet the ends of justice."

Here I do not know. Will it not be pre-judging the case by the Magistrate whether he is going to punish him with imprisonment or fine or both? At what stage is the Magistrate going to decide about the nature of punishment.

SHRI F. H. MOHSIN: I think that will be an interpretation for the Judge.

SHRI SYED NIZAM-UD-DIN: It will be prejudging. Before hand he will have to judge; whether he may punish him only with fine or punish him with imprisonment or something like that. Therefore, I think some anomaly is there in this clause. That is my submission.

THE VICE-CHAIRMAN (SHRI RANBIR SINGH): I suppose the Minister cannot help it.

SHRI F. H. MOHSIN: There is no flaw at all. He has got a discretion in the matter.

THE VICE-CHAIRMAN (SHRI RANBIR SINGH); Judges have their discretion.

SHRI SANAT KUMAR RAHA: Sir, I would request you to take clause-by-clause opinion of the House, specially regarding clauses 5 and 7 which deal with separation of Judiciary and Executive.

THE VICE-CHAIRMAN (SHRI RANBIR SINGH); The time has not yet come for' that ' submission. ' You may make it at the proper, time.

The question is:

"That the Bill to amend the Code of Criminal Procedure, 1973, be taken into consideration."

The motion *was* adopted.

THE .VICE-CHAIRMAN .(SHRI RANBIR SINGH): We shall now take up clause-by-clause consideration of the Bill. ...

Clause 2 *to* 4 *were added to the Bill.*

THE' ; VICE-CHAIRMAN (SHRI RANBIR SINGH): Clause 5. There is an amendment by Shri Shyam Lai Yadav.

Clause 5—*Amendment of section* 13.

SHRI SHYAM LAL YADAV: Sir, I beg to move;

1. "That at page 2, lines 32-33, *for* the words 'under section 34 of the Police Act 1861, or under any other special law' the words 'or under any special law' be *substituted."*

Sir, the reason for this amendment is that the Police Act is also a special Act. I think it may be accepted.

SHRI F. H. MOHSIN: Sir, I accept it.

THE VICE-CHAIRMAN (SHRI RANBIR SINGH): The question is:

1. "That at page 2, lines 32-33, *for* the words 'under section 34 of the Police Act, 1861, or under any other special law' the words 'or under any special law' be *substi-. tuted."*

The motion was adopted.

THE VICE-CHAIRMAN (SHRI RANBIR SINGH): The question is:

"That clause 5, as amended, stand part of the Bill."

The motion was adopted.

Clause 5, *as amended, was added to the Bill.*

THE VICE-CHAIRMAN (SHRI RANBHl SINGH): Clause 6. There is an amendment by Shri Shyam Lai Yadav.

Clause 6—*Amendment of section* 14.

SHRI SHYAM LAL YADAV: Sir, I beg to move:

2. "That at page 3,—

(i) in lines 20-21, the words '(hereafter in this sub-section referred to as the original district)' be *deleted;* and

(ii) in line 28, for the word original" the word 'said' be *substituted."*

Sir, this is only a drafting change and Government may kindly accept ii.

The question was proposed,

SHRI F. H. MOHSIN; I accept it.

THE VICE-CHAIRMAN (SHRI RANBIR SINGH): The question is:

2. "That at page 3,—

(i) in lines 20-21, the words '(hereafter" in this sub-section referred to as the original district)' be delated; and

(ii) in line 28, *for* the word 'original' the. word 'said' be *substituted."*

The motion was adopted.

THE VICE-CHAIRMAN (SHRI RANBIR SINGH): The question is:

"That clause 6, as amended, stand part of the Bill."

' *The motion wax adopted,*

[The Vive-Chairman]

Clause 6, *as amended, was added to the Bill*

Clause 7 *(Amendment of section* 18)

SHRI SHYAM LAL YADAV: Sir. I move:

3. "That at page 4, line 13, *after* the wor<} 'any' the word 'special' be *inserted."*

Th^ *question was proposed.*

SHRI SHYAM LAL YADAV: It is also a drafting change. It may be accepted.

SHRI F. H. MOHSIN. I accept it.

THE VICE-CHAIRMAN (SHRI RANBIR SINGH): The question is:

3. "That at page 4, line 13, after the word 'any' the word 'special' be *inserted."*

The motion was adopted.

THE VICE-CHAIRMAN (SHRI RANBIR SINGH): The question is:

"That clause 7, a$_s$ amended, stand part of the Bill."

The *motion was adopted.*

Clause 7, *as amended, was added to the Bill.*

New Clause 1A

उपसभाध्यक्ष (श्री रणबीर सिंह) : क्लाज 7–ए, यह तो सेक्शन 20 के संशोध के सदर्भ में जो है अमेंडिंग बिल मे वह अंड डिस्कशन हो नहीं है ।

श्री श्याम लाल यादव : मेरा निवेदन यह था कि यह जो क्लाज में हमने किया है . .

उपसभाध्यक्ष (श्री रणबीर सिंह) : सेक्शन 20 में ।

श्री श्याम लाल यादव : हां, सेक्शन 20 में जो वर्डिंग है इसको अगर एक्सेप्ट कर लिया जाए तो अच्छा रहे नहीं तो फिर जब कोर्ट के इन्टरप्रिटेशन में दिक्कत पड़ेगी तो इाफ्टिंग चेन्ज के लिये दोबारा हाउस के सामने लाना पड़ेगा, इसलिए मेरा निवेदन था, अगर मंत्री जो सहमत हो, सदन सहमत हो, तो उसको स्वीकार कर लिया जाए ।

SHRI F. H. MOHSIN: *Ot* course, this is to remove certain difficulties. As he says, we may have to bring another Bill again for removing these difficulties, I accept the amendment. It may be allowed.

उपसभाध्यक्ष (श्री रणबीर सिंह) : अमेंडमेंट तो यह अच्छा है लेकिन हाउस में यह अच्छा प्रिसिडिन्ट कायम नहीं करेंगे । पहले आपको सोच समझ कर जिस जिस क्लाज में या सेक्शन में अमेंडमेंट लाना जरूरी था उसको बिल के अन्दर लाना चाहिये था । लेकिन अगर सदन सहमत है तो मैं सदन के हाथ में हूं ।

SHRI B. N. BANERJEE: In **our** generosity we may raise no objection.

THE VICE-CHAIRMAN (SHRI RANBIR SINGH): Formally you move it.

SHRI SHYAM LAL YADAV: Sir, I move:

"That at page 4, after line 15, the following new clause be inserted, namely: —

4. '7A. In section 20 of the principal Act, in sub-section (2), after the words 'in force' the words 'as may be directed by the State Government' shall be *inserted* and for the words "of or any" substitute 'such'."

मैंने इसको पढ़ लिया है क्योंकि अमेंडमेंट में कुछ शब्द ठीक से छपे नहीं थे, जो मैं इसमें रख रहा हूं . . .

THE VICE-CHAIRMAN (SHRI RANBIR SINGH): That has not been circulated. What has the Minister to say about the amended Amendment which has not been circulated?

SHRI F. H. MOHSIN: I accept it if the House permits.

THE VICE-CHAIRMAN (SHRI RANBIR SINGH): He may formally read it again and move it.

SHRI SHYAM LAL YADAV: Sir, I move...

SHRI B. N. BANERJEE: He can write it and give it to you.

SHRI SHYAM LAL YADAV: Sir. I move:

4. "That at page 4, after line 15, the following new clause be *inserted,* namely:

'7A. In section 20 of the principal Act, in sub-section (2), after the words 'in force' the words 'as may be directed by the State Government' shall be inserted and for the words 'of or any' the word 'such' shall be substituted."

The question was proposed.

SHRI SANAT KUMAR RAHA: The amendments should not be hastily accepted.

THE VICE-CHAIRMAN (SHRI RANBIR SINGH): The comments of Shri Raha, I suppose, are correct. The Bill should not be hastily drafted. Anyway, the House has agreed. So, I put the amendment to the House. The question is:

4. "That at page 4, after line 15, the following new clause be inserted, namely: —

'7A. In section 20 of the principal Act, in sub-section (2), after the words 'in force' the words 'as may be directed by iha State Government' shall be inserted and *for* the words '0I or any' the word 'such' shall be *substituted'."*

The motion was adopted. 781

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THE VICE-CHAIRMAN (SHRI RANBIR SINGH) The question is:

"That new clause 7A stand part of the Bill."

The motion was adopted.

New Clause 1A was added to *the* Bill.

Clauses 8 *and* 9 *were added to the Bill. New*

Clause 9A

SHRI SHYAM LAL YADAV: Sir, I move:

'That at page 4, *after* line 37, the following new clause be *inserted.* namely: —

'9A. In section 102 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely: —

'(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the court, he may give custody thereof to any person on his executing a bond undertaking to produce the property befor$_e$ the court as and when required or to give effect to the further orders of the court as to the disposal of the same.'."

Sir, this clause is as a result of the recent Supreme Court judgment No. AIR 1976 page 680, that section 102 does not empower the police officer to dispose of or to take bond f^{or} the properties that he seize$_s$ in a crime. For example, take elephants or camels or motor cars or buses or trucks. If the police officer gets them during inv2stigatiop. he is empowered to take a bond. There is great difficulty with regard to these and the Supreme Court has suggested that this thing should be gone into by Parliament. Therefore, I have suggested this amendment. I hope the Minister will

[Shri Shyam Lai Yadav]

kindly accept it and the House will agree.

The question was proposed.

SHRI F. H. MOHSIN: I agree.

THE VICE-CHAIRMAN (SHRI RANBIR SINGH): The same thing applies here. This is barred under the Rules. It is not proper for the Ministry to bring Bills without proper deliberation and thinking and we are thankful to Shri Yadavji who considered it more minutely than the Ministry itself.

SHRI B. N. BANERJEE: It is also not proper to move an amendment like this. What you said on the part of the Ministry, it applies equally to (him. He is equally to blame for such an amendment.

SHRI SHYAM LAL YADAV: What could I do? I had to move it.

THE VICE-CHAIRMAN (SHRI RANBIR SINGH): The question is:

5. "That at page 4, *after* line 37, the following new clause be *inserted,* namely: —

'9A. In section 102 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely: —

'(3). Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and wher, the property seized is such that it cannot be conveniently transported to the court, he may give custody thereof to any person on his executing a bond undertaking to prcd 'ce the property before the court as and when required or to give effect to the further orders of the court as to the disposal of the same.'."

The *motion was adopted.*

THE VICE-CHAIRMAN (SHRI RANBIR SINGH): The question is:

"That New Clause 9A stand part of the Bill."

The motion was adopted.

New Clause 9A was added to the Bill. Clauses 10 *to* 12 *were added to the* tfilL

Clause 13—*Amendment of section* 167

SHRI SHYAM LAL YADAV: Sir, I move:

6. "That at page 6, lines 11-12, the words 'if he is prepared to and doe* furnish bail' be deleted."

Sir, because this power of detention for 7 days is given to the Executive Magistrates and thereafter it will be passed on to the Judicial Magistrates, this portion may kindly be deleted. I think the Government should accept it.

The question was proposed.

SHRI F. H. MOHSIN: I am accepting.

THE VICE-CHAIRMAN: There to another amendment also by Shri F. H. Mohsin.

SHRI F. H. MOHSIN: Sir, I move:

9. "That at page 6,—

(i) line 24, *for* the words 'on the expiry' the words 'before the expiry' be *substituted;* and

(ii) line 25, the word 'forthwith' be *deleted. "*

The question was proposed.

THE VICE-CHAIRMAN (SHRI RANBIR SINGH): The question is:

6. "That at page 6 lines 11-12, the words 'if he is prepared to and doea furnish bail' be *deleted."*

The motion was adopted.

THE VICE-CHAIRMAN (SHRI RANBIR SINGH): The question is:

9. "That at page 6 —

(i) line 24, *for* the words 'on the 'expiry' the words 'before the expiry* be substituted; and

(ii) line 25, the word 'forthwith' be deleted."

The motion was adopted.

THE VICE-CHAIRMAN (SHRI RANBIR SINGH): The question is:

"That clause 13, as amended, stand part of the Bill."

The motion was adopted.

Clause 13, *as amended, was added w the Bill.*

Clauses 14 to 17 *were added to the Bill.*

Clause 18—*Amendment of section* 208.

SHRI SHYAM LAL YADAV: Sir, I move:

7. "That at page 7, line 5, *for* the words 'in relation to' the words 'in relation to any offence which is compoundable under section 320 or' be *substituted."*

Sir, I move it because the benefits of section 206 should also be available to such other cases [as] are compoundable under section 320; the time of courts will be saved.

The question was proposed.

SHRI DEORAO PATIL (Maharashtra) : I support that amendment. I say that this House should accept this; the Minister should accept this.

SHRI F. H. MOHSIN: I accept that.

THE VICE-CHAIRMAN (SHRI RANBIR SINGH): The question is:

7. "That at page 7, line 5, *for* the words 'in relation to' the words 'in relation to any offence which is compoundable under section 320 or' be *substituted."*

The motion was adopted.

THE VICE-CHAIRMAN (SHRI RANBIR SINGH): The question is:

"That clause 18, as amended, stand part of the Bill".

The motion was adopted.

Clause 18, as amended, *was* added be *the Bill.*

Clause 19—*Amendment of* section 208

SHRI SHYAM LAL YADAV: *Sis,* I move:

8. "That at page 7, line 16, *after* the word 'that' the words 'no copy shall be furnished and' be inserted."

Sir, the notes that are provided on the clause speak about this thing thai no copy will be furnished.

The question was proposed,

SHRI F. H. MOHSIN: I accept the amendment.

THE VICE-CHAIRMAN (SHRI RANBIR SINGH): The question is:

8. "That at page 7, line 16, *after* the word that' the words 'no copy shall be furnished and' be *inserted."*

The motion was adopted.

THE VICE-CHAIRMAN (SHRI RANBIR SINGH): The question is:

"That clause 19, as amended, stand part of the Bill."

The motion was adopted.

Clause 19, *as amended, was added to the Bill.*

Clauses 20 *to* 33 *were added to the Bill.*

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

SHRI F. H. MOHSIN; Sir, I move

'That the Bill, as amended, be passed".

The question was proposed.

SHRI LAKSHMANA MAHAPATRO: Sir, the other parts about which we raised objections can b« reconsidered.

. THE VICE-CHAIRMAN (SHRI RANBIR SINGH): Has the Minister to say anything about his comments?

SHRI SANAT KUMAR RAHA: Today is the day of Mr. Shyam Lai Yadav, not the day of the Minister who moved the Bill. I think that along with Mr. Shyam Lai Yadav and the Congress Benches, the Minister should think over this matter regarding the separation of the judiciary from the executive. Then this Bill should be passed; otherwise, let us adjourn and go home.

SHRI F. H. MOHSIN: The amendments moved by Mr. Shyam Lai Yadav were acceptable to the Government; we have accepted them. Unfortunately, they have not moved any amendment. I cannot consider any amendment not moved by them. Those Members will reconsider their decision after going home.

THE VICE-CHAIRMAN (SHRI RANBIR SINGH): The question is:

"That the Bill, as amended, be passed."

The motion was adopted.

MESSAGES FROM THE LOK SABHA

I. The Appropriation (No. 6) Bill, 19

II The Labour Provident Fund Laws (Amendment) Bill, 1976.

SECRETARY-GENERAL: Sir, I have to report to the House the tollow-ing messages received from the Lok Sabha, signed by the Secretary-General of the Lok Sabha: —

I

"In accordance with the provisions of Rule 96 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose herewith the Appropriation (No. 6) Bill, 1976 as passed by Lok Sabha at its sitting held on the 26th August, 1976.

2. The Speaker has certified that this Bill is a Money Bill within the meaning of article 110 of the Constitution of India."

II

"In accordance with the provisions of Rule 96 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to encloss herewith the Labour Provident Fund Laws (Amendment) Bill, 1976 as passed by Lok Sabha at its sitting held °n the 26th August, 1976."

Sir, I lay a copy of each of the Bills on the Table.

THE VICE-CHAIRMAN (SHRI RANBIR SINGH): The House stands adjourned till 11.00 A.M. tomorrow.

The House then adjourned at fifty-six minutes past five of the clock till eleven of the clock on Friday, the 27th August, 1076.

GMGIPND—M—781 R.S.—6-10-76.