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tion Limited, for the year 1969-70, together with the Auditors' Report on the Accounts and the comments of the Comptroller and Auditor General of India under sub-section (1) of sectheieon. tion 619A. of the Companies Act, 1956. [Placed in library, See No. LT-4051/72]

FERTILISLER (CONTROL) THIRD AMENDMENT **Order** 1972

SHRI ANNASAHEB SHINDE: Sir. I also beg to lay on the Table a copy (in English and Hindi) of the Ministry of Agriculture (Department of Agriculture) Notification G.S.R. No. 428 (E), dated the 26th September, 1972, publishing the Fertiliser (Control) Third Amendment Order, 1972, under sub-section (6) of section 3 of the Essential Commodities Act, 1955 [Placed in Library. See No. LT-3963/72.]

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NOTIFICATION UNDER THE ESSENTIAL COMMO-DITIES ACT. 1955.

SHRI ANNASAHEB SHINDE : Sir. I also beg to lay on the Table a copy (in English and Hindi) of the Ministry of Agriculture (Department of Agriculture) Notification G.S.R. No. 428(E), dated the 6th October, 1972, under sub-section (1) of section 12A of the Essential Commodities Act, 1955. [Placed in Library. Sec No. LT-3963/72.]

ANNUAL REPORT OF THE DEVELOPMENT COUNCIL FOR SUGAR INDUSTRY FOR THE YFAR FNDING THE 31ST MARCH 1972

THE MINISTER OF STATE IN THE MINISTRY OF AGRICULTURE (PROF. SHER SINGH) : Sir. I beg to lay on the Table, under sub-section (4) of section 7 of the Industries (Development and Regulation) Act, 1951, a copy (in English and Hindi) of the Annual Report of the Development Council for Sugar Industry for the year ending the 31st March, 1972. [Placed in Library. See No. LT-8964/72.1

MOTION FOR ELECTION TO THE NATIONAL FOOD AND AGRICULTURE ORGANISATION LIAISON COMMITTEE.

THE MINISTER OF STATE IN THE MINISTRY OF AGRICULTURE (SHRI ANNASAHEB SHINDE) : Sir, I move :

8-7 RSS/ND/72

That in pursuance of the Ministry of Agriculture (Department of Agriculture) Resolution No. F. 10-1/65-FAIT, dated the 9th September, 1966, as amended, this House do proceed to elect in such manner as the Chairman may direct, one member from among the members of the House to be a Member of the National Food and Agriculture Organisation Liaison (Committee).

The question was put and the motion was adopted.

THE CODE OF CRIMINAL PROCEDURE • - r= -

श्री नवल किशोर (उत्तर प्रदेश): उपाध्यक्ष जी, कल इस विधेयक के वाद-विवाद के संबंध में मैं यह कह रहा था कि ग्राज हिन्तूस्तान की ग्राजादी के 25 साल के बाद भी यह एक ग्रफमोस की बात है ग्रौर एक दूख की बात है कि पुलिस के प्रति ग्राज भी जनता में वह विश्वास पैदा नहीं हो सका है जो कि किसी ग्राजाद देश के ग्रंदर होना चाहिए। श्रीमन, जिस समय हम ग्राजादी की जंग लड रहे थे. उस समय हममें मे बहत से लोगों का आरेर जनसाधारण का वास्ता पुलिस से पडा था और ग्राज 25 माल के बाद भी उस समय की जो धारणायें थीं वह समाप्त नहीं हो पायीं हैं। इस में शक नहीं कि बहत से कमीशन्स बैठे इस पूलिस के संबंध में, इसलिए कि उसमें सुधार किया जाय----उत्तर प्रदेश में कमीशन बैठा, राजस्थान में कमीशन बैठा, ग्रौर शायद ग्रौर दूसरे स्टेट्स में भी कमीशन्स बैठे होंगे, लेकिन उसके वावजुद भी कोई विशेष सूधार पुलिस की जहनियत में, उसके ग्रप्रोच में, उसके काम करने के तरीकों में हम ग्रभी तक पैदा नहीं कर सके। ग्राज भी ग्राम तौर से सदन में इस बात की शिकायतें ग्राती हैं ग्रौर जब कभी यहां ला ऐंड ग्राईर की बात ग्राती है ग्रौर कहीं पुलिस से कंफन्टेशन उसके सिलसिले होता है नो

[श्री नवल किशोर] 🛛 👾 🤤 में पुलिस की निन्दा की जाती है। तो मैं इस तरफ गृह मंत्री जी का ध्यान **ग्रार्का**षत करना चाहता हं कि उनका तमाम क्रिभिनल प्रोसीजर कोड जो फर्स्ट इन्फार्मेशन रिपोर्ट होती है, उस पर आधारित है । पुलिस शासन की वही बुनियाद है। लेकिन ग्राज भी फर्स्ट इंन्फार्मेशन रिपोर्ट को लिखने का वही तरीका है। ग्राज भी थानों की जो फीस पहले थी, उससे वह कुछ बढ गयी है, लेकिन एफ० ग्राई० ग्रार० की फीस ग्रपनी जगह कायम है ग्रौर मिर्धा जी मझ से ज्यादा जानते होगें कि एफ० ग्राई० ग्रार० लिखी नहीं जाती है, बल्कि वह लिखवाई जाती है। जो ग्रादमी जाता है ग्रपनी शिकायत लिखवाने के लिए वह अनभिज्ञ होता है कानुन से ग्रौर थाने के दीवान जी जो होते हैं, जो पुलिस के सबसे बड़े हाकिम हैं थाने पर, वह जिस तरह से चाहते हैं उस रिपोर्ट को लिख लेते है। यह बात सही है कि ग्रापने ग्रब उस में कूछ तरमीम की है, उसकी ग्रब कापी फी दी जाएगी, वैसे कापी की बान तो ग्रभी भी थी, लेकिन ग्रब शायद बिना पैसे के कापी दी जायगी, उसका कोई पैसा नहीं लिया जाएगा। पहले लिया जाता था या नहीं, इसका कुछ पता नहीं है, लेकिन उसमे कोई खास सुधार होने वाला नहीं है। ग्राज भी यह बात सब पर जाहिर है कि जो **श्रादमी रिपोर्ट लिखाने ग्राता है, उसकी** रिपोर्ट में पूलिस दूसरे लोगों को फसाने की कोशिश करती है ग्रौर ग्राज भी लोगों पर झुठा केस बनाया जाता है। अरीर आज कल थानों में एक खास बात यह है कि दफा 19 ग्राम्स ऐक्ट का इस कदर मिसयूज होता है कि कुछ कहना नहीं। किसी भी बेगुनाह इंसान का देशी तमंचा रखवा कर**ं उसका चा**लान कर दिया जाता है स्रौर इसी तरह के झुठे केसेज बनाये जाते हैं। इसके

पीछे कुछ पार्टीबाजी होती है। वहां के गांव की ग्रौर शहरों की भी ग्रौर कुछ पोलिटिकल ग्रसर से भी ऐसा होता है। तो मैं यह बात जानना चाहता हं कि इतनी मेहनत के बाद भी इस एफ० आई० ग्रार० में सुधार लाने के लिए आपने क्या कोई बात की है? शायद कुछ नहीं हम्रा है। श्रीमन्, मिर्धा वात को जानते होंगे कि ग्राज भी सिर्फ 60 परमेंट केमेज की एफ० आई० आर० लिखी जाती है ग्रौर 40 परमेंट केमेज की नही लिखी जाती है। श्रीमन, जब हम उत्तर प्रदेश में थे, तो वहां इस बात की कोशिश की गयी कि कोई भी रिपोर्ट छिपायी न जाय, क्योंकि पुलिस एफ० ग्राई० ग्रार० इसलिए नहीं लिखती है ताकि उसके यहां. काइम्स के ग्रांकडे कम रहें ग्रौर उनको यह कहने का मौका रहे कि हमारे यहां पिछले साल के मुकाबले इस साल काइम्स कम हुए हैं। हालांकि काइम्म कम नहीं होते है। वैसे ग्रापने ंडस में कुछ ग्रमेंडमेंट किया है ग्रौर वह बाद में ग्रायेगा श्रौर वह बात ग्रपनी जगह पर है कि ग्रगर किसी की रिपोर्टन लिखी जाय तो वह उसको सीधे सूपरिंटेंडेंट के पास भेज सकता है।

ग्राप जो ग्रमेंडमेंट लाये हैं, उससे स्थिति बहुत नहीं बदलती; क्योंकि ऐसा ग्राज भी 🗠 है। मैं चाहता हं कि अगर यह साबित हो जाए कि थानेदार ने या दीवान जी ने, 🖡 जो भी ग्रफसर वहां हैं, उन्होंने जान-बुझ कर रपट नहीं लिखी है, किसी वजह से तो उनके लिए पनिशमेंट का कोई न कोई इंतिजाम होना चाहिए।

एक बात और कहना चाहता हूं। ग्रापने जुडीशियरी ग्रीर ऐक्जीक्युटिव को 🔐 मेपरेट कर दिया । बहुत से स्टेट्स में तो यह था, ग्रापने उसको म्राल इंडिया बेसिस पर ग्रलग कर दिया, यह ग्रच्छा

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134

कदम हे। मै यह झर्ज कर रहा था कि बहत दिनो से यह भाग थी कि म्रापकी पुलिस के दो विग होन चाहिए, एक इवेस्टिगेटिग पुलिस हो ग्रौर एक प्राजी-क्युटिंग पुलिस हो । इसका कुछ ऐक्स-रिमेट हमने उत्तर प्रदेश में भी किया शा। अब तो पता नही उसका क्या (म्रा) मै जानना चाहता हू कि क्या मधी साहब इस बात से इत्तीफाक करते े कि इसमें यह बात की जाए[?] श्रीमन, मै इस बान को मानता हू कि इसमे जो ाहत सी ग्रच्छी तब्दीलिया हई है। उनक लेए में बधाई देना चाहता *ह*, उनको गैर ज्वाइट सेलेक्ट कमेटी को। मेने खा कि बहुत से बच्चों, स्त्रियों ग्रौर समरी ायलुम के बारे में इसके अन्दर काफी धार किये गये है। यह भी आपने **बच्छा किया ह कि आनरेरी मजिस्ट्रेट** गौर जस्टिस ग्राफ पीस को खत्म कर देया । - 1.

श्री श्याम लाल यादव (उत्तर प्रदेश) ।त्म नही हुए है, सेकिंग क्लास के होगे।

श्री नवल किशोर कछ कम ता केये हैं। इसमे आपने प्रोवेशन आफ गफेडर्स ऐक्ट के लिए तथा रिमाड वगैरह ह बारे मे जो सुधार की बाते की है, ाह तो ठीक है। लेकिन मै यह जानना गहता हू कि इसमे जो आपकी दफा 83 र, उसके अन्तर्गत आपने यह किया है कि गगर कोई कोर्ट के सामने पेश न हो तो उसका ग्रब तक कायदा यह था कि 30 देन तक वह पेश न हो तो उ**सकी** गपर्टी ग्रटेच हो सकर्ता थी। ग्रापने 30 दिन को बात निकाल दी । मै हहना चाहता हू कि ग्रगर किसी ग्रादमी ार झुठा केस हो जाए और उसकी प्रापर्टी हे अटेचमेट का ग्राईर एक साथ कर दे तो उसको पता भी नही चला कि उसके ऊपर केस ग्र्या है। तो जो सेक्शन 83 का ग्रसली मशा शा उसको म्रापने खत्म कर दिया। इसलिए मै ग्रापसे कहना <mark>चाहता हू कि</mark> इस पर दोबारा दृष्टिपात करे।

श्रीमन, दफा 107, 108, 109 ग्रौर 110 ये चारो प्रिवेटिव सेक्शस है। लेकिन मिर्धा साहब उतना ही जानते है जितना कि में जानता हू कि इनका मिसयुज होता हे। अब तो दिक्कत यह है कि कोई मूवमेट हो, चाहे जनता का मुवमेट हो, स्ट्डेट्स का मुवमेट हो. उनको दबाने क लिए दफा 107, 108, 109 ग्रौर 110 का मिस्यूज होता है। मै यह समझता था कि ग्राजाद हिन्दुस्तान के ग्रन्दर इन दकाग्रो के लिए कोई स्थान कोड ग्राफ क्रिमिनल प्रोसीजर मे नही होगा, क्योकि यह धब्बा है किसी भी डेमोक्रेटिक गवर्नमट के लिए और उस देश के लिए अहा डेमोक्रेसी बुनियाद मानी गई हे हमारे राजतत्र की। लेकिन श्रीमन्, मुझे एक बात याद है, आपको भी शायद जेल जाने का सौभाग्य मिला होगा। मिर्धा माहब ओम् मेहना से तो बात होती रहती है, मेरी तरफ भी निगाह करे। I want your attention and also your mind.

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मै अर्ज़ कर रहा था कि मै जब जेल में था तो श्रीमन्, जब कभी वहा सफइयो की कमी होती थी या स्वीपर्स की कमी होती थी तो दफा 109 में भातू आं को भेज दिया जाता था। यह दफा निकम्मी है, It is a black spot on any decent administration. मगर वह ग्राज भी इसमे कायम है। 108, 109 ग्रौर 110 म आपने इतना कर दिया है कि उसकी प्रोसीडिंग जुडीशियल मजिस्ट्रेट करेगा, मगर 107 मे स्रापने रखा है कि उसका एग्जीक्युटिव मजिस्ट्रेट करेगा । तो कम से कम 107 में इतना तो कर ही दीजिये कि वट भी जुडीशियल मैजिस्ट्रेट करे; क्योंकि एग्जीक्यटिव मैजिस्ट्रेट और पूलिस में साठ-गाठ होती है और उससे

[श्री नवल किशोर]

न्याय मिलने मे काफी दिक्कत होती है। श्रीमन्, इसके ग्रन्दर जो पहले कमिटल प्रोसीडिग्स होती थी, इसको खत्म किया है। यह एक मिक्सड चीज है। इससे एक फायदा यह जरूर होगा कि जो देरी होती थी वह कम हो जाएगी, लेकिन इससे मुझे डर यह है कि सेशन कोर्ट मे काम बहुन ज्यादा बढ जायगा, क्योकि कमिटल प्रोसीडिंग मे मैजिस्ट्रेट को यह भी ग्रधिकार था कि ग्रगर वह समझता था कि प्राइमाफेसी केस नही बनता है तो वह उसे डिसचार्ज कर देना था। फिर भी डिले को कम करने के प्वाइट ग्राफ ब्यु मे मैं ममझना हू कि यह एक ग्रच्छा कदम है।

श्रीमन, इसमे जो दफा 407 है, उसके बारे में मैं कहना चाहता ह। इसके सम्बन्ध मेे एक बनियादी सवाल है। **दफा** 407 में एप्लीकेशन फार टासफर की बात थी और एडजार्नमेट आफ प्रोसी-डिंग की बात थी। ग्रब तक कायदा यह है कि अगर कोई आदमी एप्लीकेशन देदेकि मैं अपने केस को ट्रासफर कराना चाहता हू ग्रौर हाई कोर्ट को मुव करूगा तो वह प्रोमीडिंग वही की वही एडजार्न कर दी जाती ह। ग्रब जो नया बिल पेश किया है, इसमे इस चीज को हटा दिया है। मगर ज्वाइट सेलेक्ट कमेटी ने इसको पास किया और सर्वसम्मति से पास किया, मगर ग्रब मिर्धा साहब के नाम से एक अमेडमेट ह कि स्थिति फिर वही की वही कर दी जाए। श्रीमन्, मै ग्रापके जरिये से एक बुनियादी सवाल उठाना चाहता हु। में इस बान को मानता हू कि कैंबिनेट को इस बात की ग्राजादी ग्रौर ग्रधिकार है कि ज्वाइट कमेटी के बाद भी वह कोई भी अमेडमेट करना चाहे तो ग्रमेडमेट कर मकती हे। मै उस ग्रधिकार का मानता हू । लेकिन जिस कमेटी में मिर्धा माहब मौजुद हो---- ग्रौर मिर्धा साहब चाहे कैंबिनेट मिनिस्टर न हो, किन्तू उनकी हैसियत कैबिनेट मिनिस्टर से कम नही है––जब उनके सामने ज्वाइट कमेटी मे यनानिमस फैसला हो जाय. तब उसको इस तरह से चेज करना मे समझता हू कि न कोई उस कमेटी के स्टेचर को यह बढाता है और ग्रगर मझे माफ करे तो मैं कहगा कि मेरे दोस्त मिर्धाजी का स्टेचर भी नही बढा हे। इसके माने यह है कि कही कोई फाइनैलिटी नहीं है। जब हम ग्राप बैठ करके किसी कमेटी म ग्रापस मे डेलिबरेशम के बाद, वाद-विवाद के बाद एक चीज पर ग्रा जाय, वह चीज सर्व-सम्मति से तय हो जाय, तब मै समझता ह कि जो चीज सर्वसम्मति से तय हो जाय, उनके अन्दर इस तरह के अमेडमेट नही ग्राने चाहिए।

इसमे, श्रीमन्, 151 की बात भी ग्राई हे। पुलिस की जो मौजूदा हालत हे, उसमे दफा 151 में जो पावर्म ग्रापने दी है, मैं समझता ह कि उससे अभी तक जो शकाये हे लोगों के दिमाग में उसके मिसयुज के बारे मे हैं। वह ग्रपनी जगह पर ग्रबभी रहेगी यद्यपि ग्रापने उसके सब-सेक्शन (2) में यह कर दिया हे कि बेल की प्रोसीडिंग्स उसी तरह से होगी जैसे कि चैप्टर 5 मे व्यवस्था है। मगर चैप्टर 5 उन ग्रादमियो से डील करता है जो कि **बगैर वारे**ट के पकडे जाय, मगर आफेम करने के बाद पकडे जाय, लेकिन इसमे तो बिना कूछ किए पकड सकते है सिर्फ उस बिना पर कि ग्रापको शक है कि ग्राफेम होगा। तो इसका काफी मिसयूज होता है ग्रौर आगे भी होगा। इतनी मेहनत के बाद भी वह चीज वही ह, जहा पर पहले थी ।

श्रीमन्, पब्लिक प्राजीक्युटर की बात है, मिर्धा साहब भी जानते हैं मैं भी जानता हू कि ये जो पब्लिक प्राजीक्यटर्स एप्वाइट

किये जाते हैं वह कैसे किये जाते है। म्राज तक यह कायदा था, म्रापने यह रखा था ग्रपने बिल मे कि डिस्ट्रिक्ट मैजिस्ट्रेट श्रौर हाई कोर्ट की सिफारिश से उनका एप्वाइटमेट होगा, लेकिन ज्वाइट कमेटी ने उस बात को नही माना। में सिर्फ एक बान कहना चाहता हू कि इसके म्रन्दर काफी पोलिटिकल प्रेशर ग्रौर काफी पोलिटिकल पैट्रोनेज होता है। जो ग्रापने क्लाज रखा था म्रोरिजनली वह ज्यादा वेटर था वजाय इसके । इसी नरह से जब ग्राप डिस्ट्रिक्ट कौमजम को एप्वाइट करते है उसमे यह मेरा ग्रपना एक्सपीरियस भी है कि ऐसे वकील जिनके पास कभी एक केम नहीं जाता है, मगर चुकि उनका पुल होता है कही न कही मेरे पाम या मिर्धा माहब के पास ग्रौर वह डिस्ट्क्ट कौंसिल बन जाते है। सिर्फ उनके पास पोलिटिकल प्रेशर होता है ग्रोर पालि-टिकल स्टिग्म को वह खीच सकते है। तो मै यह चाहता था कि जो पब्लिक प्रोजीक्युटर की एप्वाइटमेट की बात ह, वह अपनी जगह जैसी आपने पहले रखी थी बिल मे वैसी ही रखनी चाहिए।

श्रीमन्, ग्राज कल जो क्रिमिनल कोर्टस है they are infact, courts of मैने acquittal. ग्राकडे इकठुठे किये थे जब कि मे यु० पी० मे होम मत्री था तो मालूम हग्रा कि सिर्फ 60 परसेट की कम्प्लेटम एफ० ग्राई० ग्रार० लिखी जाती हे । उसमे से 60 परसेन्ट अदम तफतीश मे खत्म कर दिये जाने है, सिर्फ 40परसेन्ट का इन्वेस्टिगेशन हे । होता उस 40 परसेन्ट में 15 परसेन्ट का काविक्शन होता है। हमारे डिप्टी सेकेटरी जज साहब बैठ है, इनका भी एक्सपीरियेन्स होगा। और उन 15 परसेन्ट में से भी जो अपील में जाने है तो छुट-छाट कर 5 परसेन्ट बच

जाते है। आज जिस नग्ह से काइम बढ रहा है और जिस तरह से कोर्टस का एक्विटल चल रहा है उससे मैं सम-झता हू ग्राप काइम्स की रोकथाम नही कर पाएगे । इसके बारे मे ग्राप क्या कर सकते है, मैं जानता नही ग्रौर मै यह कहने के लिए तैयार नही ह कि स्राप उसम स्रन्नेसंसरी इन्टरफियरेन्स करे। श्रीमन, एक नागरवाला का केस था। यहा म उसके डिटेल्ग मे नही जाता ह, मगर कोर्ट ने प्राम्टनेस ग्रीर इफिशियेन्सी मे कमाल कर दिया--- 3 घटे मे सब कुछ हो गया, वरना एक-एक साल, डेढ-डेढ साल तक केसेज पडे रहते है सेशन्स कोर्ट मे, श्रौर संशन्स कोर्ट मे ही नही, जो नीचे की लाग्नर कोर्टस है, उनमे भी छ-छ' ग्राठ-ग्राठ महीने हां जाते है। में चाहता हु, नागर-वाला केस की जो इफिशियेन्सी थी हन्डेट परसेन्ट. उसकी 10 परसेन्ट जाए 🝃 डफिशियेन्सी भी कोर्ट्स मे ग्रा तो ये बहुत सारे जो एरियर्स इकटठा हो गए है कोर्ट्स मे, ये एरियर्स ग्रासानी में खत्म हो जाएगे।

ग्रव मै ग्रापके जरिए से कहना चाहता ह, ग्रडर ट्रायल्से के बारे मे ग्रक्सर यह होता है कि लोग महीनो ग्रडर ट्रायल बने रहते हैं। आपने उस मे एक मियाद रखी ह छ महीने की, मगर उसमे एक दिक्कत यह है कि मान लीजिए, एक ग्रादमी को ग्रापने बद कर दिया, वह पहुच गए जेल मे ग्रौर ग्रगर श्रीमन् उसका ग्राफेन्स ही ऐमा हे, जिसमे उसे मजा 3 महीने या 6 महीने में ज्यादा नहीं हो मकती, तो छ महीने उसके वैसे ही हो गए जेल-खाने मे, हालाकि ऐसे मजिस्ट्रेट भी है जो इनने सेन्टेन्स को सेट ग्रसाइड कर देते हैं. उस पीरियड का कसिडरेशन कर लेते हैं। इसमे ग्रापने इम्प्रुवमेट किया है, इसमे शक नही, लेकिन इसके

[श्री नवल किशोर] बावजूद भी जो स्थिति है वह इससे सुधरने वाली नही है। यह मै स्रापसे स्रर्ज करना चाहता है।

बेन्स के बारे में इसमें एक बात यह है कि जो बेलेब्ल स्राफन्सेज है उनको बेल देने के कुछ तो ग्रधिकार पूलिस के होते है ग्रौर कुछ हमारे मजिस्ट्रेट्स के होते है, हालाकि कानून यह है कि उसको फौरान बेल द दिया जाए, लेकिन ग्राम तोर पर ऐमा होता है कि पूलिस ग्राफिसर उसको बेल नहीं देता ग्रौर मजिस्ट्रेट भी ऐसा करने वभी-कभी है कि उसको जेल में कस्टडी के अदर काफी टाइम भेज देते है ग्रौर उसमे लग जाता है क्योकि पेशकार वगैरह करण्डान की बात तो मे नही कहना तक शायद उनके चाय-चाहता—-जब पानी का इतजाम न हो तब तक आगे कोई चीज बढती नही। तो मैं चाहता ह, स्ट्रिक्टली इस बात को फोलो किया जाए कि जो बेलबल वारेन्ट्स है उनकी फौरन से फौरन उसी दिन बेल हो जानी चाहिए।

श्रीमन्, जुर्डाशियल मजिस्ट्रेट का एपौ-इन्टमेन्ट उसमे रखा है हाई कोर्ट के तहत । मे इस वात में तो इत्तिफाक करता ह कि उनका डिसिप्लिन, उनका कोड ट्रान्सफर, उनकी ग्राफ काटक्ट, उनका एफिंगियेन्सी, उनका प्रमाशन, न मब हाई कोर्ट के ग्रडर होना चाहिए, मगर जब जजेज का एपौइन्टमन्ट भी एग्जीक्यूटिव आर्डर में होता है तो जुडीशियल मजिस्ट्रेट्स का फर्स्ट एपौइन्टमेन्ट जं ह वह एग्जीक्युटिव से होना चाहिए। ऐसा मेरा ग्रपना खयाल है।

श्रीमन्, अव दो और दत्ते कह कर मै खत्म कर द्गा । क्लाज 116 मे ग्रापने लिखा है — that the date on which the Magistrate starts inquiry after appearance of all the persons concerned. ग्रब मान लोजिए किसी केस मे कई मुलजिम है, 6 तो हाजिर हो गए, एक मुलजिम हाजिर नही होता या पुलिस मेनिपुलेट करती ह एक ग्रादमी हाजिर न हो, तो मेरा कहना यह है कि उस एक ग्रादमी की वजह से वे छ ग्रादमी जेलखाने मे मड़ते है। यह बात मुना-सिब नही है। इसलिए मैने इस तरफ ध्यान खीचा।

इसी तरह मे. श्रीमन्, 172 की बात है, क्लाज 172 जो है, उसमे भी यही बात है और इसमे भी गोलमाल करने के लिए काफी गुजायश है । जैसा कि मैंने शुरू मे कहा था ग्रौर मेरा भी एडमिनिस्ट्रेगन का ग्रपना तजुर्बा है कि ग्राज मी पुलिस की डायरी खाली रहती है श्रौर पिछली तारिख मे ग्रासानी के साथ रिपोर्ट दर्ज हो सकती हे। इस चीज को रोकने के लिए मुझे कोई चीज इसमे दिखलाई नही देती है।

उसी तरह से क्लाज 438 है, जिस के बारे मे श्री झा ने इस प्रकार से नोट ग्राफ डिसेट लिखा हे:

It cannot be demed that the benefictaries of this clause will be only moneyed persons. The common man cannot avail of this additional advantage after committing 'non bailable' offence, it_is necessary that either this clause is totally deleted or this power of granting anticipatory bails is given to the lower courts, approachable by wider sections of citi-'ens or a proviso should be added excluding charges of muider, smuggling, blackmarketing, defalcation and other economic of heinous offences''

श्रीमन्, ये कुछ चीजे ऐसी है जिनके बारे मे मैं माननीय मत्री जी का ध्यान स्राकर्षित कराना चाहता हू। जैसा मैंने शुरू मे कहा था कि इसमे शक नही है कि ज्वाइन्ट सिलेक्ट कमेटी ने बहत मेहनत में यह कार्य किया है। इस बिल का ऐम्स एन्ड ग्राब्जेक्द्स यह है कि स्पीडी ट्रायल हो, गरीबों को जस्टिस मिल सके, ज्युडीशियरी ग्रौर एग्जीक्युटिव का सेप्रेशन हो ग्राल इंडिया बेसिस पर, ये जो चीजें हैं, बहुत ग्रच्छी है ग्रौर इस सम्बन्ध में जो कदम उठाया गया है, उससे जनता को लाभ पहुंचेगा क्यों-कि इम बिल में काफी सुधार हो गया है।

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मैं यह भी मानता हू कि कोई भी कानून कभी भी एक स्टेंज या दो स्टेज में परफेक्ट नहीं बन सकता है। मै इन सब बातो को जानता हं कि कानुन को ग्रमल करने के बाद ही उसमें सुधार किया जा सकता है। हमारे मिर्धा साहब सम्भवत एक प्रोग्रेसिव ग्रादमी हैं श्रीर में समझता ह कि उनकी गिननी उनके दल में प्रोग्रेसिव ग्रादमियों मे मानी जाती होगी। ग्रगर इसमे प्रिवेन्टिव डिटेन्शन के चेप्टर का वह हिस्सा जिसमें 107, 108, 109, 110 ग्रौर 151 भी आता है, निकाल दिया जाता तो बहुत ग्रच्छा होता। इफ य वान्ट प्रोग्रेसिव लेजिस्लेगन तव ये चीजे एक ब्लैक स्पाट है। मुझे इस बात का ताज्ज्ब है कि श्री शुक्ल जी जो इस कपेटी के चेयरमैन थे, उनकी निगाह से यह चीज क्यों वच गई।

श्री महावीर प्रसाद शुक्ल (उत्तर प्रदेश): बहुन कुछ सुधार हम्रा है।

श्री नवल किशोर श्रीमन्, ग्राखिर में, मैं इस सुधार के लिए ग्रापने दोस्त श्री शुक्ल जी को चाहे वे प्रोग्रेमिव हो, प्रगतिशील हों या न भी हों, उन्हें भी बधाई देता ह ग्रौर मिर्धा साहब को भी बधाई देता ह । इसके साथ ही साथ मैं ज्वाइन्ट सिलेक्ट कमेटी के तमाम मेम्बरों को भी बधाई देता हूं। मुझे ग्राशा है कि मैंने इस सम्बन्ध में जो मुझाव रखे हैं, उन पर मिर्घा साहब सहानुभूति के साथ विचार करेंगे ग्रौर जो कुछ धब्बा डेमोकेसी पर रह गया है उसको हटाने की कोशिश करेंगे ।

इन शब्दो के माथ मैं इस बिल का समर्थन करता हु।

SHRI B. T. KEMPARAJ (Mysore) : M1. Deputy Chairman, Sir, the Select Committee has done its best in amending the Criminal Procedure Code which has been in vogue for the last several years in our The Select Committee has been ⇔untrv able to reduce the sections in the Code to the extent of 284. One important thing they have done is they have included provisions regarding maintenance in section 125. Regarding other things, they are there with some modifications here and there. No fuither care has been taken to have any radicel changes to suit the present conditions of the society. It is necessary for us to think how all these laws and codes which were imposed on us by the Britishers could be radically changed in order to suit the changing circumstances in the country. Sir, it was these very provisions of the Criminal Procedure Code which Mahatmaji certified in his struggle for independence and after achieving independence should we persist take shelter under the provisions of these laws which were imposed on our country in order to protect the interests of the Britishers? We have to consider how far these things should continue.

At least in my view a beginning has been mide to develop a legal procedure, as to how they have to be dealt with hereafterwards. Here I want to refer to section 241 which says:

"If the accused pleads guilty, the Magistrate shall record the plea and may, in his discretion, convict him thereon."

In sections 239 and 240 only an opportunity of being heard is given. It says here:

"... after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his rea ons for so doing."

[Shri B. T. Kemparaj]

Section 240 says:-

"If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused."

Then suo motu the Magistrate can convict him. Here is a lacuna according to me because it is a very well-known presumption that the accused must be given a chance to prove his guilt beyond all possible doubt. The only accused may be convicted. Here by giving an opportunity to the prosecution and the accused to submit their arguments and, after hearing their arguments, if the Magistrate finds that the accused is guilty, he can straightaway convict him if he pleads guilty. This is a new thing in this Code

My suggestion is that this has to be looked into.

Coming to the maintenance clause, a provision has been made, as it was previously in the Code, that the maintenance of minor children, father, mother and the wife, has to be considered by a court of law. The same procedure has been followed here also. There is no serious attempt made to give protection to a person who comes seeking the protection of the court. Only after an offence has been committed the police makes investigations. This is a thing which the Joint Committee ought to have taken into consideration. Unless an offence is committed, no police officer takes cognizance of it and tries to give immediate relief. Therefore, it is necessary, in the case of noncognizable offences, to see that the protection of the police is available to the suffering people. Therefore a way has to be found to give protection to the persons who are put to harassment and trouble and the police describe this offence as a non-cognizable offence. Under such circumstances, it is for the authorities to make it possible for giving protection to such persons who cannot get the protect tion of the police.

According to me the entire Code could have been divided into five Chapters-(1) Pieliminary; (2) Powers and duties of the officers who are directly connected with investigation and filing the charge sheet on receipt of the first information report; (3) Trial of cases summarily under summony and warrant and also at Sessions; (4) This Chapter might have included appeals; and (5) Miscellaneous things such as public nuisance, breach of the public peace, maintenance and other things. The Bill which is before us could have been a sho ter one so that many of the advocates could go into the various sections very easily and could know the law very well. But this has 484 sections. Advocates, people in the legal profession, have to study this afresh. And it becomes a sort of secondary school for them. If it had been in an abridged form with only those sections which have been amended, it would have been Anyhow, we have made a beginnbetter. ing and I think hereafter a Bill may come which may prove equal to the changed environment and conditions of the country.

SASANKASEKHAR SANYAL SHRI (West Bengal) : Sir, firstly I will take the point about custody and refusal of fail. My good friend Nawal Kishorji had touched the fringe of that point but he had not followed it up. To me, as a humble student of law, after the Constitution has been adopted, this taking into custody and refusal of bail is a tyranny which has been described by no less a person than our Rabindranath Tagore as the most reprehensible primitive form of despotism. Sir, remember, on the 15th August, 1947, after the dark hour of midnight, after the zero hour, was over, we were told that we were free from the white rule.

Sir, there was a feeling of ficedom before the mind of everybody and this sense of relief was consolidated by the Constitution. Sit, in the Constitution we converted ourselves to a Republic, every citizen becoming a citizen of the Republic, and we gave to ourselves a promise of social equalities, social justice and equality before the eye of law. Sir, with that preamble, which is the most sacred testimony in the Constitution, if you look at the provisions of this Bill. I maintain, Sir, you will find that the whole thing is subversive of the Constitution, it is derogatory to the principles 145

of social and natural justice; it is detrimental to the dignity of the common man and it is violation of the pledge of equality.

Sir, look at clause 437(1). There it is stated that a man should not be granted bail after the police has arrested and brought him to the court if there are reasonable grounds for believing that they are guilty of certain offences. Sir, at that stage when the law presumes the accused is innocent, the trial is far away, yet, who the devil gives the power to whom, the police or the court, to refuse bail by believing at that stage that that man is guilty of such and such offence. This is ravishment of the principles of the Constitution.

Then come to article 14 of the Constitution. It says:--

"The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

Sin, while a person comes to the police, makes a false information or any information and he gets the pationage and the privilege of an adopted child or a domesticated son-in-law of the State and is given all freedom to assemble true evidence and to manufacture false evidence, a citizen who is an accused, who has not to prove to be innocent, is kept in the cold storage of the jail in the corner, not able to assemble his evidence to prove innocence forthwith, not able to bring before the police or the magistrate that he has been falsely prosecuted.

Sir, article 20(2) makes it clear that :

'No person shall be prosecuted and punished for the same offence more than once."

My lawyer friends are there. And is both disjunctive and conjunctive. If a man is kept in detention, if he is kept in prison, he is punished. So before the trial commences he is awarded punishment and kept in the jail. Is it equivalent to ad interim punishment like ad interim injunction that we get in civil courts? Make a hell of it Then. Sir, article 21 says:-

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

Procedure Bill, 1970

So when these people are kept in jail and bail is refused, actually the legal procedure for trial has not commenced. Sir, the legal procedure come in sessions case in chapter 18. Trial of warrant cases is chapter 19. Trial of summons cases is in chapter 20. Summary trials is in chapter 21. Chapters 23 and 24 are chapters for taking evidence and other miscellaneous proceedings. So, the provisions refusing bail at all these intermediate stages contravenc articles 22 and 21. So, as a student of law, I say that clause 437(1) where the provisions have been maintained for refusing bail, is antagonistic to the fundamental rights as adumbrated in articles 22 and 21 Therefore, by virtue of article 13(2), these detention clauses are absolutely ultra wires and void.

Sir. I hope in your life you have been accused in political cases. Now, article 22 of the Constitution has given us a guarantee and an advantage.

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

What does it mean? If I am airested and kept in detention, I cannot have the advantage of having a lawyer of my choice, because what is the choice? You go to the market. You go to this shop or that shop or a third shop before you finally decide what will be your choice in respect of the article you require, and what will be your choice in respect of the price. There fore, it is ordained by the Constitution that the man must have the freedom to go out to sound lawyers-he may not have gone to senior lawyers at all in his life before that-and then make his choice. Therefore. That freedom is taken away this detention is ultra vires and antagonistic to the Constitution.

My friend, Mr. Nawal Kishore, spoke of trials going on for one year. You know the Shahibari case. Whatever may be the political thinking of parties, as a lawyer

10-7 RSS/ND/72

[Shri Sasankasekhai Sanyal]

I say that these hundreds of people are rotting in jail for the last nearly three years. Some of them, Vinay Kumar and Gokul Roy, were returned MLAs at that time. Their names did not appear in the First Information Report. Their names did not appear in the statement before the police for several months. Sir, an European judge would at once ask "Mr. Public Prosecutor, does this man's name appear in the First Information Report?" "No Sir, but ''Don't talk there are other evidence". about other evidence. Release him forthwith". But these people are denied bail and the State would stoutly oppose bail from court to court. And this, I repeat, is ravishment of the Constitution.

Coming to article 19, it says :

"All citizens shall have the right-

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India;"

Of course, if he is found guilty, certainly he will be held in prison. But apart from that, this freedom is there. But it is hemmed in by sub-article (5) of article 19. It says:

"Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law etc." if that imposes reasonable restrictions either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

The guodem generis you will find that this does not apply to a person when he has been compelled to be under custody before the trial is commenced. What are the grounds for the detention of a man? So long we have been hearing that certain persons have to be kept in detention for What are they? One is certain reasons. necessary for him to be put in custody for test identification parade. My good friend, I shake hands with him, he has deleted this as the cause of detention. But I can at once tell him as a lawyer with about 50 years of experience that it is the only reasonable and cogent ground for keeping a man in custody at least for some time because in a dacoity case some people may have recognised in the house some unknown

persons. They have to be put under TIP and if they are released on bail, there is no valid identification. But if that is taken out, there are only two other grounds, abscondence and tampering with evidence. Abscondence is a nasty theory. Every person loves his family. Every person loves his society. Every person likes to face a trial, even to go to jail for life for twenty years and come back and have a family life. How many people have absconded ? Have you taken statistics? In my career of 50 years I have done several thousands of big criminal cases. In my experience there were only two persons who absconded but they were not recovered. I wanted the West Bengal Government to give me statistics, but they could not furnish. In a history of 50 years there were only a dozen cases. So people love their family. Do you know why people abscond? Not because of fear for trial, for facing trial; they abscond because they know that once they are put under police custody, the kisses of the loving police are two much, if they are put in jail, their life is a hell there. Therefore, in order to keep themselves away from the police and the jail tvranny they abscond. But once you have made it clear just as in civil cases, no defendants will abscond. A person who knows that there is a decree, yet he may be put in a civil jail,-during the trial you don't say to compliment that you must secure the trial-he will back out at any time. Similarly, do you think that a person who loves his family and society will ever go underground and suffer from more terrible agony? This is the theory which does not stand. There again in the trial Vinavakumar and others were denied bail for more than three years. Therefore, several hundred people who were wanted in that unwanted case are in hiding. Even in West Bengal 10,000 people are moving about like vagrants because they do not want to go into the clutches of the police although they know that even in these days, in these days of fast retrograde judiciary, if they appear before a normal judge, they would be acquitted. But they are terribly afraid of the police and their detention in the jail. About the police. the less said, the better it would be the That is why good same about the jail. people are afraid of them. Prisoners are brickbattled, lathi charged and billeted. Now, so far as tampering with evidence is

concerned, when a policeman is accused of murder of a person belonging to the ruling party is accused of murder, he is at once given a dictated bail, and there is no question of tampering with evidence When non-conformists are brought there. in false cases and accused, this condition comes in. of tampering with evidence There are two things involved. Ale we supposed to think that our society is so depraved that a wrong doer will be able to influence truthful people to deflect from the path of rectitude? It is a shame. But what about the premium that you are putting upon the prosecution? They are free to manufacture evidence. They are free to terrorise the people and this is in the absence of the accused. If the accused remains free, he can point out to the Police during investigation : "This is the evidence which has proved the falsehood of the prosecution story. Here is the evidence which will prove my innocence. If I am in jail, evidence in my favour can be washed out and evidence against me can be manufactured". Therefore, I maintain, bail should only be used for the purpose of enforcing attendance of the accused and not for purposes of giving him punishment or pig-sticking. You know what 15 pig-sticking? You beat up a pig with a stick until it is half dead and then When people are you become a hero. moving for bail from court to court, when their resources are exhausted and when the trial actually comes up they have no resources to face the prosecution by engaging good lawyers or by persuading people to give evidence in their favour, this refusal to give bail is denial of justice. When a man loses Rs. 1,000 or a house in decree what does it matter because when you steal my property or money, you commit theft, but when you steal my liberty, you are guilty of rape of the Constitution. A large number of peasants and workers have come into this category. Who will look after them? The State appoints Public Prosecutors for conducting at State cost many false cases. When the accused is put in the cold storage in a counci of the jail, except in 302 cases, no lawyer is engaged to defend him at State cost. Why not? Moreover these lawyers who are selected for defending the accused, have to come from a panel and this panel constitutes lawyers who are either third class or fourth class. I do not mean any disrespect to them. The first class lawyers, whom these people would have otherwise engaged and whom they cannot engage because their resources are exhausted, are not available to them and therefore they have to accept these colourless lawyers to undertake their defence in serious cases. There is another point also to be considered. Apart from the Constitutional ground, is it natural justice to pour your money over petty and false prosecutions and deny money and assistance to the accused in detention in cases involving even capital punishment or the like? Shri Nawal Kishore said that political rivalry has also to be taken into account. Nowadays cases and cases are being launched by the ruling Party in West Bengal against peasants and workers.

SHRI BRAHMANANDA PANDA (Orissa) What about the UF rule⁵

SHRI SASANKASEKHAR SANYAL : When this Bill is being considered, we have to consider the ruling Party in every State. We have to consider the ruling Party in the Centre also. I might mention that West Bengal is now under absolute, tyrannical Congress rule. U F. Government did not send common man to Jail Therefore, Sir, I am mentioning about these workers and peasants.

Sir, the industrial workers who want to go back, after negotiations, to their factory for work, at the factory gate are arrested and kept behind the prison bars. But, Sir, if by some sort of an accident a man is found guilty of having committed an offence before the police, the police not knowing that he has got his father or his grandfather in the ruling party, arrests him in good faith as an ordinary dutiful policeman should do and the guilty man is taken to the station. Now, Sir, the Minister comes, his in-laws come; and the Minister's hitelings come and they dictate to the police that the individual must be given bail. I do not grudge any bail being given to an offending police officer or an offending member of the ruling party. But, Sir, I submit that in order to avoid this discumination, you should make the grant of bail the rule and refusal of bail the exception (Time Bell rings) Sn, only a few minutes more. I am glad that you have given me some time.

[Shri Sasankasekhai Sanyal]

If you hand over the whole matter to the police by keeping people in detention, the awe of the police is there and the policeman comes after the muider and he throws the net on the whole village. Sir, the real offender goes away and a whisper is sent to his ears: "Well, you pay something to him You must satisfy him by paying something to him and you also be And, then, Sir, the a false witness." police people go to the other people in the village and tell cach one of them, "Well, you are suspected in this case. People are saying that you are involved in this murder " Now, Sir, these people get frightened. Taking advantage of this, the policemen extort money from these innocent people. This is how the police corruption has been given a premium and refusal of bail leads to such corruption which it is the profession of the ruling party to do away with. But, Sir, in practice, the ruling party wants to perpetuate it in its own interest

Sn. I now come to the security proceed-As my friends have ings. muntioned, after all, what is it? Either the Judicial Magistrate or the Executive Magistrate will take action on police reports mostly. Again, Sii, confession before the police is inadmissible in evidence. A statement taken by the police under Section 161 is inadmissible in evidence. Sir, the law distrusts the police, but the Magistrates will have to act upon the reports of the police'. Therefore, Sir, I submit that this negation of the bail, the refusal of bail, is inconsistent with the Constitution, is anti-constitutional, is improper, is unfair, is intolerable and is against the principles of natural justice. Thank you, Sir.

MR DLPUTY CHAIRMAN : The House stands adjourned till 2-00 PM.

The House then adjourned for lunch at fifty-nine minutes past twelve of the clock.

श्री भोला पासवान शास्त्री (विहार) : उपाध्यक्ष जी, कानन की निगाह में सभी नागरिक बराबर है ऐसा हम सूनने ग्राये है ग्रौर ग्राज भी सून रहे हैं, लेकिन क्या समाजिक दष्टिकोण से, ग्रार्थिक दुष्टिकोण से, राजनीतिक दृष्टिकोण से, समाज मे बराबरी का भाव है ? नही है । इसलिए मैं इस सिदधॉत मे कभी विञ्वास नही करता । जहा समाज में इतनी विषमता हो, जहा एंक गरीब ग्रादमी कानुन को खरीद न सकता हो; उस की यह हिम्मत न हो कि जो न्याय है उसे वह ग्रपने पैंसे से खरीद सके, ग्रपने भले के लिए उसका इस्तेमाल कर सके, वहा इस तरह की बात कहना गलत है। बराबर इस बात की दुहाई दी जाती है कि कानून की निगाह में सभी सिटीजन्स बराबर है, लेकिन यह एक खोखली बात है, वेबनियाद बात है और इस का कोई ग्राधार नही है और मुझे इस बात का बडा दूख है कि ग्राज भी इसी बात की दुहाई दी जाती है। जिस कानून पर म्राज हम लोग बहस कर रहे है यह एक सौ साल पुराना हो गया है ग्रौर ग्रग्रेजी राज मे जो हालत थी वही हालत ग्राज भी है। उसमे कोई अतर नही ग्राया है। इसीलिए मुझे ग्राश्चर्य है कि जब यह ग्रमेंडमेट लाया गया. हालाकि इसमे ग्रच्छे ग्रच्छे सुझाव है, ग्रच्छे ग्रमेडमेंटस है ग्रौर दूसरे मित्रों ने दिये है और मिनिस्टर साहब ने भी ग्रपने बयान में कहा है कि यह इस सदी का सब से ग्रच्छा कानून है, तो यह तो होना रहेगा। सब यह सब होंगे कानून के ग्रन्दर ग्रमेडमेंट होगा, लेकिन इस कानून को जिसको कि सौ वर्ष में ज्यादा हो गये ग्रौर जिस रूप में इसका ग्रमेडमेट ग्राया है, मै **ग्राप**से सच्चाई से कहना ह कि इससे पैसे वालो को फायदा हो जाएगा, धनी ग्रादमी को फायदा हो जाएगा लेकिन गरीब को कभी फायदा नही होगा ।

The House reassembled after lunch at two of the clock, MR. DTPUTY CHAIRMAN in the Chain.

इस कानन से भी जिसकी में उम्मीद करता था कि म्राज ऐसा कानून म्रायेगा, स्वराज्य होने के बाद 25 वर्ष के बाद कम से कम गरीब ग्रादमी को, गरीब इसान को भी कुछ सहायता कोर्ट मे मिलेगी। मिलेगा कैसे क्योकि उसके पास साधन नहीं है। जब समाज में इस तरह की विषमता है तो वह कानून को कैसे खरीद सकता है ? वह 302 दफा मे फस जाता है। जो गरीब म्रादमी पकडा जाता है, ग्ररेस्ट होने के बाद ही उमकी ग्राधी मृत्यु हो जाती है। ग्रगर वह गरीब रहा तो 302 दफा में गरीब के केस की सूनवाई नही होती है। वह कुसूर नही करेगा तो भी उसको फासी पडेगी क्योकि वह ग्रच्छा वकील नही रख सकता है, वह पालकीवाला को नही रख सकता है।

संसदीय कार्थ विभाग में राज्य मंत्री (श्री ओम मेहता) पालकीवाला तो कस्टीट्यूशन का वकील है।

श्री भोला पासवान शास्त्री हम कस्टीट्यूशन की बात नहीं कर रहे। हम तो पालकीवाला की बात कर रहे है। हम तो वह बात कहने के लिए उठे हैं जिसके मारे हुए हम लोग है। इसलिए ग्राज मैं उम्मीद करता था कि जो कानुन ग्राज ग्राप ला रहे हैं, इसको ग्रापने बड़ी ग्रासानी से ला दिया, बडे सीधे तरीके से ला दिया और मेरा ख्याल है कि यह विचार नही किया गया कि हमको इडियन पीनल कोड को बदलकर किस तरह का मौलिक परिवर्तन करना चाहिए। यह तो अग्रेजी राज्य का बना हुग्रा है। ठीक है, ग्रापने उसमे कुछ ग्रमेडमेट ला दिये, मैं यह नहीं कहता ह कि आपने खराब काम किया, मेरा इजारा सरकार की तरफ या किसी दूसरे की तरफ नही हे कि ग्रापने खराब काम किया. लेकिन इन अमेडमेंटस से गरीब

समाज को, जो पिछडा हम्रा समाज है, उसको इसाफ मिलने वाला नही है, उसको फायदा होने वाला नही है जब कि वह स्वत कानून को खरीद नही सकता है। जिसके पास पैसे है उसके पास ही अच्छे वकील भी जायेंगे और उसीकी सूनवाई होगी, वह गवाह भी ला सकते है। लेकिन गरीब ग्रादमी का कचहरी में इसाफ मिलेगा यह मझे विश्वाम नही है। यह बतलाया जाएगा वि जो गरीब क्लास है, गरीब लोग है उनके लिए ग्रपने क्या प्रावधान किया ? आपने तो मान लिया कि कानून की नजर मे सब पब्लिक बराबर है ग्रौर ग्रापने ग्राखे मुँद ली। इससे काम चलने वाला नही है। इससे समाज का भला हो जाएगा, कोर्ट मे उसको फायादा हो जाएगा । यह ग्रापने नही सोचा। यह मैं ग्रापको कहगा कि ग्राप अमेडमेट लाये, लेकिन फिर भी वही पूरानी वातें, वही पूरानी रफतार, वही पूराना चिन्तन । उसमें कोई भी परिवर्तन, दुष्टिकोण का काई भी परिवर्तन नही हुग्रा। मेरे कहने का मतलब यह है कि उसको लाना चाहिए था, **ग्राज ग्राप** नही लाये है तो आपको सोचना चाहिए ग्रौर ग्रागे लाना चाहिए। कानून की निगाह मे सब सिटीजन बराबर है, यह धोखा है, महा-धोखा है। मैं इसको कभी नहीं मान सकता। कानून में बराबर है, मगर समाज मे बराबर नही है। समाज मे कोई छोटा है, कोई बडा है। कोई विद्वान है, कोई मूर्ख है, समझता नहीं है, कोई जहालत में पडा हआर है। वकील उसकी मदद नही करता है। वह कचहरी में मारा मारा फिरना है। ग्रगर कानून की यह नजर रहेगी तो मै कह देता हू कि ग्राप कानून का ग्रमेडमेट कीजिए । लेकिन जिसको जरूरत है कानून का सहारा मिलने की उसको इससें कोई फायदा होने वाला नही है जब तक की ग्राप कानून मे मौलिक परिवर्तन नही करते हैं।

[RAJYA SABHA]

[श्री भोला पासवान शास्त्री]

ग्राज भी ग्राप लाये है तो इस स्थिति मे भी म्रापको सोचना चाहिए था कि इसमे हम कैसे तथा कुछ कर सकते है कि नही की गरीब लोगों को कम में कम कुछ फायदा हो। इसका तो फायदा धर्ना लोगो को होगा। जितना कडा कानून है वह गरीब लोगो के लिए है ग्रौर कानून की जितनी सहलियत है वह सब धनी वर्ग के लोगों के लिए है। जाहिर है इसमे कुछ भी छिपाने की बात नही है। इसमे कुछ बताने की बात नही है। यह तो समाज की बात है। जितने हथकडे पहुचते है कानून के गरीबो के यहा वह हथकडे ग्रमीर के यहा नहीं पहुचते। ग्रमीर का काम मजिस्ट्रेट साहब भी कर देते है, मिनिस्टर साहब भी कर देने है, ऊपर से भी कर देगे, उसका काम जल्दी जल्दी जल्दी हो जाएगा। लेकिन गरीब का काम जो कुछ जानता नही है, सत्तू बाधकर जाता हे कोर्ट मे, तारीख पर तारीख पड़ती है ग्रौर उसका घर बैठ जाता है वह कमायेगे तो ग्रपने बच्चो को खिलायेगे या कचहरी मे ले जायेगे ? इस दृष्टिकोण से कानून पर ग्रापने विचार नही किया। इसमे दोष किसको दिया जाय। सरकारी बेच को कहे या ग्रपने को कहे। किसको कहे इसमे सब के सब दोषी हो सकते है। हमने सोचा ही नहीं। जो बना हुन्ना रहता है, जो लीक है, उसी पर चलना शुरू कर देते है ग्रौर तब तक चलते रहेगे जब तक कि कोई शक्ति नही श्रावे जोकि उखाड कर के फेक दे। तो हम कहते हे कि इस दुष्टिकोण को बदलिये श्रौर ऐसा विचार रखिये कि कानून के हम लकीर के फकीर नही है, कानून को हम कोई ग्रपने सिर पर चढा कर नही रखेगे, कानून हमारे सिर पर चढ़ कर नही बोलेगा, कानून पर हम कंट्रोल करेगे। वह

दृष्टि लाइये तभी काम चलेगा। ग्रौर हमारा विश्वास है कि जो स्स्टिम हमारा है, जो हमारा कास्टीट्य्झन है जिसके ग्रन्तर्गत हम काम कर रहे है, जो सामाजिक स्थिति है म्रौर जा पार्लियामेटरी सिस्टम है, जिसमे हम काम कर रहे हैं, वह कानून में विश्वास करता है, पार्लियामेटरी सिस्टम ग्राफ गवर्नमेट जो है वह गवर्नमेट म्राफ ला है, तो मेरा ग्रटूट विश्वास है कि ला के जरिये से समाज का परिवर्तन हो सकता है बशर्ते कि हम ला के प्रति सिसेयर रहे, ला के प्रति ल्वायल रहे, उसे ग्रमल मे लाये ग्रौर ग्रगर वह ग्रमल में नही ग्राना है तो वह समाज-विरोधी काम हो जाता है। ग्रगर कानून इफेक्टिव नही है तो इसको बदलने का ग्रधिकार है ग्रौर इमीलिये पार्लियामेट ह, इसीलिये ग्रसेम्बली है कि जिस कानुन से समाज का काम नही चलेगा उसको बदलेगा लेकिन बदलने का जो प्रासेस है वह उसी तरह है जैसे कि ग्रो० टी० रेलवे की गति थी कि चल रही है तो चल रही है रुक गई तो रुक गई। हमारे बहुत मे दोस्तो ने कहा कि बड़ा ग्रच्छा कानून है, वड़ा बढ़िया है। कौन चीज बढिया है। हम तो समझते हैं कि जैसे ग्रौर कानून बनता है वैसे ही है, खाली ग्रमेडमेट है, सामान्य ढग से आ्राडिनरी ढ़ग से जैसे आरेर मामलों में देखा जाता है उसी तरह से इसमे भी देखा गया है। इसमे कोई यह दृष्टिकोण नही है कि समाज के ज्यादा से ज्यादा लोगो का विशेषकर के गरीब तबके के लोगो का लाभ हो। स्रगर ज्यादा से ज्यादा गरीब लोगो का फायदा नही है तो उस कानून को रद्दी की टोकरी मे फेक देना चाहिये। उससे कोई फायदा होने वाला नही है।

श्रीमन् मेरा यह दृष्टिकोण कभी नही है ग्रौर न रहेगा कि सरकारी बेच

वालो को दोष दूगा किसी को द। मै तो यह सोचना ह कि यह बान चलने वाली नही है। ग्राप यह विचार रखिये, मोचिये, कि म्राज हमारे हाथ मे देश की ताकन है, पार्लियामेट मे मेजारिटी है, देश की हुकूमन को चला रहे है । ग्रगर हम, हुकूमत, न करे तो कौन करेगा। कौन सोचेगा। सब की नजर हकुमत के ऊपर रहती है क्योकि वह रिसोर्मफुल है, उसको ताकत है, उसका ग्रधिकार है। तो यह बाते क्यो नही मोची जाती है कि ऐसा कानून लावे, ऐसा कानन करे कि जिसमे ज्यादा मे ज्यादा म्रादमियो को फायदा हो भ्रौर खास कर के गरीब का जरूर फायदा हो। धनी ग्रादमी जो है वह होशियार है, पढा लिखा है, उसकी पहुच है, उनका काम तो ग्राज भी हो जाता है ग्रौर आगे भी हो जायगा। हम तो वैसे आदमी के लिये कहते है जो कि निसहाय है, जिसका कही कोई नही है। उसको कचहरी मे जाना पडता है और न मालूम उसको क्या क्या करना पडना है। ग्रब उसको पकड कर के दो वर्ष के लिये जेल में रख दिया जाता है, दो वर्ष के बाद वह छूट भी गया, गुनहगार नही निकला तो क्या नतीजा है। दो वर्ष उसको ग्रब उसके बच्चे कैसे खायेंगे. रखा । पीयेगे, कैसे वह जिन्दा रहेगे। क्या कोई उसको दो वर्ष का कम्पेनसेशन देते है। कोई कोर्ट नही देना है । कोई सरकार नही देती है। इस तरह का टार्चरस ला, ग्रादमी को तग करने वाला कानून इस देश मे नही चलने वाला है ग्रीर नही चलेगा। यह मै इसलिये मलाह दे रहा ह कि म्राप सोचिये, समझिये। केवल कानून लाने से नही होगा। विचारधारा को बदलिये, दुष्टिकोण को बदलिये । यह बडी महत्वपूर्ण है । कानुन बात জা ग्राप बनाते हे एक एक म्रादमी पर उसका

ग्रसर पड़ता है। वह कानून जाने या न जाने लेकिन वह कानून के शिकजे मे पड जाता है। कानून उसको परेशान करता है, पुलिस परेशान करती है, मजिस्ट्रेट परेशान करता है, वह बच नही सकता है। हम यह सोचे कि हमको कैंसा कानून बनाना है। ऐसा कानून बनाना हे जिसमे कि ज्यादा से ज्यादा पबलिक को, गरीब ग्रादमी को, राहत हो। मैं कोई धनी ग्रादमी के खिलाफ नहीं हू वह भी ग्रादमी है, उसे जीने का, रहने का, कमाने खाने का, हक है लेकिन यह नही होना चाहिये कि कानून मे ही ऐसा क्लाज हो जाय, ऐसा कानून बन जाय, जिससे कि धनिक वर्ग फायदा उठाये श्रौर सारा का सारा गरीब वर्ग, सारा का सारा समाज, वचित रहे। इस तरह उससे का दुष्टिकोण हो। ग्रापके पास केसेज होंगे, आप जानते हैं। हम लोग सब पबलिक वर्कर है, सब के सब कोई धनी नही कुछ लोग धनी घरो से आते है। लेकिन हम गरीब घर से आते है।

बहुत ग्रादमी बनी घर से ग्राए हैं, मैं गरीब घर से ग्राया हू। हमको जो ग्रन्भव होगा उसके ग्राधार पर कानून मे सुधार करने की सलाह देगे। ग्रभी जो किमिनल ला का एमेन्डमेन्ट हो रहा है उसमे हमारा विरोध नही हे, वह कूछ नए ग्रौर ग्रच्छे सजेशन्स लेकर <mark>ग्राया है, क्</mark>योकि उस पर सोच विचार करने के लिए कई मेम्बर लगे हुए थे। 1970 का कानून हे ग्रभी इस साल ग्राया है, **ब**हुत सारे क्लाजेज इसमें है, लेकिन मैं बहत सा सुधार हम्रा है। कहता ह इसमे गरीब के लिए कोई फायदा नहीं। जब हम श्रपने प्रदेश मे काम करने थे तो सोचा करते थे कि ल्या करने से मुधार हो सकता है। कहा गया कि स्टेट गवर्मेन्ट को बदलने

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[श्री भोला पासवान शास्त्री]

का ग्रधिकार नही है, पावर नही है, सेन्ट्रल एक्ट है, यह सेन्ट्रल गवर्मेन्ट से बदलना होगा। मझे ग्राशा थी, उम्मीद थी, कि हमारी सरकार इस पूरी चीज को देखेगी ग्रौर ऐसा एकानून बनाएगी जिससे गरीब को भी कानून से फायदा होगा, उसको कानून को मानने की भावना हो। कानुन ग्रपने देश मे बहुत है लेकिन जिस कानून से गरीब पीसा जाता है, मारा जाता है, मक्खी की तरह दुर्गनी है, उसमे देश बनेगा या क्या होगा। आप बना लीजिए, जो कानून का फायदा उठाने वाले हैं वे फायदा उठाएगे। जब कि इस कानून को चलने एक सौ, सवा सौ वर्ष हो गए ग्रौर स्वराज्य हए 25 वर्ष हो गए, ग्रब ग्राप बदलने जा रहे है, तो कौन सा दुष्टिकोण लेकर बदलने जा रहे हैं। दृष्टिकोण वही प्रराना दकियानूमी दृष्टिकोण। इस द्ष्टिकोण से काम चलने वाला नही है, इसको बदलना होगा (समय को घटो) ग्रौर बदलना चाहिए। ग्रब यह ऐसा नही समझिए कि आसान काम हम कर रहे है क्योंकि जब वह दबा क्लाम तब समाज मे तवाही होगी। उसको हम लोग देखते है किस तरह मे गरीब <mark>ग्रादमी को तबा</mark>ह विया जाता है कचहरी मे। यह क्बन हम बनाए है तो क्या श्रागे नही तबाह रहेगे। उन लोगो को क्या पता जो ग्रभिजान कुल मे पैदा हुए, जिन्हे चादी के टुकडे के दर्शन होते रहे। तो हम जानने है, हम राज्य के चीफ मिनिस्टर थे, जब डिफोमेशन केस चला दिया पोलिटिकल पार्टीज ने तो किस तरह से हमको खडा होना पड़ता था श्रौर हजारो ग्रादमियो की भीड होती थी। पैसा उनके पाम था केस कर दिया। मजिस्ट्रेट ग्रौर पुलिस के सामने किस तरह हम केम लडे थे? जब जिंदगी में स्ट्रगल ही करना है तो किसी तरह मे लडे। तभी हम उसकी चोट ग्रौर पीडा को जानने भी है, गरीब जानते है। ग्रब जो यहा यह कानून बना रहे है तो इस चीज मे इमेजिनेशन से काम लेना चाहिए और इम बिल को पास भी करेगा यह हाऊस। तो मेरा तो बोलने वालो मे नाम भी नही था लेकिन हमने चाहा ग्रेपना फर्ज निबाह, इस राज्य सभा का. पार्लियामेन्ट का मेम्बर हू, कम से कम मै ग्रपना दृष्टिकोण तो रखू ग्रौर कही ग्रागे भी कही ग्रमेन्डमेन्ट करना पडे तो इस लाइन से मोचे ग्राप। जिस चीज के बारे मे कहने के लिए खडा हुन्रा वह ऐसा रास्ता नही है कि म्राप उसको दरकिनार करें, नजरबदाज करें श्रौर चले जाए या नही सोच विचार करे। इसलिए मैं इस विश्वास के माथ इस बिल को सपोर्ट करता हू कि जो ग्रच्छे सजेशन्स है, ग्रागे के लिए मैं कहता हू, जब कभी वक्त ग्राएगा तो उनके ऊपर श्रमेन्डमेन्ट लाए ताकि उसका लाभ गरीबो के घर में जाए, झोपडियो मे जाए। एक गरीब को, मजदूर को भी मालूम हो कि गवर्मेन्ट का कानून हमारे जो रेप्रजेटिव्ह लोग ਲੈ है। जिन्हे जनता ने भेजा है, प्रतिनिधि बना कर दिल्ली भेजा है, वे हमारे काम को देख रहे है। तो इसको ग्रच्छा कानन बनाम्रो, इससे दिल मे खशी होगी। इममे कोई नैरोनेस नही हो, बडे ग्रादमियो के लिए कानुन नही हो। अगर ऐसा होगा तो समाज का वडा में बडा आदमी पडा रहेगा, वह कानून चलने वाला नही है, वह टूटेगा। हम कानून का पालन करने वाले है तो हम यह देखें कि इससे टार्चर न हो । मै साफ कहता हू जो कानून गरीब के रास्ते मे बाधक होता है, जिससे गरीब को फायदा नही है, हम उस कानून को नही

है। वह जुल्म है। इसलिए मानते जब क्लाज बाई बलाज विचार चलेगा तो इन बातों पर विचार किया जाए। मेरा तो इसमें कोई ग्रमेन्डमेन्ट नहीं लेकिन चंकि ऐसा विषय था इसलिए हम खडे हए कि हम पबलिक के रेप्रेजे-टिव्ह हैं, हम यहां उनकी तरफ सं कहने के लिए श्राए है अत. इस सदन के सामने ग्रपना दुष्टिकोण ग्रर्ज कर दुं इसके ग्रापके सामने । ग्रलावा ग्रौर कछ विशेष नहीं कहना है।

RAHA (West SHRI SANAT KUMAR Bengal) : Mr. Deputy Chairman, first of all I would like to congratulate Mr. Shastri and I am in full agreement with the spirit of what he said. I am not a student of law but I was a victim of this Criminal Procedure Code some time back and may also be in future. So I speak from my own bitter experience of life. We are discussing here the Criminal Procedure Code as changed by the Joint Committee. In the spirit of Mr. Shastii I can say that we are discussing old wine in new bottle. Our social system grows out of relations, mainly of productive relations. The main point which Mr. Shastri has placed before this House is this that this House and this Parliament should first improve the situation which has arisen out of the system. Our society in this country is changing because of the productive relations and the system we have is very oppressive and exploiting. It is in this background that we have to discuss the changes to be brought about in the Criminal Procedure Code. I know from my own experience in life that crimes mainly grow out of social contradictions. It is nothing but the result of property relations. So long as we have these vested interests in society we cannot escape from this sort of crimes, moral crimes, social crimes, political crimes and economic crimes which are today dominant in our so-This is the main feature of our ciety. society in India today. It is these types of crimes that are going to be handled by this Criminal Procedure Code. How can you handle them? Sir, as crime grows out of the capitalist society as a result of productive relations naturally exploitation

Procedure Bill, 1970 162

must be there but our Government professes that their aim is socialism, demochacy and social justice. I naturally expected that this Bill would help in achieving that aim and would do something towards at least social justice. I do not talk of democracy. I do not talk of socialism but at least to some extent social justice can be upheld by this Government which claims to work for a classless society, a socialist society. But it is a very sad commentary on the work of the Joint Committee that its Report has not come up to the needs of our changing society. This Bill is really important because 25 years after independence we are now going to establish a new order, a new law. The British for their own interests created the Criminal Procedure Code in order to perpetuate their colonial exploitation, in order to pertheir police petnate rule through the medium of administrative bureaucratic magistracy. When the Congress Government is loudly talking so much about socialism and democracy I expected that they would give serious consideration to this phenomenon in our society. They should consider carefully how the society is to be run. how the laws should govern, how order is to be set up and how peace is to be established through such laws. Sir, there are some minor changes suggested by the Joint Committee but the vital sections which affect the masses through which the British sought to keep the masses in their grip under police rule, under the rule of their bureaucracy and magistracy, are still every much there. Sections 107, 108, 109, 110, 144 and 151, all these are applied in all cases of social In the case of trade union injustice. workers. kisans, share-croppers, landless labourers, youth and students, imme- ' diately any democratic movement, peaceful democratic movement is saited, these sections are ruthlessly applied by the police and by the magistrate. So, according to my thinking, all these sections should be deleted. Otherwise, how can we save out society? The majority of the people come under the grip of these oppressive sections. It you wisely consider all these things, I think the Congress rule, whose objective is social justice, cannot be established. Social justice cannot be established without removing these sections. Recently there have been many cases of oppression and excesses by the police. Everyday in the news-

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11-7 RSS/ND/72

[Shri Sanat Kumai Raha]

papers we read that police excesses are there. Still the Joint Committee has given the police these powers with some minor amendments which have nothing to do with the people. All these things go in favour of the vested class and interests. I think the time has come when we should think a new and there must be some code for police crimes as well as for economic crimes. For police crimes there must be a special code. This Code has nothing in it to solve all these things within our society. So, I think the Criminal Procedure Code, as changed by the Joint Committee, has not kept pace with the growth of our Whether you want it or not, society. out aim is democracy, socialism and social justice. People will not be always satisfied with this Criminal Procedure Code. This Code will be torn up by the people and it will be thrown into the wastepaper basket. This Code cannot help the people in their daily life, in their future prosperity or in their prospects of livelihood.

Another point I raise is this One of the aims of this Code is to speed up and expedite cases but what has it done? It has failed. Only the scope in some cases has been extended. No major change is there. How can we expedite and have speedice justice and make it successful when our poor people are rotting day and night inside the jail and outside the jail?

Another point I want to raise is about tice legal aid. No provision has been made for the down-trodden and poor people who want protection from the police, from the Thana and from the Govern-Nothing has been done towards ment this end. Why? All these are meant cons-" ciously for serving the interests of the ' vested class. All these things are meant consciously for serving the interests of the capitalist-class. They are used against the trade union Norkers. They are victimised, In the case of Kisans the Jotdars take advantage of the situation. The provision of legal aid has been completely left to the Governments of the States. Why? It is very ugly because you have already crippled all the States financially. The financially-crippled States cannot give financial help to the poor people to defend their cases for getting justice in courts. F.I.Rs., police remand, all these are for the vested interests. It can be manipulated, tampered with according to his wish. Our masses the poor people think that the police is a terror, they are not the servants of peace; they think that the thana is more terroristic than the prison itself. They think "If I go to the thana, I will be kicked out of the thana because I am a poor man." You cannot protect these people from the tortures and exploitation of the vested class and the police jointly. Even the police alone can do these things. Your appaiatus or machinery or administration or your judiciary or your magistrate, all are jointly going against the poor people. So, I think that these things should be seriously consideted. Shri Sanyal spoke of the so-called appeal and police remand. I am in full agreement with what he said because he has always been my defence lawyer; he has always defended me whenever I had committed any political action.

I request the Minister to consider all these. I am not at all happy about the result, about this Joint Committee's Report on this Criminal Procedure Code. It is a very big, voluminous book. But it has nothing to satisfy the people; it has all to help the vested class, the capitalist class, the land-owning class and others who will always take opportunistic advantage of the present society. Though it has come from the joint Committee, I cannot fully agreeto commend it. So, with all these serious criticisms. I request the Minister to give serious consideration to my suggestions. It is a Bill on which the rule of the Congress is to be established; law and order would be changed according to the perspective of the ruling party if it is imposed.

SHRI SHYAM LAL YADAV : I would not have taken the time of the House. But there are certain matters which I would like to explain. I appreciate the points made in the speeches of my three friends. We should appreciate that this Criminal Procedure Code has been the basis of jurisprudence in our country since long. And everyone in the country, even a person in the remote village, knows some of the sections and procedures of the Code. Therefore, it would not be possible for any Government to make any revolutionary change not change the entire structure of the criminal jurisprudence in the country. An attempt has been made in the present Bill to make the provisions

1/11 -

166

rather easy and to enable the course of justice casy and for a quick decision to be taken so that there may be some justice done in time. There are certain maior changes that have been made in the Bill, from the present Code. One of them is that summons cases have been made punishable up to two years instead of one year, and warrant cases have been made punishable over two years. Then the procedure has also been somewhat changed. Powers of the magistrates have been changid. Magistrates of first class used to award sentences only for 2 years. Now, they can award a sentence of three years, He can impose a fine upto a maximum of Rs. 2,000 previously; now, he can impose a fine upto a maximum of Rs. 5,000. In the same way, magistrates of second class can inflict up to six months of imprisonment it has been advanced to one year. The fine was limited to Rs. 500, now it has been raised to Rs. 1,000. And a new magistrate. Chief Judicial Magistrate, has been added here, about which point I will submit later on. He has been given the power to award punishment up to seven years. At present, the Additional Judicial Magistrates are functioning in the diffeicht States. They have the power of only the magistrate, first class. Now, the Chief Judicial Magistrate will have the power of the Assistant Sessions Judges and he can award punishment up to seven years. In that way we see that big cases can be tried by Magistrates and the higher courts should not be crowded with many cases which take so much time. The procedure for summons cases has also been made applicable to a large number of cases.

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Then, Sir, one thing which has been done through this Bill is the separation of judiciary from the executive. It has for once been done through statute on an all-India basis. Up till now in some States separation has been done by legislation of the State Assembly and in some of the States separation has been done by an executive order of the State Government. But now this Code envisages two types of Whenever the word "magismagistrates. trate" is used in the Bill it refers to judicial magistrate and whenever the word "judicial magistrate" is not referred it is always used for "executive magistrate, and more and more cases withdrawn from the

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courts of executive magistrates are handed over for trial to judicial magistrate. I think the people and the bar of the country will appreciate this big step in the separation of judiciary from the executive.

One thing more. The honorary magistrates have been abolished, by and large. But I regret that the Government could not agree to total abolition of honorary magistrates. Only second class special magistrates have been provided. A safeguard has been accepted by the Government on the insistence of the Committee that these second class special magistrates will be appointed by the High Court, and for one year at a time. They cannot be appointed for more than one year. The High Court may enhance the period again by making fresh appointment. So, I think in some ways that objection is met.

There are certain other new provisions which may be appreciated, Sir. For the first time in processing under section 107 it has been provided that if the proceeding does not terminate after six months and the opposite party is in custody, the proceeding will automatically drop. If he is on bail then the magistrate, as special reasons, can enhance the period for trial; otherwise the proceeding will terminate. In the Bill there is some obvious drafting omission which I have tried to plug through my amendment on which I would be speaking later.

So far as I remember it was originally agreed in the Committee that clause 116 will provide for stoppage of proceeding after six months. If the magistrate passes an order of continuance of the proceeding for special reasons, that order should be open to revision by the sessions court. In the Bill, as circulated, we find that an appeal is provided. An appeal will be too much because that is almost an interlocutory order. So I have proposed that the order for not stopping the proceeding in a case under section 107 should be tried by the sessions court.

Coming to section 314, 1 hind from the proceeding that it was agreed that if a court while delivering the judgment comes to the conclusion that the witness who appeared before it has made deliberately and willingly false statement he will be

[Shii Shyam Lal Yaday]

prosecuted for perjury in the way prescribed in that chuse. But the Bill nowmentions that if he has made contradictory statements to his statement made before the police or before the magistrate under sections 161 or 164 he can be charged for perjury. I have proposed an amendment that that portion should be deleted and the decision as taken earlier by the Committee should be accepted and if the person has made a false statement and the court comes to that finding it the time of delivering the judgment that person should be tried for perjury.

Then Sp there is clause 381 Our finend Mr. Syed Ahmed referred to it I am in agreement with him vesterday that there is some flaw in the diatting Otherwise, that objection would not have been raised. I have proposed that clause 389(3)(1) should be deleted and in sub clause (ii) instead of exceeding three it should be not exceeding three 11115 That is if a person is convicted vears by a court and it the time of conviction he is convicted only for a bailible offence then he should be given bail immediately for filing in appeal he will not be sent But if the cise was a warrant to jail case and he was convicted and punished with imprisonment for a period not exceed ing three years and he was on bail, then also he will be granted bail and he will not be asked to go to jail pending the appeal. That is the right arrangement and I hope the amendment that I have proposed will be accepted.

Now there is one controversial point in clause 407 It is provided that the accused person or any person has the right to move for transfer if he feels that the court tiving is prejudicial to the accused or any person Once he moves for transfer the provision as it exists to day and as is proposed in the Bill also as decided by the Joint Committee unanimously and accepted by the Government is that the Magistrate will step the proceedings as soon is the accused person brings it to his notice that he wants to make a transfer application for transfer of the case to a higher court. He will no doubt take a bond from him and he will grant only a certain limited period

to enable him to bring a stay order from the higher court. Now the amendment as proposed by the Minister and circulated to us seeks to delete this clause. I had a discussion with him yesterday and some of out friends also had a discussion with him I told him, This is a very stringent pro posal that you have made ' I said that because the house will agree that it is in very rare cases that an accused person or his lawyer goes for transfer of a case It is very fare. Even if the accused wants it there are very lew lawyers who will dare to say that the case may be transferred because they have to appear every dav before the Migistrate and they cannot in cut the displeasure of the court They will advise their clients not to move for transfer. Only in extreme cases, it is done The law provides for all types of cases It is not that the law provides only for general cases. It provides for exceptional cases also. In this case, if the accused person wants to move for transfer and he tells the court - I want to move for transthan if the court is prejudiced it fei will proceed and decide the case The accused person will not be able to do any Even if he gets the transfer he thing will be helpless and he will be sent to fail. So this will cause a lot of hardship I think the plea advanced on this account is that the cases are usually delayed because of transfers But from my own experience at the Bar and from the experience of others, I can say that there are very few cases in which transfers are asked for or in which things are delayed. I can visual lise cases in which important persons of resourceful persons are involved, even to day, in spite of the law, in spite of the amendment that is being proposed by the Minister they can get a stay order from the higher court I hey can delay procee dings in the court in so many ways There is no difficulty for them to get it done But Sir the poor litigants will suffer think the Minister should appreciate the feelings of the Committee and should not go back upon the understanding that he give to the Committee He was very kind to accept it in spite of the stubborn opposition from his officials or advisers. I think he should stand by that understanding and accept the Joint Committee's Report on that point He should not press his amendment

[13 DEC. 1972]

Lastly, some of my friends have said that the preventive sections should be dropped. We have already amended section 109 to a very large extent, and only one type of case can come up before the court now. So far as the other provisions of the Bill are concerned, I think there has been a significant increase in the facilities provided to the accused persons. For example, in the realisation of fine, Clause 421 provides that if he undergoes imprisonment, fine will not be realised. If an undertrial is undergoing trial and is in detention, and if he is sentenced ultimately, that period of detention will be deducted from his ultimate detention. Now for the first time a limitation has been provided, limitation is undergoing trial and is in detention, and Till today there was no limitation. Now anticipatory bail has been provided in Clause 438. And one more bail has been provided. My friend was referring to the case of identification, specifically; that is the usual method that the police bar the bail, the police raise the plea of identification. Now it has been provided that bail will not be refused only because of lack of identification. That is a big advance-Then, there is a lot of corruption ment. in the verification of bail bonds. That has been provided in this, that verification will be provided by the magistrate or those who are subordinate to him and not by any other extraneous authority like the revenue officials or the police officials. because there is a lot of corruption. The magistrate will verify himself the genuineness or the adequacy of the bond or will depute some other magistrate and will not send the papers to anybody else. That is a good advancement. Then I think the maintenance chapter is good and it has been appreciated by all. Now maintenance is being provided not only to the children, not only to the wife, but to the parents, the indigent parents also. Lastly, I would like to say that the Minister will kindly accept this amendment which I have proposed and withdraw his own amendment.

ap le solo

SHRI BIPINPAL DAS (Assam): Mr. Deputy Chairman, Sir, the judicial system plays a very important role in a democratic country. We are aiming at bringing about a socialist society, a society based on social justice. We are also committed to the principles of democracy and we are not going to do it overnight by revolution. We are going to achieve our objective < through democratic processes. And therefore, in this process the judicial system is also very important. It must play a significant role. It must help in the advancement of our objectives. It is from that point of view that I would look at this Joint Committee Report. The Joint Committee Report, I must submit, is quite welcome from various points of view. And before I can discuss that question, I would like to take this opportunity of strongly repudiating the allegation made by my esteemed friend, Mr. Sanyal, that the ruling party is using all the various laws only to serve the interests of the ruling party. I strongly repudiate that. I think he was condemn the overzealous in trying to Government on that point . . .

SHRI SASANKASEKHAR SANYAL : I wanted to give credit to the ruling party.

SHRI BIPINPAL DAS : At the same time I would say that although the Joint Committee has made a substantial improvement over the old legislation, I do not think it has gone far enough. The Joint Committee should have gone still farther. I do not want to go into the details as you have given me only ten minutes. I am only pointing out a few things that strike my mind just now. For example, one of the basic questions that must be answered by all judicial systems is that the common people must be given quick justice. I have seen the various provisions made in the Joint Committee Report. But still I feel that enough has not been done. For example, they have decided to confer some powers on some sub-registrars by way of help to the common people, so that they can get quicker justice. I think they should have gone a little farther. If a magistrate in a town or city is beyond the casy reach of the common people, the people in the villages, I do not think even the sub-registrar is within the easy reach either, not very easy.

Therefore, something should be thought out and a new device or system should be evolved so that the common people, particularly those who live in remote villages, get quick justice.

Where does the judicial process actually start? It does not start in the law court. For all practical purposes it starts with

[Shri Bipinpal Das]

the Police Station-the Thana. First the complaints, charges and counter charges go there and the accused are hauled up and then the cases are brought before the court. Now, what is the conduct of the Police? we do something in this regard Can through legislation and not merely by evecutive decisions or orders in order to see that the police harassment is stopped? The poor people, the working classes, the peasantry and particularly the Harijans are the worst sufferers at the hands of the Police. They being the first agency to initiate the legal process and if they themselves start harassing the poorer sections of the people, can you call the justice to be metcd out to them afterwards, justice in fact or in reality? This is the question I pose before the hon. Minister and the Government.

The Police use all kinds of methods and I know they resort to third degree methods, harrassments, torture and all sorts of things. Some statutory provision must be there to stop these things. Any Policeman who resorts to any of these things should be punished and punished drastically. For that there should be some legal provision. All of us know that these things are going on. But what have we done to stop these things?

Then, what about anti-social elements? I am very glad that some provisions have been made, in regard to hoarders, profiteers and those who violate laws on foreign exchange. There are provisions here, but the ultimate question is what is going to happen in practice. Even now there are some laws against hoarders, profiteers, black-marketeers and so on. But what is going to happen in practice.

SHRI GOLAP BARBORA (Assam): Especially under Congress rule.

SHRI BIPINPAL DAS: I do not know what will happen when his party comes to power. We have seen enough of these opposition parties. They cannot claim to have the monopoly of all the honesty and integrity in the world. Every major opposition party in this country has been tested in one part or other of this country and every one of the opposition parties has been found wanting. Therefore, do not blame Congress alone. Be a little responsible. This is a common job . . . AN HON. MEMBER: That is the consolution.

SHRI BIPINPAL DAS: This is no consolation. This is a pointer to the fact that the disease has gone very deep in the society. We have to root out the disease. We have to do it along with all others. There is no question of one party or the other party doing it. I know what the opposition parties are. I was in the opposition tor long years. Please do not proyoke me. . .

SHRI SASANKASEKHAR SANYAL: On a point of order. He says I cannot provoke him. Why not he evoke the best in me?

SHRI BIPINPAL DAS: That we will do in the lobby, outside.

I was saying about anti-social elements. On some minor technical grounds, many of these people escape punishment. I agree that the Joint Committee has tried to do something about it. But this is not sufficient. We have to do something more in order to see that they do not escape from the chutches of law.

What about delayed procedure? Shri Yadavji has mentioned clause 107 and said that the proceedings must be completed within six months.

Under special circumsances it may be extended. Leave alone the question of extension. I would like to ask Mr. Yadav and any lawyer-Member present here and also every Member of this House: "Is six months not a very long time for proceedings to be drawn up against a person who is already in custody?" You say that this, period of six months can also be extended...

SHRI SHYAM LAL YADAV: It is not for persons in custody. For them it should be terminated within six months.

SHRI BIPINPAL DAS: My question is this: "Even if you keep it as six months, is it not too long a period?"

SHRI SHYAM LAL YADAV: Yes.

SHRI BIPINPAL DAS: Do you think that justice is done by detaining a person for six months and you delay drawing up [13 DEC. 1972]

the proceedings against him? Why should there be a delay? If there is a case, if there is a concrete case, why should there be any delay in drawing up the proceedings against him?

SHRI SASANKASEKHAR SANYAL: I have given you instances where people have been kept for three years without trial

SHRI BIPINPAL DAS: Therefore, Sir, I feel that something should have been done on this point also. My question is how to improve the efficiency of the functioning of the entire judicial system. This is the basic question and today, Sir, in this country it is just not there.

Then, Su, about over-clowding in jails by undertrials. Again, Sir, the Joint Committee has said quite a lot about it and tried to do something about it. But why should it happen? Why should there be at all any over-crowding in jails by undertrials? This issue of under-trials has become so nauseating for me, absolutely nauseating. A man can be there for a few days, for a week or two and the proceedings should be drawn up against him and if he is guilty he should be punished; otherwise, he should be let off.

SHRI SASANKASEKHAR SANYAL: The word "undertrial" has not been defined in any law.

SHRI BIPINPAL DAS: Sir, these are the few points which I wanted to make because I personally feel very much about these. I welcome this Report. Although I say that this Committee tried its best to improve upon the old Code, I do not feel entirely happy about it because a little more remains to be done.

Then, Si, I come to certain general questions. Some time back, Si, if I terms ber aright, the honourable Law Minister, Shii Gokhale, assured u_{2} —I do not know whether here or there, whether in this House of the other House—that something will be done to help the poor by way of legal aid. Just remember, Sir, that 22 croises of our people are living below the subsistence level. If one of them wants to seek justice and if he has to go through

all these procedures and proceedings, what will happen to him? He has not enough money even to feed his family, not enough money to have two meals a day and if he has to go through all these procedures and proceedings, what will happen to him and what are you going to do about it?

SHRI SASANKASEKHAR SANYAL: Sir, max I enlighten hum a bit on this? In the meetings of the Joint Committee on the Advocates Bill, a clause came up for discussion relating to legal aid to the poor and the expectation was that a chapter would be introduced in the Bill. But the Committee has dropped it.

SHRI BIPINPAL DAS: Mr. Sanyal, at the age of seventy or above seventy, you try to behave like a young man of twentyfive.

SHRI SASANKASEKHAR SANYAL: I am still voung. I feel voung.

SHRI BIPINPAL DAS: I am very glad about it and I congratulate you on your energy Please do not interrupt me thinking that I am contradicting you.

SHRI SASANKASEKHAR SANYAL: You also do not envy me for my energy.

SHRI BIPINPAL DAS: I envy your energy.

SHRI SASANKASEKHAR SANYAL: I leel flattered.

SHRI BIPINPAL DAS: Now, Sir, the basic question I pose before the House and the Government is this: "What are we going to do to help the poorer sections of our society to get justice quickly and casily and cheaply?" This is the basic question which we should tackle if we really mean any business by socialism and all that. Probably we may progress a little slowly. I also know that in a democratic set-up we cannot do things overnight and so we have to make progress slowly. But you must do something about this. What have we done so far? And, Sh, what are we going to do now? This is what I want to ask now. [Shri Bipinpal Das]

In this connection, I want to say something and I hope my lawyer friends like Mr. Sanyal and Mr. Yaday will pardon me if I say a word about the fees taken by the lawyers from the poor people in this country.

SHRI SASANKASEKHAR SANYAL: We are for that.

SHRI BIPINPAL DAS: What is hap pening today? Are you doing justice to yourselves? I address the entire lawyer class in this country. Are they doing justice to themselves, to the people of 3 P.M. this country or to the cause which they hold dear in this country? I do not want to make any more comment on this. Let them think for themselves. Some of them show their love of social justice, socialism, equality and so on And they shed tears for the poor people of this country. But what is going on in law counts? How can you reform the system- Let the lawyers of this country, I appeal to them, come forward themselves and fix a limit . .

SHRI SASANKASEKHAR SANYAI : On a point of order. Does he know that law vers are supposed to act without any remuneration? Does he know further that an eminent lawyer does at least 50 per cent of his work free of any remuneration?

SHR1 BIPINPAL DAS I know many of them I am not going into that .

SHRI H. S. NARANIAH (Mysore): Mr. Palkhiwala donates Rs. 5,000 per day for charitable purposes.

SHRI BIPINPAL DAS I am not going into individual cases. I do not say that there are no good men among lawyers. I do not say that. I am talking of the law yers as a class, in general. They must act and assert. Everybody knows what is happening in this country. I appeal to them to reform this.

SHRI B. T. KEMPARAJ: As far as the advocates are concerned, it is not the correct view.

SHRI BIPINPAL DAS: I know. I know many of my friends who are practising law. . .

SHRI SASANKASEKHAR SANYAL Let my friend be prosecuted and I shall defend him free of charge

(Interruptions)

SHRI BIPINPAL DAS: My lawyer friends get upset when I say this. What is the furth- I plead with them, I appeal to them, to come forward themselves. They have well organised Bar Councils, Associations and so on Let them come forward and do some justice to the poor people of this country by fixing a limit to their lees.

Last point, Sir, I did not want to say, but I just mention it. I know that there is comption in this country in various bran ches various sectors, various sections. It is no use blaming only one section. But still something should be done. Some efforts should be made at least to rid the judicial system of this evil or at least to bring down the level of corruption in judicial system to the minimum, and to do justice to the poor people if we are to utilize this system ultimately for bringing about a new society based on equality and social justice

श्री गोलाप बरबोरा: उपाध्यक्ष महोदय, मैं कोई वकील नहीं हूं, लेकिन पिछले 25 साल के राजनीतिक और मामाजिक जीवन में कानून, पुलिस ओक्ट वकीलो के मामने आने का मुझे मौका मिला है और मै ने देखा है और मेरा यह तजवी है कि देश में जो कानून होता है वह उस देश की समाज व्यवस्था का प्रतीक होता है। मुझे इस काग्रेसी राज की जल में भी रहने का मौका मिला है। आज हमारे देश में कानन का एक जंगल बना हआ है और कानन का इस्तेमाल सही ढंग से न होने का जो एक तरीका चल रहा है उस से साबित होता है कि हमारा नाग भले ही समाजवाद को स्थापित करने का हो, लेकिन हमारा देश पजीवाद और सामन्त-वाद की ओर ही बढ रहा है। क्योंकि हम देखने है कि कहने को नो वोला जाता है कि कानन के सामने सब लोग बराबर हैं लेकिन वास्तव में बात यह है कि कानुन की नजर में कुछ लोग ज्यादा वढ़े हैं और

उस कानून के सामने उन को ही ज्यादा बराबरी मिलती है। जिला कोर्ट से मप्रीम कोर्ट तक आने के लिए जिन के पास 25, 50 हजार म्पया नही है उस के लिए कानून के सामने सब को बराबरी हो, इम का कोई सवाल ही नहीं है। आप के कानून की किताबो में कुछ ऐसी धाराये है जैसे 107 है, 109 है, और मै जेलो में गया ह वहा रहा हैं और मै ने देखा है कि अडर टायल्स वहा रहते हैं ।

हमारा जेल झहर का जेल है। कभी उसमे 125 की कैपैमिटी रही. ग्राज 1500 लोग बहा रखे जाते है। ज्यादातर 70-80 फीसदी ग्रडर-ट्रायल है, ग्रडर-ट्रायल में ग्रामाम की जेलो में रह चके है। ऐसे ऐसे लोग देखे है शिवसागर की जेल मे रहा, वहा देखा की एक चाय बागान का गरीब मजदूर, हमारे घर मे 3 मील दूर चाय बागान मे काम करता था. एक दिन अपने रिण्नेदारों के पास गया था। राम्ते में कोई स्टेशन में उतरा। स्टेशन में पुलिस रहती है, उसने पकड़ा कि क्या है पाकेट में दो, नहीं तो जाओं 109 धारा. 107 धारा के अन्दर। पड़ा है जेल मे। पैंसे वाले लोग तो बराबर ज़मानत में चले ग्राते है, लेकिन गरीब मजदूर, किमान, भुमिहीन जो है उनको जमानत मे लाने के लिए लोग 20-25 रुपये खर्च करने के लिए तैयार नही है ग्रौर बह पड़ा हुग्रा है जेल मे। यह हालत है। जिस देश में 10 करोड <mark>ग्रादमी बे</mark>कार हो उसमे ग्राप 109 मे किसी को गिरफनार करने हो ostentious "for having no of livelihood'' बेकारो means के लिए क्या ऐश्योरेम है[?] ग्राप उनको लाइवलीहड का मीन्स नही दे पाने है नो उसको गिरफ्तार करेगे धारा 109 जेल में रखेंगे ? उसको मे उसको कोई प्रोटेक्शन नही, कोर्ट मे कोई कागजान दाखिल करने का रास्ता नही। इसलिए 12-7 RSS/ND/72

हमने यह माग की है, सामाजिक ग्रान्दोलन में हम लोग लगातार यह माग करते रहे है कि 107, 109 कानन की किताबो में हटाये जाये। ग्रंडर ट्रायल रहता है। एक दफा देखा कि जोर हाट की जेल में 15 माल का स्टुडेट मईर केम में इप्लीकेट कर के गिरफुतार किया गया था ग्रौर 3 साल तक जेल में रहा। जब तम लोग वहा पहचे तब तक चार्जशीट नहीं ग्राई ग्रोर 3 साल लगातार चलने के बाद चार्जशीट नही ग्राई तो उन लोगो <mark>ने भुख हडता</mark>ल की कि हमारे खिला<mark>फ</mark> किल्यरकट चार्ज शीट लाई जाए, हमको मजिस्टेट के सामने पेश किया जाए। उनको भुख हडताल करनी पडी। कोई 70 फीसदी ग्राउर ट्रायल जेल मे थे। क्या गजरती है उनकी जिन्दगी मे श्राप लोग जो बज्र्ग लोग है, काग्रेमी ग्रान्दोलन में जेल गये हैं उनको गायद मालम होगा, नये लोगो को तो मालम होगा नहीं। ग्रडर ट्रायल्म को खाना मिलता है। ग्रडर ट्राइल्स को कम जेल का डे़म नही मिलता है, वह फटे हाल रहता है। उनकी देखभाल करने वाला नही है, वदन में कपडा नही है, बीमार है, यह हालत है। तो देश मे कानुन का जगल ज्यादा बढाकर कोई फायदा नही है। 🦷 📭 🚛 57

हमारा राजनीतिक उद्देश्य ग्रगर समाज-वाद रा है तो समाजवाद में ज्यादा से ज्यादा लोगा को जो प्रोटेक्शन देने का उद्देश्य है उमी उद्देव्य से कानून बनने चाहिए श्रौर ज्यादातर कानून का इस्तेमाल नही होना चाहिए। यह व्यवस्था ग्रगर हो तो बहत फायदा देश के गरीब लोगो को मिलेगा। उसके लिए पहला कदम है कि 107, 109 को जल्दी खरम किया जाए। कम से कम ग्राज ग्रगर हिन्दूस्तान में कही 20 लाख लोग जेलों में है तो उनमें में 10 लाख लोग जल्दी में जल्दी रिहा हो जाएगे ग्रौर सरकार ग्रौर देश के गरीब [श्री गोलाप बरवोरा] लोगों का लाखों लाख रुपये की जो बरबादी होती है वह भी बरबादी रुकेगी। श्री भूपेन्द्र नारायण मंडल (बिहार):

श्रीमन्, मुझे भी बोलना है।

श्री उप-सभापतिः ग्रापने कहा था कि ग्राप नहीं बोलना चाहते है।

श्वी भूपेन्द्र नारायण मंडल : किसने कहा? ग्रगर यह कहा तो ग्रापको गलत कहा गया। हमने कहा था कि हम पीछे वोलेंगे। दूसरे दिन जायगा तो दूसरे दिन बोलेंगे, यह कहा।!....

श्री उप-सभापतिः हमसे कहा गया कि यह बिल कल तक जायगा तो बोलेंगे, नही तो नही बोलेंगे। ग्रच्छा ग्राप बोलिये पांच मिनट।

श्री भपेन्द्र नारायण मंडलः श्रीमन, यह बात सही है कि मैं ग्राज ही ग्राया ह ग्रौर मैंने इसको पढ़ा नही है इसलिए पढ कर के जितना कहना चाहिए उतना मैं नहीं कह सकता हूं लेकिन एक बात तो प्रत्यक्ष है कि जो ग्राज हालत देश की है उसमें ग्रगर सब से बडा कानुन तोड़ने वाला कोई है तो यहां की सरकार है। इसको ग्रगर ग्रापको देखना हो तो जेल में चले जाइये। भागलपूर सेन्ट्रल जेल की कैंपेसिटी कितनी है। 1500 है। श्रौर कैंदी कितने हैं----3000। इस कानुन को किसने तोडा । सरकार ने तोडा। क्या इस किमनल प्रोसीजर कोड से या जो पीनल कोड का मंशो-धन ग्रा रहा है उसमें कोई ऐसा प्राविजन है जिस प्राविजन के जरिये कानुन को तोड़ने वाला अगर सरकार है, सरकारी ग्रादमी है, तो उसके ऊपर मकदमा चले। इस तरह का कोई प्राविजन ग्रापने इंडियन पीनल कोड में या इस किमनल प्रोसीजर कोड में किया है। नहीं किया है।

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> इसलिए जो म्रमली यहां की वीमारी है वह वीमारी यह है कि म्राज की सरकार जो वर्तमान व्यवस्था है, उस व्यवस्था

को बदलना दिल से नही चाहनी है, हालांकि मुह से या कानून के रूप में भी वह इस ढंग की बात कर रही है जिससे कि मालूम पडता है कि वह ऐसा कर रही है और लोगों को इससे उम्मीद बंधती है कि शायद सरकार समाज को कुछ बदलना चाहती है। जो हमारा मंविधान है उस संविधान के शुरू में कह दिया गया है कि किस तरह का समाज की बनाने कोशिश सरकार को करनी चाहिए लेकिन जिस तरह के समाज की कल्पना की गई है वैसा क्या बन रहा है। उसके प्रिणम्बिल में जिन बातों का जिक किया गया है, जिस इक्वालिटी, लिबर्टी, फ्रट-लिटी. डिगनिटी ग्रादि का उसमें वर्णन किया गया है उम बात को क्या ग्रपने मामने रखा है ग्रौर जो प्लान ग्रापने बनाये है उन प्लांस को ग्रगर देखा जाय नो क्या उन बातों को वह रिफलेक्ट करना है। क्या यह बात सही नहीं है कि इमी दिल्ली शहर में ग्रौर पटना शहर में जो कि मेरे राज्य की राजधानी है वहां पर नई नई बस्तियां बसाई गई ग्रौर बसाई जा रही है, कही पर श्रीकृष्ण नगर है, श्रीकृष्ण पूरी है, कहीं पर किदवई पूरी है, न मालम कितनी पुरियां हैं लेकिन उन पुरियों को कैंसे बसाया गया है । वहां पर गरीब लोगों की बस्ती थी। इनकी स्कीम जो है वह स्लम क्लीयरेंस की है ग्रौर स्लम क्लीयरेंस के जरिये से सारी जमीन को एक्वायर कर लिया जाता है, ऐसा नहीं होता है कि उस जमीन पर बसे हुए गरीबों को रुपया दे कर उनके घरो को ही ग्रच्छा बना दें, यह स्लम क्लीयरेंस की स्कीम नहीं है। इनकी स्कीम है कि उनकी जुमीन को ले लो, मारी बस्ती को उजाड दो, उसको साफ सूथरा करो उसमें हर ग्रमेनिटीज को दो ग्रौर फिर उस पर अपने भाई-बन्ध को जो कर वसा दो। यही इनकी स्लम क्लीयरेंस स्कीम है। इसलिए हम कहते

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Procedure Bill, 1970 182

पास रुपया है वह टाइम ले कर हैरास करता है। दूसरी पार्टी ग्रगर गरीब है तो वह न्याय पा ही नहीं सकती है। इसलिए मैं सरकार से कहना चाहना ह, इस ग्राम्पेक्ट को भी सरकार को सामने रखना चाहिए।

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दुसरी बात जिसकी ओर मै ध्यान खीचना चाहना ह वह यह है कि जितना भी ग्राज कानून बनता है, हर कानून मे एक प्राविजन किया जाता है कि सरकार के वही लोग जो इस कानून के आपरेशन मे लगे हुए है, उन लोगों के ऊपर कोई जिम्मेदारी ग्रपने काम की नही ग्राएगी, सरकार की कोई लाएबिलिटी नही होगी-क्या ऐसा कानुन समाजवाद को लाने वाला कानून होगा ? क्या इमीसे वह समाज बनेगा जिस समाज की कल्पना कास्टीट्यूशन के प्रीएम्बूल में की गई है? इस बात का भी खयाल रखिए कि इस तरह से ग्राज जो काम सरकार की ग्रोर से चला है, हाफ हार्टेंड वे से चल र<mark>ह</mark>ा है, डूप्लिसिटी उसमे है, सत्य का म्रंश नहीं है। इसलिए ग्रापको ग्रपने काम में सक्सेस नहीं मिल रही है। ग्रगर ग्रापको यही करना था तो ग्राम पचायत बनी हुई है, फुल ग्राथारिटी दे दे उसको काम करने की । फुल निगरानी करने के लिए जज को पावर कर देते कि जिस ग्राम पचायत में बेइसाफी हो वहा जो इसाफ करने वाला ग्रादमी है उस पर मुकदमा चला दे। इस तरह का प्राविजन करने तो हम समझने गरीब के साथ इसाफ है ग्रौर उसमे सरकार का भी खर्चा बचता, देरी भी कम होती, ग्रौर जो पचायत का पच हो उसको भी डर लगा रहे कि हमारे ऊपर भी देखने वाला ग्रादमी है इसलिए न्यायपूर्वक काम करना चाहिए ग्रौर उसके ऊपर ग्रपील करने की जरूरत पड़ती, तो हाईकोर्ट मे जाकर ग्रपील की व्यवस्था हो सकती।

है कि जो सविधान की मशा है, जो उसके प्रिएम्विल में दिया गया है उसके मुताबिक जो हिन्दूस्तान मे प्लान चल रहा है वह क्या चल रहा है इसे देखे। वह प्लान भी उसके मुताबिक नही चल रहा है। जो सरकार को चलाने वाले क्रादमी है ग्रगर वह सविधान के मनाबिक कानून नही बनाते है, ग्लान नही बनाते है क्या वह मुजरिम नही है, क्या उनके ऊपर मुकदमा नही चलाना चाहिए, उनके ऊपर भी मुकदमा चलना चाहिए । क्या इस तरह का कोई सशोधन ग्राप ग्रपने इडियन पीनल कोड या इस क्रिमनल प्रोसीजर कोड में ला रहे है कि वह बात हो सके। वैमी कोई बात इसमे नही है। इसलिये ग्रभी जो किमनल प्रासीजर कोड इस हाउस के सामने है इससे कोई बड़ी बात होने वाली नही है। बराबर यह कहा जा रहा है कि हाई कोर्ट मे बहुत मुकदमे जमा हो गये है, लोग्रर कोर्ट्रम में बहुत मुकदमे जमा हो गये हैं और ये सब मुकदमे जल्दी खत्म होना चाहिए। मै भी चाहता हू कि मुकदमे खत्म होना चाहिए, जल्दी खत्म होना चाहिए लेकिन एक बात का कफ्युजन लोगो मे, बोलने वालो मे, रहता हे ग्रौर शायद उस बान पर उनका ध्यान नहीं गया है ग्रौर वह बात देरी के बारे मे यह है कि कभी कभी गरीब लोगो को मुकदमा लडने के लिए देरी करने की जम्हरत पड़ती है। क्योंकि वह घर जाता है, उसको पैसे के लिए, दो-चार रुपए के लिए वहा पर इंतजाम करना पड़ना है, तब मोहलत देता है। तो इस ढग से स्रगर कोई देरी न करे तो मुकदमा लड़ भी नही सकता है। यह भी एक ग्रास्पेक्ट है देरी होने का। इसलिए क्रिमिनल प्रोसीजर कोड में ग्रगर इस तरह का प्राविजन रहे कि जो जेनुइन गरीब है, गरीबी की बिना पर वह टाइम चाहना है, तो उसको मिलना चाहिए लेकिन ग्राज वह टाइम मिलता है कही किसी को। जिनके

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS AND IN THE DEPARIMENT OF PERSON (SHRI RAM NIWAS MIRDHA) NEL. SN, I have very carefully heard the various Members who have taken part in this debate which is on the Bill before us Many ideas have been discussed and some of the changes that we have made in this Bill from the existing situation have been commended Well, Sir, there are some as peets of this Bill which I mentioned in my opening speech and I would not like to repeat them. What we have tried to do in this Bill is that investigation and trial of cases should be expeditious and fair, that due protection should be given to the right of the accused and that there should be a check on the arbitrary excicise of power by police and other authointics Well Sir a lot has been said regaiding the security provisions of the Code and the way in which they are misused In the similar way, mention has also been made about the provisions regarding preventive arrests by the police Sil, it seems that there is a deep distress against the whole police as is evident from the speeches made by hon Members

It may be true that there are instances ١. when the powers given to the police under the Code have been abused but to condemn the whole police force would be most unlair. Alter all, the policemen about whom so much is said are part of the society to which we all belong. Most of the police force is from poorer classes of our society and to say that all of them abuse the powers or exceed the powers that are given to them would be not only a gross exaggitation but most unlain to a force which has exhibited on occasions some commendable traits of bravery and fairmindedness. If we continue this spirit of distinst I think we would be impeding the process which I am sure we all want to initiate of improving the morale quality and efficiency of the police force. More and more educated people are coming into the police the officer cadres are selected after very intensive scieening and competitive tests and I am sure a definite im provement in their working and behaviour is noticeable which should receive, however grudgingly at least practical recognition at the hands of hon Members

SHRI SASANKASEKHAR SANYAL. Are

SHRI RAM NIWAS MIRDHA I mentioned about security proceedings. If hon Members would see the changes that we have made some of the criticisms would have been avoided. For example, proceed ings under sections 108, 109 and 110 which formerly used to be with the Executive Magistrates now would be handled by the Judicial Magistrates. As regards separa tion of executive and judiciary also, we have made this separation. It is one of the accepted principles of our legal sys tem. We have given it a statutory basis on a un form pattern all over the country Up till now there was separation of the executive and judiciary but the pattern differed from State to State Sometimes it had a legal basis, sometimes it was merely through executive instructions but in this new Bill we have tried to give it a uni form pattern all over the country and I think it should be welcomed by everyone We have taken out cases from the Exe curive Magistrates and given them over to the Judicial Magistrates who are under the High Courts and who can be expected to be very fair and impartial in their outlook and at whose hands none need have invited about being victimised or being put to any disadvantage

श्री बीरेन्द्र कुमार सखलेचा (मध्य प्रदेश): आपने 108 और 109 को तो ज्यूडिंशियल मजिस्ट्रेट को ट्रान्सफर कर दिया, लेकिन 107 के बारे में क्या हआ[?]

SHRI RAM NIWAS MIRDHA This point was also very seriously debated in the Joint Committee and their decision was that in view of the circumstances under which section 107 is resorted to it would be better if it is kept with the Executive Magistrates because very quick uction is needed in cases of this nature where a breach of peace is apprehended So to put it in the hands of the Judicial Magistrates may to some extent even de lear the purpose for which that section is designed.

SHRI MAHAVIR IYAGI (Uttai Piadesh) Bail will be available in that case-

AN HON MLMBER It is a bailible offence

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श्री वीरेन्द्र कुमार सखलेचाः अन्भव तो यह है कि एग्जीक्यूटिव मजिस्ट्रेट हमेशा ट्र पर श्रीर दूसरे कामो पर लगा रहता है

SHRI RAM NIWAS MIRDHA Sir, a lot of suggestions have been made which really do not form a part, which cannot form a part of this Bill. Just now the hon. Member said that executive Magistrates are not in the court. This is the type of thing which we can not provide for in the Code. It is an administrative matter. I do hope the State Governments are from time to time served of the matter and they would do what could be done to increase the number of Magistrates to handle these cases. This is something which this Code This is a type of short cannot rectily. coming which will have to be dealt with Similarly, some suggesidministratively. tion was made that the Station House Officer who does not register an LLR should This is also be punished. something which cannot be provided for in the Code. We have provided some sateguards regarding the filing of first information reports which is the basis for starting any investigation. One of my amendments will make it more stringent. If a Station House Officer does not register an FIR, we are giving the right to the complainant to write a letter to the Superintendent of Police. It would be taken cognizance of and the case could start. Similarly, a suggestion was mude by Nawal Kishorep that the investigating branch and the general duty branch of the police should be separated. That, again, is an administrative reform and I am glad to inform the House that some States have already adopted it. In some of the big inclippolitan towns they have a set-up which is exclusively devoted to the investigation of cases and another set-up which concerns itself with traffic and general du ties. I hope the States will take more and more steps in that direction, so that we can have less of delay in the investi gation and disposal of cases, so that the cases could be investigated in a very thorough manner and delays could be avoided

Well, Sn, a lot was said about legal and The present system of law does put a poor man at a disadvantage. I am not opposed to that statement as a general

....

proposition, because the system under which we work does put poor people at a disadyantage. We were conscious of this fact and one important innovation that we have made in this Bill is about legal aid. In all cases which are triable by a court of Sessions, the accused person will have the right to be defended by a lawyer at Govcument's expense and this is quite an advance from the present situation.

SHRI SASANKASEKHAR SANYAL: Would it be a lawyer of his choice?

SHRI RAM NIWAS MIRDHA: Well, Sn, there would be rules. The High Court would make rules as to how and in what manner it should be done.

SHRI SASANKASEKHAR SANYAL: The Constitution says so.

MR DEPUTY CHAIRMAN: If the Constitution save so, it is all right. It will take care of it.

SHRI RAM NIWAS MIRDHA. Not only that. There was a feeling in the Joint Committee that we should go even farther than this but since going faither than this would have meant imposing great financial buiden on the State Governments if was thought better not to go in for that without consulting the various State Governments because all these provisions would be implemented by the State Governments. They will have to pay for the lawyers who provide legal aid to these accused persons. We have made an enabling provision saying that if the State Governments so desire, whenever they are in a position to extend it, they can extend this free legal aid to the accused in other types of cases. I think this provision would also be used by some State Governments to extend the scope of legal and

Well, Su, some hon. Members quoted the old sections about people without any ostensible means of subsistence being held up ind detained. All these provisions have been removed. We were conscious of these provisions and the iniquity of those provisions, without using a stronger word than this. We have removed this provision: "any person who has no ostensible means of subsistence and who cannot give a satistactory account of himself." It was a section which could be abused and was abused in many cases. We have removed that. Not only that. We have tried to bring in

[Shii Ram Niwas Mindha.]

the anti-social elements, people who resort to what we can call white-collar crimes against society. We have tried to bring them within the ambit of this Bill.

Provision has been made for demanding security from habitual black-marketeers, defaulters in payment of provident fund dues and other anti-social persons of that nature.

BARBORA: SHRI GOLAP There should be one more provision that at least no citizen should be called to the thana without clear summons. Please make that provision.

SHRI RAM NIWAS MIRDHA: Well. Sir, briefly I have tried to comment upon the various suggestions. A lot of suggestions have come. Some amendments have also been referred to. On most of them I will comment when we come to them. Some of them I might accept. One amendment I am going to bring forward, re gaiding the automatic stay of proceedings when a transfer application is made. We discussed this in the Joint Committee. And it is an agreed recommendation from the joint Committee in the sense that no minute of dissent is there about it. As you know and as the House knows, there is no voting by majority or minority in the Joint Committee. That is the tradition of which we are always aware, In the Joint Committee all these measures were thoroughly discussed and even though proposals differed sometimes radically from the proposals that the Government originally formulated, we tried to accept them in the spirit in which they were advanced, which means, to improve the working of the criminal law system in the country. To this particular amendment I will come when it is taken up; and it has been brought forward because the Law Commission have very strongly recommended on it and they have given various reasons; not only this Law Commission but other Commissions before also have said that this provision is many times abused. The process in the court, the trial in the court, is delayed not only by months but years in many cases. And other arguments also I will adduce when I come to the amendments themselves.

With these words, I once again thank the hon. Members,

श्री नवल किशोर: व्हाट एबाउट दिस क्लाज 320 इस मे एक ग्रमेडमेंट की बात थी जिस को ग्राप ने कहा था कि हम एग्री करते है ग्रौर वह शायद मिस हो गया है। उस में 'दि परसन ग्रार हिज रिप्रेजेंटेटिव' होना चाहिए था। उस को भी राइट ग्राफ कंपाउडिंग हो, यह बात थी।

श्री राम निवास मिर्धाः उस पर भी बहस की गयी थी ग्रौर कई तरह के विचार थे कि उस के लीगल रिप्रेजेंटेटिव को यह हक दिया जाय या न दिया जाय। एक व्यक्ति के खिलाफ कोई जर्म जरूर होता है लेकिन वह समाज के विरोध मे भी एक जुर्म कहा जा सकता है। इस लिए उस सारे विचार के बाद यह तय किया गया कि उस को न किया जाय और इसी लिए वह ग्रमेडमेट सेलेक्ट कमेटी ने स्वीकार नही किया।

श्रीमन्, इन शब्दो के साथ मै जिन माननीय सदस्यों ने इस बहस मे हिस्मा लिया है ग्रौर ग्रपने विचार व्यक्त किये है, उन के प्रति ग्रपना ग्राभार प्रदर्शित करता ह श्रोंर खास तौर से जो हमारे सहयोगी थे इस सेलेक्ट कमेटी मे. उन के प्रति मै अपना ग्राभार प्रदर्शित करना चाहता ह कि उन्होंने बहुत ही बुद्धिमानी में श्रौर बहत ही मेहनन में इस सारे विधेयक पर विचार विमर्श किया । मेरा विञ्वास है कि कमेटी से जो विधेयक ग्राया है उस में कई ऐसी बातें है जो हमारे प्रशासन को ग्रौर हमारे क्रिमिनल सिस्टम को सुधारेगी। आज के जमाने के ग्रन्रूप हम ने इस को बनाने की कोशिश की है।

MR. DEPUTY CHAIRMAN: The question is:

'That the Bill to consolidate and amend the law relating to Criminal Procedure, as reported by the Joint Committee of the Houses, be taken into consideration."

The motion was adopted.

MR. DEPUTY CHAIRMAN: Let us now take up the clause-by clause consideration of the Bill

Clauses 2 to 4 were added to the Bill

Clause 5 was added to the Bill.

Clause 6-Classes of Criminal Courts

SHRI RAM NIWAS MIRDHA: Sir, I move. 1.1. 240 . 11

"That at page 28, line 20, alter the words 'first class' the words 'and in any metropolitan area, Metropolitan Magistrates' be inserted."

The question was put and the motion was adopted.

.. . . MR DEPUTY CHAIRMAN. The question is

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

The question was put and the motion way adopted.

Clause 6, as amended, was added to 41 11 the Bill. 111

Clauses 7 to 25 were added to the Bill

Clause 26-Courts by which offences are triable.

SHRI NAWAL KISHORE: Sir, I move

25. "That at page 28, after line 44. the following be inserted namely: --

"Illustration .- A is committed to the Sessions Court on a charge of culpable homicide Hc may be convicted of voluntarily causing hurt-an offence triable by a Magistrate."

The question was proposed.

SHRI NAWAL KISHORE: Sii, it is a very innocent amendment and is just an illustration. It was just to explain the thing. But if M1. Mirdha does not accept it I will not press it. I beg to withdraw it

Amendment No. 25 was, by leave, withdrawn. 2416 2 1 1 1 1

MR DEPUTY CHAIRMAN: The question is:

"That clause 26 stand part of the Bill '

The motion cas adopted

Clause 26 was added to the Bill.

Clauses 27 and 28 were added to the Bill.

Clause 29-Sentence which Magistrate may pass.

SHRI RAM NIWAS MIRDHA: Sir, I move:

2. "That at page 29, after line 31, the following be inserted namely:-

(4) The court of a Chief Metropolitan Magistrate shall have the powers of the court of a Chief Judicial Magistrate and that of a Metropolitan Magistrate, the powers of a Judicial Magistrate of the first class'."

This is more or less a formal thing by way of clarification and I hope it will be accepted.

MR DEPUTY CHAIRMAN. The question is -

2 'That at page 29, after line 31, the following be inserted, namely:-

'(4) The court of a Chief Metropolitan Magistrate shall have the powers of the court of a Chief Judicial Magistrate and that of a Metropolitan Magistrate, the powers of a Judicial Magistrate of the first class'." :

The motion was adopted.

MR. DEPUTY CHAIRMAN: The question 1s:--ĥ. тИ. 111

That clause 29, as amended, stand part of the Bill.

The motion was adopted.

Clause 29, as amended, was added to the Bill

Clauses 30 to 14 were added to the Bill

[RAJYA SABHA] -

Clause 45—Protection of members of the Armed Forces from arrest

SHRI RAM NIWAS MIRDHA Sin, I move:

3. "That at page 35, lines 2—3, the words 'and of clause (d) of sub-section (1) of section 196' be deleted "

The question was proposed.

SHRI RAM NIWAS MIRDHA. This is a small dratting amendment and I hope it will be accepted.

MR DEPUTY CHAIRMAN. The question is:

3. "That at page 35, lines 2-3, the words 'and of clause (d) of sub-section (1) of section 196' be deleted "

The motion was adopted.

MR DEPUTY CHAIRMAN. The question is:

That Clause 45 as amended, stand part of the Bill

The motion was adopted.

Clause 45, as amended was added to the Bill.

Clauses 46 to 77 were added to the Bill

Clause 78-Warrant forwarded for execution outside jurisdiction.

SHRI NAWAL KISHORE: Sir, I move: 26. 'That at page 41--

 (i) in lines 4-5, for the words 'any
³¹ Executive Magistrate or District Superintendent of Police or Commissioner of Police' the words 'Chief Judicial Magistrate or Chief Metropolitan Magistrate'' be substituted; and

(ii) in lines 6-7, for the words 'Executive Magistrate or District Superintendent or Commissioner' the words "Chief Judicial Magistrate or Chief Metropolitan 'Magistrate' be substituted."

The question was put and the motion uas negatived.

MR. DEPUTY CHAIRMAN : The question is :

"That clause 78 stand part of the Bill."

The motion was adopted

Clause 78 was added to the Bill

Clauses 79 to 82 were added to the Bill.

(lause 8) (Attachment of property of person absconding)

SHRI SASANKASEKHAR SANYAL : Sn. 1 move.

13 That at page 42, line 32, after the words at any time' the words 'but not within thirty days' be inserted "

The question was proposed

SHR1 SASANKASEKHAR SANYAL: 50 J only want to bring parity. I want the period of 30 days given to attachment to be given to the proclamation also.

SHR1 RAM NIWAS MIRDHA : Sir, this aucodiment is not acceptable because it will defeat the very purpose of attachment. If 30 days' notice is to be given then every property will be disposed of and there will be nothing to attach.

MR DFPUTY CHAIRMAN ' The que stion is :

13 'That at page 42, hnc 32 after the words 'at any time' the words 'but not within thirty days' be inserted "

The motion was negatived.

MR. DEPUTY CHAIRMAN : The quesuon is ,

'I hat clause 83 stand part of the Bill."

Clause 83 was added to the Bill

Clauses 84 to 115 were added to the Bill y

Clause 116 (Inquiry as to truth of infor mation)

SHRI SHYAM LAL YADAV : Sir. I move ·

(7) Where any direction is made under sub-section (6) permitting the continuance of proceedings, the Ses-

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192

reason or was perverse'. "

The question was proposed.

SHRI SHYAM LAL YADAV : Sir, I have already spoken about it. The Government will kindly accept it They have agreed.

MR DEPUTY CHAIRMAN : Are you accepting it?

SHRI RAM NIWAS MIRDHA : Yes

MR. DEPUTY CHAIRMAN : The question is :

30. "That at page 54 after line 44 the following be inserted namely -----

(7) Where any direction is made under sub-section (6) permitting the continuance of proceedings, the Sessions Judge may, on an application made to hum by the aggrieved party, vacate such direction if he is satisfied that it was not based on any special reason or was perverse."

The motion was adopted.

MR. DEPUTY CHAIRMAN : The question is : P_1

"That clause 116, as amended, stand part of the Bill."

The motion was adopted

Clause 116, as amended was added to the Bill.

Clauses 117 to 124 were added to the Bill.

Clause 125.—(Order for maintenance of wives, children and parents)

SHRI SASANKASEKHAR SANYAL : Sır, I move.

14. 'That at page 58-

(1) line 11, for the words 'his wife, unable to maintain heiself,' the words 'his or her spouse, unable to maintain himself or herself,' be substituted. (ii) line 12, after the word 'his' the words 'or her' be inserted.

(iii) line 14. after the word 'his' the words 'or her' be inserted.

(iv) line 18 after the word 'his' the words 'or her' be inserted.''

The question was proposed.

SASANKASEKHAR SHRI SANYAL : Sii, the reason for this amendment is simple. In the days gone by when we marned, our wives were a burden and the burden is still continuing. Nowadays in the modern set-up of societies, wives earn not only as much as the husbands in many cases, but sometimes even more. Therefore, just as it is the duty of the husband who has the means to maintain a wife who has no means, similarly it is the duty of the wife to maintain an incompetent husband if he has no means. It is the principle of natural justice. So far as the children are concerned they are as much childien of the father as they are of the mother. So why should not the mother who has got means also be liable to maintain the It is avoiding discrimination children which is very unfair. And it is ethically sound and it is also legally acceptable. I hope this will be done.

SHRI RAM NIWAS MIRDHA : This is a very laudable idea. It was very seriously discussed in the Joint Committee which ultimately came to the decision that the husband for the time being need not claim maintenance from the wife.

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MR DEPUTY CHAIRMAN : The question is—

14. "That at page 58.--

(i) line 11, for the words 'his wife, unable to maintain herself,' the words 'his or her spouse, unable to maintain himself or herself,' be substituted.

(ii) line 12, after the word 'his' the words 'or hei' be inserted.

(iii) line 14. after the word 'his' the words 'or her' be inserted.

(iv) line 18, after the word 'his' the words 'or her' be inserted."

The motion was negatived.

13-7 RSS/ND/72

195

[RAJYA SABHA]

That Clause 125 stand part of the Bill. The motion was adopted.

Clause 125 was added to the Bill.

Clause 126-Procedure

SHRI SASANKASEKHAR SANYAL : Sir, I more :

15. "That at page 59,---

(i) line 36, for the word 'husband' the word 'spouse' be substituted; and

(ii) line 39, for the word 'husband' the word 'spouse' be substituted.''

The question was put and the motion was negatived.

MR. DEPUTY CHAIRMAN : The question is-

"That Clause 126 stand part of the Bill "

The motion was adopted.

Clause 126 was added to the Bill.

Clauses 127 and 123 were added to the Bill.

Clause 129-Dispersal of Assembly by use) of Civil Force

SHRI SASANKASEKHAR SANYAL : Sir, I move:—

17, "That at page 60,---

(1) line 38, for the word 'Executive' the word 'Judicial' be substituted.

(ii) lines 38 to 40, the words 'or officer-in-charge of a police station or, in the absence of such officer-in-charge any police officer, not below the rank of a sub-inspector,' be deleted.

(iii) line 46, for the word 'Fxecutive' the word 'Judicial' be substi-1. tuted."

18. "That at page 61, line 1, the words 'or police officer referred to in sub-section (1).' be deleted."

The questions were proposed

Procedure Bill, 1970 196

SHRI SASANKASEKHAR SANYAL : Sir, after the separation of the judiciary and the executive, the judiciaty stands on a respected pedestal, and the executive not And all relevant powers have so much. been taken away from the executive so that the judiciary can do justice evenhanded without fear or without any expectation of favou. But the executive is so much involved in political leanings and political predilictions that no responsibility as enunciated in this section should be given to them. And similarly, the police, which is also a wing of the executive and polluted from all points of view, should not be given any status. Therefore, I have moved these amendments so that the whole thing may be left in the hands of the judiciary. 1

श्री वीरेन्द्र कुमार सखलेचा: यह क्लाज 129 में जो ग्रन्लाफुल ग्रसेम्बली को डिस्पर्म करने का पावर दिया गया है, एक्जीक्यूटिव्ह मजिस्ट्रेट को पावर दिया गया--यहां तक तो समझ में आता है कि ग्राप मजिस्ट्रेट्स को यह पावर दे कर किसी ग्रसेम्बली को ग्रन्लाफुल डिक्लेयर करें, डिस्पर्स करने का ग्रादेश दें लेकिन यह जो दिया है कि---

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"or, in the absence of such officer incharge, any police officer, not below the tank of a sub-inspector, "

यानी, ईवन् एस० एच० ग्रो० से नीचे किसी भी सब इंस्पेक्टर को किसी ग्रसे-म्बली को ग्रन्लाफुल डिक्लेयर करने का, उसको डिस्पर्स करने का ग्रार्डर दें, इसमें मेरा निबेदन है कि यह बहुत ज्यादा ग्रधिकार देना होगा। ग्राज तक यह पावर मजिस्ट्रेट्स को दिया है (Interruption) लेकिन-- even a sub-inspector who is not even in-change of a station house--यानी कोई नया सब इंस्पेक्टर ग्रपौइन्ट हुग्रा है तो वह भी किसी ग्रसेम्बली को कहे कि ग्रन्लाफुल ग्रसेम्बली है, तो उसके लिए मेरा निवेदन है कांस्टीट्यूशन में प्रीएम्ब्ल का जो राइट है फंडामेन्टल राइट का, उसको एब्रिज करने की पावर

मजिस्ट्रेट को है जिसको लीगल नालेज है, कसिडरेशन है, वह कह सकता है प्रसेम्बली ग्रन्कास्ट्रिय्रशनल है लेकिन एक सब इस्पेक्टर जो कल ट्रेनिंग लेकर ग्राया है, जिसको इतना एक्सपीरियेन्स नहीं है, वह कैसे कह सकेगा ग्रन्लाफुल है। वह सब इंपेस्क्टर एक ग्रसेम्बल को डिस्पर्स करने का ग्रार्डर दे, इस तरह का जो ग्रधिकार ग्राप उसको देने जा रहे है, यह त्रिल्कुल ग्रन्चित है। लोगो को ग्रसेम्बल होने का जो राइट है, उसको म्रनलाफुल डिक्लेयर करने का राइट ग्राप एक छोटे से पुलिस के ग्राफिसर को दे रहे है, जो मै समझता टू एक ठीक बात नही है।

हम लोग इस बात को देखते है कि देश मे जगह जगह पर उसे ग्रसेम्बलीज को एग्जीक्युटिव मजिस्ट्रेट द्वारा अन-लाफल डिक्लेयर किया जाता है स्रौर स्रब इस पावर को इतने नीचे के ग्रधिकारी को देना. सब इंस्पेक्टर को देना, मेरे विचार में जनता के ग्रधिकारो पर ग्रति-क्रमण करने के समान है। जब कभी मजिस्ट्रेट द्वारा इस तरह के म्रार्डर किये जाते है उनके सम्बन्ध में भी सरकार को ज्यडिशियल इन्क्वायरी करनी पड़ती है। इसलिए मेरा मत्री जी से निवेदन है कि एक सब इस्पेक्टर को इस तरह के ग्रधिकार देना उचित नही होगा और एडमिनिस्ट्रेशन की दष्टि से भी ग्राप इस पर विचार करने की कृपा करे।

SHRI RAM NIWAZ MIRDHA The first amendment is regarding dispersal of unlawful assembly and so is the other one. These amendments suggest that this power should be given to the Judicial Magistrate instead of Executive Magistrate. The whole scheme in the Bill is that certain powers of an emergent nature be better left to the Executive Magistrates to handle. I think these powers should rest with them, and to bring in Judicial Magistrates at this stage would really defeat the purpose for which provision is meant.

As regards powers to disperse an unlawful assembly to 'any Executive Magistrate or officer in charge of a police station or, in the absence of such officer in-charge, any police officer, not below the rank of a sub-inspector", I would like to say that this power was already with the officer in charge of a police station. The only addition 15 "or, in the absence of such officer in charge, any police officer, not below the rank of a sub inspector". The idea is that if there is any immediate necessity to disperse an 'unlawful assembly and if the officer in charge of the police station is not there at that time, then, to quote the language of the Bill, he can "command the assembly to disperse'. We are not giving any new power to him

SHRI V. K. SAKHLECHA : You are not giving this power to the Station House Officer, but to an ordinary sub-inspector of police.

SHRI M. P. SHUKLA: What would be the position when the Station House Officer is not in the Station, and the station is raided by a mob²

SHRI V. K SAKHLECHA: In such a situation, I will readily concede that But Clause 129 does not say that at all.

SHRI RAM NIWAS MIRDHA: This was discussed in the Committee before they decided to add these words.

MR. DEPUTY CHAIRMAN : The question is .

17. "That at page 60,---

(i) line 38, for the word 'Executive' the word 'Judicial' be substituted;

(ii) lines 38 to 40, the words 'for officer in-charge of a police station or, in the absence of such officer in-charge any police officer, not below the rank of a sub-inspector,' be deleted,

(iii) line 40, for the word 'Executive' the word 'Judicial' be substitututed.''

The motion was negatived.

MR. DEPUTY CHAIRMAN . The question is :

18. "That at page 61, line 1, the words or police officer referred to in sub-section (1) be deleted." 199

The motion was adopted. 1 Arris - A

MR. DEPUTY CHAIRMAN : The question is :

That clause 129 stand part of the Bill.

The motion was negatived.

Clause 129 was added to the Bill

Clauses 130 to 153 were added to the Bill. 4 A. A. 1 4**

Clause 154-Information in cognizable cases

SHRI RAM NIWAS MIRDHA : Sir, I move:

4. "That at page 70, after line 36, the following be inserted namely:

'(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such in-۲. formation, in writing or by post, to .:• the Superintendent of Police concerned who, if satisfied that such informa-, tion discloses the commission of a cog-H nizable offence, shall either investigate

the case himself and direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence."

The question was put and the motion was adopted.

MR. DEPUTY CHAIRMAN : The question is :

"That Clause 154, as amended, stand part of the Bill." at = it and

The motion was adopted.

Clause 154, as amended, was added to the Bill.

SHRI V. K. SAKHLECHA : Sir, I wanted to speak on Clause 154. This is the most important part of the Code.

जिसमें एफ ग्राई ग्रार लाज की जाती है। मंत्री महोदय ने जो एमेंडमेंट मव किया है उसको हम सपोर्ट करते हैं।

AN HON. MEMBER : It is over now.

Procedure Bill, 1970

श्री बीरेग्द्र क्रमार सखलेचाः लेकिन कुछ ग्रौर बातें हैं जिनके बारे में हम कुछ कहना चाहते है।

DEPUTY MR. **CHAIRMAN** : You speak on the Third Reading if you want.

Now it is over.

Clauses 155 to 160 were to the Bill.

Clause 161-Examination of witnesses by police ्या ः ū,

SHRI SASANKASEKHAR SANYAL : Sir, I beg to move:

19. "That at page 72, after line 38, the following be inserted, namely:---

'(4) The police officer shall send such written statements to the Judicial Magistrate holding jurisdiction over the matter within twentyfour hours.""

The question was proposed.

SHRL SASANKASEKHAR SANYAL : Sir, I hope the honourable Minister will give some attention to what I say. Now, Sir, in a particular case the police goes to the locality. He contacts the possible witnesses. Sometimes he does not contact the witnesses. Sometimes he takes notes on a white paper as to what has been stated and sometimes he does not take even such notes. Long after he writes down the statements of witnesses person by person and in these statements the witnesses are made to sav which they have not said earlier, because no signature is needed and no attestation is needed and it is not obligatory that these statements should be recorded in writing in the presence of the village people. Actually, such things should be sent to the Thana forthwith without any delay. Recently, Sir, the Supreme Court has held that even from a distance of 14 miles, if the FIR made under Section 161 does not come in time, within 24 hours, the statements which are supposed to have been made by the witnesses should not be accepted. Therefore, Sir, in order to protect the people, in order to protect the accused from the whims of the police who write anything
they like, who prepare any statement which was not made by the witnesses, this should be done. When the accused goes to the Sessions Court, the Public Prosecutor says, "You said this", and the accused or the witness says, "I never said this" and at that time, unless he sticks to his statement written down by the police, he will be confronted before the judge and he will be harassed by the police Therefore. Sir, in order to secure the safety of the citizen, it has to be made obligatory that as soon as the statement is recorded, just as the FIR should reach the destination within 24 hours, the statement from day to day should be despatched so as to reach the subdivisional Magistrate within 24 hours. It may be extended if there are any special reasons.

Sir, I think this is very reasonable and in the interest of the people who are accused it is necessary and essential.

MR. DEPUTY CHAIRMAN ' Yes, Mr. Sakhlecha you wanted to speak.

SHRI V. K SAKHLECHA SII, I support this amendment on a different ground.

जैसा कि श्री सान्याल ने कहा हे, लोगों को इसमे शक होगा क्योंकि केस डायरी के स्टेटमेंट्स के ग्राधार पर उनसे कास एग्जामिनेशन किया जाता है, उनको कोर्ट में कन्ट्रेडिक्शन के परपज के लिए **प्रोडयस** किया जाता है। लेकिन मेरा निवेदन यह है पुलिस कई केसेज मे ग्रौर मर्डर केसेज के ग्रन्दर जहा पर जरा सा डाउट कोर्ट के माइन्ड में किएट कर दिया तो एक्विटल मिल जाता है, ऐसे केमेज मे जहा पुलिस को इन्टरेस्ट हो जाता है तो केस डायरी में उल्टा-सीधा बयान लिख कर उस केस को स्पाइल करते है। ग्राज उन्होने ठीक स्टेटमेट रिकार्ड कर दिए, बाद में भ्रष्टाचार के कारण पूलिस ग्राफीसर का उसमें इन्टरेस्ट डेवलप हो गया तो उसको हटवा कर केम डायरी मे बयान बदल देते हैं । ग्रौर यह बदल देने के कारण एक्यूज्ड का कोर्ट मे एक्विटल हो जाता है । इस नाते एफ० आई० आर० की कापी मैजिस्ट्रेट को भेजना ग्रावश्यक है। इसी प्रकार केस डायरी के स्टेटमेट, जिस रोज वे रेकार्ड हो उसी रोज भेज दिये जाये तो पुलिस की एवीडेस प्रोटेक्टेड रहेगी ग्रौर किसी स्टेटमेट को चेज कर देना या केस मे किसी स्टेज पर इटरपोल्युशन करना ग्रौर ऐसा कर के उसे स्पायल कर देना इस की गुजायश पुलिस के पास नही रह जाएगी। ग्रौर इस तरह के चार्जेज पुलिस पर ग्रक्सर लगते है कि उन्होने केस में इटरपोल्युशन किया है। तो ऐसा होने पर उस की इवीडेशियरी वैल्यू उतनी ही ज्यादा बढ़ जाएगी ग्रौर वह सारी चीज मजिस्ट्रेट की कस्टेडी में रहेगी श्रौर इसलिए पुलिस पर कोई इस तरह का चार्ज नही लगाया जा सकता कि सब-इस्पेक्टर ने इस में कोई चेज कर दिया है। इट इज टु दि हेल्प श्राफ पूलिस ऐंड एडमिनिस्ट्रेशन ग्रालसो । तो इस लिए मेरा ख्याल है कि माननीय मत्री जी इस पर विचार करें। ऐसा होने पर जिस प्रकार एफ० ग्राई० ग्रार० की सेंक्टिटी है वैसी ही इन की भी हो जाएगी ग्रौर दिस बिल हैब सम इवीडेशियल वैल्यू। केस डायरी पर हस्ताक्षर के बारे मे यहा काफी विचार हुआ है और वही सेंक्टिटी ग्रगर ग्राप इस को देना चाहने है तो इस की कापी भी ग्राप मजिस्ट्रेट को भिजवाइये । इस से उस की सेक्टिटी ज्यादा होगी ग्रौर ग्राप को प्रासिक्यूशन मे और कन्विकशन प्राप्त करने मे ज्यादा लाभ होगा। 1 . . .

श्री ए० एन० मुल्ला (उत्तर प्रदेश) : इस सवाल पर बहुत गौर किया गया था कमेटी मे ग्रौर जो सवाल उधर से माननीय सदस्य ने उठाया है उस की हिफाजत के लिए पुलिस रूल्स देखे गये थे ग्रौर बहुत मे पुलिस रूल्स ग्रौर रेगु-लेशन जो है उन मे यह दफा मौजूद है कि यह चीजे जो वह चाहते है उन को

- [श्री एन० एल० मल्ला] फौरन भेजा जाय ग्रौर बराबर मुकदमो मे यह वहस की जाती है। ग्रौर अगर फौरन केस डायरी नही जाती है तो कहा जाता है कि इस को बदला गया ह और ग्रदालते बराबर इस बारे मे गौर करती है। तो इस की हिफाजत के लिए पूलिस रूल्स ग्रौर रेगुलेशन में काफी चीर्जे मौजूद है । **** + + - -,

SHRI V. K. SAKHLECHA : No. You go to any place, and you won't find it .

SHRI SASANKASEKHAR SANYAL Nowhere.

SHRI RAM NIWAS MIRDHA : It is not proper that the First Information Report and the statement recorded under this clause should be compared, because the F.I.R. is of very great importance in the whole case, whereas the purpose for which the police statements are used is of a very limited nature. They are never used to corroborate the prosecution. They are only used for contradicting a witness in cross-examination. The two things are completely different. In many cases, to introduce a clause like this will make the whole thing very rigid. Sometimes investigations are carried on, which are very far away from the magistrate. There are no facilities for taking copies. The investigating officer has to be there on the spot. As Shii Mullaji has said, these things can be provided in the Police Rules To provide them in the Code would not be proper.

SHRI SASANKASEKHAR SANYAL Sir. . . .

MR. DEPUTY CHAIRMAN ' You had your say.

SHRI SASANKASEKHAR SANYAL : We want Division.

DEPUTY CHAIRMAN : The MR. question is :

19. "That at page 72, after line 38, the following be inserted, namely:-

(4) The police officer shall send such written statements to the Judi Magistrate holding jurisdiction cial over the matter within twenty-four hours.' "

The House divided.

MR. DEPUTY CHAIRMAN : Aves-11, Noe-59. 7 (S) of h-1 1 1 1 d h ALLA 4 ·1 Г I -AYES-11 ۲ Banaisi Das, Shii Barbora, Shri Golap Gowda Shri U K. Lakshmana Mathew Kuilan, Dr. K Menon, Shri K. P. Subramania Nawai Kishore, Shri Patel, Shir D. K. Raha, Shri Sanat Kumai Sahai. Shri Ram ٢.,

Sakhlecha, Shii V. K. Sanyal, Shii Sasankasekhar

17 + 1 + 17 NOES-53

Abid, Shri Qasim Ali 1 Ahmad, Shri Syed Mva, Shri Joachim Arif Shri Mohammed Usman Berwa, Shii Jamna Lal Bhaidwaj, Shri Jagan Nath Buragoham, Shu Nabin Chandra Chaudhari, Shii N. P. Chettri, Shui K. B. Choudhury, Shri M. M. Das, Shri Balram Dikshit, Shri Umashankar Gadgil, Shri Vithal Hathi, Shii Jaisukhlal Himmat Sinh, Shri Hussain, Shri Syed . Kalania, Shii I. K. Kalyan Chand, Shri Kapur, Shii Yashpal Kemparaj, Shri B T. Ť Khan, Shui Maqsood Ali • • Kollur, Shu M. L Kushan Kant, Shri Kulkaini, Shri A G Kulkanni, Shri B. T. Takahani Ramari Olandovat, Shrimati [13 DEC 1972]

Mehta, Shri Om Mirdha, Shri Ram Niwas Mukherjee, Shri Kali Mukherjee, Shri Pranab Kumai Mulla, Shri A. N. Munda, Shii B. R. Narasiah, Shii H. S. Naravani Devi Manaklal Verma. Shrimati Nurul Hasan, Prof. S. 1 Panda, Shri Brahmananda <u>،</u> ۱ Patil, Shri G. R. Patil, Shri P. S Puri, Shri D. D. Reddy, Shri K. V. Raghunatha Roshan Lal, Shri Savita Behen, Shrimati 111 Shashtri, Shii Bhola Paswan Shukla, Shri M. P. Singh, Shii Bindeshwari Piasad Sita Devi, Shrimati Sushila Shankar Adivarekar, Shrimati Tiwari, Shri Shankarlal Tiwary, Pt. Bhawaniprasad 1.1 Venigalla Satyanarayana, Shri Vidvawati Chaturvedi, Shrimati Vyas, Dr. M. R Yaday, Shii Shyam I al 11 . 711. The motion was negatived. 1.111 / DEPUTY CHAIRMAN : MR. The question is : "That clause 161 stand part of the Bill". The motion was adopted. Clause 161 was added to the Bill. Clauses 162 to 171 were added to the Bill. Clause 172 (Diary of Proceedings in investigation) SHRI NAWAL KISHORE : Sir. I move

31. "That at page 77, line 32. after the word 'investigation' the words 'and the said diary shall be despatched next day to the Magistrate having jurisdiction to try the case under investigation' be inserted."

32. "That at page 77, for lines 33 to 42, the following be substituted, namely:--

(2) The police diaries may be used by the Court to aid it in inquiry or trial of the case concerned and the parties can also make use of them.' "

The question was proposed.

श्वी नवल किशोर : श्रीमन्, वह क्लाज 172 जो है यह डायरी ग्राफ प्रोसीडीग्ज से संबंधित है। इंवेस्टिगेशंस के ग्रन्दर जब कोई पुलिस ग्राफिसर इंवेस्टिगेट करके केस डायरी भरता है तो उसमें लिखता है कि उसने कौन कौन मे केसेज मे, सफतीश कौन कौन से गवाह ग्राये, ग्रादि बातें लिखता है। मैं यह चाहता हूं कि इसके ग्राखीर में यह भी लिख दिया जाए- "and the said diary shall be despatched next day to the Magistrate having jurisdiction to try the case under investigation".

मेरी मंशा यह है जब डायरी कंप्लीट हो जाए तो दूसरे दिन उसको वहां भेज दिया जाए ताकि डायरी के माथ टेंम्परिंग करने की कोई गजायश नही रह जाए।

दूसरा मेरा ग्रमेडमेंट है। सब-क्लाज (2) को मैंने इसी में इनकारपोरेट कर (3) दिया है। सब-क्लाज में लिखा हग्रा है कि जो ऐक्युज्ड है उसको केस डायरी की कापी नही मिलेगी। में जाननाचाहना ह कि ग्रब ग्राप दोनों को ऐक्यज्ड ग्रौर उसके एजेन्ट को सुविधा देना चाहते हैं तो जो केस डायरी है यह उन दोनों को अवेलेबल होनी चाहिए, उसको और उसके वकील को मै समझता ह कि ग्रगर मिर्धा साहब ने यह तय कोई ग्रच्छी नहीं किया है कि बात नही मानेंगे तो इस अमेंडर्मेंट को उन्हें मान लेना चाहिए। fgi

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श्री राम निवास मिर्धाः श्रीमन्, पहले ग्रमेंडमेट के बारे में मैं पिछले मगोधन में उत्तर दे चुका हूं कि जो डायरी है उसकी नकल मजिस्ट्रेट के पास भेज दी जाए, यह किस वजह मे स्वीकार नही हुग्रा।

दूसरा मंशोधन जो है उसके विषय में मेरा निवेदन है कि पुलिस डायरी का एक विशेष महत्व रहा है ग्रौर इस संशोधन से अदालतों मे भी उसका उपयोग कर सकें या जो पार्टियां हैं वे भी उसका उपयोग कर सकें। मैं समझता हूं कि इससे काफी दिक्कत होगी ग्रौर इससे हम नयी चीज शुरू करेंगे जिसका प्रभाव आगे चलकर क्या होगा, मैं नही कह सकता। इसलिए मैं इसको स्वीकार नहीं कर सकता।

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MR. DEPUTY CHAIRMAN : Are you presenting it?

SHRI NAWAL KISHORE : No. Sir.

The amendments (No. 31 and 32) were by leave, withdrawn. + 50

MR. DEPUTY CHAIRMAN : The question is :

"That clause 172 stand part of the Bill."

The motion was adopted

Clause 172 was added to the Bill.

Clauses 173 to 195 were added to the Bill.

1. The use

Clause 196—Prosecution for offences Against the State

SHRI RAM NIWAS MIRDHA : Sir, I move :

5. "That at page 85, lines 28 to 31 be deleted."

The Questions were preposed.

SHRI RAM NIWAS MIRDHA : Sin, this is a procedural amendment. This clause is being taken to the next clause. MR. DEPUTY CHAIRMAN : The question is :

"That at page 85, lines 28 to 31 be deleted."

The motion was adopted.

MR. DEPUTY CHAIRMAN : The question is :

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

The motion was adopted.

Clause 196, as amended, was added to the Bill

Clause 197—Prosecution of Judges

SHRI RAM NIWAS MIRDHA : Sir, I move

6. "That at page 86,---

(i) the existing sub-clauses (2) be renumbered as sub-clause (4) thereof;

(ii) before sub-clause (4) as so renumbered the following sub-clauses (2) and (3) be inserted, namely:---

(2) No court shall take cognivance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting, or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government

(3) The State Government may, by notification, direct that the provisions of sub-clause (2) shall apply to such class or category of the members of the force charged with the maintenance of public order as may be specific therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression Government' occurring **''Cent**ral therein the expression "State Government'' were substituted.' ''

The question was proposed.

SHRI V. K. SAKHLECHA : I want to oppose this.

माननीय उपाध्यक्ष महोदय. यह धारा 197 में ज्वांइंट कमेटी की रिपोर्ट के बाद जो मंत्री जी ग्रमेंडमेंट लाये है उसके लिए मेरा यह निवेदन है कि इस ग्रमेंडमेट का जो पार्ट (3) है उसमें यह है:

"The State Government may, by notification, direct that the provisions of sub-clause (2) shall apply to such class or category of the members of the force charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that subsection will apply as if for the expression "Central Government" occurring therein the expression "State Government" were substituted."

श्रीमन. मैं सभा भवन का ध्यान धारा 197 की म्रोर आकर्षित करना चाहता वह है कि ग्रागर हूं । यह धारा कोई पबलिक सर्वेंट, कोई ग्रधिकारी, ग्रपनी पावर को मिस्यूज करे तो इसलिए कि **ग्राफिशियल कपेसिटी में वह काम कर** रहा है इसके अन्तर्गत उसको प्रोटेक्शन दिया गया है उसका प्राजीक्य्शन करने के खिलाफ और इस कारण से, इस प्राविजन के ग्रन्तर्गत न मालुम कितने घणित कार्य किये जाते हैं ग्रधिकारियों के द्वारा ग्रौर फिर भी उनका प्राजीक्यशन नहीं हो पाता है। जैसे कि सब-इंस्पेक्टर्स होते हैं वह थाने के ग्रन्दर बला कर के मलजिमों में मार-पीट करने हैं, उनको भयंकर रूप से यातनायें देते हैं ग्रौर फिर जनता के आदमी के लिए जिसको कि पीटा गया है, जिसको इंजरीज पहुंचाई गई है, उसके लिए कोई एविडेंस कलेक्ट करना मुझ्कल होता है श्रीर मुकदमा करना तो ग्रीर भी मुश्किल होता है लेकिन ग्रगर वह इसके लिए प्रयत्न भी करता है तो कहा जाता है कि स्टेट गवर्नमेंट की परमिशन लाइये उसका प्राजीक्युशन करने के लिए और हम जानते है कि वह पर-14-7 RSS/ND/72

मिशन उसको जल्दी मिलती नहीं **है**. महीनों इसमें निकल जाते हैं तभी कहीं किसी केस में मिलती है। सब सदस्यों ग्रनुभव होगा कि स्टेट को इसका गवर्नमेंट ऐसे कितने मामलों के श्रन्दर प्राजीक्यद्यन की इजाजत देती है। यह ग्राप जानते हैं कि सबइंस्पेक्टर्स <mark>श्</mark>रीर पुलिस आफिसर्म ग्रपनी पावर्स का दूरु-प्रयोग करते हैं ग्रौर इसलिए कि वह पबलिक सर्वन्ट है ग्रनेक प्रकार के ग्रत्याचार जनता के ऊपर करते हैं श्रौर जो इस प्रकार का काम करते हैं उनके खिलाफ कोई प्राजीक्यशन नहीं ला पाते हैं। जैसा कि मंत्री जी ने कहा कि सारे पुलिस ग्राफिसर्म को बदनाम नहीं करना चाहिए, कोई ग्रच्छे ग्राफिसर्स हैं, ईमानदार ग्राफिसर्स हैं, काम करने वाले है लेकि**न** जो पावर का दुरुपयोग करते हैं पुलिस ग्रधिकारी उनके लिए क्या कर सकते हैं। उनके पास उनका डंडा है, फोर्सं है, उनको स्टेट ने यह ग्रधिकार दिया है कि ग्रपनी पावर्स को युज करे लेकिन वह उसको निरीह लोगों के खिलाफ उपयोग करते हैं। ऐसी स्थिति में भी ग्रगर वह निरीह जनता, ग्रत्याचार से पीडित लोग यह चाहते हैं कि कोर्टस में जा कर के उनके खिलाफ कार्यवाही कर सके तो उसके इस ग्राधिकार के ऊपर भी प्रतिबन्ध लगाने वाला यह सेक्शन 197 है। इस नाते से मेरा निवेदन है कि जहां तक जजेज का सवाल है यदि जजेज ग्रपनी ड्यूटी के ग्रन्दर कोई काम करें तो उनको प्रोटेक्शन दिया जाय लेकिन पुलिस आफिसर के बारे में भी ऐसा ही करिये यह ठीक नहीं है। फिर यहां मंत्री जी जो म्रमेंडमेंट लाये हैं उसमें तो एक कदम श्रीर ग्रागे रखा है श्रीर कहा है कि यह स्टेट गवर्नमेंट के ऊपर है कि कौन से पूलिस के इम्प्लाई को प्रोटेक्शन देना चाहते हैं। यह भी इस सेक्शन में डिफाइन नहीं किया है, यह भी स्टेट गवर्नमेंट के ऊपर छोड़ [Shri V. K. Sakhlecha]

रखा है कि स्टेट गवर्नमेट जिन आफिसर्स के बारे मे डिक्लेयर कर दे उन ग्राफिसर्म के बारे में बिना परमिशन के प्राजीक्यशन नही किया जा सकता है भ्रौर उनके लिये सेक्शन 197 का सारा प्रोटेक्शन दिया जाएगा चाहे वह ग्राफिशियल कपेसिटी को जान कर के कितना भी घणित कार्य क्यो न करे। तो मेरा यह निवेदन है, मैं यह चाहता हू कि ग्रगर वह ग्रत्या-चार करे, श्रपनी पावर्म को एब्युज करे तो जनता को ग्रधिकार देना चाहिए कि न्यायालय के अन्दर उनको प्राजीक्युट कर सके। जनता तो उन्हे दडित नही करेगी, कोर्ट ही दडित करेगी लेकिन कम से कम जनता कोर्ट मे जा कर उनको प्राजीक्युट तो कर सके, यह ग्रधिकार जरूर जनता को दिया जाना चाहिए। ग्रौर इस नाते से इसके ऊपर यह रेस्ट्रिक्शन लगाना फोर्स के लिए भी ठीक होगा कि सारी पूलिस फोर्स चद आफिसरो के कारण बदनाम न हो। वह अत्याचार करने है, मारपीट करते है, भ्रष्टाचार करते है ग्रौर उसके कारण पूरी पुलिस फोर्म की बदनामी होती है। जो वास्तव मे दोषी है उनको दडित किया जा सके इतना अधिक प्रोटेक्शन दोषी अधिकारियो को नही देना चाहिए। इसलिए मैं इस अमेडमेट का घोर विरोध करता हू । स्टेट गवर्नमेन्ट को कतई यह पावर नही देना चाहिए, छोटे पूलिस ग्रफसर को नही देना चाहिए। जहा तक जज श्रौर मजिस्ट्रेट का पावर देने का सवाल है, उनको प्रोटेक्शन देने की बात समझ मे ग्रा सकती है।

SHRI RAM NIWAS MIRDHA Sir this amendment is merely of a drafting nature As I said, in connection with clause 196, we deleted certain provision which is now being sought to be trans ferred to clause 197 The terms of the amendment are just the same as in clause 45 which we have already passed

श्री वीरेन्द्र कमार सखलेचाः क्लाज 196 वाला नहीं है। वह तो आम्र्ड फोर्मेज के बारे मे है।

श्री राम निवास मिर्घाः यह आर्म्ड फोर्सेंज के बारे मे है। दरग्रसल मे 45 को देखे, जो उसमे शब्द इस्तेमाल किए गए है वह वही लाए है इसलिए इन तीन क्लाजेज मे तालमेल बिठाने का प्रयत्न किया गया है।

श्री वीरेन्द्र कुमार सखलेचाः श्रीमन, को फिर से पढ कर सुनाए देता ह ---

'The State Government may, by notification, direct that the provisions of sub section (1) and of clause (d) of the members of the Force charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub section shall ap ply as if for the expression "Central Government' occurring therein, the ex-'State Government" were pression substituted '

तो इसलिए स्टेट गवर्मेन्ट किन्ही भी आफि-सर के बारे मे नोटिफाई कर सकती है, पुलिस भ्राफिसर के बारे मे नोटिफाई कर सकती है।

SHRI SHYAM LAL YADAV I would like to say a word about this clause. It is a very important clause and I think the apprehensions of Mr Sakhlecha are misfounded I would say what happened and why this clause was provided. The PAC of Uttar Pradesh some time back was posted in Kashmir and there was a firing in Srinagar The person who was respon sible for firing was tried by the Kashmir Government for murder and was convicted by the Kashmir High Court Then the State Government of UP was all the time giving help and State Counsel to that constable and the case went up to the Supreme Court I do not know what hap pened in the Supreme Court But it has happened that the Provincial Armed Con stabulary either at the instance of the Cen tral Government or at the instance of the different State Governments are going to help in different parts of the country and if the PAC constables performing their duties in different parts of the State are left at the mercy of the State Government, and if there is no protection, I think from that point of view the word Force' has been used So, the word 'Force' means the Armed Force of a State Government and it does not apply to a police officer of any rank. It applies only to the Armed Police, i.e. Provincial Armed Constabulary or some other name given to the Armed Police So, this clause is very relevant and we have already provided for this in clause 45. So, I think the State PAC does deserve this protection

MR DEPUTY CHAIRMAN The question is

6 I hat at page 86 ---

(1) the existing sub-clause (2) be renumbered as sub-clause (4) thereof,

(11) before sub-clause (4) as so renumbered the following sub-clauses (2) and (3) be inserted namely —

(2) No court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government

(3) The State Government may, by notification, direct that the pro visions of sub-clause (2) shall apply to such class or category of the members of the force charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression 'Central Government' occurring therein the expression 'State Government' were substituted

The motion was adopted

MR DEPUTY CHAIRMAN The question 15

That clause 197 as amended stand part of the Bill '

The motion was aaopied

Clause 197, as amendea, was added to the Bill

Procedure Bill, 1970

Clause 198 to 19 were added to the Bill

Clause 320-Compounding of offences

SHRI NAWAL KISHORE Sn, I move

33 That at page 125 line 7, after the words in the third column the words or their legal representatives in case of such person s death or disappea rance be inserted '

34 That at page 126 line 5, after the words in the third column the words 'or their legal representatives in case of such person's death or disappearance,' be inserted

The questions were proposed

SHRI NAWAL KISHORE I know that Mr Mirdha will not accept them in spite of their genuineness and validity Clause 320 says

The offences punishable under the sections of the Indian Panel Code specifield in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table

I only want to add the words or then legal representatives in case of such person's death of disappearance. I would like to point out that the intention of this Clause is being furthered by my amendments and I cannot see what objection he could have I also see that a very important Member of the Joint Committee, Mr. B. R. Shukla, has given a note of dissent in this very connection Even though the Report is unanimous by the majority Mr Shukla has been obliged to give a note of dissent in this regard. Under these circumstances 1 can only hope against hope that Mr Mirdha will see his way to accept these uncodments of mine

SHRI SHYAM LAL YADAV They are very simple amendments

SHRI RAM NIWAS MIRDHA We dis cussed this very thoroughly in the Select Committee and as I said earlier various difficulties will arise by accepting this. [RAJYA SABHA]

[Shri Ram Niwas Mirdha] •

Therefore it is really not possible for me to accept these amendments.

MR. DEPUTY CHAIRMAN: The question is:

33. "That at page 125, line, 7, after the words 'in the third column' the words 'or their legal representatives in case of such person's death or disappearance' be inserted."

The motion was adopted.

MR. DEPUTY CHAIRMAN: The question is

34. "That at page 126, line 5, after the words 'in the third column' the words 'or their legal representatives in case of such person's death or disappearance' be inserted."

The motion was adopted.

MR. DEPUTY CHAIRMAN: I'he question is:

"That Clause 320 stand part of the Bill."

The motion was adopted.

Glause 320 was added to the bill.

Clauses 321 to 343 were added to the Bill.

Clause 344—Summary procedure for trial for giving false evidence

SHRI SHYAM LAL YADAV. Sir, I move:

35. "That at page 135,

(i) in line 37, for the words 'Session Judge' the words 'Court of Session' be substituted, and

(ii) in lines 39 to 41 the words 'had made on oath a statement which had substantially contradicted his previous statement on oath recorded under section 164 on section 200 or he' be deleted.''

The question was proposed.

SHRI SHYAM LAL YADAV: Sir, I would like to say just one word. This clause deals with summary procedure for trial for giving false evidence. The portion I want to delete by my amendment was agreed upon to be deleted by the Select Committee but inadvertently that portion has been kept in here. I think this portion should be deleted. And I have just made one consequential change. I think the Government would accept this.

SHRI RAM NIWAS MIRDHA: I accept this amendment.

MR. DEPUTY CHAIRMAN: The question is:

35. ' That at page 135,

(1) in line 37, for the words 'Session Judge' the words 'Court of Session', be substituted, and

(11) in lines 39 to 41, the words 'had made on oath a statement which had substantially contradicted his previous statement on oath recorded under section 164 or section 200 or he' be deleted."

The motion was adopted

MR. DEPUTY CHAIRMAN: The question is:

"That Clause 344, as amended, stand part of the Bill."

The motion was adopted.

(lause)44, as amended, was added to the Bill.

Clauses 345 to 353 were added to the Bill.

Clause 354---(Language and contents of judgment)

SHRI RAM NIWAS MIRDHA: Sir, I move—

7. "That at page 139:---

(1) the existing sub-clauses (4) and (5) be renumbered as sub-clauses (5) and (6), respectively thereof; and

(11) before sub-clause (5) as so renumbered the following sub-clause (4) be inserted, namely:---

(4) When the conviction is for an offence punishable with imprisonment for a term of one year or more, but the court imposes a sentence of i.

imprisonment for a term of less than three months, it shall record its reasons for awarding such sentence, unless the sentence is one of imprisonment till the rising of the court or unless the case was tried summarily under the provisions of this Code."

The question was proposed.

SHRI RAM NIWAS MIRDHA: I would commend this amendment for the consideration of the House because this is a new provision which is included to restrict short-term imprisonment since we find that a large number of persons in jail are there for short terms and it does not serve a useful purpose That is why this amendment is being brought to restrict the award of short term imprisonments.

श्री वीरेन्द्र कुमार सखलेचाः यह जो संशोधन क्लाज 354 में माननीय भत्री जी ढ़ारा पेश किया गया है, उसके सम्बन्ध में मुझे यह निवेदन करना है कि जब माननीय मत्री जी ने 197 क्लाज में संशोधन पेश किया था ग्रौर जिस ममय उमको लिया जा रहा था उस समय मुझे ग्राञ्चर्य हो रहा था कि उसके ऊपर पूरी तरह से ध्यान नही दिया जा रहा है। क्लाज 197 में जो अमेंड-मेंट था उसमें ग्राम्ड फोर्सेज की बात की गई जब कि वह पुलिस फोर्म से सम्बन्ध रखता है। ऋब यह जो भ्रमेडमेट माननीय मंत्री जी सदन के सामने लाये है उसका ग्रसर यह होगा कि जज के ग्रपने जजमेंट के वक्त यह एनाउन्स करना पडेगा ग्रौर उसके साथ ही साथ रीजन्स भी देने पडेगे कि उसने तीन साल या एक साल की सजा क्यों दी?

किस कारण जो जुर्म एक साल की सजा से पनिशेबिल है उसमें तीन महीने मे कम की सजा दे रहे है। जूरिस-पूडेंस ग्रौर न्याय व्यवस्था मे यह कही नही है कि किमी जुर्म मे 10 मात्र की सजा की व्यवस्था है मजिस्ट्रेट समझता है कि एक साल की मजा या तीन

महीने की सजा देने की श्रावश्यकता है तो उससे एक्सप्लेनेशन मांगा जाय।

"(4) When the conviction is for an offence punishable with implisonment for a term of one year or more, but the court imposes a sentence of imprisonment for a term of less than 3 months, it shall record its reasons for awarding such sentence "

ऐसा कहीं ग्राज तक नहीं रहा। সৰ म्रापने दस साल की सजा, चार साल की सजा या 5 साल की सजा रखी है तो इसका मतलब यही है कि 5 साल की सजा देनी चाहिए, चार साल की सजा देनी वाहिए। कम दे यह जज का डिस्क्रीशन है लेकिन उस सिलसिले मे रीजन्स देने को कम्पेल करने का कोई कारण मझे नही दिखाई देता। उसका यह ग्रर्थ भी लगाया जायगा कि उन्हें ज्यादा सजा दनी चाहिए। मैं समझता ह कि इस प्रकार का एक्सप्लेनेशन मागना उचित नहीं है, यह जूरिसप्रूडेंस के सिद्धान्त के खिलाफ है **ग्रौर** इसलिए मै इसका विरोध करता हूं।

MR. DEPUTY CHAIRMAN: The question is:

1 hat at page 139:--

(i) the existing sub-clauses (4) and (5) be renumbered as sub-clauses (5) and (6), respectively thereof; and

(ii) before sub-clause (5) as so renumbered the following sub-clause (4) be inserted, namely:—

'(4) When the conviction is for an offence punishable with imprisonment for a term of one year or more, but the court imposes a sentence of imprisonment for a term of less than 3 months, it shall record its reasons for awarding such sentence, unless the sentence is one of imprisonment till the rising of the court or unless the case was tried summarily under the provisions of this Code.''' Code of Criminal [RAJYA SABHA]

MR. DEPUTY CHAIRMAN: The question is:

"That clause 354, as amended, stand part of the Bill."

The motion was adopted.

Clause 351, as amended, was added to the Bill. Clauses 355 to 372 were added to the

Bill.

Clause 373-Appeal from orders requiring security or refusal to accept or rejecting surely for keeping peace or good behaviour

SHRI SHYAM LAL YADAV: Sir, I move:

86. "That at page 145, lines 26 to 29 be deleted."

The question was proposed.

SHRI SHYAM LAL YADAV : This is a consequential amendment which has already been accepted in clause 116. So, I think my amendment should be accepted, because it is consequential.

SHRI NAWAL KISHORE: On a point of order. You had kindly said that those amendments which were negative in nature would not be taken up, but here Mr. Yaday's amendment says that lines 26 to 29 be deleted.

MR. DEPUTY CHAIRMAN: It is part of the clause and not the entire clause When you gave your amendment you should have been very careful. The amendment of Shri Shyam Lal Yadav The question is: —

36. "That at page 145, lines 26 to 29 be deleted."

The motion was adopted.

MR. DEPUIY CHAIRMAN : The question is:

'That clause 373, as amended, stand part of the Bill."

The motion was adopted.

Clause 373, as amended, was added to the Bill.

Procedure Bill, 1970

Clauses 374 to 388 were added to the Bill.

Clause 389-Suspension of sentence pending the appeal; release of appellant on bail.

SHRI SHYAM LAL YADAV: Sir, I move:

37. "That at page 151,-

(i) lines 3 to 5 be deleted; and

(ii) in line 7, for the words 'for a term exceeding' the words 'for a term not exceeding' be substituted."

The question was proposed.

SHRI SHYAM LAL YADAV: It covers the question of bail. When a person is convicted under a bailable offence, he will be granted bail. If it is a non-bailable offence and the sentence is for not exceeding three years and if he was on bail, he should be allowed bail. I think that is the purpose of the Bill as proposed by the Joint Committee, but in drafting some changes were introduced. I think the Gov comment will agree to this.

SHRI RAM NIWAS MIRDHA : Yes.

MR. DEPUTY CHAIRMAN: The question is: ---

37. "That at page 151,---

(i) lines 3 to 5 be deleted; and

(ii) in line 7, for the words 'for a term exceeding' the words 'for a term not exceeding' be substituted."

The motion was adopted.

MR. DEPUTY CHAIRMAN: The question is:-

"That clause 389, as amended, stand part of the Bill."

The motion was adopted.

Clause 389, as amended, was added to the Bill.

Clauses 390 to 406 were added to the Bill. ç ÷., Ł£

Clause 407-Power of High Court to transfer cases and appeals.

SHRI RAM NIWAS MIRDHA: Sir, I move:

8. "That at pages 157 and 158, lines 33 to 49 and 1 to 18, respectively, be deleted."

The question was proposed.

श्री नवल किशोर श्रीमन्, वैसे तो मिर्धा साहब ने इसका जवाब जब अपनी डिबेट बाइन्डग्रप की थी उसी वक्त दे दिया था, लेकिन मुझे अफसोस यह है कि मैं उन के जवाब से कंविंस नहीं हो पाया। मुझे इस में कोई ग्रापत्ति नहीं है कि एजर्नमेंट प्रोसीडिग्स को म्राप रखें या न रखें, लेकिन मैं एक सिधांत के भ्राधार पर इस का विरोध करना चाहता हूं श्रौर ग्रच्छा यह होता कि हमारे मिर्धा साहब इस ग्रमेंडमेंट को खुद न पेश करते। ग्रगर उन को इस को पेश करना ही थां, पास कराना ही था तो स्रोम् मेहता साहब से कह कर इस को मनी-पूलेट करा लेते श्रौर किसी ऐसे ब्रादमी मे इस को पेश करवाने जो कि कमेटी का मेम्बर न होता।

श्री ओम् मेहताः मै कुछ मनीपुलेट नहीं करता हूं।

श्री नवल किशोर : मैनीपूलेट शब्द मै ने बडे श्रच्छे मायनों में इस्तेमाल किया है ग्रौर संसदीय मंत्री होने के नाते ग्रोम मेहता साहब से बडा मनीपूलेटर कोई श्रौर हमारे यहां है नहीं। मिर्धा साहब ने कहा कि इस मामले में ला कमीशन की एक बड़ी स्ट्रांग क्रोपीनियन है कि इस को इस में से हटा दिया जाय। श्रीमन्, ग्रबतक हर संशोधन में न मानने की एक ही दलील थी हर मामले में यह कहा गया कि इस मामले में कमेटी ने बड़े गौर से विचार विनिमय किया ग्रौर कमेटी ने उस के बाद ही यह फैसला किया है। हमेशा उन का यह म्रार्गुमेंट था। फिर ला कमीशन की रेकमेंडे- . शन भी तो कमेटी के सामने थीं ग्रौर उस के बावजुद भी ज्वायंट सेलेक्ट कमेटी ने एक फैसला किया ग्रौर उस मे मान-नीय मिर्धा साहब भी शामिल थे। वह फैसला एक मत से था। उस के बाद श्रीमन्, यह ग्रमेंडमेंट पेश हो, मुझे इस में केवल एक ही ग्रापत्ति है कि ज्वायंट मेलेक्ट कमेटी दोनों हाउसेज को रेप्रेजेंट करती है, ग्रगर वहां कोई युनानिमस फैसला हो जाय इतनी बहस के बाद ग्रौर उस के बाद उसे बदलने के लिए गवर्नमेंट की तरफ से कोई ग्रमेंडमेंट ग्राये. यह मैं समझता हं कि कोई ग्रच्छा कंवेंशन नही है। मिर्धा साहब इस बात को ध्यान में रखते हुए इस को प्रेस न करें तो ज्यादा ग्रच्छा है।

SHRI SHYAM LAL YADAV: I would like to say that 1 associate myself with the observations made by Shri Nawal Kishore. This was a decision arrived at by the Joint Committee at great length and after great discussion for several days at several sittings. The Ministry was very much persistent with its desire to do away with this provision. But ultimately by argument, the Committee was able to convince the hon. Minister and he agreed to this proposal, that is when a transfer application is moved before the court before the defence closes its case, he should make an application. It says-

'If in any inquiry under Chapter VIII or in any trial, any party interested intimates to the Court at any stage before the defence closes its case that he intends to make an application under this section, the Court shall, upon his executing, is so required, a bond without sureties of an amount not exceeding two thousand rupees that he will make such application within a reasonable time to be fixed by the Court, adjourn, subject to the payment by the party seeking such adjournment such costs as may be fixed by the Court, the case for such a period as will afford sufficient time for the application to be made and an order to be obtained thereon : ''

[Shri Shyam Lal Yadav]

What I would like to submit is that all these conditions were imposed at the instance of the hon. Minister-1 must sayand now we are surprised that he has introduced an amendment doing away with all these things I think this will harm the course of justice and people will lose confidence in the courts. They will be left without any mercy, remedyless, to go and obtain transfer of cases from courts which will hurry up with the trial, conclude the tital, immediately convict them and send them to jail and the transfer application I submit, there is will become useless. no reason. I have reason to oppose the amendment to clause 354 also. But I refrained because the Committee did not give any opinion on that clause that the imposition of a minimum sentence is necessary. But here the Committee has given a definite decision. I would like to submit that all these things were done at the great insistence of the Government that these conditions should be imposed so that no person should be encouraged or should feel it easy for moving the transfer for delaying the case by trial.

I think sufficient impediments have been placed in the course of such hurried actions and there will not be any undue delays. These provisions are for extreme cases. There are very rare transfer applications but the law provides for such cases. Therefore, there is no justification for amending and these provisions. I would still request the Minister that he should consider this fact because this matter will raise again a hue and cry in the two Houses because it is a very important advantage to the accused person if you remove this defect.

One thing more I hope the existing provisions do not contain so much impediments in the way of moving transfer applications. But here we have placed several other impediments, more than what is existing today. Therefore, let us see the working of this provision for some time and if afterwards this provision is misused they can bring in another Bill.

SHRI RAM NIWAS MIRDHA: Sir, it is after great hesitation, but after very serious consideration, that I thought fit to bring this amendment. It is very true that normally it should not take place because the Select Committee had unanimously adopted it. But even in the Select Committee I expressed hesitation and some of the suggestions that were incorporated were as a result of discussions that took place in the Committee. Why I have brought it is because this clause has a long history. Many times attempts have been made to amend it because it was thought to be obstructive of justice. If you bear with me for a short time, I would like to read out some extracts from the I aw Commission's report. It says:--

"The Statement of Objects and Reasons for the 1932 Bill mentioned that:

"The practical working of this new procedure has been carefully observed by Government over a considerable period, and they have come to the conclusion that it lands itself to grave abuse and is calculated to defeat the ends of justice."

"In a judgment of the Calcutta High Court, it was forcefully observed:—

"The position created by section 526(8) is truly amazing, one effect being that no accused persons can be convicted except with his own consent, No discretion is given to the court by the section. If the accused notifies his intention to make application to the High Court for transfer, the trial must be adjourned immediately. There is no limit to the number of such notifications. It may be given during the course of any trial . . . The abuse of process which sub-section (8) makes possible obviously may be aggravated to almost any extent, where there is a joint trial and each accused person is represented by a different pleader."

Sit, the report goes on to give more arguments and reasons why this type of amendment is necessary.

So, Sn, this is the background why I have thought it fit to bring this amendment This is a good amendment. It will speed up the processes of trial. Many times people with resources resort to these strategems because a poor man who is not properly represented would not resort to these

[Shri Ram Niwas Mirdha.]

strategents for extending the trial. It is only the resourceful people, people with money, people with legal knowledge, resort to such things and I think we should not be a party to such procedural strate gems which might indefinitely postpone the trial. Therefore, I would request the House to accept the amendment.

MR. DEPUTY CHAIRMAN: The question is.

8. That at pages 157 and 158, lines 33 to 49 and 1 to 18, respectively, be deleted."

The motion was adopted.

MR. DEPUTY CHAIRMAN: The question is:

¹ That clause 407, as amended, stand part of the Bill,

The motion was adopted.

Clause 107, as amended was added to the Bill.

Glauxe 108—Power of Sessions Judge to transfer cases and appeals

SHRE RAM NIWAS MIRDHA: Sir, I move:

9. "That at page 158, lines 28 and 29, for the figures brackets and word "(7), (9), (10) and (11)" the figures, brackets and word "(7) and (9)" be substituted." Sin, this amendment is only consequential to the change made earlier.

MR. DLPUTY CHAIRMAN: The question 15.

9. 'That at page 158. lines 28 and 29, for the figures brackets and word '(7).
(9), (10) and (11)' the figures, brackets and word '(7) and (9)' be substituted.''

The motion was adopted.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 408, as amended, stand part of the Bill."

The motion was adopted

Clause 408, as amended, was added to the Bill.

Clauses 409 to 410 were added to the Bill.

Clause 411- Making over or withdrawal of cases by Executive Magistrates

SHRI RAM NIWAS MIRDHA. Sir, I move:

10. "That at page 159. line 11, the words 'of which he has taken cognizance' be deleted."

The question was proposed,

SHRI RAM NIWAS MIRDHA: Sit, this is merely a dratting change

MR. DEPUTY CHAIRMAN: The question is:

10. 'That at page 159, line 11, the words of which he has taken cognizance' be detecd.''

The motion any adopted.

MR. DEPUTY CHATRMAN: The question is:---

"That clause 411 as amended, stand part of the Bill.

The motion was adopted.

Cleuse 411, as amended, was added to the Bill.

Clauses 412 to 436 were added to the Bill

Clause 437-When bail may be taken in case of non-bailable offence

SHRI SASANKASEKHAR SANVAI : Sir, I move :

21. "That at page 166 after line 59, the following b inserted, namely:---

'Provided forther that bail shall be granted as a rule and that refusal of bail shall be an exception and as such refusal shall always be founded on reasonable grounds.'

38. That at page 166, line 36, after the word 'investigation' the words 'or that he may absend or tamper with evidence' be inserted."

The questions were proposed.

227 Code of Criminal

SHRI SASANKASEKHAR SANYAL Su in the amendment I have suggested that there should be no impediment to the grant of bail and I want to enling the scope by making part of the law the fear that he may obscond or tamper with evidence. These are leose outmoded medieval concept. I have already made my submission at the eather stage 1 do not know whether Mi Mindha is taying to find his way to accepting it of not

SHRI RAM NIWAS MIRDHA Su, this imendment if recepted would completely obliterite the difference between bullable and nonbailable offences. Even as it is, we have liberalised the provisions regarding bull For example, formerly bail was not given because someone was needed for identification parade and things of that nature

SHRI SASANKASEKHAR SANYAL In the Meetut Conspirate case Justice Hut chinson observed that bull should be the rule and refusil the exception. That was in the British days. Many British judges held that view. Now at the time there was no fundamental right of liberty. Now that we have fundamental rights of liberty even without obliterating the difference between bullible and non-bailable offences you can make a provision that bail should be the rule and refusal should be the exception and the grounds for refusal should be stated.

SHRI RAM NIWAS MIRDHA Well, Su

SHRIVE SAKHLFCHA Surregard ing this last portion that bail should be the rule

MR DEPUTY CHAIRMAN This is an after thought. He had spoken and the Minister was replying

SHRI V K SAKHLFCHA He was speaking on this provision मेरा यह निवेदन वेल के प्राविजन है कि के बारे मे केवल यह एक हाई कोर्ट का डिसीशन नही है ग्रनेक हाई कोर्टों के डिसीशन है

MR DEPUTY CHAIRMAN You can not male a speech in the middle of the Minister's reply

RAM NIWAS MIRDHA The SHRI hon. Member is supporting the amendment and supporting the judicial pionouncement which was quoted by Shir Sanyal What even judicial pronouncements are there which are very much in favour of giving bail we respect them all But this amend ment would heave no discretion to the court at all. Now the court has discussion to decide in the light of the various judi ctil pronouncements Secondly it will obliterate the difference between builable and non-bulable offences. There are en ough sufegurids provided in the Bill

MR DEPUTY CHAIRMAN The question is

Provided further that bail shall be granted as a rule and that refusal of bail shall be an exception and such refusal shall always be founded on reasonable grounds.

The motion was negatived

MR DFPUTY CHAIRMAN. The question is

38 That it page 106 line 36 after the word investigation the words or that he may abscond or tamper with evidence be inserted.

The motion was negatived

MR DFPUTY CHAIRMAN The question is

That cliuse 457 stand part of the Bil!

The motion was adopted

Clause 437 was added to the Bill

Clauses 438 to 483 were added to the Bill

Clause 484—Repeal and satings

SHRI RAM NIWAS MIRDHA Sir, I move

11 'That at page 181 lines 3 and 4, the words and nothing in this Code shall

apply to any such prosecution by deleted.

The question was proposed.

SHRI RAM NIWAS MIRDHA: Sir, the amendment is of a draiting nature

MR. DEPUTY CHAIRMAN The question is:

14 That at page 181, lines 3 and 4, the words 'and nothing in this Code shall apply to any such prosecution' be deleted."

The motion was adopted.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 484, as amended, stand part of the Bill".

The motion was adopted.

Clause 484, as amended, was added to the Bill.

The First Schedule and the Second Schedule were added to the Bill.

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

SHRI RAM NIWAS MIRDHA Su, I move—

"I hat the Bill, as amended, be passed "

The question was proposed

श्री गनेशी लाल चौधरी (उत्तर प्रदेश) उपसभापति महोदय, यह बिल ज्युरिस्प्रुडेन्म मे ताल्लुक रखता है। जिस समय यह ऐक्ट पहुँले बना था उम ममय ज्यरिस-प्रडन्स का जो मतलब था वह दुसरा था। आज के वक्त मे जब समाजवाद आया है तो ज्युरिस्प्रूडन्स की डेफनिशन ग्रौर ज्युरिस्प्रूडन्स भी साथ साथ बदलता जा रहा है। मुझे दूख है, ग्राज के बदलते हुए समय के ग्रनसार इस बिल मे प्राविजन नही किया गया है। जहा पर देखो तहां पर पावर बढाया गया है, राइटस गए है, चाहे मेजिस्ट्रेट्स के हों बढाए

चाहे पुलिस ग्राफिसर्म के हो, चाहे समरी ट्रायल्म हो। श्रीमन, मैं यह इसलिए कहना चाहता ह कि ग्राज ऐसा वक्त <u>आ गया है कि हर ग्रादमी ग्रपने राइट</u> ग्रौर ग्रपने तावत की माग करता है, डयटी की माग नहीं करता है। ग्राज हम भक्तभोगी है । ग्राज देश जरा से रिपोर्ट मगा कर देख ले. बारा 107 में 109 में किनने गरीब हरिजन ग्रौर बेजबान लोग बद है। जहा पूलिस बाराज हई, फौरन दफा 107 में उठा कर बद कर दिया । तो म्रापने पुलिस बालां के ऊपर ऐसी काई रोक नहीं लगाई कि ग्रगर ग्राप गलत हरिजन बद करेगे तो उनके उपर भी एक्शन हा सकेगा । मै माननीय मत्री जी से कहना चाहता ह, ग्राज छोट छोटे पढे लिखे हरिजनो की जिदगी बर्वाद की जा रही है। हमारे जिले में एक विद्यार्थी था, हाई स्कल सेकेन्ड डिविजन में पास करके इਂਟੁਡ-मीडिएट में पटना चाहना था। लोग नाराज थे. उन्होने पुलिस से मिलकर ग्राम्स ऐक्ट में उसको रख दिया जमानत के लिए। ग्राम्स ऐक्ट में ग्राइडेन्टि-फिकेशन की काई वान नहीं ग्राती है लेकिन दरोगा जी ने लिख दिया कि यह मामला ग्राइडेन्टिफिकेशन का है इसलिए 4 महीने---जुलाई, ग्रगस्त, सितम्बर ग्रौर ग्रक्ट्वर, वह बेचारा जेल मे वद रहा। -1 महीने के बाद जब छट कर ग्राया तो स्कल में नाम नहीं लिखा गया, उसका नाम काट दिया गया। दरोगा जी के ऊपर इसके वारे मे कोई जाच पडताल नही हई हालाकि मैने बहत एम०पी० से भी दरोगा वही मौजुद कहा। आज है । दरोगा यह कह रहा है, ग्रब के तूम छट गए लेकिन आगे तूमको डकैती मे धरेगे।

तो श्रीमन्, प्रापने पावर तो बढाया है लेकिन यह पावर, मुझे डर है, हरि-जनों के ऊपर, गिरे हए तबकों के ऊपर

П

231 Code of Criminal

[श्री गनेशी लाल चौधरी]

इस्तेमाल किया जाएगा। तो यह जो नया समाजवाद, नयी रोशनी स्राई है---हमारी प्रधान मत्री इन्दिरा जी नर्या रोजनी लाई है---इस रोजनी मे ग्राप ग्राज यह कानून बदल रहे है तो इसमे राइट्स एन्ट पावर्स सबकी बढा रहे है लेकिन उनकी ड्युटी की बात नहीं कर रहे है, यह खतरा है उन लोगों के लिए जो देश के गिरे हुए लोग है उनके खिलाफ इस्तेमाल किया जाएगा। यह बान म मैंसलिए कह रहा ह कि ग्राज ममाजवाद में एक धारणा बन रही है देश म लोगा की ग्रौर गरीबी हटाग्रो की एक धारणा बन रही है। उस से हरिजनो की हानि होगी। मैं एक दोहे मे उसको आपके सामने कहना चाहना हू, क्या समाजवाद की डेफनिणन, समाजवाद की परिभाषा, जो आपने को ह उसकी तह मे आप यह कानून बना रह है तो----

'ईश्वर अल्ला तेरा नाम परा पैसा आधा काम,तो श्रीमन्, ग्राज जो समाजवाद ग्रा रहा है, उस मे आप गरीवों के लायक कानुन बनाइये क्याकि आप मजिस्ट्रेटो को जो पावर देने जा रहे है उसमे थे गरीब लोग रहते हे। मै फिसते ग्राप से माग करूगा कि ग्राप रिपार्ट मगवाइये कि म्राज 107 के अन्तर्गत कितने हरिजन लोग बन्द है, आज कितने 109 के ग्रग्तर्गत हरिजन वन्द है। ग्राज दूसरे लोगो के ऊपर यह धारा— लागू नही की जाती है। मैने इस सम्बन्ध में कोई मंगोधन नहीं दिया है ग्रौर सदन थोडी देर मे इस बिल को पास कर देगा, लेकिन मझको इस चीज से बड़ी निराशा हो रही है कि इस चीज से इम्प्रुवर्मेट ग्राने वाला नहीं है। इस-लिए मै मत्री जी मे कहना चाहता ह

कि उनका जो समाजवाद का नारा है, गरीवी हटाग्रो का नारा है, वह बिल्कुल बेकार हो गया है।

श्री विरेन्द्र कमार सखलेचा उप सभा-पति जी ग्राप इस बिल को पारित करने जा रहे है। क्रिमिनल प्रोसिजर कोड बिल के सम्बन्ध में सदन के सामने कई संगोधन रखे गये ताकि यह बिल गौर ग्रच्छा हो जाय, लेकिन 'रनके' सम्बन्ध में जो उत्तर मिले, उसस हम सव लोगा को निराशा हई। मुझे यह वान वडे दुख के साथ कहनी पड रही है कि जब सिलेक्ट कमेटी में सब बात तय हो चकी है, उसका ही लास्ट वर्ड तो फिर इस सदन में अमेन्डमेट हे मव करना, उसे इस बात का ग्रधिकार देना ग्रौर इस सदन द्वारा विचार करने का जो प्रावधान हे, वह कोई ग्रर्थ नही रखना है। यह बात सही है कि सिलेक्ट कमेटी में मंत्री जी की सहायता के लिए ग्रधिकारिगण रहते है, पर सदन के ग्रन्दर तो उन्हे स्वय जवाब देना पड़ता है ग्रौर स्वय निर्णय करना पडता है। लेकिन हम यह आशा करत है कि मत्री जी उचित मशोधना ਬਾ वारे में अपनी राय दे रामते है और उन्हे स्वीकार करने की क्षमता रखते हे। लेकिन जो बात हमने ग्रनभव वी वह यह ह कि जो महत्वपुर्ण प्रावि-जन्म है, उनके सम्बन्ध में जो ग्रारग्य-मेन्ट्स दिये गये थे, उनका कोई उत्तर नही दिया गया। वेल के बारे मे. एफ० ग्रार० ग्राई० के बारे मे, जजमेट के बारे मे, ट्रान्सफर के प्राविजन के बारे में कोई उचिन उत्तर नहीं दिया गया ग्रौर ग्राप इस बिल को पारित कर रहे हैं। आज आप का बहमत है, ग्राप इसको पारिन करा सकते है, लेकिन मैं इस सम्बन्ध में यह श्राव्वासन चाहगा, जैसा कि ग्रापने ग्रपने जवाब

के **ग्रन्दर क**हा कि ग्राप एफ० ग्रार० ग्राई० के प्राविजनों में किसी प्रकार का सशोधन मानने के लिए तैयार नही है । लेकिन आपको एडमिनिस्ट्रेटिव पावर्स है ग्रौर उसके ग्रन्तर्गत , मैं ग्राशा करूगा कि केन्द्रीय सरकार तथा स्टेट सरकारों को आप यह निर्देश देंगे कि जो ग्रधि-कारी इसका प्रयोग करते हैं वे इसका दुरपयोग न करे क्योकि स्राप इस बात को ग्राच्छी तरह से जानते है कि जो सब इसपेक्टर है थाने के हैड कांस्टेबिल है वे एफ० ग्रार० ग्राई० की रिपोर्ट को दर्ज कराने के ग्रधिकारी होते है **ग्रौ**र ट्रा**य**ल के समय यह रिपोर्ट बहुत महत्व रखती है। इस नाते मैं यह चाहता हू कि पूलिस रेगुलेशन बनाने वक्त ग्राप यह देखेंगे कि जो सब इस-पेक्टर है, हैड कास्टेबिल है, जिस को ग्राप यह ग्रधिकार देने जा रहे है, वे जनता के अधिकारो का पूरी तरह मे सरक्षण करे ग्रौर वे ग्रपने इस ग्रधिकार का दूरुपयोग न करे। ग्रगर कोई इसका दृरुपयोग करता है तो ग्राप डिपार्ट-मेन्टली उसके खिलाफ ऐक्शन ले सकते है ताकि वे टाइल के समय केस के मम्बन्ध मे कोई गडबडी न कर सकें। वेल बिना कारणो के रिफयुज न की जाय, बेल एज ए रूल, हाई कोर्ट के जो नियम है, हाई कोर्ट की जो रूलिंग है. उस हिसाब से लोगों को बेल मिले। लोगों को 107 के ग्रन्तर्गत तंग न किया जाय। यद्यपि म्रापने एग्जीक्युटिव मेजिस-ट्रेट्स को पावर दे रखी है, तो ग्राप को इस बात की भी व्यवस्था करनी चाहिये कि वह ट्रायल को कम्पलीट करे श्रौर एक डेढ महीने के ग्रन्दर उसका फैसला 107 के अन्तर्गन उन्हे इस प्रकार दे दे। की इयुटी पर न भेजा जाय।

यह जो क्रिमिनल प्रोसीजर कोड बिल है यह जनता के लिए एक महत्वपूर्ण जिल है क्योंकि काइम ट्राइल मे जनता को इस बिल द्वारा वास्ता पड़ता है। श्राप इस बिल को पारित करने जा रहे हैं, लेकिन जिन प्वाइन्टो के बारे मे हमने भ्रापका ध्यान खीचा है, जनता को सरक्षण देने के बारे में जो सुझाव ग्रापको दिये, उनको ग्रापने नही माना श्रौर ग्रब ग्राप इस बिल को पारित करने जा रहे हैं। लेकिन मैं म्रंत मे यह निवेदन करना चाहता हू कि एडमिनिस्ट्रे-शन की तरफ से इस बात का ख्याल रखा जायेगा कि जो इसमे प्राविजन हुए हैं उनका दूरुपयोग न हो और एफ०ग्रार०ग्राई०, बेल, केस का प्रापर टायल, लोगों को न्याय मिले, इन सब बातों का ख्याल रखा जायेगा झौर इसी उद्देश्य से हम इस बिल को पास करे, यही मैं आ्राजा करता हं।

श्री राम निवास मिर्घाः श्रीमन्, यह कहना ग्रनुचित है कि सरकार ने यह विधेयक केवल बहुमत के ग्राधार पर पास कराने की कोशिश की है। प्रवर समिति मे जो भी बातें उठाई गई उन पर पूर्ण विचार किया गेया। कभी भी प्रवर समिति में कोई भी बात बहमत के ग्राधार पर मनवाने की कोशिश नही की गई। यहा पर भी सैयद ग्रहमद साहब ने एक सज्ञोधन दिया, एक मसले पर हमारा ध्यान ग्राकृष्ट किया, उसे हमने स्वीकार किया, ग्रौर भी कई सशोधन स्वीकार किए गए हैं । इमलिए यह कहना कि सदन मे जो बातें कही गई है या जो सशोधन लाए गए उनको केवल बहुमत के श्राधार पर रद्द कराने की कोशिश की गई वह न्यायपूर्ण नही है, यही मेरा माननीय सदस्य से निवेदन है। कई बातें ऐसी है और कई संशोधन ऐसे हैं जिनको स्वीकार करने में ग्रसमर्थ था क्योंकि उन प्रावधानो की कई राज्यों ने ग्रपने नियमो मे डाल रखा है, जैसा मुल्ला साहब ने कहा। मै ग्राशा करता हू कि जो इस विधेयक की 1 73

[श्री राम निवास मिर्धा]

भावना है श्रौर जो भावनाएं सदन मे माननीय सदस्यो ने व्यक्त की है उन पर राज्य सरकारे विचार करेगी ग्रौर जो भी हम इस विधेयक के ढारा न कर सके या न करना चाहा क्योकि उसमे विधेयक को बहुत ही कूठित करने की स्थिति पैदा हो जाती । मुझे पूरा विश्वास है कि राज्य सरकारे और प्रशासन माननीय सदस्यो की इन भावनाम्रो पर विचार करेगे भ्रौर जो कमिया रह गई है जो पूरी की जा सकती है वे नियमो के द्वारा पूरी करने की कोशिश करेगे ग्रौर केन्द्रीय सरकार भी इसमें जो सहायता दे सकेगी वह देगी और मेरा विश्वास है कि राज्य सरकारो के सह- योग से हम ऐसे क्रिमिनल एडमिनिस्ट्रेशन की व्यवस्था कर सकेंगे जो समयानकल हो ।

MR. DEPUTY CHAIRMAN: The question is:

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

The motion was adopted.

ДЕРЦ ГҮ CHAIRMAN: The MR House stands adjourned till 11-00 A.M. tomorrow. I T

> The House then adjourned at fifty-seven minutes past four of the clock till eleven of the clock on Thursday, the 14th December, 1972.

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