State or candidates from one State taken on the cadres of other States. That also is being followed and now Kashmir officers or candidates from Kashmir will have the opportunity not only of serving in Kashmir but in the other States as well. We have got also a promotion quota under which State officers are being taken into the I.A.S. and the I.P.S. Thus it will be found that by the participation of Jammu and Kashmir State in the All-India Service scheme not only Jammu and Kashmir but India also would benefit considerably because thereby the officers would have an opportunity of working either in that State or in the other States and *vice versa*. And that will meet the particular desire or the objective that my friend, Mr. Bhupesh Gupta, has in view, namely, that all these officers ought to be extremely efficient and they ought to work in the present political set-up. So far as these two points are concerned, naturally his observations will always be given effect to because we are anxious that our officers are very efficient and secondly that they know the democratic conditions in which they have to work. Thus even though the Bill is very small, it will have very good effect so far as India and so far as the State of Jammu and Kashmir are concerned.

SHRI BHUPESH GUPTA: I have only one question just for clarification. The hon. Minister said that the Kashmir Government has seen this thing. I take it that they have seen it. Have they fully accepted these rules and regulations or will it be necessary for them to have some consultations in the future?

SHRI B. N. DATAR: They have accepted the rules; they have made certain suggestions which will be examined with as much sympathy as possible because it is our desire to see to it that all their requirements are properly met.

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill be passed."

The motion was adopted.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL, 1958

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI B. N. DATAR): Sir, I beg to move:

"That the Bill further to amend the Code of Criminal Procedure, 1898, as passed by the Lok Sabha, be taken into consideration."

So far as this Bill is concerned, the object of this Bill is to facilitate what can be called reciprocal arrangements. Now, so far as India is concerned, we have got a Code of Criminal Procedure dealing with all the matters relating to criminal justice. Similarly, in the State of Jammu and Kashmir they have got a similar Code of their own. There are certain areas in India where the Code of Criminal Procedure does not apply. Under these circumstances in respect of these areas often-times a question arises as to how the summonses from one area into the other should be served or how warrants should be executed. In this connection may I point out to this House that we have already got section 93A which deals with this question? Section 93A of the Code of Criminal Procedure dealt only with two matters. It stated that so far as reciprocity arrangements were concerned in respect of two matters proper arrangements should be made so far as the Indian courts were concerned and *vice versa*. They provided for the service of summons to, and warrants for the arrest of, an accused person. Now, whenever such summonses or warrants were issued either in the State of Jammu and Kashmir or in any of the States in India then naturally reciprocal arrangements

[Shri B. N. Datar.]

were made and so far as these two matters are concerned there was no difficulty at all. But unfortunately two other matters which were of equal importance remained unnoticed or remained unprovided for. They relate to search warrants and summonses to produce documents. These two things had not been provided for. Therefore a difficulty arose and the difficulty was very keenly felt during this year and it was therefore found necessary that the law should be comprehensive enough to provide for not only the two points which have been mentioned in section 93A but also for the other two points as well. As such a reciprocal arrangement was found necessary in India and also in the State of Jammu and Kashmir and as the matter admitted of no delay, an ordinance was issued. That ordinance was issued on 5-6-58 making the law comprehensive enough so that reciprocal arrangements could be not only in respect of the two matters already provided for but in respect of all the four matters. After the Ordinance was promulgated the earliest opportunity is now taken to have an amendment of the Code of Criminal Procedure on the lines of this Ordinance. What is now being done is this. We are taking away section 93A because it was found incomplete and insufficient and we are having a new Chapter, namely, Chapter VIIA dealing with this particular subject in respect of the four matters that I have mentioned in a very comprehensive and wide manner.

Now clause 3 says that this new Chapter shall be inserted with detailed provisions which will become section 105A after this Bill is passed. It reads like this:

"105A. (1) Where a court in the territories to which this Code extends (hereinafter, in this section referred to as the said territories) desires that—

(a) a summons to an accused person, or

(b) a warrant for the arrest of an accused person, or

(c) a summons to any person requiring him to attend and produce a document or other thing, or to produce it, or

(d) a search warrant....."

The first two had already been provided for but the last two had not been provided for and they created considerable difficulty and that is why for the purpose of having a law comprehensive enough covering these two points also, an Ordinance was issued.

Then it has been stated that whenever any of these summonses or warrants are issued, they shall be served or executed at any place within the local limits of the jurisdiction of a court in the State of Jammu and Kashmir or a court established or continued by the authority of the Central Government in any area outside the said territories. Then what is done is they are naturally sent for execution or service, as the case may be, to the State of Jammu and Kashmir or to the courts referred to above, and as soon as they are returned with a certificate that they have been properly served or properly executed, then naturally a presumption arises. There is a rule of evidence in section 74 of the Code of Criminal Procedure which says that when there is a report from the serving or the executing State that it has been properly done, then there is a presumption that it is properly done and a court in India can proceed on the assumption or presumption that it has been so done. That is point number one. Secondly, the other rule deals with the question of receiving summonses or warrants from these States. That is a reciprocal arrangement. Whenever any summons or warrant in respect of the four points that have been mentioned in the earlier portion of the section are received in India, the summonses are to be served or the warrants are to be executed as if they are the summonses or the warrants of the courts actually functioning in India. That is the way

in which these two principles have been laid down. There is no particular change made in the law. But the law was found to be incomplete in respect of the two very important matters. That is the reason why the Ordinance had been issued and why all the four points had been put together in a new section. Section 93A has to be omitted because its purpose will be served by the new section which has been introduced in the Code of Criminal Procedure and to which reference has been made in clause 3 of the present Bill.

Sir, I am confident that so far as the provisions of this Bill are concerned, they are absolutely unexceptionable; on the other hand, they are required for a proper service or execution of the summonses and warrants either issued by the courts in India or issued by the courts in the State of Jammu and Kashmir or other areas referred to. Therefore I am confident that the provisions of this Bill will commend themselves to the acceptance of this House.

MR. DEPUTY CHAIRMAN: Motion moved:

> "That the Bill further to amend the Code of Criminal Procedure, 1898, as passed by the Lok Sabha, be taken into consideration."

DR. A. SUBBA RAO (Kerala): Mr. Deputy Chairman, I think there will be no difference of opinion with regard to the contents of this Bill. But what I object to is the method adopted by the Government in resorting to this type of legislation, first of all promulgating an Ordinance and then bringing it to this House to rubber-stamp that Ordinance.

As our Minister has explained, there is nothing to add with regard to the object of the Ordinance. It is only to include two additional clauses to the Criminal Procedure Code, it is a sort of reciprocal arrangement, and naturally it is quite essential and there will be no objection to it. But this defect, this lacuna in the Criminal Procedure Code has been there. It was not a recent thing, but it has been there since 1941, and so the Government were well aware of it—I do not know how they cannot be aware of it—and it has been brought to the notice of the Government also, if I may say so, but the Government have not so far taken proper steps to remedy the defect in the previous sessions in the Parliament. Instead they waited for the sessions to be closed and then they issued an Ordinance. Then they bring in this legislation to get the sanction for that Ordinance.

Sir, it has been recently noticed that the Government are in the habit of promulgating many Ordinances and then coming to this House and asking for sanction, perhaps with the idea that they have got a brute majority and they will get definitely the sanction for them. I am not against the promulgation of Ordinances as such, it should certainly be done in certain cases and, as I understand, Ordinances are promulgated in cases of emergency but here it is done only to bring about a change, to fill up certain defects in the ordinary procedural law in the Criminal Procedure Code, and it should have been certainly brought about, not through an Ordinance, but through this House. That is what I say, and apart from it, the Government were also aware that there were certain elements in this country who were carrying on subversive activities against the national interests of this country, and they were also aware that with particular reference to Jammu and Kashmir, certain foreign countries who do not like the neutral stand taken by this Government, to make the State of Jammu and Kashmir to come into their orbit of influence, were exerting certain persons, and naturally they would try to find certain people here in India who would work against the interests of our own country and they would try to utilise them. In every State there are certain people who will be anti-national and will be working against the interests of the nation. The Government are quite

[Dr. A. Subba Rao.]

well aware of it, and when it has been brought to their notice in this particular House, it was the duty of the Government to have amended the Criminal Procedure Code so that they might have taken the action long before. But whatever it is, even though belated, it has been brought about. I am not against the contents of the Bill as such, but this procedure, this habit of promulgating Ordinances and then getting the sanction of this House, that is not conducive to the spirit of democracy. After passing the Ordinance I think it will be in the interests of democracy to give the reason for the necessity of promulgating this at least to the Members of this House I think the Minister will consider this suggestion and in future, when Ordinances have to be promulgated, they will after passing the Ordinances let the Members of this House know the necesssity, the emergency, that arose so that people might know it. What I have got to complain about is that we have not been able to know the emergency, the necessity, for passing this Ordinance.

There is one more point which I wish to bring to the notice of this House. The Government was aware that some elements in this country were taking certain actions which were inimical to the interests of the country. So, they wanted to take action on that particular, individual case. When they started taking action, they found the lacuna in the Criminal Procedure Code. Then, in order to enable that action being taken in that particular case, they passed an Ordinance. They corrected the Procedure and then took action. I am not saying that action shouldn't have been taken in that particular case. They should take action. But the principle behind the Government's passing the Ordinance in order to facilitate the action being taken in a particular instance is very bad and this procedure should not be followed. I hope at least in the future the Government will not do it. As regards the object of this Bill, I do not have any objection and I support it.

SHRI P. N. SAPRU (Uttar Pradesh): Mr. Deputy Chairman, objection has been taken that the Government should not have resorted to the course of promulgating the ordinance in this matter. No objection has been taken by the Opposition to the provisions of the Bill themselves. It is admitted that the provisions are necessary and desirable.

So far as this objection is concerned, the position is that the necessity for this measure arose on the 5th of June, 1958. It is on that day that the Ordinance was promulgated. It would obviously be not possible for the Government to promulgate this Ordinance without the concurrence of the Jammu and Kashmir Government. We know that under our Constitution, the State of Jammu and Kashmir enjoys—I think rightly so—a special status, a right, of framing her own Constitution a right which we did not give to any other State in India. Of course, I cannot speak for the Government. But rather I imagine that the question has been arising before. It did not strike either of the two Governments to come to an arrangement regarding such warrants or the production of documents in courts. May I invite your attention to the terms of Article . . .

SHRI B. N. DATAR: Article 123 possibly.

SHRI P. N. SAPRU: Thank you very much.

> "(1) if at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require."

Parliament, I think, adjourned on the 11th of May. This Ordinance was promulgated on the 5th of June and it is on that day or about that time that the President must have been

satisfied that there were circumstances which necessitated his taking immediate action and he promulgated this Ordinance. I hope that Mr. Datar, in his reply, will throw light on the circumstances which necessitated this action on the part of the President. I think we may assume that in acting as he did, the President had a good cause. And in any case, there is no objection to the substance of this Bill. We cannot take any legally valid objection on the ground that the change in the Code was anticipated by an Ordinance. So far as the change itself is concerned, I think it is in the right direction. It is rather strange that the Jammu and Kashmir court should be regarded for the purposes of the criminal law as an external court when Kashmir is bound up with India with so many ties.

Under the existing law, it was possible to summon a person or to issue a warrant for the arrest of any accused person. But it was not possible for any one, to summon any person, to require him, for the purposes of attending and producing a document or other things. It was also not possible to issue a search warrant. These were the obvious deficiencies in the existing state of the law. It is proposed that these deficiencies should be set right by the measure which has been brought forward by Mr. Datar.

I do not know, Mr. Deputy Chairman, whether there are any other matters in regard to which the Criminal Procedure Code does not apply, in which respects the Kashmir court is different from ours. If the Criminal Procedure Code is different there in some other matters from our court the matter should be taken up with the State of Jammu and Kashmir and with the consent of the Jammu and Kashmir Government, the Kashmir Criminal Procedure Code should be brought into line with the code in India. I know that section 93A of the Code of Criminal Procedure is going to be eliminated and instead of that there is going to be added a new chapter in Part III of the principal Act. I have examined the change which has been suggested in this Bill. That change is, as I have already stated, in the right direction. It will further help to unify or to integrate this country with Kashmir.

4 P.M

Then, Sir, much was said by some opposition Members regarding the position of services in Kashmir. That was in connection with the Bill which we have just passed. But not only is the integration of services desirable, but common laws also are necessary. Law is a great unifying factor; it cements national unity. Therefore I think it should be our effort to ensure that as far as possible we have common laws in regard to the various matters which affect the country as a whole. As we know, there is the Union List, there is the Concurrent List and there is the State List. I think our effort should be to see that the Union and the Concurrent Lists are used in such a manner as to provide for some system of common laws for the entire country. Therefore, Sir, the objection that initially the procedure adopted was that of promulgating an Ordinance has really not much force. We do not know what exactly the position was on the 5th June when this Ordinance was promulgated. We know that in Kashmir there is in some ways an abnormal situation, and that abnormal situation is not our creation. For that abnormal situation, some foreign power, aided or abetted by certain other foreign powers, is responsible. And therefore, it may well be that in order to meet that abnormal situation or that difficult situation it was felt necessary to take some immediate action. That, I think, is the reason why this Bill was initially promulgated in the form of an Ordinance. Well, I am only guessing it. I do not know it. But perhaps Mr. Datar when he begins to reply to this debate, will throw some light on this matter. Thank you very much.

श्री जस्पत राय कपूर (उत्तर प्रदेश): उपसभापति महोदय, इस सदन के लिये आज यह बड़े हर्ष और सौभाग्य का दिन है कि एक

[श्री जस्पत राय कपूर]

ही दिन के कार्यक्रम मे हमारे सम्मुख तीन विधेयक उपस्थित किये गये है, एक जो इसके पूर्व हम स्वीकार कर चुके, एक जिस पर अभी हम विचार कर रहे है और एक जो इसके उपरान्त आने वाला है और इन तीनो विधेयको द्वारा हम देश की एकता को और देश की सुरक्षा को सुदृढ करने जा रहे है। जहा तक इस विधेयक का सबध है इसका मै सहर्ष हृदय से समर्थन करता हू।

हमारे माननीय मित्र जो कि विरोधी दल के है उन्होने इस सबध मे यह आक्षेप किया कि इस विधेयक के आने से पूर्व सरकार ने जो आर्डिनेस बनाया था उसको न बना कर इस विधेयक को ही हमारे सामने उपस्थित करना था। जहा तक इस आर्डिनेस का सबध है, मै समझता हू कि वह अत्यन्त आवश्यक उसी समय हो नही था जिस समय कि वह प्रसारित किया गया बल्कि इस विधेयक को तो अब से बहुत दिन पूर्व, सम्भवत कोई दो वर्ष पूर्व, हमे स्वीकार कर लेना चाहिये था। साधारणत इसमे कोई दो राय हो ही नही सकती कि आर्डिनेस का अधिकार सरकार को उसी समय इस्तेमाल करना चाहिये जब कि कोई गम्भीर परिस्थिति एकदम से उपस्थित हो जाय और जहा तक इस विधेयक की धाराओ का सबध है एसी कोई परिस्थिति एकदम से उत्पन्न नही हुई थी कि जिसके लिये कि उसी समय आर्डिनेस जारी करना आवश्यक था। लेकिन, मै तो दूसरी बात कह रहा हू कि आर्डिनेस जारी करने की जरूरत उस समय ही नही थी बल्कि उससे बहुत पूर्व इस विधेयक को हमारे सामने प्रस्तुत कर के हमसे स्वीकार करा लेना चाहिये था क्योकि जिस परिस्थिति का मुकाबला करने के लिये यह विधेयक अब हमारे सामने रखा जा रहा है, अथवा आर्डिनेस जारी किया गया था, वह परिस्थिति तो अब से दो या तीन वर्ष से या उसके अधिक वर्षसे हमारे सामने थी और वह विशेष परिस्थिति यह थी कि जम्मू और काश्मीर राज्य के सबध मे उस राज्य के बाहर अन्य राज्यो मे बैठे हुये लोग और विशेषकर हमारी आख और नाक के सामने ही इस प्रकार की कार्यवाहिया कर रहे थे जिससे कि हमारे देश की एकता को, हमारे देश के मान को और हमारे देश की सुरक्षा को निरन्तर बहुत कुछ हानि पहुच रही थी।

इस सदन मे एक से अधिक बार पहले मैने और सम्भवत कई और सदस्यो ने भी उस विशेष परिस्थिति की ओर सरकार का ध्यान दिलाया था, लेकिन न जाने किन कारणोवश सरकार ने उस परिस्थिति का मुकाबला करने के लिये, उस विशेष व्यक्ति के विरुद्ध कुछ कार्यवाही करने के लिये--जिस विशेष व्यक्ति द्वारा निरन्तर कई साल से ऐसी कार्यवाहिया की जा रही थी जिनसे हमारे देश को बहुत क्षति हो रही थी--कोई कडा कदम नही उठाया। मालूम नही उस परिस्थिति का मुकाबला करने के लिये उसके खिलाफ क्यो नही कदम उठाया गया। उस परिस्थिति के सबध मे, उस विशेष व्यक्ति के सबध मे बडी ही नर्म नीति का प्रयोग किया गया और बडी ही उदारता दिखाई गई।

ऐसी परिस्थितियो का मुकाबला करने के लिये ऐसे व्यक्तियो के सबध मे कोई रियायत करना, कोई उदारता दिखलाना, भले ही अब से पहले उन्होने देश सेवा क्यो न की हो, कोई उचित प्रतीत नही होता और इस सबध मे, मै समझता हू, दो राये नही हो सकती कि उस परिस्थिति का मुकाबला करने के लिये अब से बहुत पहले कदम उठाना चाहिये था। पहले कदम न उठाने के कारण यूनाइटेड नेशस आर्गेनाइजेशन मे व अन्तर्राष्ट्रीय सस्थाओ मे हमारी बडी क्षति हुई। यहा दिल्ली से जो कागजात छपते थे, और दिल्ली से ही नही बल्कि उस स्थान से जिसकी कि मालिक सरकार स्वय है, वहा बाकायदा उसके दफ्तर से निरन्तर रात और दिन--रात दिन ही क्यो, कभी कभी तो घटे घटे बाद--इस तरह के प्रचार किये जाते थे और जो पत्र पत्रिकायें

वहां से निकाली जाती थी उनको यूनाइटड नेशंस तक भेजा जाता था, पाकिस्तान तक भेजा जाता था और उन सबों को उद्धृत करके पाकिस्तान के लोग हमारे विरुद्ध यूनाइटेड नेशंस में बताते थे कि देखिये, भारत के एक प्रतिष्ठित नागरिक—प्रतिष्ठित इस मानी में कि इस मुल्क में अब से बहुत वर्ष पूर्व एक प्रतिष्ठित पद पर वे व्यक्ति सुशोभित थे—राज्य के केन्द्र से दिल्ली से ये सब बातें प्रसारित कर रहे हैं. . . . . .

Mr. DEPUTY CHAIRMAN: You need not go to personalities; it is not necessary.

श्री जस्पत राय कपूर : उपाध्यक्ष महोदय, आप क्षमा करेंगे यदि मैं कहूं कि ऐसी भीषण परिस्थिति की ओर ऐसे नाजुक मामलों को जब हम यह कह कर छोड़ने की कोशिश करते हैं कि इससे हमारा कोई विशेष संबंध नहीं तभी तो कठिनाई सामने आती है। जिस व्यक्ति की, जिस विशेष परिस्थिति की, मैं चर्चा कर रहा हूं, उसको हमने कड़ी नजर से नहीं देखा और उससे हमारी क्या हानि हो रही थी उस की ओर हमने इतने दिनों से ध्यान नहीं दिया। उसी विशेष परिस्थिति के व्यक्तियों के साथ इस आर्डिनेंस का संबंध है, वरना उपाध्यक्ष महोदय, मंत्री महोदय बताने की कृपा करेंगे कि कौन सा सितारा उस दिन टूट गया था या एकदम से आसमान गिर रहा था कि यह आवश्यकता प्रतीत हुई कि यह आर्डिनेंस जारी किया जाये। मैं तो समझता हूं कि इसमें कोई समझदारी दिखलाने की जरूरत नहीं यदि मैं कहूं कि इसको बनाने का एकमात्र कारण यह था कि जब जम्मू और काश्मीर राज्य में एक मुकदमा चल रहा था तब उस मुकदमें के संबंध में दिल्ली में एक स्थान में कुछ कागजात ऐसे थे कि जिनको लेने के लिये उस स्थान की तलाशी करना अत्यन्त आवश्यक था। अब हम जानते हैं कि वह कौन सा स्थान है, यह भी हम जानते हैं कि वह स्थान किसके कब्जे में था। मैंने उसका नाम नहीं लिया और न लूंगा, लेकिन बिना नाम लिये मैं कहूंगा कि सब की नजर उस व्यक्ति के ऊपर थी, और होती क्यों न, सारा देश चकरा रहा था कि यह हो क्या रहा है कि हमारे यहां प्रिवेंटिव डिटेंशन एक्ट है जिसके मातहत भिन्न भिन्न लोगों की तलाशी करते हैं, उनको डिटेन करते हैं, लेकिन आखिर यह कारण क्या है, यह कौन सा पवित्र स्थान दिल्ली के अन्दर समझा जाता है जिसमें न तलाशी होती है और यह कौन विशिष्ट पवित्र व्यक्ति है जिसकी तरफ आंख उठा कर देखना या हाथ उठाना एक पाप समझा जा रहा है। उपाध्यक्ष महोदय, इस सारे विधेयक का, उस सारे आर्डिनेंस का आधार स्थान वह व्यक्ति है जिसकी मैं चर्चा कर रहा हूं।

श्री उपसभापति : लेकिन कपूर जी यह सिर्फ एक व्यक्ति के लिये नहीं है, यह सारे व्यक्तियों के लिये है।

श्री जस्पत राय कपूर : जी हां, एक व्यक्ति के लिये नहीं है. . .

श्री उप सभापति : और यह परिस्थितियों के लिये है।

श्री जस्पत राय कपूर : जी हां, जिस परिस्थिति की ओर उस विशेष व्यक्ति की कार्यवाहियों के द्वारा हम लोगों का ध्यान खींचा गया। खैर, तो मैं उसकी चर्चा और अधिक न करूंगा क्योंकि यह सारा विधेयक और आर्डिनेंस जो है, पहाड़ के ऊपर से चिल्ला चिल्ला कर उसकी स्वयं ही चर्चा कर रहा है।

उपाध्यक्ष महोदय, यह देख कर हर्ष होता है कि धारा ९३ (अ) जल्दी फौजदारी से निकाली जा रही है। उसमें दो शब्द ऐसे थे जो बड़े खटकते थे। उसमें चर्चा की हुई है इंटर्नल कोर्ट और एक्सटर्नल कोर्ट की, अर्थात् एक भीतरी अदालत और एक बाहरी अदालत, और बाहरी अदालत के अन्तर्गत जम्मू और काश्मीर की अदालत भी एक तरीके से आती थी। यह चर्चा अलग ही एक

[श्री जस्पत राय कपूर]

क्लाज़ द्वारा धारा ९३ (अ) में की गई थी और यह संतोष की बात है कि इंटर्नल कोर्ट और एक्सटर्नल कोर्ट, ये शब्द नई धाराओं में नहीं आ रहे हैं, इनको बिल्कुल निकाल दिया जा रहा है।

उपाध्यक्ष महोदय, जैसा कि मैंने आरम्भ में कहा था, इस विधेयक द्वारा हम देश की एकता को और सुदृढ़ करते हैं। उस कथन से मेरा अभिप्राय यह था कि इसके द्वारा हम जम्मू और काश्मीर राज्य को और भारत के सब राज्यों को एक स्तर पर ला रहे हैं। मैं आशा और विश्वास करता हूं, और हमारे सदन के सभी सदस्य इस प्रकार की आशा ही नही रखते हैं बल्कि आंतरिक हार्दिक इच्छा भी प्रकट करते हैं और सदा करते रहे हैं, कि ऐसे अवसर अधिक से अधिक हमारे सामने आते रहें जिससे कि हमारे सभी कायदे कानून उसी प्रकार से जम्मू और काश्मीर राज्य के ऊपर भी लागू हों जैसे कि देश के अन्य राज्यों के ऊपर लागू होते हैं और अन्त में एक वह सौभाग्य का दिवस आये जब कि सभी बातों मे जम्मू और काश्मीर राज्य और देश के अन्य राज्य हर प्रकार से एक ही स्तर पर आ जायें।

उपाध्यक्ष महोदय, उस आर्डिनेंस और इस विधेयक की आवश्यकता पूर्ति होने से हमें कितना लाभ तुरन्त ही प्रतीत हुआ है वह तो इसी से प्रत्यक्ष है कि आर्डिनेंस लागू होने के बाद जो कुछ तलाशियां हुई उनसे प्रत्यक्ष ही मालूम पड़ता है कि ऐसे कागजात अवश्य मिले होंगे जिनके कारण सरकार को यह आवश्यकता प्रतीत हुई कि किसी जगह के कुछ लोगों को गिरफ्तार किया जाय और उन्हे नजरबन्द किया जाय। यदि पहले ही यह विधेयक बन जाता और तलाशियां हो जातीं तो सम्भवतः, बल्कि मैं समझता हूं निश्चय ही, अब से बहुत पूर्व उन्हें इस किस्म की तलाशी में मसाला मिल जाता जो कि अब मिला मालूम होता है जिससे कि वह सारी कार्यवाही आप बहुत पहले कर लेते जिसको करना अब जरूरी मालूम हुआ, लेकिन खैर देर हुई कोई बात नही। अभी ठीक कदम सरकार ने उठाया और यह कदम उठाकर उन्होने यह दिखला दिया कि कड़ा कदम उठाने को भी वे हमेशा तैयार रहते है। लेकिन उस कदम को उठाने मे ज्यादा से ज्यादा उन्हें हिचक होती है। उदारता की नीति सदा ही सरकार की रही है और यह ठीक है कि प्रिवेंटिव डिटेंशन ऐक्ट का कम से कम प्रयोग किया जाय और देर से देर किया जाय। लेकिन जब वे विवश हो जाते है तभी उसका प्रयोग करने की अत्यन्त आवश्यकता हो जाती है और ऐसा करने मे वे हिचकिचाते भी नहीं हैं। इन दोनो दृष्टिकोणों से मैं सरकार को हार्दिक बधाई देता हू और आशा और विश्वास करता हूं कि जम्मू और काश्मीर सरकार और भारत की केन्द्रीय सरकार समय समय पर इस चीज़ को विशेष रूप से सामने रखेंगे कि कौन कौन ऐसे कदम आवश्यक है लाये जाने जिससे कि एक समान स्तर पर काश्मीर और अन्य राज्य आ जाये और काश्मीर और जम्मू राज्य तथा केन्द्रीय सरकार के संबंध दिन प्रति दिन और भी घनिष्ट हो जायं।

SHRI P. S. RAJAGOPAL NAIDU (Madras): Mr. Deputy Chairman, from the opposite side Dr. Subba Rao started saying that there was a lacuna in the Code of Criminal Procedure Code which is now sought to be rectified by the issue of an Ordinance by the President, and thereafter Parliament is rubber-stamping the whole thing. I may tell my hon. friend that there is absolutely no lacuna in the Criminal Procedure Code. The necessity for this Ordinance was felt probably on the day of the issue of the proclamation by the President and even that necessity arose, if I am correct, Sir, only by way of reciprocity and on the request of the Jammu and Kashmir Government. There was first an Ordinance issued by the Jammu and Kashmir Government and it is only with a

view to reciprocate the functions of the Ordinance issued by the Jammu and Kashmir Government that a similar Ordinance was issued by the Indian Government.

Sir, as a student of law I know that when I studied in the law college which was prior to 1940, there was no such provision at all. There was no section 93A of the Code of Criminal Procedure. There was then what was called "extradition proceedings". That is to say, if a summons was to be issued for the arrest of a person in a place which was different from the place in which the particular Act operated, then they were issuing what were called extradition proceedings, for it was only by these proceedings that such persons were apprehended, as you know very well, Sir. Then, probably in 1940 or 1941 came this new section 93-A. This section came into being only in 1941.

They have then made only two provisions, and that is by way of reciprocity, provisions to issue summons to accused person and to issue warrant for the arrest of an accused person. Probably some person who was carrying on subversive activities against the Jammu and Kashmir Government and living in India had to be apprehended by the Government of Jammu and Kashmir and probably that person's residence had to be searched. There is no provision at all in the Code of Criminal Procedure for such a search being made. Hence the necessity for this Ordinance arose. My hon. friend will agree, if the Ordinance was not issued and if the house of the particular person who is in the minds of everybody in this House had been searched, then certainly any court could have just thrown out the proceedings issued by the Jammu and Kashmir Government. I am sure every hon. Member here will agree with me that this Ordinance that was issued was absolutely necessary and it was issued only just for the purpose of reciprocating a similar Ordinance issued by the Jammu and Kashmir Government. Sir it is only with that object that this Ordinance had been issued by our Government.

I am also glad, Sir, that this new Chapter VIIA is certainly an improvement over the old one. This new clause 105A that is being introduced in the Act is certainly an improvement over the old section 93A of the old Act. My hon. friend has already pointed out that words like "internal court" and "external court" have been eliminated. I still do not see why any court in Jammu and Kashmir can be considered as an external court and how any court in India should be considered an internal court. I am glad these words have now been eliminated.

MR. DEPUTY CHAIRMAN: They were only in the old section 93A. They are not here.

SHRI P. S. RAJAGOPAL NAIDU: Yes. They have not been included here and that is a right step.

MR. DEPUTY CHAIRMAN: They were considered foreign States in those days.

SHRI P. S. RAJAGOPAL NAIDU: Again, Sir, I understand the Criminal Procedure Code in Jammu and Kashmir is, more or less, the same as our Code of Criminal Procedure. I take this opportunity to urge that it is high time that at least so far as this law is concerned, there should be complete integration and the earlier this law is made applicable to the State of Jammu and Kashmir the better it will be and there will be absolutely no necessity for the issue of such Ordinances in future for all these simple things, even for such procedural matters. This, after all, is a simple ordinary procedural matter. If this Ordinance had not been passed, I am sure the required person would certainly have escaped the provisions of the law and for this simple reason, I think every hon. Member of this House has to support this measure. With these few words, I support the Bill.

SHRI B. N. DATAR: Sir, I am very glad the provisions of this Bill have been welcomed by all the hon. Members who participated in this debate. One hon. Member found fault with the issue of the Ordinance. So far as the Ordinance is concerned, it has got to be issued, provided the need for it is felt under article 123 of the Constitution. Article 123 clearly points out that if the President is satisfied during the recess of Parliament, when Parliament is not sitting, that the matter is urgent, then it is open to the President to issue an Ordinance. And the period of the Ordinance has also been mentioned, namely, six weeks from the reassembly of Parliament, unless before that time, it has been revoked, either by the President or by a vote of Parliament. Therefore, there is no question of forcing things on this House or the other House. As has been pointed out by many hon. Members, the need was felt, and so naturally that need had to be satisfied. That was the reason why the Ordinance was issued.

May I also point out that just as this Ordinance was issued here, the same day an Ordinance was issued in the State of Jammu and Kashmir. Therefore, difficulty was felt both in India and in the State of Jammu and Kashmir. So the two Ordinances were issued, one here and one there also. I may also point out to the House that only recently the Legislature of Jammu and Kashmir have also made similar amendments in their own Code of Criminal Procedure as we are now proposing to make here by this Bill.

I may also point out that so far as the question of the application of more laws is concerned, as stated by my hon. friend Shri Sapru, may I bring to his notice the fact that already certain Acts have been passed. In particular two Acts have been passed. The Taxation Law (Extension to Jammu and Kashmir) Act was passed in 1954. Thereafter an Act of a general nature was passed, namely, Act LXII of 1956 which came into force on the 25th of September 1956. It was an Act to provide for the extension of certain laws to the State of Jammu and Kashmir and the Schedule pointed out how certain Acts had been made applicable and with what particular changes wherever required, by the Jammu and Kashmir Government.

Thus you will find that so far as the lacuna is concerned, that lacuna was there. In fact, in the other House one hon. Member pointed out that there was a ruling by one of the High Courts in India according to which this lacuna was felt by the High Court. In these circumstances, it was just in the fitness of things that the law ought to be made complete. That was the reason why in respect of matters which had not been mentioned in the Code of Criminal Procedure, it was considered that the law should be made complete so that the law could serve all the legitimate purposes for which this law was necessary.

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill further to amend the Code of Criminal Procedure, 1898, as passed by the Lok Sabha, be taken into consideration."

The motion was adopted.

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

Clauses 2 to 4 were added to the Bill.

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

SHRI B. N. DATAR: Sir. I move:

"That the Bill be passed."

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill be passed."

The motion was adopted.