THE DEPUTY MINISTER FOR DEFENCE (SHRI SATISH CHANDRA): (a) The total value of the stores lost was Rs. 30.8 lakhs.

(b) The Board of Enquiry could not determine the actual and exact cause of the fire but were of the view that it might be due to any of the following reasons:—

(i) Electric Short Circuit;

(ii) Spontaneous combustion;

(iii) Lightning;

(iv) Throwing of a lighted cigarette end from the public road outside;

(v) Sabotage.

ECONOMIC AID FROM THE UNITED STATES OF AMERICA

440. DR. R. P. DUBE: Will the Minister for FINANCE be pleased to state how much of the economic aid received from the United States of America during the Plan period was passed on to the States in the shape of (i) loan; and (ii) grants?

THE MINISTER FOR FINANCE (SHRI C. D. DESHMUKH): The information is being collected from the various Ministries and will be laid on the Table of the House in due course.

RESEARCH SCHOLARSHIPS

441. MOULANA M. FARUQI: Will the Minister for NATURAL RESOURCES AND SCIENTIFIC RESEARCH be pleased to state:

(a) the basis on which scholarships are awarded to research scholars in the various Research Institutions under his Ministry; and

(b) the total amount of the scholarships awarded during each of the years from 1951-52 onwards?

THE MINISTER FOR NATURAL RESOURCES (SHRI K. D. MALAVIYA): (a) and (b). A statement giving the required information is attached. [See Appendix IX, Annexure No. 119.]

PAPERS LAID ON THE TABLE

MINISTRY OF FINANCE (REVENUE DIVISION) NOTIFICATION REGARDING CUSTOMS DUTIES DRAWBACK (PLASTIC GOODS) RULES, 1954.

THE MINISTER FOR REVENUE AND DEFENCE EXPENDITURE (SHRI A. C. GUHA): Sir, I beg to lay on the Table a copy of each of the following Notifications under sub-section (4) of section 43B of the Sea Customs Act, 1878:—

(i) Ministry of Finance (Revenue Division) Notification No. 163, dated the 18th December 1954, relating to the allowance of drawback in respect of duty-paid plastic moulding powders used in the manufacture of plastic goods.

(ii) Ministry of Finance (Revenue Division) Notification No. 164, dated the 18th December 1954, publishing the Customs Duties Drawback (Plastic Goods) Rules, 1954.

(iii) Ministry of Finance (Revenue Division) Notification No 28, dated the 26th February 1955, publishing certain amendments to the Customs Duties Drawback (Plastic Goods) Rules, 1954.

[Placed in Library, see No. S-114/55 for (i) to (iii).]

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL, 1954

MR. CHAIRMAN: Shri Govind Ballabh Pant, Leader of the House, is put down to move the motion relating to the Criminal Procedure Code (Amendment) Bill.

THE DEPUTY MINISTER FOR HOME AFFAIRS (SHRI B. N. DATAR): On his behalf I shall move it, Sir. I beg to move:

[Shri B. N. Datar.]

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

Sir, this Bill is now in the last stages of consideration and the moment it has been considered by this honourable House and its seal of sanction placed upon it, this Bill will become law. I may point out the various circumstances under which the present amending Bill was conceived, the various stages through which this Bill has passed and the form in which it has now emerged from the Lok Sabha. Now, so far as the Criminal Procedure Code was concerned, as early as 1833 the then British Government—we must say it to their credit—took up the question of having uniform laws both procedural as well as substantive for the whole of India and therefore a Commission was appointed which carried on its work for more than 20 to 25 years and in 1860 we had the first fruit of their labours in the form of the Indian Penal Code. Thereafter next year in 1861 we had for the first time a Criminal Procedure Code. That was the first Code so far as the British Administration was concerned and it must be said to their credit that they considered various points. They also took into account the special conditions obtaining in India which naturally depended to a very large extent on the practice being followed in this respect so far as British Criminal Jurisprudence was concerned. It is interesting to note that certain fundamental principles which were laid down for the first time in 1861 are still good enough in 1955 and they are also being maintained even in the present amending Bill. After 1861 the Code underwent revisions in 1872, 1882 and some major amendments were effected by the then British Government in 1898 and the Code which is now to be amended is that Code of 1898. Thereafter in 1923 again certain important amendments were made by the then Imperial Legislative Assembly and now we have undertaken to amend that Criminal Procedure Code.

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A question arises as to why the Government thought it necessary to have certain amendments. The object was to bring it in line with the present conditions. And secondly, we had the experience extending over a number of years and as a result of this experience Government had before them the views of various responsible bodies that it requires certain amendments in certain important particulars. Especially you will find that there was a general objection or a criticism was made that the system of administration of criminal justice in India was dilatory or expensive and was also cumbersome, including also that in certain cases it was highly technical. Therefore, it was felt that some attempt should be made to take up the question of the amendment of the Criminal Procedure Code so as to make its administration as speedy as possible, and that we should avoid the rigidity and the complexity of the procedure. There have been certain provisions where there has been a duplication of procedure and as a result of this it was found that justice could not be had in time. You are aware that justice delayed is justice denied. So, these were the various circumstances that impelled Government to take up this question.

We had also the views of certain State Governments in this respect. As early as 1950, certain Governments, especially the Governments of Madras and the Punjab, took up the question with the Government of India; and they stated that in particular the practice of trial by jury or with the aid of assessors had become completely outmoded and that on these and other grounds the Government of India being the central body—though this is a Concurrent subject—should undertake an examination of these questions so as to bring out a new amending Bill for

the purpose of making the law as effective and as up to date as possible

Then, Sir there were also certain steps taken by some of the State Governments, especially the Government of Uttar Pradesh and the Government of Bihar They took up this question themselves, because as I pointed out to you, the Criminal Procedure or the Criminal Law is a Concurrent subject and, therefore, it is open to these Governments to take up this question also so far as their own State limits are concerned And these two State Governments appointed committees for considering the question as to the extent to which the criminal law procedure, in particular, should be duly amended Then, it was found that even these two State Governments had suggested to the Government of India that this question should be taken up because the underlying purpose of the Criminal Procedure Code is to have a uniform practice in respect of criminal courts Though there were certain particular problems in certain States and though some of the States had their own views, still it was considered advisable that the Central Government should undertake an examination of the whole question so as to make the law as effective, and as I stated, as up-to date as possible

Therefore, the Government of India, early in 1953 took up this question They had a long note, they pointed out the various circumstances which called for a change in the provisions of the Criminal Procedure Code They sent out the note to various Governments and the Governments ascertained the views of the High Courts and other judges and also the Bar Associations in their respective States All this volume of public opinion was before us And you will find—those of you who are aware—that this scheme, or this measure that the Government of India then took was generally acclaimed not only by the press but also by the Bar Associations and the State Governments Then, as a result of the information the Government had at their disposal they prepared a Criminal Procedure Code (Amendment) Bill and they had it published in the Government of India Gazette in December 1953—with the permission of the Speaker such a Bill was published Therefore after the publication of this Bill, this was the first attempt at revising the Criminal Procedure Code so far as the present attempts were concerned And, thereafter during the next three months the Government received public opinion from numerous quarters, and then last year, in the Budget session of 1954 the Government introduced the Bill which was different in certain particulars from the one that they had published in the Central Government Gazette in December 1953 Thereafter, the Bill was considered and then the Lok Sabha referred it to a Joint Select Committee The matter came up in an indirect way before this honourable House also and then there was a general discussion and this House was pleased to appoint fifteen or so Members to the Joint Select Committee The Joint Select Committee met for over a month, they were meeting from day to day they considered the subject in its numerous aspects, and the Government of India accepted a number of suggestions so that except in respect of certain points on which it was difficult to completely resolve differences there was a fair measure of agreement and the Joint Select Committee's Report was submitted to the two Houses after as I stated an intensive consideration of the whole subject

Then it will be found that when the matter was again taken up for consideration in the other House—in the Lok Sabha—certain further proposals were made certain further suggestions were made in the House and even those the Government has accepted And now we have before us

[Shri B. N. Datar.]

a Bill in the form that it has taken after considering the various suggestions made by the public and after the suggestions made by the other House have been duly accepted.

Thus you will find, Sir, that the Bill as it is at present shows a considerable amount of accommodation to public opinion, accommodation to the Members of the two Houses. It is quite likely that a complaint might be made from certain quarters who desire that this Bill ought to have taken a more radical form. In fact, some of the members of the State Governments, some of the Home Ministers who had assembled here, were not satisfied with the way in which certain provisions had been watered down. But we pointed out to them—and they agreed—that after all we are going to have, and we ought to have a law which has the largest measure of agreement behind it. And, therefore, we have at present a Bill which has got certain peculiar features and which is meant to serve the highest ends of criminal justice so far as this question is concerned. And thus this Bill has now come before this House.

Now, I would point out to this House certain important features of the Bill and as to the way how the various provisions have undergone certain changes. I would begin with the various sections which we have touched in the course of these three or four attempts at revision of the Criminal Procedure Code. I would refer to the clauses in the original Bill, because the clauses are sometimes different. I would be making a reference to the sections in the original Code itself because thereby it would be easier for this House to understand the original section and then also to understand the changes that have finally emerged after its consideration by the Joint Select Committee and also by the Lok Sabha. The first change that has been effected—and it has been to a certain extent a novel change but in my humble opinion a welcome change—is this. There is a change under section 9 of the Code of Criminal Procedure. Now, so far as section 9 is concerned, it deals with Sessions trials, with the venue of Sessions trials, as to where a Sessions trial is to take place. Now, according to the practice that has been followed all along, the Sessions trial was to be held only at the principal seat of the Court of Session in a district, and therefore, it was not open to a Sessions Court to hold a trial at, or near, the place of offence. Certain considerations were placed before the Government that especially in the interest of the truth of the evidence, perhaps it is better if the Sessions trial in a particular case might be held at, or near, the place where the offence has taken place, provided such a transfer of the venue does not, in any way, cause any inconvenience to the accused. That was the principal consideration that naturally the Government and also the courts had to take into account. So, what the Government suggested in their original amendment was that the venue of the trial should be changed only after hearing the prosecution and the accused, and the test that was to be before the Government was as to whether there was the general convenience. So, this was how the Government had a provision made. But ultimately, Sir, the matter went up before the Joint Select Committee, and the Joint Select Committee stated that the change in venue should take place only with the consent of the prosecution and the accused. In other words, the judges' hands were tied to a certain extent. But still, the Government have accepted that position. After all, if the prosecution and the accused find that a particular place or the venue is a more suitable one, then naturally the trial has to take place only at that place, and not elsewhere. But if, for example, both the accused and the prosecution agree, and

they have to agree, that it would, in the interest of justice, be more convenient to the parties concerned to have the trial just at, or near, the place where the offence has taken place, then naturally such a change was to be contemplated. Then, Sir, you will also notice that this is only an enabling section. It does not mean that in all cases the venue has to be changed. Therefore, you will find that here the Government have accepted the position that the consent of the prosecution and the accused is a condition precedent for the change of the venue of the trial.

Then, Sir, I pass on to section 14. Section 14 deals, amongst other things, with what are popularly known as Honorary Magistrates. And so far as the institution of Honorary Magistrates is concerned, there are different opinions held in the different parts of the country. Some people hold that the system of Honorary Magistrates is not good at all. On the other hand, the Government are of the view—and that is the view which is accepted by a number of Bar Associations and others—that the one way of associating the public with the administration of justice is to hold the trials near the place of offence, and the second that non-officials, provided they are competent and experienced, should also be entrusted with the task of working as Honorary Magistrates.

There are, Sir, a number of retired Magistrates or retired officers even other than judicial, and if, for example, it were open to Government to utilise the services of such persons, then two objects would be served. Firstly, a greater number of cases would be disposed of, and secondly, the public also would feel that it is open to non-officials also to take part in the administration of justice. Now in this case, there was one abuse. While the British Government was here, oftentimes, certain persons were appointed as Honorary Magistrates for considerations other than those of competency or experience. And therefore, that system received a great measure of blame. But now, you will find that certain safeguards have been laid down. And the one safeguard that the Government have laid down—and which was ultimately enlarged by the Joint Select Committee—is this. The Government, in their first Bill, stated that the persons who were to be appointed as Honorary Magistrates ought to have experience of judicial work, or ought to possess qualifications to be specified by the State Governments. That was how the Government themselves stated it, because the Government were anxious and they realised that it was not sufficient if justice was merely speedy, but it ought also to be real justice. Otherwise, there was likely to be miscarriage of justice. And therefore, when the matter came up before the Joint Select Committee, they stated that the qualifications to be specified by a State Government should be in consultation with the High Courts, because after all, the High Courts, as the highest judicial bodies in the States, were entitled to have their say, so far as the qualifications to be prescribed for Honorary Magistrates were concerned. And the Government have accepted this position. And then, Sir, it has been stated that only those persons would be appointed who had judicial experience, or who had the qualifications to be specified by the State Governments in consultation with the High Courts. Thus you will find that on this point also the Government have accepted the position that the High Courts must have a say in this matter, and therefore, the changes have been made accordingly.

Then, Sir, we have got another section, which is popularly known as section 30, and the Magistrates appointed are popularly called Section 30 Magistrates Now, so far as more serious cases are concerned, the position is this. I am not dealing with the ordinary cases which are disposed of by Magistrates of the first, second

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or third class. But there are more serious offences where the practice is that they should be triable by a Court of Sessions, and a Court of Sessions might mean either the Court of Sessions Judge, or the Additional Sessions Judge, or even the Assistant Sessions Judge. Now in some cases, in what were known as the Regulation Provinces formerly, like the Punjab and others, there was a practice of appointing District Magistrates and specially empowered Magistrates to try such serious cases and also such offences which were punishable otherwise than with death. Only those offences were accepted, and all the other offences could be tried either by Sessions Court or by a senior and experienced Magistrate like a District Magistrate. Now that was the practice obtaining in the Punjab and in a number of other States also. It was also obtaining in Madhya Pradesh. And generally the practice had been found to be fairly satisfactory. And therefore the Government realised that after all a case could be tried in full confidence of the public by, say, an Assistant Judge, or an Additional Sessions Judge, and a Magistrate could become an Assistant Judge or an Additional Sessions Judge after a certain number of years' experience. And if, for example, such a Magistrate, instead of his becoming an Additional Sessions Judge or an Assistant Sessions Judge, has got ten years' experience, then, Sir, I would put a Magistrate with ten years' standing on the same footing as the Assistant Sessions Judge or an Additional Sessions Judge. Now you will find that we are removing all distinctions and differences, so far as the States are concerned, as gradually as possible. And therefore we have laid down that it should be open to a senior Magistrate of the first class, with ten years' experience, to try all cases except those which are punishable with rigorous imprisonment up to only seven years. So we have made two departures from the original rule. One is that such Section 30 Magistrates can be appointed in the whole of India, and secondly, they can try Sessions cases as well.

Secondly, the qualification that has been laid down is that they must have 10 years' experience as First Class Magistrates and then all that they can do would be to try cases where the punishment to be given is seven years' rigorous imprisonment or less. In other words, if there are offences for which the punishment is imprisonment for more than seven years or death, then such cases have to go to a Sessions Judge or to an Additional Sessions Judge. Even in the present law it cannot go to Assistant Sessions Judges. Therefore we have made a provision by which either the case can be tried by a Sessions Judge or an Assistant Sessions Judge or by a First Class Magistrate with ten years' experience, and this was accepted by the Joint Select Committee with one addition. They said that all the Magistrates with ten years' experience should not automatically try sessions cases. They said that only those Magistrates should be allowed to try such cases in whose case there was consultation with the High Court. The authorisation by the State Government has to be in consultation with the High Court, and therefore you will find that here also the Government have accepted the position that the views of the High Court have got to be obtained. Only in consultation with the High Court a Magistrate can be appointed to try cases which are ordinarily triable by a Sessions Court up to the limit of offences punishable with seven years' rigorous imprisonment.

Now, I come to the question of fines. The extent of the fine has been increased in view of the present financial position. Ordinarily the highest amount of fine was Rs. 1,000 for First Class Magistrates, Rs. 200 for Second Class Magistrates and

only Rs. 50 for Third Class Magistrates. This power has been increased. It is now open to a First Class Magistrate to inflict a fine up to Rs. 2,000, up to Rs. 500 for Second Class Magistrates and up to Rs. 100 for Third Class Magistrates. Thus we have introduced one more clause to which some objection was raised in the other House, *viz.*, in respect of security proceedings for keeping the peace under section 107 of the Code of Criminal Procedure. Sub-section (2) of section 107 said that this power could be exercised when either the particular person concerned was within the jurisdiction of that Court or when the breach of the peace was going to take place within the jurisdiction of that Court. Even in that case, it was only the District Magistrate or, in the case of the Presidency Towns, the Chief Presidency Magistrate who could take action. This was the procedure under section 107 of the Code of Criminal Procedure. Now, under the 1882 Code of Criminal Procedure this power was extended to others also, but for reasons into which we need not go now, under the 1898 Code this power was again confined only to the District Magistrate and the Chief Presidency Magistrate. In other words, so far as First Class Magistrates were concerned, they were not authorised to ask for security or to carry on proceedings. Now, it was considered that such powers should be extended also to First Class Magistrates, and therefore what the Government suggested and what has been accepted by the Joint Committee and the other House is that such powers under sub-section (2) of section 107 can be exercised by Sub-Divisional Magistrates or Magistrates of the First Class. This is only the restoration of the 1882 procedure and nothing beyond that. You will find that the area of a District is sometimes very large, and if all such proceedings are confined solely to the District Magistrate, then his work is likely to increase, and, besides, inconvenience would be caused also to the parties concerned, because the men against whom such proceedings take place may belong to an outlying village far away—even 100 miles—from the headquarters of the District Magistrate. So with a view to making it possible for First Class Magistrates and also Sub-Divisional Magistrates who are mostly First Class Magistrates, to take such action, Government have said that the 1882 procedure should be restored. This is so far as security proceedings are concerned.

Then I come to what are known popularly as disputes relating to immovable property. Now if there are any disputes relating to immovable property and they are only of a civil nature, they go naturally to the Civil Court, but out of disputes relating to immovable property, breach of the peace may be threatened. In such cases the Code of Criminal Procedure has purposely introduced what are known as preventive proceedings and these sections are under the Preventive Chapters of the Code of Criminal Procedure, because it is the duty of the Government to see that not only offences, when committed, are punished, but also to see that offences are prevented also. Disputes about land are a fruitful source not only of civil litigation but also of breaches of the peace as most of us are aware, and therefore it is open to Magistrates of the First Class and also other categories of Magistrates, either on information placed before them by the police or on the information given by the parties, to consider first as to whether there is any dispute at all, and secondly, if there is a dispute, whether it relates to immovable property. Mostly, the dispute in such cases will be as to who is in possession, when one party claims that he is in possession and other party claims that he is in possession. Ordinarily such disputes may relate to the question of right or title and they will naturally be decided by the Civil Court, but where such a dispute exists and is not disputed but the

[Shri B. N. Datar.]

dispute is as to who is in possession, then the Criminal Court under its preventive jurisdiction becomes seized of the matter and therefore it is open to the Magistrates under sections 145-147 to take action. Now, it was a very laborious process.

[MR DEPUTY CHAIRMAN in the Chair.]

What the Magistrate has to do is to issue notices to both the parties and to ask for their statements of claims or objections. First he has to come to the conclusion whether there is a dispute about immovable property or the possession of that property, and secondly whether it is going to lead to a breach of the peace. If he is satisfied on the latter question, then he has to find out who is in possession. If he comes to the conclusion that there is no dispute, then the whole thing falls through, but if he comes to the conclusion that he is seized of the matter because there is a dispute about the possession of certain immovable property, then he has to find out who is in possession, and after taking such evidence as he can, he has to come to the conclusion as to who is in possession, and if it is under wrongful possession, to restore the possession to the man who has been dispossessed of it within two months prior to the date of the application, and then he has to pass an order that he would not allow the other party to disturb this possession unless he brought an order to the contrary from a Civil Court.

So that was the present proceeding and it was complained, and right too, that these proceedings are to be ordinarily of a summary nature but in fact for various reasons, into which I need not go, including the desire of the parties to have as dilatory a measure as possible, they do not end as early as possible and there were cases, as most of you are aware, where such a proceeding went on for years together. I have found out a case where such a proceeding went on for as many as three years. This was considered as highly unsatisfactory and ultimately what happens is, after a criminal court's judgment, in this particular case, under section 147, the whole matter has again to be adjudged in a civil court. You will find that when the matter has been started before a magistrate, then it goes on for years and in some cases the civil and criminal courts together might take atleast a decade, if not more. Therefore what Government considered was, the first reaction of the Government was, that in all such cases the Magistrate should not go into the question of possession at all. If he finds that there would be a breach of the peace, then all that he should do would be to bind both the parties and refer them to the civil court who will decide not only the question of final title but also the question of possession. That was how Government first thought but considerable objections were received and there was also legitimate opposition to this particular measure because it is quite likely that if I am in possession of property and if some person wants to dispossess me, then all that he has to do is to allege that there would be a breach of the peace and then immediately it so happens that he starts a proceeding and what is done is, the Magistrate under the proposed provision would not go into the question of possession but would bind both the parties and that is a more important thing which I ought to have mentioned earlier. We had authorised the Magistrate to attach the property and in a criminal court, the attachment of the property means the dispossession of the man. He does not continue to be in possession of the property. So the property would be attached and would be in the judicial possession of the court through a receiver or otherwise. That means in some cases, it was pointed out to us with great force, that even a person who had been actually in possession of the property

would be dispossessed as the result of the contentions of some other persons who would say that there is a possibility of a breach of the peace In other words it is also likely that certain persons may try to take advantage of their own wrongs by purposely disturbing the person in possession of the property So the objection that was taken was found to be fairly legitimate and therefore Government considered that the provisions as they had originally stood might rather not be of use but perhaps cause inconvenience if not hardship to the other parties Therefore when the matter came up before the Joint Select Committee the whole question was considered in all its merits What has finally emerged from the Joint Select Committee is that in ordinary cases where the Magistrate is in a position to give a finding in the course of a summary enquiry as to whether there is a breach of the peace—that he has to find out in any case—then if it is open to him on the strength of such evidence as he has by way of affidavits or documents or record of rights etc if he can come to a conclusion very speedily and expeditiously then he has to come to a conclusion He has to find particularly as to whether the particular person on or was not in possession and then he has to take action accordingly But there might be cases where the Magistrate may find it difficult to find out who actually was in possession Sometimes the question of possession is a ticklish one and very complicated pieces of evidence specially oral evidence are led before the Court When the Magistrate finds that the question is not so easy of solution or adjudication by him then what he has to do is merely to ask the nearest Civil Court to give a finding He has to call for a finding on the question of possession No new proceedings are to be started but it is something like what is known in civil law as remand' The case is remanded I am putting it in a non-legal expression Certain issues are remanded or sent to the nearest Civil Court to give a finding within 3 months and then immediately they would go into it because it is more in consonance with the question of work that a Civil Judge does than what a Magistrate does Then what the Civil Judge has to do is to call the parties hear the evidence and give a finding which will go to the Magistrate In such cases the practice that has been evolved now by the Joint Select Committee is that no special suit has to be filed at all No court fee, etc is to be paid but here there is a reference at the Magistrate's level at the Court level—from one Criminal Court it goes to another Civil Court The findings are received and then the Magistrate has to pass final orders in consonance with the finding of the Civil Court Therefore you will find that in all such cases it would be easier to get the more or less authoritative findings from a Civil Court whose ordinary function is to find out all these things and then the magistrate will pass orders accordingly

SHRI R U AGNIBHOJ (Madhya Pradesh) Could it be expeditious in the Civil Court?

SHRI B N DATAR It would be because we have laid down 3 months Within three months they have to record their findings and send them back otherwise you will find that if a civil suit has to be filed it would take at least 6 or 7 months for the service of summons upon the defendants and much more for other work Therefore the speedier remedy was suggested by certain hon Members of the Joint Select Committee and the Government have accepted that Now the question of title is entirely left out because that was not to be gone into either in section 145 or 147 as they are and some facility remains If for example, a man is not satisfied he can raise the question

[Shri B N Datar]

of title but not the question of possession

SHRI M. GOVINDA REDDY (Mysore) The Civil Court will call for evidence ..

SHRI B N DATAR: Yes, and will go through the whole matter but the point is that it would be a speedier trial because a limit has been placed.

SHRI H C. MATHUR (Rajasthan) How do you ensure that within 3 months the enquiry will be completed? You have prescribed a limit but there are 101 reasons like a particular witness is not forthcoming or under medical advice he is not permitted, etc.

SHRI B N DATAR: We have to depend ultimately upon the good sense of the parties. Our object is that it must be as speedy as possible If it takes 2 or 3 days more than 3 months, that cannot be objected to but the Magistrate or Civil Judge will have to give an explanation as to why he went beyond the period of 3 months and therefore a period has statutorily to be laid down In all such cases the enquiry has to be speedy After all it is only a question of possession which can be considered on the strength of such documents and evidence as the parties have produced or will produce and also on the oral evidence

SHRI R U AGNIBHOJ Would it not be an impossibility for a Civil Court to make an enquiry speedily because the Court shall have to go according to the procedure of the Civil Procedure Code as regards summons, calling of witnesses and evidence and proving the facts and it might take longer for proving them

SHRI B. N DATAR: Ordinarily three months is more than sufficient because you will find that in such cases it is not necessary to file an application, or to call for the views or written statements of the other parties and there is no question of service of summons. What the Magistrate will do is to fix a date and send it and on that date the applicant as also the opponents to the application will have to appear in the Court If they don't then it will be entirely at their risk

SHRI H C MATHUR: What is your experience?

SHRI B N DATAR: That is exactly what I said My experience is this that in such cases, if for example we lay down as strongly as possible a time-limit, then all such findings are given I would point out to my hon friend numerous cases where in the course of appeals either a District Judge or a High Court Judge would call for findings and they lay down the period of three months—findings to be reported within 90 days—that is how they do.

And in such cases, you will find that evidence has got to be reported and if a man does not co operate with the Court, then he does it entirely at his risk We have made the provision as practical as possible. Therefore, apart from other considerations this would be a very effective method of checking delays so far as such proceedings are concerned because thereby there would be an attempt to do everything as soon as or as early as possible.

Then I would pass on to.....

SHRI H C MATHUR: Is the hon. Deputy Minister not aware that even in Delhi, in summary trials, where you expect the thing to be over within fifteen days or one month atleast there are a hundred cases which are pending for more than two years?

SHRI B N DATAR: Summary trials are summary trials under the Criminal Procedure Code and I am not aware whether they are going on for years like this.

SHRI H C MATHUR: If the hon. Deputy Minister will kindly ring up the Resident Magistrate nearby during the recess he will find that on his files alone there are a dozen such cases

SHRI B N DATAR: And with your co-operation, we will try to expedite the proceedings as much as we can and that is all we can do. After all, we have to remedy these things.

Then, Sir, there are more controversial matters. As we proceed, more controversial matters are coming up One such is that regarding the statement before the police So far as statements taken before the police officers in the course of the investigation are concerned, what Government suggested was this Government had suggested that in all such cases, instead of merely being satisfied with a statement before the investigating officer, larger recourse should be had to having these statements made before the Magistrate under section 164 But it was said that such a course would be highly troublesome to the witnesses. They will have first to appear before the investigating officer, then the witness will have to appear before the Magistrate under section 164, and then again he will have to appear in the Court also So it was suggested that all statements need not be taken before Magistrates but only some statements need be taken before the Magistrate

Then there was a small question with regard to section 162. Section 162 is a very peculiar or unusual section It starts naturally with the presumption which is fairly understandable, that whatever the police do, is not free from suspicion Whatever statements the police officers take are likely to be more involuntary than voluntary and therefore

SHRI S MAHANTY (Orissa): Please remember that this wholesome principle was enunciated by the British

SHRI B N DATAR: Let me explain the position My hon friend need not be in any hurry Well this was laid down even in the 1861 Criminal Procedure Code and it has remained all along, that all the statements taken under section 161 would not be used as evidence at all for any purpose; but an exception was made that they could be utilised by the accused for the purpose of contradiction whenever that particular witness is produced before the Court. In other words, according to the Indian Evidence Act, whenever there is a former statement by a witness, you will kindly understand, that in the Evidence Act, when that witness appears, that former statement can be utilised for all purposes I am not speaking about the Criminal Procedure Code or of section 161 I am pointing out the general provision in the law of the Evidence Act When a witness is in the witness box, then his former statement can be put to him either for the purpose of corroboration under certain circumstances and also for the purpose of contradiction by the other party, that is the cross-examining party Sometimes, the very party which calls a witness finds that the particular witness whom it has called, has been tampered with or that that witness is giving a kind of version which is entirely unusual, or which is entirely inconvenient to the calling party Then in such cases, the Evidence Act has provided that if the party that calls the witness desires to contradict the witness's own previous statement or as it is popularly called desires to prove that

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that witness has turned a hostile witness, it is open to that party then, with the permission of the Court, to cross-examine the witness. These were the general provisions so far as the Code of Criminal Procedure or the Code of Civil Procedure was concerned. What was set down was that so far as corroboration was concerned, the statement made before a police officer by a witness in the course of the investigation was not to be used for the purpose of corroboration. This position has remained as it is and will remain also as it is and Government did not also generally desire to make any departure from the present rule.

SHRI H. N. KUNZRU (Uttar Pradesh): Government did desire a departure; it was the Select Committee who did not agree to it.

SHRI B. N. DATAR: Government also desired, and for every valid grounds. But they have in effect, accepted the position. What is the use of merely pointing out to me what was the Government's original proposal? Anyway this does show that there is no want of *bona fides* on the part of the Government. They want to improve the whole police to such an extent that whatever the police officer states is true, as you find in some foreign countries where happily the whole range of police administration had risen to that extent.

SHRI H. C. MATHUR: And here it is going down so much.

SHRI B. N. DATAR: We are trying to improve it.

What has now been laid down by the Joint Select Committee is just this. It is open to the private party, that is the accused, to contradict the witness. For example the witness has stated one version in the course of his statement before the police and is now giving an entirely different version. Then in that case, it is open to the accused or the defence to cross-examine that witness with a view to contradict him. In other words, the former statement can be used by the accused for the purpose of contradiction. Even now that right has not been taken away at all. What has been done now in the Joint Select Committee is that in addition to this right, which is an absolute right, it can be used by the defence counsel if he wishes to contradict the witness without any order from the Court or any permission from the Court. But it has been laid down that it should be open to a prosecution to ask for permission of the Court and then to contradict the witness in the course of the cross-examination. In other words, two requirements have been laid down. The first is that the prosecution has to satisfy the Court or the Magistrate that the witness is now giving a version which is a departure from the one that he has formerly given so far as the prosecution evidence is concerned.

SHRI J. S. BISHT (Uttar Pradesh): That is to say, the court must be satisfied.

SHRI B. N. DATAR: Yes. The Court must be satisfied that the witness has turned a hostile witness.

In between the right of the prosecution to contradict the witness and the actual contradiction, what has been provided is that there should be the permission of the Court. Just as such a permission can be allowed in certain cases, here also the Court's judicial discretion has to be used for giving permission. Formerly it was stated that it shall not be used by the prosecution. That is how section 162 originally remained but now it has been made possible for the prosecution to approach the Court with a prayer, "here is a witness who is going away from what he has formerly stated. Therefore, kindly allow the prosecution to contradict him or to

bring to his notice what he had formerly stated" You also know, Sir, that an attempt at contradiction only means that the former evidence becomes admissible but it does not become reliable at all Oftentimes we confuse the two, admissibility is entirely different from reliability of a piece of evidence Supposing an accused had made a certain statement before incriminating a certain witness, now he makes a statement entirely exempting that witness In that case both the versions should be placed before the Court and the Court should consider both What we seek to do is to make this evidence admissible nothing more It is entirely within the jurisdiction and absolute right of the Court to consider whether after the old version has been made admissible the old version is true or the new version

SHRI GULSHER AHMED (Vindhya Pradesh) What is the change that has been made now?

SHRI B N DATAR I am just explaining the actual change that we have made It is now possible for the prosecution to make use of the old statement with the permission of the court, for the purpose of contradiction

SHRI GULSHER AHMED They can do it while cross examining or re examining

SHRI B N DATAR It cannot be done My hon friend is under a misconception The general rule in the Evidence Act has been controlled or modified by section 162 because it has been clearly stated in section 162 as it stands that the former statement can be used by the accused but not by the prosecution for any purpose So far as corroboration is concerned, that part remains and Government do not desire to make use of a former statement for purposes of corroboration but for purposes of contradiction it would be open to the prosecution to approach the Court and to seek its permission for using the old statement The Court will grant the permission if the provisions of section 157 are satisfied In other words, the accused and the prosecution are not placed on the same footing The prosecution is on a lower footing What has been done is that the complete disability so far as the prosecution is concerned has been removed, it is open to the prosecution, with the permission of the Court, to use it for purposes of contradiction. That is all that has been done

Certain other provisions have also been made which are more or less of great use to the accused You are well aware of the great case law relating to sections 161 and 162 The police statements were not available to the accused at all They could be available to the accused only under certain circumstances Even then, an application has to be filed and the accused has to say from general knowledge that he can use it for cross examination Then the Judge or the Magistrate has to look into it and then only will permission be granted or copies would be supplied What we have done is that for the purpose of giving the fullest facilities to the accused all the copies of all the documents including the statement of the accused First Information Report copies and all such documents are to be given to the accused without any cost Therefore there is no need now for the great case law that veered round sections 161 and 162 The accused will be in possession of all papers and we have further pointed out that before the case is to start there should be a preliminary enquiry, in the general sense of the word as to whether the accused has been supplied with all these copies When all these documents are with the accused it is then easy for him to make such use of such former statements as he can In the light of this provision which gives full facilities to the accused we should approach, what we have stated so far as section 162 is concerned with a certain amount of consideration It does not mean that in all

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cases what the witness has stated before the Court is correct and what he had stated before the police is wrong A statement can be false either at one edge or at the other edge It is quite likely and as some of us are aware, there are cases, Sir, where other than legitimate influence is brought to bear upon a witness He also understands that there is no penalty involved There is no signature to the statement made before the investigating officer the accused is not on oath at all and if a man is not very scrupulous about veracity or about truthfulness, it is perfectly open to him to give a version which may not be the real version You may please take it, Sir, that in certain cases at least the version that has been given first in the course of the investigation is quite correct and the statement subsequently given is the one that has been obtained under circumstances which, as I stated, are far from legitimate In other words, so far as the administration of justice is concerned we have to take into account such circumstances, in such circumstances it is the duty of law and of the court also to see that all the facts are placed before the Court, all the material is to be placed before the Court and the Court has to come to its own conclusion An attempt has been made here for the first time to place a restraining influence on the witness also At present, it is open to the witness to be entirely regardless of what he stated before it would be open to him to say that he did not make a statement at all and he would say whatever he likes at his own pleasure There is nothing that could deter him from doing it Now we have at least this moral influence if he makes a statement which is materially different from the one that he made before the investigating officer, he will fear that it will be put to him I can take into account one more circumstance I am purposely answering that question For example, there is a general complaint that a statement given before the police is not voluntary at all, that it was made under pressure In that case, Sir, it will be open to the other party to prove that that statement was involuntary, he could say that that statement was absolutely involuntary or that the statement was put into his mouth by the investigating officer In that case, there is this added advantage in that the prosecution will have to call the investigating officer and subject him to cross-examination by the other party for proving that the evidence is not reliable If all these circumstances are taken into account, there is a certain measure of advantage also to the accused As far as possible, it is the duty of law to see that justice is done Justice to be done means justice to the accused as well as to the prosecution or the complainant It does not mean that all the complaints are false it does not mean that all the statements made before the police are false It would be entirely wrong to take that view The law has to protect the interests of the accused but it has also to protect the legitimate interests of the complainant or the prosecution Therefore, this small advantage—not a very great advantage—has been extended to the prosecution by way of a restraining influence upon lying witnesses In other words, a lying witness will stand in terror that this statement would be put before him It would then be open for the accused and for the prosecution to lead such other evidence as would show that the former statement was correct or that the subsequent one was correct and reliable It is for this purpose that Government considered that this power—which depends upon he discretion of the Court—should be extended to the prosecution also in fairness to the cause of justice There is nothing more than that

Some changes have been made so far as sections 161 162 and 173 are concerned Government's proposal was that section 162 should be done away with but there was a volume of opposition to it and a part of it was taken into account by Government which has resulted in the section being maintained a it is All that Government have done is to make provision

for enabling the prosecution to take advantage of this subject to the discretion of the Court Beyond that nothing has been done

MR DEPUTY CHAIRMAN We shall take up the rest at 2 30 P M House stands adjourned till 2 30 P M

The House then adjourned for lunch at one of the clock

—

The House reassembled after lunch at half past two of the clock MR DEPUTY CHAIRMAN in the Chair

SHRI B N DATAR Mr Deputy Chairman now I shall pass on to further and more controversial matters so far as the views either of this House or of the other House were concerned, and it is my humble contention that we have accepted to a very large extent the views of the opponents of this measure in the Joint Select Committee and the point that I propose to deal with is the question of defamation of public servants and certain other classes of high dignitaries So far as the President the Vice President the Governors and the Rajpramukhs are concerned, there is no dispute at all The question arises as to whether in respect of the defamation of Ministers and public servants it should be necessary only for the defamed party to set the law in motion or whether in the higher interests of the public services it should be open to Government to intervene and to have a complaint duly filed Now there are certain special reasons why it was considered advisable that it ought to be open to Government to have a complaint filed because the questions raised were not solely of a personal or private character If for example a Government servant has been defamed in respect of his private dealings, it is entirely a matter between him and his defamer But so far as the public aspects of such questions are concerned, it was felt—and we are justified in our views by certain observations of the Press Commission's Report to which I am drawing the attention of this House presently—that so far as the defamation of public servants was concerned, it should not be treated as entirely a private matter if the defamation related to the public conduct of a public servant Now in such cases there are certain considerations which should be taken into account Take for example the common case of a public servant being defamed by the allegation that he is a corrupt officer If he is a corrupt officer, Sir then it is not merely a private defect or vice that he has but thereby the whole Administration and the name of the Administration and its dignity are entirely marred and this House and the other have always been impressing upon Government that we should see to it that our officers are above temptation and never liable to corruption In such cases if any allegations are made then two questions arise Now sometimes it happens that the particular man defamed or the officer defamed may not like himself to go to the Criminal Court

SHRI GULSHER AHMED Why?

SHRI B N DATAR Please allow me to proceed I am just giving it in the next sentence It might be in certain cases as the Press Commission have rightly thought that he may have a guilty conscience and he would have no courage to face the cross examination It may also be Sir that there may be other charitable reasons, to go to a Criminal Court, to attend it every day whenever the case is adjourned besides being a matter of great inconvenience to himself, would be also a source of great inconvenience to Government because the officer would often be taken away from his duties and will have to attend Courts So that might also be one of the reasons and therefore it was considered that if for example, the allegations are true then in that case that officer is not entitled to be kept in service, because in the interest of the purity of administration that officer has to be sacked So that is alternative No 1 It is also likely, Sir, that it might be a case of pure blackmail It might be

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that the officer may not have ' guilty of corruption or any bad] but that the person defaming him is interested in defaming him for his own personal and perhaps ignoble reasons In such cases Sir it is our duty to see that the allegations are false and if the allegations are false then it would mean that the Administration to that extent is pure Therefore you will find that, taking any alternative, either alternative No 1 or alternative No 2, this defamation of public servant in respect of his public acts as an official has a bearing upon the purity of Administration and therefore Government considered that in proper cases they ought to have also the right as representing the public to file a complaint in such cases That was why Sir, Government took up this question A number of State Governments also desired that this question should be considered in all its bearings and duly taken up so far as the proposed amendment was concerned Now what Government first proposed was that defamation of a public servant in respect of his public character was to be considered as a cognizable offence Now if it was to be a cognizable offence then certain results follow as a matter of course It would be open to the police officer to arrest him without warrant to start an investigation have the matter duly enquired into by way of committal proceedings and then to file the *challan* and then the matter would go before a Sessions Court because even in the first proposals that we had made we desired that such cases of defamation of public servants should be heard by the higher Criminal Court of original jurisdiction except the High Court namely the Sessions Court But it was pointed out by the press in particular They believed that if the offence were to be made cognizable it was likely to work as an instrument of harassment because if for example, any officer or any other police officer or any other person has a grudge against a public officer or against a press or any private defamer then these powers would be used or abused and even if ultimately the man escapes or whatever the ultimate result may be, the whole mischief that has been done would not be removed at all Now so far as this objection was concerned there was great force in the objection Therefore just before even the Joint Select Committee had started their labours, Government stated that they were going to drop their proposal to make the offence a cognizable one So that you will find

SHRI S N MAZUMDAR (West Bengal) It is better to drop the proposal altogether

SHRI B N DATAR has met part of the objections Then Sir, a number of other considerations also were raised by the Working Journalists Federation who had appeared before the Joint Select Committee Some of the objections that they took were more or less of a fundamental character They stated that there ought to be no criminal offence of defamation at all so far as such public servants were concerned that it ought to be sufficient if a civil liability were laid down or in other words it was treated as a tort Now this objection has been considered at great length by the Press Commission also Then the next question that they raised was that there ought to be no discrimination so far as a complainant was concerned It is open under the present law also to a public officer to file a complaint And it was contended that there ought to be no discrimination between a public servant as such in respect of his public acts and any other citizen That question also has been considered at great length by the Press Commission and they said that the very principle on which the whole criminal procedure has been based in-

of ...atory ... so far as public ... concerned Another objection was raised that there might be cases where the defamation may not be proved ... or where the defamation may be absolutely a trifling matter that in such cases investigation

is likely to cause harassment or hardship to the party concerned and that in no case should even the preliminary enquiry or investigation be by any police officer Certain very strong things were said against the police in general and it was contended that in all such cases they would have faith—not even in the Magistrates—only in the Sessions Judges That was how some Members criticised it They said that it should be left only to the highest Court namely, the Sessions Court So far as this aspect of the question was concerned the Government even in their original proposal had stated that this offence should be treated as one triable by a Sessions Court and not by any Magistrate.

The Press Commission considered another question also In order to provide for the elimination of all trifling cases, they suggested that there ought to be a preliminary enquiry or an investigation under section 202 of the Code of Criminal Procedure The Government were prepared to accept even this suggestion and I would read out very shortly the proposals to show how the Government have accepted their suggestions to a very great extent, perhaps even greater extent than what has been recommended by the Press Commission What has now been done is this This offence of defamation of a public servant in respect of his public duties has been made an offence of which cognisance can be taken straightway by the Sessions Judge He would hear the case and he would give his judgment one way or the other There is no intervention either by way of an investigation or a magisterial enquiry and even the journalistic federations and associations were satisfied with it Of course they made it as an alternative They suggested that no special case should be made out for public servants at all, but assuming that such a thing was to be made they said it ought to be before the Sessions Judge So in the final proposals as they have emerged from the Joint Committee it has been stated that the Sessions Courts will take cognisance on the basis of a complaint filed by the Public Prosecutor The Public Prosecutor has to take the permission of the Head of the Department to which the person defamed belongs or the Minister concerned, and he has to file the complaint more or less on behalf of the Government Even to this some objection was raised It was quite likely it was stated that the Head of the particular Department may or may not grant permission and therefore in the Lok Sabha itself it was stated that in all such cases whereever the Government were to file a complaint there ought to be except in the case of Ministers where their consent would be sufficient obtained the sanction of the Government, and not merely the sanction of the Heads of Departments That is how a further change has been effected in the recommendations of the Joint Committee by the Lok Sabha itself One more clause has been added that there should be some time limit for the filing of such complaints The Joint Committee laid down that such complaints are to be filed only within six months All these points have been duly examined One more point may also be noted here We have got section 250 of the Code of Criminal Procedure according to which where a complaint is found to be false it is open to the Court to grant compensation Now, it was felt in the Joint Committee that in order to provide for cases of frivolous complaints even by the Government there ought to be a provision firstly for compensation to be awarded if the complaint is found by the Court to be frivolous and secondly another fear was given expression to that in case a complaint was filed by the Public Prosecutor then the person defamed might not go into the witness box at all It is difficult to understand a complaint without the

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person going into the witness box. He will have in any case to go into the witness box but in order to provide against any omission it has been definitely stated that even though the complaint has been filed by the Public Prosecutor, still the officer defamed has to be put into the witness box These are the various circumstances that have been laid down and you will find that the original provision has been more than sufficiently mitigated by introducing a number of safeguards so far as the interests of the defamer are concerned.

Now, I would like very briefly to make a reference to what the Press Commission has stated so far as this particular question is concerned. I would invite the attention of the House to Part I of the Report of the Press Commission—pages 431 onwards. They have discussed the various questions and they mention that "these officers find it extremely inconvenient and often very expensive to launch either a civil suit or a criminal prosecution particularly because of the delay involved in the conduct of these cases When they do file such a suit or prosecution, they are subjected to cross-examination which is aimed at throwing more mud on the reputation of these persons, and even if there is no truth in the allegations which are suggested in the cross-examination, some of the mud sticks. They are therefore extremely reluctant to take any legal steps for obtaining redress. Even if they are able to bring home the charge to the accused, he often tenders an apology when it begins to appear that there is no way of escaping a conviction" It is pointed out that such apology is no solution at all because by that time the mischief is done and as stated, some mud has actually stuck. Then it was contended before them that it ought only to be treated as a libel of private individuals In paragraph 1122 they say. "It is difficult to accept this submission because it would mean that the framers of the Constitution had no clear idea of what 'defamation' meant when they used that word in article 19(2) of the Constitution." Therefore they said that whenever there was defamation it imported not only civil liability but also criminal liability. Then they have made a reference to the condition of law in different parts of the world and they came to the conclusion that civil litigation was not sufficient at all. On page 434 they have pointed out that "it would be impossible for a friendless woman who has been injured by a scurrilous satire to file a suit engage lawyers, " etc and then assuming that a decree is obtained, it would be against a rag or the offending person a penniless individual. And, then, Sir, it was put to them that all these disadvantages were common to a private person defamed as also to a public servant and it was pointed out by the Commission that it was not so at all. And this is what they have stated in para 1131

> "The Indian Penal Code itself recognises special position of public servants A whole chapter is devoted to offences for which only public servants are liable. The Criminal Procedure Code also prescribes special procedure in cases where public servants are involved. It would not be an unreasonable discrimination, therefore, to make some special provision with regard to them recognising their peculiar position. We look at the problem....."

and this is exactly what I have to submit,

> " not from the point of giving a favoured treatment to public servants but from the point of view of public interest"

And, then, Sir, they also suggest that the offence should not be made a

cognizable one and even if ultimately no case is sent up by the police the ignominy involved in an arrest is not wiped out That is why we accept ed it And this is what they say about a guilty public servant

> "There may also be public servants, perhaps with guilty consciences, who would not be willing to bring cases into courts and to clear themselves of the defamatory allegations"

Therefore, they stated that a special procedure has to be evolved for enabling Government to file complaints in such cases

Then Sir in the next para they have stated that there ought to be some discrimination so far as public servants are concerned All that they have proposed by way of a new provision is this

> "Provided further that when the person aggrieved under Chapter XXI of the Indian Penal Code is a public servant within the meaning of section 21 of the Indian Penal Code, by reasons of allegations made in respect of his conduct in the discharge of his public duties, the magistrate with jurisdiction may take cognizance of the offences upon a complaint made in writing by some other public servant to whom he is subordinate"

And then in the next para they contemplate a preliminary inquiry or investigation before a process is issued And then again, a reference has been made to mud-slinging and others In a criminal prosecution what really matters is the *mens rea* of the accused person

I may also point out that out of eleven members four members did not agree to the view of the Commission Again the questio has been adverted to in para 1159 and finally the opinion that the Commission have given is this

> "With regard to defamation of public servants in the discharge of their duties, our colleagues do not desire any change in the law The only change that we suggest is that without making it a cognizable offence, it should be possible to set the law in motion on a complaint, where necessary, from an officer to whom the public servant is subordinate and a provision should be made by which there shall be a magisterial enquiry or a police investigation to decide whether there is any truth in the allegation before a process is issued in pursuance of the complaint"

So you will find Sir that although the Press Commission's desire was that there ought to be some preliminary proceeding for weeding out cases which were of a trifling nature,—and you will find in this case that inasmuch as some fears were expressed—the matter has been set at rest by making it entertainable by the highest Court namely the Sessions Court This is so far as the law of defamation is concerned

Then, Sir, I would pass on to another important provision which deals with what are known as commitment proceedings Now in all such cases whenever the offences are more or less of a serious nature, it was believed that there ought to be something like a preliminary enquiry But it has been found that these preliminary enquiries commonly called commitment proceedings, take long and a number of High Court Judges, including the Judges in what is known as the Meerut Conspiracy case have made very strong observations against this practice of having what can be called a duplication of work because according to the provisions that are now there, it is necessary for the prosecution to examine all important witnesses leaving aside only a few And then, again, the whole matter has to go to the Sessions Court after a charge has been framed and the accused has been committed In such case the object was that there ought to be a preliminary enquiry with a view that if for example, the offence was not

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proved or was absolutely baseless, then it should be open to the committing Magistrate to discharge the accused. Now, we have found, after considering the various figures in this respect, that in hardly two per cent of cases are orders of discharge passed, because the committing Magistrates believe that it would be safer and it would be better also to commit the accused rather than discharge the accused. Therefore, you will find that the existence of the commitment proceedings has not been of any great use to the accused. It has been a source of great delay so far as the administration of justice was concerned. In this connection, Government's view was that this commitment proceedings should be abolished altogether. There are a number of State Governments, there are a number of Bar Associations, and others also who were of the same view. Therefore, in their first proposal what the Government did was that they just fixed upon a preliminary proceeding not by way of a judicial procedure but more or less for satisfying themselves that all the papers had been given to the accused and then the case was to be committed to the accused after a draft charge had been prepared. So, this elaborate preliminary proceeding was curtailed, in place of which only an enquiry was laid down for the purpose of satisfying the court that all the copies that had to be given to the accused had been given. Now, this was objected to very strongly and, therefore, Government have been compelled to accept the commitment proceedings to a far larger extent than they would have liked. Therefore, so far as the commitment proceedings are concerned, now what has to be done is this. Whenever there are any material witnesses, for example, and if there are no statements under section 164, then all these witnesses have to be examined by the committing Magistrate. What has been now done is that the commitment proceedings have not been eliminated at all, but have been shortened only to a small extent and the Joint Select Committee's Report was that before the commitment proceedings, the statements of the persons produced by the prosecution should be examined on the question of the actual commission of the offence. And then it was laid down that in such cases there ought to be no detailed cross-examination, no cross-examination as such, but that it should be opened to the accused to suggest some questions to the Magistrate or to the Court and then the Court might ask some questions. This was what had been agreed to at the Joint Select Committee stage. But when the matter came before the Lok Sabha, it was considered that the full right of cross-examination should be restored. Now, what has been done is, the only shortened procedure that has been done is that only eye-witnesses should be examined So far as the other matters are concerned, the matter should be speeded up to the extent possible. Here also, you will find that Government accepted, to a very large extent, the views both of the Joint Select Committee and the Lok Sabha in this respect.

Then, passing on further, we have increased the amount of compensation to be paid to an accused. It is not merely one hundred rupees or fifty rupees as the highest, but half of the compensation that has been ordered under section 250 should be given to the accused.

3 P.M.

Now, Sir, so far as the trial of warrant cases is concerned, there was a considerable delay on account of the fact that there were certain stages where the cases had got to be adjourned, and it was open, for example, to an accused to have at least three, if not more, occasions for cross-examination, and that caused not only a large amount of delay so far as the proceedings were concerned, but it also caused a lot of inconvenience to the witnesses. And that is one of the reasons, Sir, why witnesses are not willing to come forward.

And, as far as possible, witnesses would like to avoid going to the Courts And one of the reasons was that they were called on a number of occasions, then adjournments took place and they had to remain there without being called And then, even when the cases were taken up, there were, what can be stated to be, some compulsory stages where they were to be examined once, twice, three times and in some cases even more than three times Now all that was permissible where there were certain other circumstances But in view of the fact that all the copies of the papers are to be given to them, and in view of the desire that the proceedings ought to start immediately and that the proceedings should not be delayed or dragged on, what the Government have laid down is that when once the case starts, all the witnesses have to be examined, and if at all the case has to be adjourned, then very strong and cogent reasons will have to be given by the Court So, if that is the position, there ought to be no objection to the cross-examination of the prosecution witnesses only once Exceptional cases have been provided for, but ordinarily, Sir, it would be open to a defence counsel not only to begin, but to complete his cross examination, as far as possible, at one stage. He can, in a proper case, defer the cross-examination But ordinarily, once the cross-examination starts, he has to cover all the points, and will not have the pleasure of calling the witnesses solely for the purpose of cross-examination once twice or a number of times So that is the provision which has especially been introduced here

Then, Sir, so far as the summary trial is concerned now there is such a procedure as the summary trial, according to which the long drawn re in connection with or with a summons need not be taken into account And in the case of smaller offences, where small amounts were involved, say Rs 100 or Rs 50 in some cases it was to an experienced magistrate to hold an enquiry summarily And in that case there were appeals only in more serious cases out of them and there were no appeals in other cases Therefore, all that has now been done is that we have increased the amount from Rs 50 to Rs 200 In other words all petty cases of theft cheating, criminal misappropriation, etc., where the value may be below Rs. 200, would now be triable in a summary way by an experienced Magistrate.

Then Sir so far as the Sessions trials are concerned, on this point there has been complete unanimity. Formerly, on account of the peculiar circumstances obtaining in the then British India, because most of the Sessions Judges were foreigners or Europeans who did not know the regional languages, the assessors' system was introduced. Either there was a trial with the aid of a jury, or there was a trial with the aid of assessors. Now it was found that the system of assessors was far from satisfactory It was more or less a surplusage, because the opinion of the assessors was not binding on the Judge at all And therefore, that system has been completely put an end to And on this point as I stated, there is no dispute at all Then Sir so far as the trial by jury is concerned, here the Government found that there were two opinions Some State Governments were in favour of retaining the trial by jury, whereas some other State Governments were equally opposed to maintaining the trial by jury. The U P. Government, for example, has already taken the necessary steps for putting an end to the system of trial by jury But so far as the Government of India are concerned, inasmuch as this is a concurrent subject, the Government of India have not touched the provisions They have kept them as they are In other words they have left the question of trial, with or without jury, entirely to the State Governments There are some Governments like, for example, the Government, where they have still the practice of trial by

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jury is one that is not necessarily objectionable. But there are other parts where this system has been highly objected to. But it could be said on the whole that this system is one which ought to be retained, because after all, this is the only occasion where the public are associated with a Judge in the administration of Justice. We have got the system of trial by jury in England even in civil cases. But here, Sir, so far as this question is concerned, it is our desire that the public ought to have the fullest confidence in the administration of Justice. And therefore, such confidence will now be retained to the extent that the public will have opportunities of associating themselves with the administration of Justice. And the system of Honorary Magistrates is one instance where their cooperation can be utilised, and if, for example, good jurors come forward, then they have a very legitimate and effective function to perform. And therefore, Sir, it is our considered opinion that the system of trial by jury should not be given up on account of certain defects in certain parts of India, or on account of the allegations that jurors are corrupt. All jurors are not corrupt. There are certain parts in India where the jury system has been working fairly satisfactorily. Therefore, all that the Government have done is that they have kept the system as it is, and they have left it up to the various States to take such steps as they like with regard to eliminating or retaining the system. But what we have done is that we have kept the system as it is. In one or two matters, of course, we have introduced some improvement.

The one improvement that we have made is that it would be open to the lady Members to be jurors—I wish some lady Members were present here.

DR SHRIMATI SEETA PARMANAND (Madhya Pradesh): I am here.

SHRI B. N. DATAR: Oh, that is very good. So, Sir, we have made it possible for ladies to sit on the jury in order that we may have the advantage of their opinion. That is one improvement, Sir.

And secondly, Sir, what we have done is this. Oftentimes, when the number of the jurors is only seven, and if one or two members of the jury do not attend at all, then there is the possibility, and in some cases the certainty, of the whole trial being vitiated by the fact that all the members of the jury were not present at all the sittings of the trial Therefore, what we have done is that we have increased the number of jurors to nine, and we have desired that in all cases at least the specified number of jurors should be present, and if they are present throughout, and not the whole number, then the trial should not be vitiated at all. Now, so far as this question is concerned, there is little controversy on this point as well. Now, there is fairly general agreement that in some cases work as juror involves a lot of unnecessary hardship also, and in other countries also there are provisions under which, if the case is of a highly technical nature, or if highly controversial questions of law are involved, then there should be no trial by jury at all. A similar provision has been laid down here by the Joint Select Committee. They have said that whenever a trial is likely to last for a very long period or when there is complexity of evidence or when there are highly technical questions involved, trial by jury may be dispensed with on the orders of the High Court. In other words, it is not open to the Sessions Judge, much less to the prosecution, to claim that the trial should be without jury. Secondly, the number of jurors has been increased from five to seven, and in cases where the jurors are equally divided, the cases have to be submitted to the High Court. These are some of the provisions that have been made in this connection.

Then a new provision has been introduced, though it is more or less of a discretionary nature. We had

our Code of Criminal Procedure in 1898. So far as England was concerned, about the year 1899 they introduced this principle in their criminal jurisprudence that it ought to be optional for the accused to go into the witness box, that it would be discretionary to him. If he does not go into the witness box, there won't be any adverse comments against him, but there are certain cases where it is only for the accused to give a proper explanation. He cannot be a witness in his own behalf but if he desires to go into the witness box and expresses his desire in writing—that is what we have introduced in this clause—then he may do so. It has been made optional for the accused. If, for example, he believes that he is guiltless and that, if he were to point out certain circumstances on oath, it might help to bring out his innocence and if he feels that his examination or testimony would weigh effectively with the Court, then it is open to him to go into the witness box, and naturally he will have to face cross-examination. In other words, we have left the question entirely to him. It had been originally stated by the Joint Select Committee that the accused can offer himself for examination if he so chooses. Now what has been done by way of abundant caution is that, if he expresses his request to appear in the witness box in writing, then only he can go into the witness box Section 342A has been added only for this purpose.

Then it has been definitely stated in the amendment to section 344 that the case has to be heard from day to day—no piecemeal hearings—and that no adjournment should be granted except for special reasons which the Judge has to point out. It has been clearly stated also that the proceedings should be expeditious.

So far as the compounding of offences is concerned, there is one section 345 in the Code of Criminal Procedure. Now, in certain cases it is open to the complainant to come to an agreement or a compromise with the accused, and then as a matter of right he has got the right to ask the Court to dismiss his complaint, but there are certain offences which have also a public aspect attached to them, where the case can be compounded only with the permission of the Court, and there are certain cases where it cannot be compounded at all. There are certain offences which are of a public character and which have also a private character. Take for example an offence like theft. In such cases, you will find that so far as the private aspect is concerned, a man loses some money because that money has been taken away by some other person. So far as the public aspect is concerned, naturally if thefts go on, it induces a condition of uncertainty or insecurity, and therefore the public aspect comes in there. This question was debated at great length, the Joint Select Committee accepted the proposal but ultimately when the matter came before the Lok Sabha, they said that in offences like theft or criminal breach of trust, there could be compounding of offences provided the amount involved was less than Rs. 250. They laid down that in respect of offences exceeding Rs. 250 in value, there would be no compounding at all, because the public aspect was taken more into account than the private aspect.

Then I come to another important provision introduced here. Ordinarily whenever a case ends in an acquittal, then a private party has no right of appeal. It is open only to the Government in exceptional cases to file an appeal and that too to the High Court.

SHRI H. N. KUNZRU: Is it so exceptional as all that?

SHRI B. N. DATAR: Generally appeals against acquittal are very rare. That is the present practice. It is open to the Government under the law as it is, but very few appeals are filed. A private party can file no appeal at all, and that is the reason why some complainants tried to

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take the matter before the High Court by way of revision, and on that question there is a divergence of opinion. Some High Courts came to the conclusion that no revision lay. Some High Courts came to the conclusion that a revision lay, but apart from this question, it is felt that especially when the complaint is of a private nature and when the accused has been acquitted, the aggrieved party, *viz.* the complainant should have an opportunity to file an appeal. So far as this point was concerned, originally what the Government suggested was that in the case of private complaints, the complainants ought to have the right of appeal. This question was considered by the Joint Select Committee and they came to the conclusion that there should be no right of appeal as a matter of course in all cases but that there ought to be a preliminary proceeding by way of application for leave to appeal. That is how the Joint Committee put it, and therefore the present position which has been accepted by the Lok Sabha is that, so far as the Government is concerned it has its right, but that, so far as a private aggrieved party is concerned, he could not file an appeal as a matter of course, but that he could file an application for leave to appeal, and then if that application was accepted, then the whole matter would be heard in the High Court. You will find that this is the innovation which has been introduced to meet cases where there are, according to the opinion of the complainant, wrong acquittals and that, therefore, he must have some forum for taking the matter higher up, *viz.*, to the High Court. This right, in a restricted form, has been allowed under the new amendment.

SHRI KANHAIYALAL D. VAIDYA (Madhya Bharat): What about wrongfully confining a person for ten or more days?

SHRI B. N. DATAR: They are all allowed. There was one provision, *viz.*, regarding power of revision under section 435. Here the Government have accepted the view of the Lok Sabha and the Joint Select Committee. So far the powers of revision are concerned, the terms in the section are very wide. They said that it is open to a High Court to entertain applications for revision whenever there is either the question of correctness of judgment, or propriety of judgment or soundness of judgment. They have used these three words. The Government proposal was that the word "legality" alone should be there and that the words "propriety" or "correctness" should not be there, because after all the revision procedure is entirely different from an appeal. In appeal, the whole question so far as facts and law are concerned, is open before the Court but so far as revision is concerned, it ought to be confined only to legal questions or questions of law. Therefore Government had desired that the words "correctness" and "propriety" ought to be removed and a revision application should be entertainable only on the question of legality. That was the view of the Government and that is the general view so far as the fundamental implications of the expression "revision" are concerned. But it was felt very strongly by the Joint Select Committee that the section should remain as it is, *viz.*, it should be open in an exceptional case for the High Court to go into the propriety of the judgment or order or sentence or even the correctness also and we have accepted the position as it is and we are not pressing our view for the deletion of the words "correctness" and "propriety".

Then there is section 497 which deals with the granting of bail or interim release of the accused. It was felt that there ought to be cases where an accused should be admitted to bail when the case is going on indefinitely. I found in some jails the number of under-trials was unusually large and in some cases they had to remain there for months to-

gether and in one case the period was nearly 11 months That is the reason why Government feel that if we laid down some provision by which the proceeding would be expedited, then it would have a good and salutary effect and that is the reason why in section 497 it is stated that bail

MR. DEPUTY CHAIRMAN Is it section 426? You are talking of bail?

SHRI B N DATAR It is section 497 Now it has been stated that bail has to be granted as a matter of course to under trial prisoners if the case is not finished within six weeks Of course the general clause—that overriding clause—for covering cases where there are strong reasons is there Ordinarily this provision has been made with a view to speed up or expedite trials

SHRI H N KUNZRU It is not 6 weeks, but it is 60 days now

SHRI B N DATAR Yes, six weeks was our proposal but the Joint Select Committee has put it as 60 days Then there was one more provision It was a novel provision and naturally it attracted a very large amount of attention and evoked some controversy also My friend Dr Katju was in favour of having a summary procedure for punishing perjury That was how this provision was introduced It was stated that the volume of perjury was rising in India People came and they did not mind the sanctity of oath and they lied to the fullest extent possible and therefore there ought to be some summary procedure by which a man who tells lies ought to be punished just then and there That was the reason why a novel procedure was sought to be introduced by introducing a new section known as section 485A—summary procedure for perjury Now the very Court before whom a witness told lies and if the matter was clear then without affecting the findings in that particular case, it was open to that very Court or Magistrate to carry on a supplementary proceeding against that witness, to hear him and then to fine him or to send him to jail for a very short period Now this provision was intended for the purpose of discouraging falsehood by making it penal for them to tell lies Now this provision naturally evoked a very large amount of controversy There was also another provision—an analogous provision It was dealt with in the proposed section 485B What happened was that in a number of cases the hearing was held up because the summoned witnesses were not present at all Under the law if a witness accepts the summons, then naturally he has to attend a Court because it is considered as a part of his public duty but there are also penal provisions if he does not attend but then, proceedings have to be started Then it was felt that even in this case, there ought to be a penal provision according to which if a man does not attend the Court whenever he is called upon and has no satisfactory reason to give, then he could be punished in a simple way, by way of simple imprisonment or a short period or with a short fine So far as these two provisions were concerned, it was objected to, to a very large extent Ultimately what has been done is in the Joint Select Committee certain objections were raised that the same man who was hearing the original case and after hearing the original case, if he came to the tentative conclusion that that particular witness had told lies, then it was stated that, he had formed a particular opinion and that he ought not to be a proper forum for punishing an accused or even for holding summary trials and therefore these two sections were not pressed but they were introduced in another and a modified form as sections 479A and 485A What can be done is in such cases if a Court finds that a witness has told lies and the matter is extremely clear, then all that he can do is to file a complaint himself and the matter is to be heard by some other judge viz., that he will not hear the case at all So this has been introduced on the

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analogy of Section 476 The difference between the two is, section 476 deals with a number of offences against the Court of Judge but the only offence that is considered here is the one of punishment for perjury and secondly, in such cases, he will have a regular opportunity and there is no need for any preliminary enquiry in this case as it has been prescribed under section 476 So subject to this now the summary procedure has been laid down but there is nothing summary about it The matter has to go before another Judge or another Magistrate Then there were certain smaller matters One was that even in respect of technical evidence, in respect of matters based on evidence which were more or less of a formal nature, the witness had to be called and they had to be put in the witness box, in most of those cases where we are not to cross-examine at all So in order to provide for the elimination of delays, it has been stated that so far as formal evidence was concerned, it might be laid by way of submission by affidavit But still in an appropriate case for example if some objection is taken by some, if the statement is found to be objectionable, or if the Court considers that the man who has sworn the affidavit ought to come to the witness box, it is open to the court to recall the witness So subject to this, evidence on affidavit might be used for the purpose of formal evidence

There are one or two matters which are of a formal character, though they also are important, because thereby the proceedings are held up and the case cannot go on For example, the case is being heard by a Magistrate, but ultimately, that Magistrate either dies or something else happens and some other Magistrate comes to take his place Then it was open to the accused to ask for what is called a *de novo* trial from the very first That right was specially given to him by a particular section in the Code of Criminal Procedure Now it is stated that this right should not be absolute and it is now open for the case to go on as in a civil case, when evidences have been recorded partly by one Court and partly by another For example if petition is made by the accused that a certain witness should be examined or called again, or if the Court feels that the examination of that material witness is necessary in the interest of justice, then it is open to the Court to recall that witness Subject to these two restrictions, it is not open as a matter of right in every case for the accused to claim a *de novo* trial, which was generally made to delay proceedings Now that right also has been curbed to a certain extent

Then I come to section 526 Under this section it is open to the High Court alone to transfer cases from one Court to another According to the practice now followed, whenever it was found that an accused was sure to be convicted, then what he did was this He had resort to a subterfuge and he approached the High Court for transfer and it was the duty of the High Court to grant him the change when he asked for transfer In such cases, the cases remained as they were without any progress Now what has been done is this The application for transfer under section 526 cannot be filed unless the Sessions Judge has been previously approached and the application for transfer has been rejected Therefore, you will find that the work before the High Courts will be curtailed to a certain extent There will also be some curb on the power to abuse section 526.

Then there is something about the enhancement of sentences Under the present rule, whenever an appeal was filed by an accused against the sentence, then so far as that appeal was concerned, it was not open to the appellate Court to enhance the sentence if it found the conviction was right In that case, what is done by the High Court is to issue notice for revision to the accused,

and he was called upon to say why the sentence should not be enhanced In fact these two proceedings had to be taken together Now it has been said that in a proper case the appellate Court should have all the powers, including the power to enhance the sentence. That also has been duly provided for

Thus, you will find that we have introduced a number of new provisions and so far as controversial provisions are concerned, we have tried to meet the desire of the opponents of this Bill to the largest extent possible In the course of my remarks, I have pointed out how Government have accepted changes at various stages There were four proposals—one in the Gazette, then before the Lok Sabha, then before the Joint Select Committee and lastly again before the Lok Sabha You will find that the Government have accepted a number of proposals which had the effect of reducing the principal proposals to the minimum extent, because after all it was the desire of hon Members

SHRI JASPAT ROY KAPOOR (Uttar Pradesh): And may we hope that this process will continue here also.

SHRI B N. DATAR: I am hoping that this House will not ask for any changes at all.

SHRI B K P SINHA (Bihar): Why not?

SHRI B N DATAR: I am hoping, I am entitled to hope

SHRI S. N MAZUMDAR: If you drop some of the proposals.

SHRI B N DATAR: I am quite hopeful and confident that the hon elders of this House will set their seal of sanction on it without any amendment

Sir, I have not much more to say I shall finish in two or three minutes What, after all, is the object that we ought to have before us? As I stated in the other House and I would like to repeat it here also so far as the administration of criminal justice is concerned, it is of course our duty to maintain it and we have maintained it and seen to it that even now the accused should have the fairest opportunity to meet the case Subject to this—and that is absolutely just and I am prepared to accept it—the complainant also has some right. In fact, the complainant also is entitled to a fair hearing Therefore, just as we have got the English law, namely, the presumption of complete innocence of the guilt until the contrary is proved, which we accept and we have not departed from it, we have also to take into account the other principle that justice has to be done and a person who is an offender has to be punished. So far as our views are concerned, I would like to quote from *Manu* where *Manu* has pointed out the duties of the King And you all here are the kings now, and therefore, you have to make laws which deal with both these points So far as punishment is concerned, what according to *Manu* are the duties of the King?

"अदण्डयान् दण्डयन्राजा दण्याश्चैवाप्यदण्डयन् ।
अयशो महदाप्नोति नरक चाधिगच्छति ॥"

It means the king has to punish him who is guilty. The king has to save him who is not guilty. Of course, the presumption of complete innocence of the accused has to be accepted until the guilt has been proved At the same time, we should not start with the notion that the complaint is necessarily false. Therefore, the complainant is also entitled, so far as his own grievance is concerned, to vindication of his right by the punishment of the accused.

Sir, we have also to take into account another factor so far as the question of offences is concerned and that is the public aspect which is far more important than the private aspect A man is murdered and that naturally is a great injustice to his family But that is not all Thereby you also create conditions of insecurity in society and thereby society cannot proceed So far as this public aspect

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is concerned, we are anxious that in all proper cases, whenever the guilt has been proved then there ought to be provision for punishing the party and if necessary, to punish him sternly.

SHRI B K P SINHA Provided the guilt is proved

SHRI B N DATAR Yes, provided the guilt is proved Therefore, in this Criminal Procedure Code we have taken into account the interests of the accused We shall safeguard all the interests of the accused. But we have to approach this particular provision of the Criminal Procedure Code as citizens and not as a counsel much less as a defence counsel Sir, I know of cases where the accused who was really guilty was let off He had to be let off, on account of technical factors, defective investigation and things of that sort and on account of a number of other circumstances But if a man is really guilty and if he escapes from the clutches of the law then what is the effect of it on the public? That is what we have to see I have seen in many parts such wrong acquittals For that naturally, we cannot blame the Court at all, because they are acting according to the law as it exists now But such wrong acquittals have a highly demoralising effect for the whole locality People come to lose all faith in the administration of justice That is the reason why a number of friends a number of very high personages had expressed their concern at the mounting figures so far as acquittals are concerned We have taken all these circumstances into account We have to see that the interests of society are safe and I may also point out to this House that

SHRI H P SAKSENA (Uttar Pradesh) Is it not better that twelve guilty persons are acquitted than that one innocent person be punished?

SHRI B N DATAR That is true and to a certain extent I am prepared to accept it, but not absolutely If a man is guilty and if he escapes, then it has a far greater demoralising effect That is the reason why I am pressing for the other view which I am hoping you will take account of

If we approach the whole question in this way, I am quite confident that this amendment of the Criminal Procedure Code will be one of the many ways which the State Governments and the Central Government have in view for the purpose of improving the tone of investigation and for making it possible for a guilty person to be punished and a non-guilty person to be acquitted We are trying our best to speed up the whole thing and I am quite confident, Sir that this Bill will commend itself to you

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"

SHRI H N. KUNZRU Mr Deputy Chairman, the Deputy Home Minister has explained exhaustively the changes made by the Joint Select Committee and the Lok Sabha in the Bill as introduced in the Lok Sabha Lawyers have freely acknowledged that some of the provisions of Dr Katju's Bill were worthy of acceptance by the Legislature Everybody is desirous of reducing the delays and would welcome such provisions as lead to the quicker disposal of cases in so far this could be done without creating any prejudice against the accused or making his position more difficult The Deputy Home Minister explained the provisions of the Bill as passed by the Lok Sabha in such a way as to make it appear that every provision is sound and is in the interests of justice and is in the public interest. While one may agree with him in respect of many clauses, there are some I think, in respect of which there are bound to be sharp differences of opinion He

referred to many of the changes made, in the Bill in order to reduce the delay that occurs now in the decision of cases but I was rather surprised that he did not draw our attention to the increase in summons cases that would take place if clause 2 of the Bill is accepted. A summons case is defined in the Criminal Procedure Code as one that is not a warrant case. A warrant case means a case relating to an offence punishable with death, transportation or imprisonment for a term exceeding six months but the new definition of a warrant case is that it is a case relating to an offence punishable with *death or imprisonment for life or* imprisonment for a term exceeding one year. Thus, a number of cases which are warrant cases at the present time, will, if this Bill is passed, become summons cases. Now, is the punishment of one year so small that the increase in summons cases should be a matter of indifference? In a warrant case, Sir, there is a formal charge but in a summons case there is no formal charge and, secondly, it is difficult for the accused to file an appeal against his conviction by a Magistrate. My hon. friend the Deputy Minister did not refer to this. I do not remember the Deputy Minister referring to the cases that will in future be tried as summons cases if the new definition is accepted.

SHRI J. S. BISHT: The Joint Select Committee had a complete chart made out to see which of the offences would come under this and this provision was made only after very careful examination. Of course, the number was very small, not very many.

SHRI H. N. KUNZRU: There are such cases, I believe; whatever be the number of cases, the period for which a man will be liable for punishment in a summons case will be appreciably greater than it is now. I think cases involving bodily hurt in which the punishment may not be more than one year will be tried as summons cases after the passage of this Bill into law. While sympathising with the desire of the Government to facilitate the administration of justice, it is difficult for me to accept the view that the change that is proposed by him is in the public interest. This is, on principle, a very important change. I suggest, Sir, that if Government really desires to reform the criminal law, they will have to go much farther than they have done under the present Bill. They should not merely deal with such matters as are provided for in the Bill before us but should also see, for instance, whether the scale of punishment for the various offences that was accepted in 1898 is applicable at the present time. Cannot the punishment be reduced now so as to enable the Magistrates to deal with cases that are now tried as sessions cases?

SHRI J. S. BISHT: That is why new section 30 has been introduced.

SHRI H. N. KUNZRU: I was listening to the explanation of the Deputy Minister but he referred only to section 30 Magistrates and to nothing else.

SHRI J. S. BISHT: They are sessions cases.

SHRI H. N. KUNZRU: There will naturally be few Magistrates for that purpose but what I am saying would go much farther than the step taken by Government. What has been done now is in the interest, shall I say, of the prosecution; or, if you object to that, in order to enable the courts to decide cases in a shorter time than they can now but if the view that I have suggested is accepted and the matter is gone into with a desire to find out whether the punishments provided for various offences in the Penal Code can be reduced then it would be in the interests of the accused too. It can be said that both the accused and the prosecution had been fairly dealt with. But at present the balance has been tilted in one direction.

Then I come, Sir, to clause 22. I cannot go into all the clauses dealt

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with by my hon. friend the Deputy Home Minister nor it is necessary for me to do so. I shall deal from the point of view of a lay man, as a citizen interested in the law of this land, into such clauses as appear to me to be important from the point of view of the public. Now he dealt with clause 22 which seeks to amend section 162 of the Criminal Procedure Code and said that the only effect of the amendment would be to place the prosecution on the same footing as the accused in respect of the use of a statement made by a person to the police in order to contradict a witness. The evidence cannot be used for corroborative purposes but will be allowed to be used by the accused subject to the safeguards pointed out by him.....

SHRI B. N. DATAR: By the prosecution.

SHRI H. C. MATHUR: .....with the permission of the court.

SHRI H. N. KUNZRU: All right, by the prosecution subject to the safeguards pointed out by him one of which was the permission of the court as it can be used by the accused in his defence. Now, Sir, while the statement made by him in which he pointed out the safeguards is accurate so far as it goes, can we place the procecution and the accused on the same footing in this respect? Let us consider the theory, Sir, on which we proceed now. A man makes a statement to the police. If he makes the statement, in the present circumstances of India, it is not unreasonable to assume that when a man makes a statement, for instance in a *thana*, he becomes nervous and predisposed to make a statement which will be favourable to the prosecution. Now in such a case it is natural for the accused to say that a particular witness who made a statement to the police must have said the utmost that he could against the accused and that if he goes beyond his original statement in his evidence before the magistrate, he is justified in confronting him with his previous evidence and claiming that the additions made to the original statement are false and are the result of instigation by the prosecution, I mean, the suspicion may be wrong, but considering the power of the police in this country and the circumstances in which the accused makes a statement to the police, the use of the statement by the accused is perfectly reasonable and justifiable.

SHRI J. S. BISHT: It is not the statement of the accused; it is the statement of the witness.

SHRI H. N. KUNZRU: It is the statment of the witness certainly. The accused cannot be asked by the police to make a statement before it, and that question therefore does not arise. Now should the prosecution also be allowed to use the statement made to it by a witness to contradict him in the same way as the accused can use it to contradict him? The circumstances in these two cases are so dissimilar, the power of police is so great and its fears so general.....

SHRI J. S. BISHT: It is gone now.

SHRI H. N. KUNZRU: ..... that I cannot welcome the change that has been made. My hon. friend, Mr. Bisht, says this fear is gone. Sir, it may have disappeared in the district Nainital; it has not disappeared anywhere else, and I make bold to say that in the district of Nainital the police is feared even more than in the case elsewhere.

SHRI GULSHER AHMED: The hon. Member was also Public Prosecutor in that district.

SHRI H. N. KUNZRU: I am very glad that the hon. Member has referred to that; I had forgotten it for the time being. He may be regarded as a witness for the prosecution.

Now, Sir, I come to another clause which raises even more important issues. Clause 25 seeks to amend section 198 which relates to defamation. At present, Sir, the law of defamation operates in the same way in respect of all persons, no matter whether the

complainant is a public servant or a private citizen The original Bill, I mean the Bill as introduced in the Lok Sabha sought to make changes which would probably have enabled the person on whose behalf a complaint was filed at the instance of the Government, to escape examination in a court of law Now however, under the procedure as accepted by the Lok Sabha, the public servant who is alleged to have been defamed, will have to be examined by the magistrate One important matter however in the procedure that has been accepted now is that a public servant may not complain directly to a magistrate that he is defamed but his case may be represented by the Government before the magistrate, that is a complaint may be filed not by the person who feels that he has been defamed but by some other authority at the instance of the Government Now, Sir, even at the present time it is possible for the Government to help a public servant who in its opinion, has been unjustifiably criticised, on whose conduct unjustifiable aspersions have been made It can ask the Public Procecutor to help him, it can help him financially What was the reason then for altering the present procedure? The Deputy Home Minister read out extracts from the Report of the Press Commission I am as familiar with what the Press Commission has written on the subject as my hon friend himself, but the difficulty of a public servant in filing the complaint to which attention has been drawn by the Press Commission can be got over if the Government under which he is working, gives him such help as is called for in these circumstances either by giving him financial aid or by asking the Public Prosecutor to help him There must be some other and more cogent reason for altering the present procedure and allowing the Government to make a complaint It has been said by the Deputy Home Minister that it is quite possible that a public servant may be unwilling to file a complaint Is his conduct not to be cleared then or is the Government not to be in a position in that case to find out whether the public servant is worthy to be retained in the service of the Government or not? Is the Government without remedy at the present time? If it gives a hint to the public servant that he must clear his conduct or else it will be supposed that he is guilty he will have to take steps to clear himself It may, however, be said where is the harm if the new procedure is followed But I think it is for the Government first to show why the existing procedure should be changed However, putting that point aside I am quite prepared to answer the question whether a change in the existing procedure would do any harm When the Government comes forward to file a complaint, is it likely to have an effect on the mind of the Court or not? If the judiciary had been completely separated from the executive then it might have been claimed that no matter how a complaint was filed it would be dealt with in the same way by the Court before which it comes up But can it be said that at the present time .

4 P M.

SHRI H C DASAPPA (Mysore) It will go before the Sessions Judge

SHRI H N KUNZRU It is first Magistrate I will come to the Sessions Judge Please do not have any fear that I shall omit to deal with that point Now, the Bill proposes that cases in which the Government is a complainant will be tried by a Sessions Judge but not with the aid of the jury The accused in other cases, however, that is, where the complainant is a private party, will be dealt with in accordance with the existing procedure When the case is committed it will be tried

SHRI J S BISHT There is no commitment The Magistrate will himself try defamation cases

SHRI H N KUNZRU Where the Magistrate tries it himself it is all right but it can go to the Sessions

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Court and can be tried there with the aid of a jury. Or it may go to the Assistant Sessions Judge. But why should the procedure in cases where a public servant is involved be different from that applicable to cases where a private citizen is involved?

SHRI J. S. BISHT: To meet the charge that the Magistrate is under the thumb of the Police.

SHRI H. N. KUNZRU: Then you have to show why the existing procedure should be changed. You cannot change the existing procedure and use the changed procedure to justify another change. I think trying cases of the same kind in accordance with two different procedures is not in conformity with the Constitution. Article 14 of the Constitution 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." Can we say that there is equality before the law when for similar cases different procedures are provided? My hon. friend the Deputy Home Minister referred to the opinion of the Press Commission and said that it was of opinion that filing a complaint on behalf of a public servant by the Government would not justify the charge of discrimination. I do not know whether it considered the Constitution before expressing this opinion. In any case we are entitled to ask the Government whether the change it is making is in accordance with the Constitution. It may say that the two procedures are not radically different and that no injustice will be done but that on the other hand cases will be decided more quickly. But can it, so long as article 14 of the Constitution is not changed, claim that cases involving Government servants should be dealt with differently from those involving private citizens? He said that our penal law was based on a distinction between public servants and private citizens. In so far as this differentiation is based on the duties of Government servants, it is perfectly justifiable but when a public servant is charged with an offence he will have to be tried in the same way. According to the Constitution he will have to be tried in the same way as a private citizen charged with the same offence. I think it was Jennings who has said that equality before the law means that we can sue and be sued, prosecute and be prosecuted in exactly the same way. If this uniformity disappears, it cannot be claimed that there is equality before the law. Whether the inequality will lead to any injustice is a matter of argument but whatever the result of the inequality may be, it seems to me to be unconstitutional in view of the language of article 14 of the Constitution.

SHRI J. S. BISHT: Bribery cases are tried by Special Judges. We have passed that law.

SHRI H. N. KUNZRU: I am really not familiar with the law relating to bribery. All that I can say is that the legality of these laws has not been tested. There is a provision in the Criminal Procedure Code according to which no public servant can be prosecuted without the sanction of the Government. This seems to be a clear case of discrimination. The validity of the section has not been tested.

MR. DEPUTY CHAIRMAN: Even now section 500 is triable by a Court of Session, but not exclusively, of course.

SHRI H. N. KUNZRU: That is the whole point.

MR. DEPUTY CHAIRMAN: Court of Session, Presidency Magistrate or Magistrate, as the case may be.

SHRI H. N. KUNZRU: That will be in all cases, not in certain cases only. The provision to which I have already referred, perhaps, is embodied in section 197 of the Criminal Procedure

Code There is nothing to guide the discretion of the executive authorities in the matter of giving sanction for the prosecution of public servants The law at present leaves it entirely to the sweet will of the executive, whether a member of the executive is to be prosecuted or not by a private party This may seem to be clear case of discrimination, but it exists and its validity has not yet been challenged

MR DEPUTY CHAIRMAN This provides for prosecution by public servants for defamation—not by a private party

SHRI H N KUNZRU I am not familiar with the provisions of the section to which you are referring, but all that I say is that such provision—I shall have to read it carefully in order to see what its effect is—but if there is not one section but twenty different sections in the Criminal Procedure Code of the same kind, or if there are other laws of the same kind, it does not vitiate the argument that I have put forward If you say that there are fifty different laws in which different procedures have been provided for dealing with similar cases, because in some of these public servants are involved while in others they are not, I shall regard the procedure as discriminatory as I do in the present case

SHRI H C MATHUR He is only citing section 197 as an illustration

SHRI H N KUNZRU That is right it is as an illustration

Now, Sir, I come to clause 95 of the Bill As introduced in the Lok Sabha, it provided that person who has been tried for a non-bailable offence should be released on bail if his trial could not be concluded within six weeks from the date on which he appeared or was brought before the Magistrate, unless the Magistrate for reasons to be recorded in writing refuses to release him There are two important changes that had been made First, the period has been increased from 42 to 60 days, and second, these sixty days are to be calculated not from the date on which the accused appears or is brought before the Magistrate but from the date fixed for taking evidence in the case Now, there is a world of difference between these two. What I want to know is whether the Government, which introduced the earlier provision, changed its mind afterwards and accepted the modifications made by the Select Committee? Had it been obligatory on the Magistrate to release an accused person within a certain period, I could have understood the reason for making the period fairly long—I mean the period after the conclusion of which he was to be released on bail But the Magistrate has been given discretion to refuse bail, only he will have to record his reasons for doing so in writing I do not see, therefore, why the period should have increased from 42 to 60, and it is to be calculated from the date not on which the accused appears before the Court but from the date fixed for hearing the offence Now, the police may ask for remand after remand and the accused can remain in custody indefinitely The Deputy Home Minister referred to the case of a person who had been under trial for eleven months Is he quite certain that under the changed procedure, the same kind of injustice may not occur? The period may not be as long as eleven months but if it is even as much as six months it should be a matter of serious concern So long as the Magistrate has the power to refuse bail I see no reason why the changes recommended by the Select Committee should have been accepted

Sir, there is just one more point to which I should like to refer before I sit down The Deputy Home Minister referred to the desire of the Government to see that the law's delays were reduced as much as possible I have no doubt that the desire of the Government is genuine and that it is in the public interest that justice should be administered both efficiently and quickly I should, therefore, like

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to know what will be the effect of the changes proposed by the Bill in the future on the disposal of cases. Government know the total number of cases of all kinds that are tried at present. They know the number of cases in arrears at the present time. Can they not form an estimate of the extent to which relief will be provided by the new procedure? I think if they can do so, the feeling of uneasiness that prevails at the present time will be removed. People are not satisfied with the vague assertion that the new procedure will be shorter than the existing procedure and the disposal of cases, therefore, will not be delayed as long as it is now. We should like to be given some estimate of the reduction that will be brought about, in the Government's opinion, in the arrears that may remain hereafter.

The present position, Sir, is very serious. I cannot give the figures for the whole country, but I can give them for my State of Uttar Pradesh. I gave the figures, so far as they related to the year ending the 31st March, 1954, in the course of the debate that took place on this Bill in May last. But I can now give the figures up to the 31st of October 1954. The number of civil cases pending in the High Court on the 31st October 1954 was about 26,000, and the number of criminal cases pending before the same Court was about 8,000. The number of cases pending in the subordinate courts on the 31st December 1953 was as follows:

Civil cases; including appeals—about 1,10,000.

Criminal cases, including appeals—about 54,000.

Now, Sir, if the Government really want to give satisfaction to the public by providing for an early disposal of cases, this matter should receive their serious attention. The strength of the High Court has been increased by the appointment of three new Judges. But, will this be enough to deal with the cases now pending before the High Court? I think, if this matter is to be properly dealt with, the Government should enquire into the root causes of the increase in litigation in criminal cases. Unless this is done, however much we may try to simplify the procedure, we shall only be dealing superficially with the serious trouble that exists at the present time.

Sir, there is just one more point that I should like to bring to the notice of the Government in this connection. When he referred to appeals against acquittals by the State Governments, I asked him whether the number of appeals was very low. And he said it was. Now I find, Sir, here too my information is confined to Uttar Pradesh. Formerly, the number of appeals against acquittals was very small, perhaps only three or four in a year. Then it increased. And when Sir Grimwood Mears was the Chief Justice of the Allahabad High Court, there was a hue and cry raised against an increase in the number of appeals. I believe that the High Court expressed dissatisfaction with the then existing state of things, and the number of appeals decreased. But they seem to have increased again. According to a report on the administration of justice in the U.P. for the year 1952, the number of appeals, including those pending from 1951, was 264 in 1952 as against 152 in the previous year. Can the Deputy Minister say now that the number of appeals against acquittals is very small? According to me, the number of such appeals seems to be extraordinarily large in the U.P. And I think it is a matter that should receive the attention both of the High Court of U.P. and of the Supreme Court. I think we have a right to ask that the present state of things, which amounts almost to a scandal, should be brought to an end, and that the number of appeals against acquittals should be discouraged, as far as possible, except in cases where real injustice has been done.

The House will be interested to know how the Allahabad High Court has dealt with the appeals against acquittals. In the year 1952, it was able to deal with only 48 cases, and

of these 48 cases, it allowed the Government appeal in 9 cases and dismissed it in 39 cases. Well, the number of appeals allowed by it is not small, and I think, that too ought to be a matter of concern. But taking the total number of cases that went before the High Court, it does not appear that appeals against acquittals have been filed after proper scrutiny by the local Government.

SHRI B. K. P. SINHA: Now the complainants will have the right of appeal under this Bill.

SHRI H. N. KUNZRU: I do not want to take the time of the House, and I shall therefore leave that point to my hon. friend, who, I have no doubt, will be able to deal it with the vigour that characterises his speeches usually. Sir, this is a very important matter, and I think, it should receive the attention of the Government. In any case, I think, if the present state of things continues in U.P., the Supreme Court ought to look into the matter generally, and ought to lay down the rules that will have the effect of reducing the number of such appeals, while allowing them only in cases where an acquittal would be gravely to the jeopardy of the public interest.

SHRI GULSHER AHMED: Mr. Deputy Chairman, I am very glad that this Bill, after it has been passed by the Lok Sabha, has come with certain improvements. And I am more glad that certain suggestions that I had made, when this Bill was referred to the Select Committee, have been embodied in this Bill.

As I said, Mr. Deputy Chairman, there are few people, either in this House or outside this House, who will disagree with the object of this Bill, which is to make the administration of justice cheap, easy and quick. But my complaint is that merely by amending the Criminal Procedure Code this object cannot be achieved. It is not the law itself, but how the law is administered, that matters much. I am reminded here of what the late Mr. Gokhale said when he was speaking about the Sedition Act. I am quoting the late Mr. Gokhale.

> "My Lord, it has been well said that more depends upon the manner in which a law is administered than upon the law itself."

Sir, there are so many factors like the police, the courts, the lawyers and the public, who have to play a part before this objective can be achieved. You know the kind of Magistrates that we have got in this country, how they are appointed and the kind of salary that they get. In most of the cases, as you are well aware, people come before the Courts and always tell lies. Until and unless these things are changed and the system of investigation by the police is also changed, nothing very much can be done in this respect. All these things have been fully realised by the Home Minister himself, as is very clear from his note sent to the different States and the Chief Justices. But I am sorry to say that at this stage when the Government has announced the formation of a Law Commission, it is somewhat incongruous that the Code of Criminal Procedure is brought here before this House and this House is being asked to pass it with the amendments suggested. After all, the Law of Evidence and the Indian Penal Code which are very closely connected with the Code of Criminal Procedure are going to be brought before the Law Commission, and it is possible that some of the amendments that we are making now may not be thought of by the Law Commission and it is quite possible that we may again be asked to make some amendments to this amended Code of Criminal Procedure.

Sir, nobody disagrees with the dictum that justice should be cheap. I would suggest that, as we are trying to have a socialistic pattern of society, we ought to have a law like the one in the U.K. passed in the year 1949, when the Labour Party was in power, to help poor people. Otherwise there is no meaning in saying that all are equal before the law. They (the Bri-

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tish) fully realised this and so they passed a statute by which any poor person who has got no money to fight for his case, can apply to the Government for assistance, and the Government, after taking all the facts into consideration and after satisfying itself that he is a deserving person gives him the money required. From what I have read in the papers, it seems that nearly two and half lakhs people in the U.K. applied for such help and that nearly 1,50,000 people were given help from the exchequer and about 50,000 people were helped by Law Associations—by legal profession—by giving them voluntary help. So, I think that, if we are keen that justice should be cheap, this Government should consider the framing of some such law.

Though the Lok Sabha has made certain improvement in this Bill, still it requires consideration of some of the clauses by the Government. The most important is the trial by jury. I submit most humbly to the Home Minister that nearly 80 per cent. of the people whose opinions have been sought and nearly 60 per cent. of the States have said that trial by jury should be abolished. The Chief Justices of all the High Courts of the States, and the ex-Chief Justices of India, Mr. Mahajan and Mr. Sastri, have said that trial by jury should be abolished. I would just like to tell this House that in England trial by jury is in vogue not only in criminal cases and but also in civil cases. Lately the tendency in England has been to reduce jury trials in civil cases as far as possible and that in some cases they have already done so. So far as criminal cases are concerned, they have not yet touched them but the consensus of opinion is that no useful purpose is served by jury trials even in criminal cases. Here I would like to quote a passage from a book "Criminal Justice in England" by Herman Manheim published in the year 1946. He says:

> "Trial by jury has but few supporters among lawyers of today and it is difficult for those familiar with its weak spots to say very much in its favour. The whole idea of trial by jury has become obsolete."

Now, Sir, I would also like to give the opinion of a very, very great man of this country, who has also expressed his opinion about the system of trial by jury. I refer to Mahatma Gandhi. He says:

> "I am unconvinced of the advantages of jury trials over those by judges. In coming to a correct decision, we must not be obsessed by our unfortunate experience of the judiciary here, which in political trials has been found to be notoriously partial to the Government. At the right moment juries have been found to fail even in England. When passions are aroused, juries are affected by them and give perverse verdicts. Nor need we assume that they are always on the side of leniency. I have known of juries finding prisoners guilty in the face of no evidence and even judge's summing up to the contrary. We must not slavishly copy all that is English. In matters where absolute impartiality, calmness and ability to sift evidence and understand human nature are required, we may not replace trained judges by untrained men brought together by chance. What we must aim at is an incorruptible, impartial and able judiciary right from the bottom."

Sir, one of the most wonderful things happened in U.P. where an Association of Jurors with permanent Secretaries and President was formed and they waited on the Governor of U.P. to agitate against the abolition of jury trial. What actually happened was that a Judicial Reforms Committee was appointed in U.P. under the chairmanship of Mr. Justice Wanchoo, and that Committee had recommended that jury trial should be

abolished To protest against this recommendation of the Judicial Reforms Committees, an Association of Jurors with permanent Secretaries and President was formed and they waited on the Governor and said that that should not be done I think this is more than enough to warn the Government that jurors in this country cannot be relied upon Another State in which jury trial was in existence was Bihar Corruption among the jurors had become so evident that the Bihar Government was compelled to appoint a special Committee to go into this matter and report to the Governmert as to what should be done, and that Committee in Bihar after careful consideration and after taking all kinds of evidence, came to the conclusion that jury trial should be abolished Not only that, the Chief Justice of Bengal, while giving his opinion about this, has stated that in some mofussil towns lawyers charge jury fees along with their legal fees These are the opinions of some of our very great and responsible persons

As I have said before Mr Deputy Chairman, the Chief Justices of the following States have definitely said that the jury trial should be abolished I will give the names of those States Assam Bihar Bombay, Orissa, Calcutta Allahabad Madhya Bhara , Mysore Patiala Rajasthan, Saurashtra Travancore-Cochin and Mr Sastri and Mr M C Mahajan of the Supreme Court The Chief Justices—Mr Sastri and Mr Mahajan—have given qualified opinion They have said that it should be retained provided we can get better type of persons, which is very difficult In England where public morality is much higher than ours the jury trial takes place with all possible precautions that a human being can take All the ten members of the Jury, from the moment they have taken the oath, are not allowed to talk even among themselves about the case until and unless the whole case has finished Then till the trial lasts they are kept under a guard in a special place where they could get no chance of ever talking or discussing the case If my hon friend is prepared to indulge in this luxury and if the State Governments can afford to meet all these expenses of keeping the jurors together and maintaining them in a hotel or restaurant and keeping a guard for them

SHRI H P SAKSENA Are they kept under custody?

SHRI GULSHER AHMED Actually under police guard The policeman is always in the hotel and watches them The verdict of a jury is unanimous If a single man differs the whole jury is discharged and a new panel is formed But what happens here? The majority verdict of the jury is accepted. The other thing is that once the jury has given a verdict, the judge becomes helpless He can only refer the matter to the High Court Generally what happens is that he rather refers the case to the High Court or he reduces the sentence if he thinks that the verdict of the jury is not correct My hon. friend had dealt very ably and tried to explain his position that the Government is keen to see that a guilty person is convicted, but does he realize that due to this jury trial, 90 per cent of the people are acquitted because the jury can be overcome by paying money, by bribery or by exercising influence on the jurors or by bringing all kinds of pressures on them and that verdicts of 'not guilty' in most of the cases are brought due to these reasons? In most of the States like Bengal and Madras where they have jury trials they have abolished it in the mofussils The jury trial has been kept only in Calcutta Bombay and Madras cities because in big cities like Calcutta, Madras and Bombay they can get proper people to function as jury So I would humbly request the Home Minister that as the trial by jury has been opposed nearly by 80 per cent of the States, the Bar Associations, the Chief Justices of the Country and the Government is keen to see that guilty persons are really convicted, if they are guilty the institution of jury

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should be done away with, or in the alternative, if they really want the people of this country to participate in the administration of justice, then have proper procedure, take all the precautions that are humanly possible so that they cannot be corrupt or cannot be influenced.

Then I come to the next point of clause 6 whereby section 30 is going to be amended to the effect:

> "that the District Magistrate, Presidency Magistrate and Magistrate of the first class can be invested with the powers to try offences punishable up to seven years or less."

The only two States in India which had these Magistrates under section 30 were Punjab and Assam and after independence Hyderabad and some Part C States (not all). By amending this section, the Government desires to extend this section to the whole country. U. P., Bengal and Madras which in my opinion, represent on the whole a proper opinion on this subject, have opposed this. The new Home Minister who headed the Government of U. P. also opposed the proposal of giving power to the Magistrates under section 30.

SHRI J. S. BISHT: They need not give the power, it is not compulsory.

SHRI GULSHER AHMED: If it is discretionary, then Government may use it.

SHRI J. S. BISHT: If they are opposed to it, why should they do it?

SHRI GULSHER AHMED: They say that they have a sufficient number of Sessions Judges and there is no necessity of giving this power to the Magistrates to try these cases.....

SHRI J. S. BISHT: They need not appoint anybody.

SHRI GULSHER AHMED: In this regard I would say that this is not desirable in view of article 50 of the Directive Principles of the Constitution where it is laid down that each State will try to separate the Executive from the Judiciary within a reasonable time. As far as I remember, during the debate in the Constituent Assembly, a limit of 3 years was put down within which each State would separate the Judiciary from the Executive but then some Members said that if this limit of 3 years would be put, then some States will not separate the Judiciary from the Executive before 3 years. So they (framers of the Constitution) decided that this limit of 3 years should be removed. I will quote my hon. friend Dr. Katju what he said in 1948 about this topic. I am quoting from an article on "Separation of Judiciary from Executive" published by the *Hindustan Times* on 13th December 1948. I am quoting his opinion:

> "In fact, in important cases, I imagine, they (Magistrates) are kept in touch with the progress of the police investigation, and what is much more important, action under the all-pervading preventive sections of the Criminal Procedure Code—I refer particularly to Sections 106 to 110, 144 and 145 of the Code—is often taken with their previous tacit or express approval. As executive officers they acquire a good deal of knowledge through police and other sources about cases which they are subsequently called upon to try judicially."

Then he goes on further and says:

> "Then there is a widely prevalent feeling that most of them are subservient to executive influence and labour under a fear that their career may depend upon how they decide cases in which the provincial Government or the higher executive authorities may be interested. Under the British rule it was commonly said that in the so-called political cases it was difficult to expect even-handed justice from the magisterial Courts. The whole problem to my mind is capable of a very easy solution which has not

found general acceptance throughout India.

"The District Magistrate is the principal officer in the district charged with the duty of maintaining law and order in his district. He must be assisted by several subordinate magistrates. The District Magistrate and his colleagues should continue to discharge all executive authority and exercise all discretionary powers which may be vested in them as such executive officers."

Then he proceeds further and says:

"It is sometimes overlooked that while the civil judiciary is entirely independent of the executive from top to bottom even on the criminal side, in so far as trials of serious offences are concerned, independent tribunals, exist presided over by Sessions and Assistant Sessions Judges.....I think there should be no difficulty in appointing judicial magistrates for trying all criminal cases of every description. Their appointments should be made after an examination and on the recommendations of the Public Service Commission. They should enjoy security of tenure and absolute freedom from executive control. After all, what is the object that we intend to achieve by separation of two functions? The object is that the accused person should have the benefit of trial before an independent and impartial magistrate, who should try and dispose of the case before him according to law without any bias, without interruption and without pressure or influence of any sort or kind being brought upon him."

Sir, in view of the above opinion, I feel that when some of the States in this country have already separated the judiciary from the executive, a provision like this one, is not proper. I will, with your permission, Sir, quote just one of the Judges of the Punjab High Court where section 30 is applicable even today. He says:

"No magistrate should have the power to sentence any citizen for 7 years which is a good bit of man's life. As far as I am aware, nowhere can a member of the Executive award such a sentence. It is everywhere the function of a judge to try a person for serious offences and to give heavy sentences. Even in the British period, except in non-regulation provinces, a magistrate could not award more than two years and in England his powers extend to 6 months only."

Two or three Judges of the Allahabad High Court, Justice Kidwai and Justice Desai, have also given their opinion against this provision.

Sir, I also feel that this will be discriminatory and is open to doubt. Justice Madholkar of the Nagpur High Court sticks to the view that the whole section should be omitted in view of the case decided by the Supreme Court in the year 1952, *i.e.*, the case of the State of West Bengal *versus* Anwar Ali. The West Bengal Government have said that to classify offences on the ground of the experience of Magistrates is not very safe. This is what the Government of West Bengal have said:

"The proposed classification on the basis of the magistrate's experience and not on the classes of offences or the classes of the accused will be difficult to justify."

The next point that I would like to bring to your notice, Sir, is the clause dealing with the statement made before the police which can be used by the prosecution to contradict the witness. This point was very ably dealt with by my learned friend Dr. Kunzru, but I would just like to explain the position a little further. Sir, in practice what actually happens is this. The statement made before the police is not made on oath, nor is it written down *verbatim*. Generally what happens is this that the witness narrates

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his history and the police officer writes it in his own language to suit his own case. According to this amended provision, not only the prosecution will be entitled to contradict the witness, but the prosecution will also be entitled to use that statement in the re-examination of the witness to clarify any matter which had arisen as a result of the cross-examination.

SHRI J. S. BISHT: But that is the old provision of the law.

SHRI GULSHER AHMED: I am coming to that, I shall explain what will happen. If the defence counsel has made any good points as a result of his cross-examination, that will be washed away by the prosecution putting up the statement of the witness in his re-examination. So in this way a great loss has been done to the accused person and very material gain has been achieved for the prosecution.

SHRI J. S. BISHT: But how can he re-examine the witness who may be hostile?

SHRI GULSHER AHMED: What will happen now, under the new provision is this that the prosecution will not have to declare the witness as hostile. He can re-examine him straightaway if the witness makes contradictory statement in his cross-examination.

SHRI J. S. BISHT: No.

SHRI GULSHER AHMED: He will simply take the permission of the court, and after taking that permission, he will re-examine him. At present, he applies to the court to declare the witness hostile and then he exercises the right of only cross-examining his own witness without any reference to the police statement.

SHRI H. C. DASAPPA: But that he cannot do until the witness has given sufficient indication that he is not sticking to what he said to the police.

SHRI B. K. P. SINHA: What is the use of putting this provision here, if the witness is not to be cross-examined without declaring him hostile? None. Under the law as it is, he can be cross-examined after being declared hostile.

SHRI GULSHER AHMED: The prosecution cannot use the statement before police for that purpose, for the purpose of re-examining his own witness. What will happen after amendment is that we will convict an accused on the basis of a statement which was not made under oath against a statement before the Court under oath. Before the police he (the accused person) never makes any statement on oath, he never signs it, the statement is written not in his own words. Under the new provision, in the re-examination, and in confronting the witness, the prosecution will be in a position to use that statement indirectly to corroborate its own case and story. That way, I think, a great injustice has been done to the accused and I think section 162 as it existed in the principal Act should be retained, and I do not think there is any necessity to make any change in section 162.

Next I come to clause 25 whereby section 198 has been amended to make defamation against ministers and public servants not actually a cognizable offence but something like that, under clause 25 not only the person against whom an allegation has been made, but the second man also can file a complaint before a Sessions Judge. Sir, I feel what my learned friend Dr. Kunzru has said on this point is quite correct and I feel that this provision amounts to a kind of a different treatment to the public servants. In a Welfare State, when we are going to nationalise the Imperial Bank, when we are going to nationalise this industry and that industry, a huge number of persons in this country will become public servants and thereby a privileged class and a different

procedure will be followed in their case. Sir, in France, according to Prof. Dicey, there is no rule of law, rule of law means equality before law; that equality before law means that every person will be tried by the same Court and under the same law. Even there there is no such provision. Dicey who wrote his book on the English Constitution said that there was no rule of law, because in France there was a separate law which governed the public servants and there were separate courts which tried the public servants.

MR. DEPUTY CHAIRMAN: You may continue tomorrow. The House stands adjourned till 11 a.m. tomorrow.

The House then adjourned at five of the clock till eleven of the clock on Tuesday, the 12th April 1955.