[Mr. Chairman.]

of valuable lives. We all deplore it. But the Government would be able to make a statement after making enquiries.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL, 1954—*continued*

SHRI GULSHER AHMED (Vindhya Pradesh): Mr. Chairman, yesterday I was speaking about clause 25 dealing with defamation against public servants and the Ministers. I was trying to say that in a country like France, where according to the opinion of Prof. Dicey, the great constitutional lawyer, there is no rule of law; that is equality before law—even that country never thought of making any law making defamation against public servants and the Ministers as a cognizable offence or something like a cognizable offence. I would like to say and draw the attention of the hon. Home Minister to the fact that by making this provision, he is going to take away a very valuable right from the public to criticise the public officers and responsible Ministers which is very, very essential. According to section 499, sub-section (3), a public servant or a Minister can be criticised and the judges of the Hight Court have gone to the extent of saying that even a defamatory statement against a public servant, if it is in the public interest can be made.

There are several rulings of the High Court to this effect. So I would say that the amendment of section 499 of the Indian Penal Code will also have to be made. And if that is going to be done, then I feel that a very valuable right of the citizens of a free country is going to be taken away by this provision.

Then, Sir, I would like to draw the attention of the hon. the Deputy Home Minister to the fact that in no civilised country has any attempt of this kind been made where the public servants and the Ministers have been given a special privilege. There is one example in the United States that before Jefferson became the President of the United States, the Congress had passed a law whereby defamation against public servants and Ministers was made a cognisable offence. But as soon as Jefferson became the President of America, he being a great jurist, who was more or less responsible for the framing of the Constitution of the United States, released all the accused persons who were in jail for committing the offence of defamation against public servants when he became the President. Apart from that one solitary example, you won't find any other example, or you won't find any such provision having been made anywhere in any democratic country. So, I feel that by making this provision, the fundamental guarantee that is given to every citizen under article 19 of the Constitution is going to be hit very badly. This provision, to my mind, is somewhat like section 124A of the Indian Penal Code. That section dealt with sedition, and according to that section, the Government could prosecute any person, if they were satisfied that any act, statement or allegation made by any person was going to create dissatisfaction among the subjects of Her Majesty, or something like that. The only difference, to my mind, appears to be that in place of the word 'dissatisfaction' the word 'defamation' has been put in. So, I feel—and there are many other persons, some of them are Judges and some of them are lawyers, who have also felt—that this provision is going to curtail the freedom of speech or the freedom of the press, which is guaranteed under article 19 of our Constitution.

Then, Sir, by this provision, the Government has tried to make a difference between slander and libel. Under the Indian Penal Code, there is no such difference. For anything defamatory said or written, the punishment is the same. There is no such distinction between the two as exists in England. By amending this section,

the Lok Sabha has created a difference between slander and libel. I feel that there will be a great conflict between these two provisions And I do not think that unless and until we make an exhaustive code of Defamation, as has been done in the United Kingdom in the year 1952, this provision in the Criminal Procedure Code will be in conflict with the Indian Penal Code, and also with the provisions contained in the Constitution, articles 14 and 19.

Then, Sir, our past experience has shown that persons placed in high positions are sometimes very sensitive Here I will just remind the House about the two cases which happened when I was a student in the University Two Judges of the Allahabad High Court issued a notice against one of the editors of a Bombay newspaper on the ground that certain things written by him had amounted to a contempt of the court And they wrote to the High Court of Bombay for the surrender of the editor to their jurisdiction, because he was a resident of Bombay The Presidency Magistrate granted the request of the Allahabad High Court and asked that the editor should be surrendered or handed over to the jurisdiction of the Allahabad High Court But when the matter came in appeal before the Chief Justice of Bombay, he allowed the appeal and held that the grounds of contempt of the court were very flimsy, and refused to surrender the editor to the jurisdiction of the Allahabad H gh Court Judges

The other case was that of a Madras High Court Judge Sir, this will be a good lesson for us, because we find that even persons like the High Court Judges who are supposed to be very calm and quiet, and not liable to be easily excited have got excited very easily over the things which appear in the newspapers Then what about our politicians and our civil servants? A politician a Minister, is a repre sentative of the people, he is elected by the people, he has to fight election, and allegations are made against him when he goes to his constituency to fight the election Therefore, Sir, the possibilities are that if any person speaks anything against the Minister, the latter may use his power and may exercise his influence and may thus make his secretaries to give permission to the Public Prosecutor to file a complaint against his opponent

Sir, if the hon the Deputy Home Minister is not going to accept my amendment, which I have given notice of, for the deletion of the words "Ministers and public servants", at least he can accommodate me to this extent by providing that no complaint of defamation against public servants and Ministers will be filed before the Sessions Judge, unless and until it is certified by the Advocate-General of the State, or in the case of the Indian civil servant, by the Attorney-General of India Sir, these two persons are experts in law and are qualified and they can very easily find out whether a particular statement amounts to a defamation or not In this connection, I would like to draw the attention of the House to the fact that the offence of defamation is a very very technical offence, and even the Judges in the United Kingdom have, sometimes, not been able to say as to what things amount to a defamation, saying to a Minister that he is incompetent as a Finance Minister or as a Home Minister amounts to defamation or not. To draw a line in these matters is, I think, a very difficult thing, particularly in a country like India where most of the people are not very much advanced in education and in political matters So, Sir, I would suggest that at least this safeguard should be provided that any complaint on behalf of the public servant or the Minister must be filed only by the Advocate-General of the State or by the Attorney General

Then, Sir, during the course of his speech, the hon the Deputy Home Minister tried to emphasise that the

[Shri Gulsher Ahmed.]

Government was very keen to see that the corrupt officers were brought to book. I do not think this is the way they can be brought to book. You are not going to examine the man against whom certain allegations are made, but you are going to examine the man who has made those allegations. Sir, in this connection, I would just like to draw the attention of the hon. the Deputy Home Minister to the fact that the Planning Commission had made certain suggestions for stopping the corruption. The Planning Commission had felt that there was corruption among the Services, and, therefore, it had made suggestions in its report, as to how the corruption among civil servants could be stopped. I want to know whether the Government has taken any steps in that direction or not. It does not look very nice on the part of the hon. the Deputy Home Minister to come here and say that he wants to change the law of defamation because he wants the corrupt civil servants to be brought to book. Let him take some action on the lines which have been suggested by the Planning Commission, which consisted of, I suppose, very great and eminent persons. Then, Sir, in the English Law of Defamation passed in the year 1952, they have made a provision that, if any unintentional defamation is made it should not be punished, if the man who made the defamation, is willing to correct himself. For example, if any newspaper publishes any defamatory allegation against any person.....

SHRI J. S. BISHT (Uttar Pradesh): This amendment is not to the Indian Penal Code but only to the Procedural Code.

SHRI GULSHER AHMED: I know that. I am not talking of the Indian Penal Code. I am talking of the Law of Defamation of the United Kingdom of 1952. There they have made this provision that, if the person who made the allegation is willing to correct himself and published the correction, then no action can be taken against him; and if the man against whom the statement was made refuses to accept the offer of correction, then the man making the defamation can put a defence that he was willing to correct himself and was willing to print the correction in his newspaper but the plaintiff refused to accept the offer. He can put up this defence if a suit is filed against him under the Defamation Act. I feel that there is a great necessity that the law of defamation in this country should be exhaustively defined and codified, because this is one of the important laws of the land which sometimes affects or infringes the freedom of speech, which is a fundamental right guaranteed under the Constitution.

Leaving aside this point, Sir, I would like to take a few more minutes to explain clause 22 dealing with statements before the police. Yesterday when I was speaking in the House, there seems to have been some confusion among the Members of this House as to what changes are actually going to take place after this amendment. The position today is this: The police or the prosecution cannot cross-examine its own witness but if the prosecution gets permission from the court after making an application that the witness has turned hostile, then the prosecution can cross-examine its own witness, but while cross-examining its own witness, the prosecution cannot make use of the statement which that witness had made before the police, but now after this amendment has been made to section 162, the prosecution will be in a position to use that statement which the witness had made before the police and thus wash away all the effects which the Defence Counsel would have created after cross-examining the witness. So, this is a very material change that is going to be made, and, I think, this is going to mean a lot to the accused persons, because after all the statement made by the witnesses before a

police officer is not made on oath; it is not written in the words of the witness, it is not signed by the witness To make that statement equal to the statement that the witness makes before the court on oath, before an independent judiciary, is, I think, something very drastic and is against natural justice. I think that after this amendment it will be very, very difficult for an accused person to get acquitted. I have moved an amendment and I hope that the hon. the Deputy Home Minister will seriously consider the consequences of the change that he is contemplating to make in section 162 As I said in the House yesterday, there is no doubt that the other House has made some very good changes in the Bill, but I feel that at least section 162 and clause 25 relating to defamation really require more serious consideration by the hon. the Deputy Home Minister and this House, and I hope that, when the amendment comes up for discussion, the House will lend me its support.

SHRI S N. MAZUMDAR (West Bengal): Mr. Chairman, the hon. the mover of the Bill has stated that the object of this amending Bill is to secure cheap and speedy justice, which is very essential for the functioning of a democratic system of government, but the Government has proceeded in the wrong way and has done something else. If we take the objectives of this Bill, securing cheap and speedy justice, they are no doubt laudable, but in going through the Bill we find that the whole show has been given away. In the name of securing speedy and cheap justice, the Government is taking this opportunity to incorporate some definitely retrograde provisions in the Code as it exists today. When it is doing this, it does not deserve any support but only deserves condemnation. Sir, when this Bill was referred to the Joint Committee, it had to face stiff opposition. This Bill did not have an easy passage in the other House. It met with opposition from all sides of the House, even from Members of the ruling party. As a result of it, many of the provisions had to be amended, and the form in which it has come to this House is better in the sense that some changes towards the better have been made in the Bill as it came out of the Joint Committee, but still the bad features of the Bill remain, and this has been pointed out by my hon. friend, Mr Gulsher Ahmed, in a very mild manner He has been very modest in his remarks I do not know why the hon the Home Minister is not piloting this Bill If he is not inclined to proceed with this Bill, he should have taken courage in both hands and given this Bill a decent burial till the proposed Law Commission is set up and it goes into the whole question.

SHRI J. S BISHT: All the hundred and eighteen clauses are bad? Do you oppose all of them?

SHRI S. N. MAZUMDAR: I am not here to be cross-examined as a witness I am not a lawyer. I speak from a layman's point of view. So, I would request my lawyer friends to listen to what I want to submit before this House. I have not said that all the clauses in the Bill are retrograde or that all the clauses should be dropped. But what is the main purpose? The main purpose, as has been pointed out by the mover himself, is to bring the existing measure into line with modern times From that point of view, I think nothing is going to be lost if, instead of proceeding with this, a Law Commission is set up as early as possible and that Law Commission is given the task of going through the whole thing It is true that all these measures have been handed to us from the previous administration, to change which Indians fought for years. Now, in order to bring in radical changes in the system, what are the necessary conditions? First, the police should be reformed. The whole question of how the police functions should be thoroughly gone into The mentality of the police should be changed. It remains unchanged as yet. We are told that certain procedures are standing in the way of speedy disposal

[Shri S. N. Mazumdar.]

of cases, but what is the reality? What do we find? What is the reason why cases are not disposed quickly but go on for years and years? From my experience as a layman, I would like to give the reasons which, I think, are responsible for delay in the disposal of cases, but before that, I would like to say this that the speech made by the hon. Dr. Katju, while making his motion for referring this Bill to a Joint Committee, if I may put it bluntly, showed a convicting mentality. If I may go a bit further, it betrayed the outlook of a court inspector who thinks that every case which he conducts must result in a conviction. Speedy justice is necessary but what we find generally is this. Many times I have been a victim of some political cases even during 1949. At first some persons are arrested, the police safely leaves them in custody in the name of investigation. The investigation is not actually taken up before a considerable time elapses. The magistrate has many other functions to attend. He has to attend on V. I. Ps. and he has other administrative duties and as a result he cannot take up the cases. I agree with my friend Mr. Gulsher Ahmed and Dr. Kunzru—I don't remember whether Dr. Kunzru made that suggestion that if the judiciary is separated from the executive and if the disposal of cases is left to officers who have nothing to do with other administrative functions, then the disposal of cases will be far more speedier. Then in the matter of police investigation, if the whole police force is reformed, if its entire method and outlook is changed, it will go a long way for the speedy disposal of cases and for speedy conclusion of investigation. Without doing that what we are finding is that in particular sections, definitely retrograde steps are being taken. It may be pointed out by some that I am concentrating on some particular sections. I confess my ignorance about the legal aspects of the whole thing. There may be other measures which competent Members will discuss and dilate upon but the measures which seem to me definitely retrograde I would like to point out. It has already been pointed out. The first and the second speaker after the mover of the Bill have laid their fingers on just the right spots. As regards the question of taking away some of the rights which the accused enjoys at present or till now, the speakers who have spoken on this have all agreed and I fully agree with them that under the contemplated procedure, the right of the accused which he enjoys now is going to be seriously curtailed. At this stage in the commitment proceedings, the accused gets a full picture of the case against him and he can prepare for the defence. Now the Government is proposing some substitutes which are thoroughly inadequate in respect of the documents which will be given to him. The documents on which the prosecution will rely will be given to the accused but there may be other documents or other items of evidence on which the prosecution does not rely but which are essential for the successful defence of the accused person. But if that right is taken away from him, it means he is placed in a very difficult position—and in what context?—without carrying out the necessary over-all radical reforms in the system of administration of justice.

12 NOON

As regards other measures, in 1949 I was arrested in a political case and then I was remanded to custody. The police waited for several days. I used to be taken to the court at 10 A.M. and made to sit there up to 4 in the evening without even being produced before the magistrate. Then there was another remand and going back to jail and then I came back after 15 days and in this way it happens sometimes. When the trial was actually taken up it also could not be disposed of though the trying magistrate in my case was very eager to dispose of the case quickly. What happened? One of the chief prosecution witnesses was a Police Inspector and he was

busy in some other duties for some time On another occasion it happened that he was escorting a Minister and they had a motor-car accident and the Minister was injured and so he could not come. In this way the whole thing was delayed. There were some documents against me written in Nepali which were produced before the court earlier but for two months these documents were kept unused Then only on the date of framing up of the charges, the documents were placed before the trying magistrate and the magistrate said that he could not understand the Nepali language and he wanted a translation in English to be made and for that another remand for 15 days was granted. In this way cases are disposed of. If really speedy disposal is wanted, then the finger should be laid on these spots Then there is another serious incursion on the existing rights of the accused The accused at present has the right to postpone cross-examination of the prosecution witness It was proposed originally that the accused must cross-examine the witnesses then and there but because of stiff opposition from all sections, the Lok Sabha passed an amendment that the cross-examination may be deferred to a later stage at the discretion of the magistrate but I want to know why that measure should be taken In my opinion for the disposal of cases, other steps should be taken instead of curtailing the existing rights of the accused The accused may be defended by lawyers or maybe he is defending himself—there may be all sorts of cases It may happen that if he gets a full story of the prosecution case, then he is in a position to conduct his defence properly. We know the average accused in our country, we know that even educated persons are completely ignorant in the matter of law or cross-examination or putting up defence because we may conduct our defence Supposing I am asked to conduct my defence. I shall conduct it on common-sense without understanding the subtleties of the law and if I am asked to cross-examine the accused on the spot, I may miss the most important points but on mature reflection I may find out the real flaws or faults in the prosecution case or if I am defended by a lawyer he may find out the real defects in that case and in that way the defence may be enabled, but that right is going to be taken away by this

Another argument is put forward that the witnesses don't like to come to the court Therefore if the cross-examination is deferred, it creates difficulty. As I have already pointed out, the reason lies elsewhere as to why the witnesses are reluctant to come to the court It is often because they are asked to come on a certain date and they are made to wait there from 10 A.M. to 4 or 5 or 6 P.M. and then they are asked to go away because another date is fixed In this way the witnesses also undergo harassment The whole procedure is such that it involves harassment of the witnesses So this should be reformed instead of taking away the right of the accused to defer cross-examination till a later stage Now this attempt to take away the right of the accused has been very strongly opposed by different sections of opinion and the amendment as I have said, is an improvement on the original proposal but still the amendment does the mischief in the sense that it leaves the whole thing, the right of deferring cross-examination or not to the discretion of the magistrate It may be argued as to why we should assume that the magistrate may take a biassed attitude. I don't like to go into all these details but as I have said, the real necessity in the matter of reform of the procedure of administration of justice is the separation of judiciary from the executive Unless that is done, the whole thing will not be properly conducted

[THE VICE-CHAIRMAN (SHRI V K. DHAGE) in the Chair]

Then, Sir, there is another question. At present the accused cannot be cross-examined by the magistrate.

[Shri S. N. Mazumdar.]

The accused, if he likes, can explain some circumstances in the evidence against him. Sir, I have been the accused in a conspiracy case,—conspiracy to wage war against the King Emperor—in 1933 and I know what happened in that case. Our trial went on and on and the thing which started on the 10th August 1933, on that judgment was delivered on the 1st May 1935. We know the whole procedure. That was a special tribunal, but even then, from that, I know what the atmosphere in the court is. What happens? Our accused persons, generally have not a very high level of education, they are not very sharp persons. Whenever one is put on arrest, whenever one is brought to the court, one feels a sort of awe, because the whole atmosphere in the court is awe-inspiring. Of course, the atmosphere of the place where justice is administered should be serious and solemn, that I understand. But it should not be awe-inspiring. However, the whole atmosphere, starting from the arrest of the person accused, right through the various processes which he has to undergo, is so awe-inspiring that for the ordinary accused, it is really bewildering. If he is taken before the trying magistrate and is cross-examined there, then in that bewildered state of mind, he may give answers which he really does not mean to give and which may put him in jeopardy. That is why this provision that the accused may be cross-examined, this provision also is a serious incursion into the rights of the accused, as he stands at present.

Sir, it has been pointed out that this amending Bill seeks to give the prosecution the right to cross-examine its own witness or to contradict its own witness on the basis of the police statement. This has also been thoroughly criticised. In the original Bill, it was proposed that the police statement can be used by the prosecution not only for contradiction, but also for corroboration. Now, after the amendment, as it stands, that can be used for contradiction. But here also, let us see what is the reality. How are these statements recorded by the police officers? These statements are not recorded by them on a scientific basis. They go to the place of occurrence and ask the persons, or take the accused person to the place and the officer puts certain questions to the person. It often happens that he puts certain questions at the place of occurrence and comes back and after the lapse of a considerable length of time he sits down to record the statement from his own memory, and it is left to his own likes or dislikes to give the statement whatever inclination or whatever bent he wants to give it. There is nothing to prevent him from doing that. Moreover, this statement is not written in the form of questions and answers. The police officer asks questions and writes down the statement according to his own understanding. If the least is to be said, I would say that he does it according to his own understanding. But there is nothing to prevent him from giving the statement the bias which he likes to give. So, as the system stands at present, these statements can be used by the defence to contradict the prosecution witness. But what is proposed here? It is proposed that the prosecution can use these statements which are unreliable, which are so admittedly unreliable that they are not taken as evidence or admitted as exhibits. Now the prosecution is being given the right to use these statements to contradict its own witness. The prosecution witness may be tutored outside. He might have made certain statements under police pressure, under intimidation, under third degree methods. And later on, it may have happened that in the court he made the correct statement. But according to this provision, if the prosecution finds that the statement of the witness in the court goes against the prosecution, then the prosecution can utilise that statement to contradict its own witness. That also means that it amounts to a serious incursion into the rights of the accused, as matters stand at present.

Sir, there are a few other matters with which I would like to deal. First of all there is this question of jury. I differ from my hon. friend Mr. Gulsher Ahmed on this subject. He has pointed out the defects of the jury system, that it is unreliable and that this system is not working very satisfactorily in all places. Of course, I do admit that there are defects in the jury system, the juries can be corrupted and all that. But let us go to the root of the whole thing. There may be abuses, of certain procedure, but there may be certain inherent good things in the procedure also. If we distinguish between the two and if we find that the inherent character of the procedure is correct, but that it was abused in the implementation of it, then the correct way would be to remove those abuses. My submission is that first of all it is due to the wrong selection of the jury that this system came to be abused. The personnel of the jury is generally selected from the decadent class. If the selection of the personnel of the jury is done with proper care and it is seen that honest persons are there as the jury, then I do not think these abuses will continue. Nobody can proceed on the assumption that honest people are not available in our country to serve on the jury. Why we stand for the retention of the jury system is this. It gives the public, the people in general, the laymen, an association with the administration of justice. Those who deal with the administration of justice look at it from a certain mental outlook or certain posture of mind. But the layman's understanding of the facts is also necessary in order to see that justice is properly dispensed. That is why we stand for the retention of the jury system and for the removal of the abuses in the system.

As regards the question of assessors, my opinion is that the system of assessors can be abolished if the system of trial by jury is retained and it is adopted in all necessary cases. If that is not retained, then as a lesser evil, the retention of the system of assessors gives some chance to the layman to be associated with the administration of justice.

Now, Sir, I come to the main question, namely, the question of defamation.

Sir, the hon. mover of the Bill has said that the Bill, as it stands at present, will really help to purify the administration, if there is corruption in it. I think, Sir, it is like standing a thing on itself. Corruption is there and the correct procedure is to remove the corruption but what we find here is that in cases where corruption is brought to light in the press and in the public, then the whole machinery of the State will come down on the people. The hon. mover has referred to the opinion of the Press Commission in this matter. I do not know whether Government has accepted the other recommendations of the Press Commission. Unless we know that decision, I can say that the Government comes here taking one recommendation according to its advantage and cites it in its defence. That is not proper. There was a dissenting note in the Press Commission's Report. Out of the eleven members of the Press Commission, four submitted a dissenting note and that note is not to be lightly treated. That note was submitted by persons eminent in public life and who have long experience in public life and they submitted that note after mature consideration. What we find from the opinion of the majority members of the Press Commission is that the State Governments presented before them an exaggerated picture of the whole thing and when Dr. Katju spoke before us, that impression of mine was further confirmed. Sir, the Press Commission has also said that instances of scurrilous writing is not so widespread in our press and that it is generally confined to what is known as the Yellow Press. In order to curb the Yellow Press, in order to curb these lapses from the proper code of journalism, the Press Commission has suggested certain other

[Shri S. N. Mazumdar.]

things among which is the suggestion for the setting up of a Press Council which will see to these things. Government has not taken any action on this; at a later date it may come forward and say something in this matter but here Government is taking certain things out of the context and is citing them in its defence.

It is said in the note of dissent appended to the Report of the Press Commission that criticism of public servants in our country has been less severe than in other countries. We are now engaged in building up a democratic society. In that task, it is necessary that the administration should be purified; the public servants should discharge their duties properly. The public servants, Ministers and other high dignitaries are all responsible to the people and the essence of democracy is that their faults should be criticised. If it is really our desire to develop a proper democratic atmosphere then the best means of discouraging any wrong use or abuse of the right to criticise a public servant should be to root out corruption or such objects of criticism from the administration itself. Right criticism of these people should be encouraged instead of being discouraged. No case has been made out to prove that there has been so much of scurrilous writing against public servants that the heavens are going to fall and the administration is going to topple down. The hon. Dr. Katju while speaking on the motion to refer this Bill to the Joint Select Committee, tried his best to give us the impression that the poor public servants, whose hands are tied, whose mouths are shut and sealed, are groaning under this difficulty, that they cannot take proper steps against scurrilous writing but, in spite of all his eloquence, he could cite only one or two instances.

I again go back to the Press Commission. The Press Commission has definitely said that instances of scurrilous writing in the press are very few and that the proper way to tackle that is to establish a Press Council which will see to these things. The State Governments, according to the note of dissent, placed an exaggerated picture of the unfounded attacks on public servants. We know how the Government dignitaries function today. The Press Commission has said some unkind things against them also. Today Government is taking power into its hands as a result of which even right criticism or the least criticism may be, at the discretion of the Government, taken to a court. It was, in fact, argued by the hon. mover of the Bill that after the amendment made in the Lok Sabha there is nothing to fear. He also cited the case of the Working Journalists Federation and said that they had agreed to a certain procedure. I could not exactly follow his position there but I also know, Sir, that while speaking on the amendment in the other House, Dr. Katju gave some assurances about the procedure in defamation cases. He said that there would first be a departmental enquiry and some such other procedure will be adopted. After that assurance in the other House I expected that an amendment will be coming forth from Government incorporating that assurance into the body of the Bill but nothing has been done and I think Dr. Katju is pleading ignorance of his assurance; that shows the way the wind is blowing. The Working Journalists Federation protested against the whole procedure and the hon. mover of the Bill brushed it aside by saying that their objections were fundamental. Am I to take it that objections on fundamental grounds are to be lightly treated, that fundamentals are to be mouthed and voiced on some solemn occasion and then quietly given a decent burial and that practice should be exactly opposed to those fundamentals? I do not think, Sir, that fundamentals can be so lightly treated. Even with the amendment passed by the Lok Sabha, the position is that the press will feel that when it tries to ventilate the right things, the most.

moderate things, against public servants, against Ministers or other dignitaries, the whole machinery of the State will operate against it. The provisions of the Bill, even as amended, do act as an element of terror against the press. We know how things go on and it is no use trying to brush aside all these things or blind ourselves to the realities. It is admitted that the administration as it stands today should be purified; some radical changes should take place in it. Nothing of these things is being provided here. What is being provided is that there may be some dilution in the procedure but the fact remains that if a dignitary of the State, if a Minister or if a public servant is criticised the whole machinery of the State will work against the press. It may be argued that if the charges are found to be false or unfounded then the accused will be paid compensation but, Sir, he will have to go through the whole process of harassment, running to the court, etc. This will be a Damocles sword hanging over his head. The process involves considerable harassment and if that prospect hangs over the head of the press, like a Damocles sword, it will stifle criticism of public servants in public functions. It is no use saying that everything has been set right by the amendment as has been incorporated in the Lok Sabha. The amendment has taken away some of the sharp edges but the mischief remains there. That is why, Sir, the best thing.....

SHRI JASPAT ROY KAPOOR (Uttar Pradesh): What is the mischief?

SHRI S. N. MAZUMDAR: The terror element against the press is there. For a criticism of the public servant in his public function the press can be harassed at the discretion of the Government.

DIWAN CHAMAN LALL (Punjab): Why? If they are perfectly right in what they say, why should they be harassed?

SHRI S. N. MAZUMDAR: I submit that they will be harassed in this way—whether they are perfectly right or not will be decided if a complaint is filed, after the process of the case has been concluded—that for several months they will have to run to the court with that worry before them.

DIWAN CHAMAN LALL: So will the man who is defamed.

SHRI S. N. MAZUMDAR: I said Lall was not here then—that the cases of defamation, the cases of scurrilous writing of unfounded attacks against earlier—my hon. friend Diwan Chaman public servants are not so numerous as to deserve a provision like this. That is my submission. I shall eagerly await the opinion of my friend Diwan Chaman Lall, but, Sir, in my opinion the proper step the Government should take is to drop this clause altogether. That will be a good thing and I think that will be appreciated not only by us on this side but on Government side also.

SHRI JASPAT ROY KAPOOR: Even without the proposed amendment the defamer can be proceeded against.

SHRI S. N. MAZUMDAR: Yes. When he can be proceeded against then what is the necessity of this? The provision is there and that is the main contention that the defamed person can proceed against the defamer. Then, if that is so, what is the necessity of this? So, Sir, I have submitted my main argument. There may be some other points left and they will be taken up by my other friends who will speak and also by me at the time of the discussion of the amendments.

SHRI J. S. BISHT: Mr. Vice-Chairman, I rise to support the proposals with regard to the changes in the Criminal Procedure Code as they emanated from the Joint Select Committee and, as I shall show very shortly, except with regard to three or four sections, I extend my wholehearted

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support to this Bill, with respect to about 111 sections that are dealt with in this Bill, and I will recommend to my hon. colleagues here that they can go forward with a clear conscience and vote for all these measures that are proposed in it because they are a great improvement on the present Code of Criminal Procedure and we must be thankful to the hon. Dr. Kailas Nath Katju for the immense amount of labour and energy he has spent over it and tried to improve the whole machinery of criminal law administration of this country. As the hon. the Deputy Minister said yesterday, the Act was of 1898. Only after 32 years it was partially reformed in 1923, and it is after 32 years again exactly that we are in this process of further reforming it in the light of the defects that we have noticed in the administration of criminal justice.

SHRI H. P. SAKSENA (Uttar Pradesh): Is it on the basis of prestige, Sir, that my hon. friend who was a member of the Select Committee is supporting all the provisions of this Bill?

SHRI J. S. BISHT: Well, if my hon. friend will have a little patience, he will himself agree with all these proposals but for those three or four sections to which I shall come at the end of my speech.

Now, Sir, take for instance clause 2. In this case all that has been done is that the limit has been extended from six months to one year only. There was some point yesterday by Shri H. N. Kunzru as to what other laws may be involved and what will be the consequences. I have got here, Sir, a chart which shows exactly the particular sections which will be brought in if we extend this period to one year only. The total number of sections involved is only 26 out of nearly 511 sections or something like that in the Indian Penal Code and they are more or less minor. For instance there is 153 (Offences against the public tranquillity). The other is Offences by or relating to public servants. Then there is Contempt of lawful authority of a public servant. Then there is Offence relating to coins. Then there are the Offences relating to religion. Then there are the Offences affecting the human body, sections 309, 323, 357 and 374, all minor things. Then there are the Offences against property, sections 417, 434 and 448. Then there are the Offences relating to Documents and to Trade or Property marks, sections 482, 486 and 489. So all these are very minor. They were very carefully examined and there is no difficulty about them, and this will enable many of these cases to be tried like summons cases. So there is, I think, no difficulty about it and there was not much controversy even in the Lok Sabha when the Bill came in there.

Then clause 3 says that the Sessions Judge can hold his court at any place, where both the parties agree, for the disposal of the case or for the examination of any witness or probably to see exactly how a particular offence was committed, a dacoity or a murder, when there is a certain vital point involved and it is necessary to go to the local spot in the presence of the parties. This is a great improvement on the present position because at present nobody can go. A Commission has to be sent or some court has to be sent. That is not very satisfactory, and in this case a very great precaution has been taken that the accused as well as the complainant, the prosecution as well as the defence have both to agree to this procedure before the Sessions Court will go there and the Sessions Court itself should agree to that proposal.

Then with regard to honorary magistrates. At present anybody can be appointed honorary magistrate. In future qualifications will have to be laid down; rules will have to be framed in consultation with the High Court and only people who conform to these qualifications will be eligible

for being appointed as honorary magistrates.

Then there is one clause dealing with section 30. Dr. Hriday Nath Kunzru yesterday himself advanced a plea that we must appoint some magistrates with extra powers so that the work in the Sessions Court may be lightened, that is to say, most of its work which is of an intermediate class, which a first class magistrate cannot dispose of but which only a Sessions Court should dispose of. Those minor cases are cases which can be disposed of by a section 30 magistrate. Under the present section the power of such a magistrate extends up to ten years. In fact the Joint Select Committee had taken the precaution and reduced it to seven years. So there should be no complaint on that account. The objections are not so large and very great precaution has been taken and it is that every magistrate of first class and even the District Magistrate must have had at least ten years experience as first class magistrate before he can be invested with power under this new section. Now if people of that experience are available—I hope they are available in every State—and if these people are given these extra powers up to seven years, then much of the work that is today pending in the Sessions Courts will be very much lightened.

Then under clause 7 Assistant Sessions Judges have been given power to punish up to ten years and the power of the magistrate to fine has been doubled and considering the depreciated value of the rupee at the present time it is not a revolutionary measure at all.

Now, Sir, clause 16 empowers the magistrates, under section 107 of the Criminal Procedure Code to take those bonds and the only lacuna that was found in the operation of the present Act has been done away with. Now, for instance, if there is a criminal say in the Meerut district who is operating in Delhi, or say there is a criminal there who wants to commit criminal breach of peace from there, under the present law, the District Magistrate of Meerut even if he knows about it can take no action. Now under this law it has been provided that if either the place where the breach of the peace or disturbance is apprehended is within his jurisdiction or the person is within his jurisdiction or there is a person there who is likely to commit a breach of the peace outside the limits of his jurisdiction, then in all these cases he can immediately catch hold of that man. And this is merely the preventive power of the police. In cases in which they know that in a particular locality there is a person who is likely to commit breach of the peace and about whom they have some strong evidence they can promptly take action against him. We come to clause 17 which is a new proposal and which makes the procedure in the summons cases uniform. Formerly there was a little amount of discrimination but that discrimination has been done away with and the whole thing has been made uniform.

As regards clauses 18, 19, etc., anybody who has had some experience of the criminal courts knows very well that these disputes about land involve people into prolonged litigation under section 145 of the Code of Criminal Procedure and sometimes these proceedings drag on for years together. What has been done is this. A criminal court can take cognisance only when there is a likelihood of a breach of peace, not otherwise. If it is otherwise, it becomes a mere civil litigation. They can go to a civil court to have the question of possession or title settled there. In fact, there are innumerable cases which are disposed of under section 9 of the Specific Relief Act. It is only where there is an apprehension of breach of peace that action is taken under these sections. Now what is proposed in the Bill is that the magistrate will have to decide the case within a period of two months, that is to say, he will have to come to a quick decision as to who should be put in possession

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If he finds that the man who is already in possession should not have it, he can ask the party to go to a civil court. If he finds that a man is unlawfully dispossessed, then he can put him in possession. If there is some civil affair involved in the matter, he will make out an issue and remand it to the Court of the Munsiff or the Civil Judge as the case may be and that Munsiff or the Civil Judge will have to decide that issue within a period of three months and send it back to the court of the magistrate. So the maximum period envisaged under the new Bill is about five months within which the matter will have to be disposed of and this is a vast improvement on the present state of affairs. Now, as I said, the matter goes on dragging for months together, if not years.

Next I come to the amendment of section 160. That again, I may inform my hon. friend, Mr. Saksena, is a very great improvement. Today the police has got unlimited power. If an offence is reported, they can summon anybody, male or female, to the police station and the person summoned must present himself at the police station. Under the proposed amendment it has been decided that no female will be summoned to the police station, nor any youngman under the age of 15 years. The police officer will have to go to their place if he wants to make any enquiries about the matter pending before him from any female or from a boy under 15 years of age. That in itself is indeed a very great improvement. And all these tales about the so-called perjury and the so-called third degree methods will never arise either in the case of females or of young boys up to the age of 15 years.

Then I come to section 162. Here the present procedure has been maintained, that is to say, the statement of the witness or the accused who goes before a police officer while investigating a case, will be recorded but he is not asked to sign it there. The old state of affairs remains so far but all that has been attempted to be done is this. Now when in a court of law he makes a statement contrary to what he has made before a police officer the defence has the right to confront him with that statement and to contradict him with that statement and that is done very liberally. Now by this amendment the complainant has also been given the same right as the defence. (*Interruptions.*) Many of the critics of this Bill tried to confuse the police with the defence. They do not seem to realise that there is somebody behind the police and that is the person who has been the victim of the crime. The police comes in because it is a matter of sufficient public importance and that is why it has taken cognisance. There is still that part of it, that is to say, private offences. That is to say, a man who is the victim of an offence may go to the criminal court or he may not go. Or even if he goes to the criminal court, he may compound and settle the matter. But there are offences of a serious nature in which the very security of the community is at stake or the security of the State as such is at stake. In such cases it cannot be left to the mercy of the private person to move the court or not to move the court. It is only in such cases that the police comes into the scene and that too not on their own but because it is the policy laid down by the law of the land. They happen to be merely the executive instruments of that policy and if they are doing their duty I do not see why it should be made an object of complaint. At present when a witness goes there, he is tampered with by the defence. In fact if the accused happen to be rich—not rich alone but even dacoits who have plundered and looted money in thousands, they keep a certain amount to defray the expenses of defence; that is part of their new technique because they are also moving with the society and learning new techniques—what they do is this. There is in every case a star witness on whom the success or failure of the case depends entirely and I am

sorry to say that there are *parokars* and other people round about who specialise in this sort of thing and make a dead set to get at this star witness. And if they succeed the whole prosecution goes. At present it is a matter of very great advantage to them. They go and tell the witness, "You may have made any statement before the police but you cannot be confronted by those people. It is only the defence who can do that. So do not worry about it at all." So the prosecution has no right to confront them with that statement. So far as the prosecution is concerned, it might as well go into the waste paper basket. It is to prevent this sort of abuse that goes on today, and since it helps the witness being tampered with, that this amendment is being sought to be made. The witnesses are tampered with either by means of pressure or bribe and they are forced to go back upon their statements. Now, they can be confronted by the prosecution also with the statements that they have made. So far as the prosecution is concerned, I may inform hon. Members here that the prosecution does not stand to gain a single inch by this new provison at all because we can use it only when the witness has turned hostile and when he is declared hostile so far as the prosecution is concerned, he is written off. We cannot get a conviction based on the evidence of a witness turned hostile since the prosecution itself will be telling that he is a liar. No court is going to base its judgement or conviction on a witness whom the prosecution itself calls a liar. So far as the prosecution is concerned that witness is practically written off. He is of no use. It is only to prevent this sort of abuses to which I referred just now—and it is going on a very large scale and preventing the criminal from being brought to book—that this amendment is made. I have got the Criminal Administration Report of U.P. and you will be surprised to see the number of acquittals that have been secured.

SHRI H. P. SAKSENA: May I just enquire from my hon. friend whether this clause does not go in favour of the accused?

SHRI J. S. BISHT: It goes in favour of nobody. It goes in favour of justice; it goes in favour of maintaining truth when the witness says one thing at one time and another thing at another time. We want to discourage that sort of thing. In this Criminal Procedure Code there is a provision against perjury but even before the court people make a statement and at another time either due to pressure or bribery, they try to turn round. And we want to bring in this new clause that is here to have special punishment for him in order to put a stop to this growing evil of perjury. Similarly, we want that witnesses, when they come before the police, must state the truth, the whole truth. Why should they mislead the police itself and why should they say that, at a later stage, they did that merely on account of the pressure of the defence; or on account of bribery; or on account of the considerations of community and caste; and this and that pressure? They should not go on like that, but they should help in the cause of justice and if a man has committed a crime, he must be punished. Why should he get off? A man may have committed a murder, for instance an innocent man has been killed. He had no chance to defend himself. Now this man is living; he is running about moving the whole machinery of his caste and community, dangling money, winning over the witnesses, etc. Dead man never speaks; he is dead and gone. And now everybody is with the defendant. If you have some experience of Sessions Court for some years, you will hear only one thing from morning till evening, day after day, month after month,—when there is no defence:

"पुलिस ने मारा था, इस लिये हमने कह दिया" । और साहब, आपने ऐसा क्यों किया ? " इस लिये कि पुलिस घूस मांगती थी, थानेदार घूस मांगता था" ।

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Now, all experienced Sessions Judges turn a deaf ear to this, which the accused are obliged to say when there is no other defence except that "the police beat us." What we are trying to do is this. We want to stop this sort of thing. We want to encourage the man who will come and say the whole truth and nothing but the truth. And that is why this has been put down, there is no other motive except that the cause of justice should be furthered.

DR. R. P. DUBE (Madhya Pradesh): How can one say that everything in the statement is rightly written? If I speak the truth, is there any force or any rule to see that the police will put down exactly what I am saying?

SHRI J. S. BISHT: My hon. friend being a learned Doctor has no experience of this thing. I can tell him that in 999 cases out of one thousand, it is written correctly. (*Some hon. Members*: No, no.) I just want to tell you, in this connection, I am reminded of a saying by Lord Northcliffe. When a press reporter came to him, he said: "if you come to me with a news that a dog has bitten a man, I throw it away. It is no news; but if you bring a news that a man has bitten a dog, then that is news. I can give a big headline." But how many bite a dog, may I know? In a State like Uttar Pradesh, the population is six crores and thirty lakhs; it is bigger than Germany; it is bigger than France; it is bigger than England, there must be nearly two thousand sub-inspectors of police in charge of investigation and all that. And there are fifty-one districts with hundreds of magistrates. How many cases do you come across in these reports from the High Court in which the police have been found at fault? Hardly ten or twelve

SHRI H. C. MATHUR: You mean to say how many cases have been 'found out'?

SHRI J. S. BISHT: Out of eighty thousand cases, as this report says, you come across eight people who have done mischief. What is the speciality about this police, I do not understand. Only this morning I was reading in the papers about some I.C.S. officers who have been prosecuted one in Sindri case or Fertiliser case and the other in another case. The appeals are pending, I cannot comment on that, because they are still *sub judice*, they are the subject of an appeal. You come across them, there is nothing special. They are human beings, there are good men, there are bad men. But now on account of this advance of education and all that, I can say that nearly fifty to sixty per cent. of the young people who are being recruited for the job of inspectors of police or sub-inspectors of police are graduates of our Universities. They are given special training and even those head constables who write these information reports are matriculates and intermediates. Now, if you think that these people are corrupt, then it means that we are all corrupt. It cannot be said that one class of our own people are so backward and we alone are virtuous. It cannot be, because it means that we are all corrupt. I have no doubt and I am not prepared to accept it. In fact, I can tell you from my ten years' experience as a Public Prosecutor that I never came across a case in a Sessions Court where an innocent man had been deliberately put in under a false charge. Never. It may be that they make mistakes; they are themselves misled. For instance, a crime happens in a village. They go there to make enquiries. What happens? The man who makes the report makes the report correctly, but in getting the names of the accused written down, he also implicates a few other people who are innocent but who are his enemies. Somehow the innocent people are always discharged by the police or acquitted by the magistrate at a later stage. If the police finds out that in an important case, two parties are very strongly engaged, one party is implicated in the First Information Report, then the police

inspector has not the courage to discharge him at all, the other party immediately sends a telegram to the Superintendent of police or the District Magistrate saying that this man has been bribed. They have to put him before the magistrate..... (*Interruptions.*) Sir, I am not going to pay heed because I have little time left. (*Dr. Dube rose to speak.*) My hon. friend has no experience. Public Prosecutors are not Government servants. If they find that an accused is innocent, they tell the Sessions Judge that he is innocent. They are not police servants at all.

Then, Sir in clause 63 it has been provided now that there will be expeditious trial. That is to say, once the case is started and witnesses are present, then that will be disposed of day to day without adjournment. In fact, what happens now is this: the case is adjourned for fifteen days; then there is another adjournment for fifteen days, and so on. That means a very great hardship to the accused. His case drags on in the court for months together. If you take the number of undertrial prisoners in Uttar Pradesh alone, it is in thousands, most of whom are acquitted or discharged at a later stage. Therefore, this provision has been made that there will be an expeditious trial and the witnesses will be examined day after day and the case will be disposed of as early and as quickly as possible. In fact, a very important provision has been made that in a case triable by a magistrate, if the trial of a person accused of any non-bailable offence is not concluded within sixty days, the man will be released on bail. It is compulsory. At present it is not so. He may be there for six months or twelve months. Now, within sixty days, in a case triable by a magistrate, if the case is not concluded, then he will be released.

Then, the list of compoundable offences has been enlarged. That, again, is for the benefit of the accused, because now it has been found that there are many cases in which the people, although they have filed criminal cases, want to compound those cases, at a later stage, and facilities have been given for them to do so

Then, Sir, we have made certain verbal changes.....

THE VICE-CHAIRMAN (SHRI V. K. DHAGE): Would you like to take some more time?

SHRI J. S. BISHT: Yes, Sir.

THE VICE-CHAIRMAN (SHRI V. K. DHAGE): The 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 J. S. BISHT: Mr. Deputy Chairman, I was just reviewing all those clauses of the Code of Criminal Procedure (Amendment) Bill, which were of a non-controversial nature and which had not been the subject of controversy either in the Select Committee or in the Lok Sabha, and which, I hope, will be carried through in a matter of minutes in this House.

Now, Sir, I had gone as far as clause 95 of the Bill. Under the new section 497, a new facility has been granted to the accused that in case, in an offence triable by a magistrate, the proceedings are not concluded within 60 days, then he will be released on bail. That is now made compulsory. Now this is a very important provision, because it will force the police to have the trial concluded within 60 days, or else the accused will be at large and will be free to tamper with the witnesses. Then, Sir, certain provisions have been made with regard to the formal evidence by public servants. That is also purely a matter of convenience and facility.

Then, Sir, there is this clause 110. This is again a new benefit that has

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been granted to the accused, that is to say, he can be absent from a case and he can be represented by a pleader. The proposed provision states as follows:

"At any stage of an inquiry or trial under this Code, if the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before the Court is not necessary in the interests of justice, the Judge or Magistrate may, if the accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused."

This is a great convenience to the accused. He can, in all private cases, defamation cases and other cases, just sit at home and allow himself to be represented by a pleader as in a civil case.

Then, Sir, one novel procedure has been laid down here. For instance, in a case of murder, which is a cognisable offence, the police takes charge of the accused, the accused is prosecuted, and ultimately the man is convicted and sentenced to death, and he is executed. But the man who has been murdered may have left behind him a widow and some children. But they get nothing out of it, that is to say, they are left where they are stranded in life. Therefore, it was found by the Select Committee that one of the important deterrents in future against this sort of crime would be to provide for compensation to those who are left behind after a man has been murdered. Therefore, this clause 111 has been provided for in the Bill. It states as follows:

"(bb) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (XIII of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death."

Therefore, now what will happen is this. In future, a would-be murderer would also have to think, if he has got some property at home, that not only would he be hanged, but that after him, his property would also go, by way of compensation, to those who might have fallen victims to his nefarious crime. And I hope that this will act as a very powerful deterrent. Sir, from the analysis that I have given of all these provisions, which cover practically 111 clauses out of 118 clauses in this Bill, you will find that everything that has been put in here is solely for the benefit of the expedition of the trial, and for the facility of the accused, and for cutting short many unnecessary routines and details. And to that extent, the machinery of administration of criminal justice will be greatly facilitated and smoothened.

Now, Sir, I have to come to those four clauses which are the subject matter of much controversy. These are clauses 23, 25, 29 and 35. These are the main clauses. Now, the first clause which is the subject of contention, is clause 25, which has now become famous. This clause provides for the insertion of a new section, section 198B, regarding prosecution for defamation against public servants in respect of their conduct in the discharge of public functions. In this connection, Sir, I would like to invite the attention of the hon. Members to the provisions of the Bill, as it was introduced in this House in the beginning. Now, clause 25 of the Bill originally introduced in this House only made a little amendment in section 198 of the Code of Criminal Procedure. Section 198 lays down that the court shall not take cognisance of an offence under Chapter XIX or

under Chapter XXI, except by a complaint made by the person aggrieved, that is to say, in a defamation case, no court shall take cognisance unless the person defamed himself goes to the court and files a complaint. So, this clause 25 of the original Bill only made an exception that in the case of the President, the Governor, the Rajpramukh, the Minister or any other public servant, it would not be necessary for them to come to a court and file a complaint. And then, Sir, clause 112 made a change in Schedule II by making this offence, in so far as it referred to the Governor, the Rajpramukh, the Minister, etc., a cognisable offence. Now this was a very serious change that was proposed in the law, because it was being made a cognisable offence with all the consequences that flowed from that type of offence. Now there was much agitation against it. And as the hon. Members will note from Appendix II, which was filed by a deputation of the press, there had been certain objections. And we had also the Press Commission's Report and its relevant portions, which have already been read out by the hon. Deputy Minister yesterday. I will not read them out to you again. Now, in the light of these things, the Select Committee decided that the provisions, as they were proposed, were rather too radical and too drastic, and that there was every likelihood of there being injustice done to the people who were alleged guilty of either slander or libel. To that end, the Select Committee remodelled the whole thing, and took it out of the category of cognisable offences altogether, that is to say, it was made non-cognisable. And in the new clause 25 all these various safeguards have been put in. When the offence is committed against the President or the Vice-President or the Governor or Rajpramukh of a State, it should be approved by any Secretary to the Government authorised by him in this behalf; if it is against a Minister of the Union or of a State, it should be approved by the Secretary to the Council of Ministers, if any, or of any Secretary to the Government authorised in this behalf; and if it is against any other public servant, it should be approved by the Government concerned, *i.e.*, by the authority who has the authority to remove him from service. This is the safeguard here. This is a great concession. Then the court of sessions is given original jurisdiction to try such cases, so that the person accused has this advantage that he would not be tried by any magistrate, not even the District Magistrate. The reason was this: It has been said that the magistracy, because there is no separation between the executive and the judiciary, is more or less under the thumb of the Government, and in a case like this, the man who has been prosecuted for defamation or slander was likely to be at a disadvantage. Therefore, the Select Committee wisely said that the trial should be before a Sessions Judge. There the separation of executive and judicial functions is complete. It is nobody's case that the Sessions Judges are not independent. The second advantage given to him is that he would have the right of first appeal to the High Court, not the second appeal but the first appeal to the High Court, where the whole case can be contested and challenged both on grounds of fact as well as on grounds of law. This is an important concession that has been given to the accused in this matter. I am one of those who do not believe that the press should have absolute and complete freedom to say anything against anybody, because this is denied to the ordinary citizen. It should not have any rights superior to the ordinary citizen. They are not entitled to write anything with a view to what is called in law 'character assassination'. They have no right to assassinate a man's character and honour. A man's character and honour is as important to him as his life, in fact more important than his life. Merely because they have got the press in their hands, they should not write anything as they like without restraints. I will quote the words of the Press Commission. This is what

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they say in paragraph 962 of their report:

> "There is, however, little dispute that some kind of restriction is inherent in the concept of the freedom of the Press. To quote again from the report of Mons. Lopez 'what is objectionable is the imposition of arbitrary and unnecessary restrictions and not necessarily the restrictions themselves. If it is true that human progress is impossible without freedom, then it is no less true that ordinarily human progress is impossible without a measure of regulation and discipline. Indeed one might say that restrictions are essential to the preservation of the freedom itself and that what makes freedom usable as a factor of progress is the existence of essential compensatory limitations. At this stage of human progress, freedom, like atomic energy, would be an anarchic and unmanageable force save it is placed under adequate control.'"

That is why even the Press Commission recommended that these restrictions should be placed. Therefore, I submit that what the Joint Committee had recommended was extremely fair, in fact fairer than they would be if they had taken the whole thing away. Many hon. critics have misunderstood one thing: We are not going to make any change in the substantive law of defamation at all. All the sections concerned are there as they are. The complainant, whether a public officer or a Minister, today can file a complaint against the press and they would be in the same position as they would be when a public prosecutor files the complaint in a court of sessions. In fact, if they file a complaint before the magistrates, who, it is said, are under the thumb of the executive, and if the public official happens to be a Secretary or a Minister, is it expected that the magistrate will hesitate to convict the man? On the other hand, under the proposal of the Joint Committee, the complaint should be before a Sessions Judge, who will not care whether the man concerned is a Minister or a Secretary to the Government. I think that this provision included by the Joint Committee is very fair and I think that in due course the general tone of our press would be very much improved. The good press need not be afraid of this. For instance, we have experience of the daily press here in Delhi and also in places like Calcutta, Bombay, Madras and Lucknow. There is no complaint against them. They keep a high standard, but the general mass of the regional language presses, which have very little circulation, with probably a circulation of 2000 or 5000 in a district, indulge in this sort of game. There are black sheep among the press as there are in every other profession or trade, and they try to blackmail people, try or threaten to do something unless something is done for them. It is this which has got to be put an end to. This yellow press lives on sensationalism and, as I said, on 'character assassination'. This has got to be put an end to, and what the Joint Committee has done safeguards the interests of the *bona fide* critics. This will only affect people who try to trade on the honour of other people.

SHRI GULSHER AHMED: Would he like the same procedure to be applied in the case of a private individual who is defamed by the press—the case being tried before a Sessions Judge and the complaint being filed by the public prosecutor?

SHRI J. S. BISHT: I personally would have no objection if you can appoint so many public prosecutors. Another point is that when a Minister or a big public servant is defamed, not only is that man defamed privately but the entire machinery of the State is also defamed, because, after all, what is a Government? The Collector in a District, or a Tahsildar in a Taluq or an S.D.O. or an Inspector of Police or a Railway official or any other official in any other department

is a limb of the Government, and when he is defamed, as is the practice with certain opposition parties, the attempt really is to discredit the Government by discrediting its officials. There is not only a private aspect to this but also a public aspect. After all, what is the difference, I do not understand. We try to start a motor car by moving the big handle in front of the car or by using the self-starter in the dash-board. The main object is to move the car. The main object here is to make the law of defamation move. We are not touching the Indian Penal Code. We are only changing the Code of Criminal Procedure. The substantive law is not going to be changed in any manner directly or indirectly. All that is being done is to make the machinery of the law of defamation move. Instead of the person doing it, the pubilc prosecutor will do it, and the public prosecutor cannot do it on his own authority. If the man defamed is the President or the Vice-President or the Governor or a Rajpramukh, it will have to be approved by a Secretary to Government authorised in this behalf, and in the case of any other public servant employed in connection with the affairs of the Union or of a State, it has got to be approved by the Government concerned. That is to say, the public prosecutor cannot do it by himself. The whole complaint will be going before the Legal Rembrancer of the Government concerned, and only when the Government concerned thinks that it is a fit case, the complaint will be filed. If the contention is that merely filing before a Sessions Judge will affect him, then that applies to every cognizable case before a Sessions Court. The mere fact that the public prosecutor files the case and is a kind of 'starter' of the proceeding, does not mean that the law of defamation is affected at all. Therefore, I don't see how the interests of the accused are affected in any way. If at all, they will be, in fact, in a better position than they are today because they will have a better forum for their trial and they will have the advantage of an appeal before a High Court Judge. The present position is that it is a dead letter because they see today that an official or Minister or President don't go to a Court of law and therefore whatever may be the law of the land, they have virtual immunity to put up caricatures or to make all sorts of allegations against them—the most atrocious allegations against those officials who have no opportunity to proceed against these people. The press people are afraid not because it will be legally or in any other way prejudicial to them but that the law which was dead till now practically will now become alive tomorrow. That is what they don't want and so all this dust is being raised. Therefore, I submit that it is wrong to say that anything wrong is being done here. My only objection is to the various concessions that have been made in this clause 198B about which I am not happy—for one simple reason. Why are we making these concessions? After all we start with a certain objective and we don't want to change this law with regard to defamation merely for the sake of a change. There is a certain evil in the country, *viz.*, that public officers or Ministers are being defamed unnecessarily on a large scale and we want to stop that, and to bring the criminal to book. If instead of that, in reforming the law, the very reverse is the effect, *i.e.*, instead of their getting any relief, instead of protecting these victims, if they become the victims themselves, then the whole purpose is defeated. Here it says that:

> "The person against whom the offence is alleged to have been committed shall, unless the Court of Session for reasons to be recorded otherwise directs, be examined as a witness for the prosecution."

It has been made compulsory—I don't know why it should be necessary merely because the other side wants it. They may want the most unreasonable thing. He may be transferred to Travancore-Cochin or some

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other place. Why should he be called here? The defamatory remarks may be published in a paper which is itself *prima facie* defamatory. It may be the most atrocious charge that the officer has kept a mistress etc. The presumption in law today is that it is *prima facie* defamatory and it is for him to prove it. In fact the Press Commission itself has criticised it and which the hon. Deputy Minister read out. Their purpose will be served if the man comes to the court because they can cross-examine him. No man is a Plastic God and there is no man who has not committed some wrong at some time but what relevance has that point to this particular incident? If a Collector has committed say, a breach at some time by favouring some particular person, that particular action should be subjected to scrutiny. But whether that Collector, when he was a boy did something wrong should not be the subject of enquiry.

SHRI AKBAR ALI KHAN (Hyderabad): That is the duty of the Sessions Judge.

SHRI J. S. BISHT: That is why the Press Commission, which consisted of such eminent men like Shri C. P. Ramaswamy Ayyar, said that this is one thing of which people are afraid because when mud is thrown, some mud sticks because some people may think that there cannot be any smoke without some fire and there may have been something in that. That is why I object to this.

Another thing that is said here is that if it is proved to be frivolous and vexatious, then he will be charged. The result will be that again there will be the same old difficulty. My submission to the hon. Home Minister is that this is a matter which should be seriously considered. Some gentlemen in the defence brought a charge against me in the Select Committee that at one time I was also a public prosecutor. In my province they are called Government Counsel. In every District they do both Criminal and Civil work. They are not like police prosecutors and there is difference between police prosecutors and part-time public prosecutors. What is the offence? I say out of 30 years at bar, 20 years I spent at defence. Then I have a double advantage that I have seen both sides. I know how the accused works and how the police works. These gentlemen have not seen that and they have only heard what the accused says: "हां, पुलिस ने मुझको मारा, ठीक है उसको मारा। पुलिस ने घूस मांगी, ठीक है उसने मांगी।"

They don't try to cross-examine them. After all they are clients, and they are paid to defend the accused. They have seen only one side. Therefore they have formed this lop-sided view of both the police and the investigating machinery. I appeal to them this much. You are the Parliament which is the King and your duty is to see that the citizens of the State are protected from criminals, that those who commit crimes are brought to book and punished. It is none of your job to take sides or to favour the accused. Not at all. What we want is that a crime is committed, it should be investigated and the criminal should be brought to book and punished mercilessly and relentlessly because you cannot stop crime without that. I have got here a figure which I will show you. They are the figures of Uttar Pradesh. Here it says that out of 23,157 persons brought, in the Sessions, only 7,167 were convicted, *i.e.*, 16,000 were acquitted or discharged.

SHRI H. P. SAKSENA: That is .....

SHRI J. S. BISHT: Is it the contention that these 16,000 were all innocent people? What is the position today? Men commit crimes, they are brought to court but on account of the defective law or technicalities they are let off merely because there is a cry raised everywhere that the police is bad. In fact I think, it must be your experience too, as it is the experience of all those who have practised in the courts. There must

be some 400 to 500 districts in India and there must be an equal number of District and Sessions Judges and Assistant Judges—nearly 600 of them. There is only one Government Public Prosecutor and for each district there are at least 200 lawyers on the defence side and the whole atmosphere is full of defence. Every judge is valued as to whether he is an acquitting or convicting Judge. If he is convicting, every member of the bar is against him and says that he is a bad man. If he is acquitting, he is considered a good man. The whole atmosphere has been so vitiated by this sort of thing that the complainant's suit has never a fair chance. You must remember that those who are victims of these crimes are people who have been robbed, where rape has been committed or where houses have been burnt or where people have been murdered ruthlessly and those people deserve your protection as much as you want for the accused. It is nobody's case, not of the Government's or of any public prosecutor in any part of India, that innocent persons should be convicted or hanged but when they know that a man is guilty, they want to see that he is convicted. That is the whole position. Why should we give this long rope and why should we allow these people to escape merely because of technicalities merely because of the slogan which my hon. friend raised that it is better that twelve criminals are acquitted rather than one innocent is convicted.

SHRI H. P. SAKSENA: Guilty person.

SHRI J. S. BISHT: That cannot be agreed to. Even under the present law, are you sure that no innocent man is hanged? A riot occurs in a city and a police man is there. He has promptly to fire and he does not look who is guilty or who is not guilty. Probably an innocent man is killed. But if he does not open fire, the whole town may be in ruins. That is the lesser evil, the lesser harm. That is what you have to do. As far as human machinery goes, try to save the accused, but do not make it too tight for the guilty person to be punished. Otherwise it would be a free land for dacoities, murders and arson. That is what I say. I would therefore submit to the hon. the Home Minister that this section 198B should be reverted to the position in which it was when it came from the Select Committee. If that is not possible, if he does not do that, then it is much better to delete it altogether than leave it just as it now stands. It is a hundred times better, if it is not going to serve the purpose if it cannot bring the erring press to book, if it cannot bring to book all those people who indulge in black-mailing, in dishonouring the honour of other people. it that cannot be done, then it is useless and it had better be deleted. If you delete it, then I have proposed in my amendments to make a little change which will be non-controversial. The first is that in section 259 you should make a provision to the effect that in these cases the man can appear by pleader so that the complaint may not be dismissed, merely because he is not present. I have suggested this because in clause 110, you are allowing the same privilege to the accused. I do not wish that there should be any discrimination and if the accused need not be present there, then the complainant too need not be present. That will remove one difficulty.

3 P.M.

SHRI JASPAT ROY KAPOOR: Not on all days?

SHRI J. S. BISHT: No, he has to be there from day to day under section 259 and even if you are absent on a particular day, the complaint is likely to be dismissed forthwith. If you allow these little amendments of mine, that would serve the same purpose.

Another change I suggest is that in the case of the Rajpramukhs and the Ministers a commission may be issued for their examination, if there is a complaint of defamation; not in the case of public officials. I have

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made this distinction for in the case of the public official, if he wants to conduct the case properly, he must go to the court and submit himself to the ordinary procedure. But the Ministers and others also can be examined, not in the court but on commission, and the reason is simple. For the time being that person is the State and we must honour the State. The State is the root of all law and weal. That being so, though you may like or dislike a man, for the time he occupies the position of President or Vice-President or Minister he is the State and forms part of the State and we must do nothing which will be derogatory to the State or which will bring the State into disrepute, by bringing the man to the common court. That is not right. And if he is examined on commission, at his place, the counsel for the accused will be there, the counsel for the prosecution will be there too and they can cross-examine him at their convenience and at leisure and to their hearts' content. So there is no harm done there. These are the two things that I have suggested. If you delete it, then add these two things which will probably serve the purpose much better than what has been done in the Lok Sabha. The look of it is not very pleasing. Do not allow this mangled figure of the proposed Section 198B to be put on the Statute Book. Either go back to the old clause as proposed by the Select Committee, or delete it with these two amendments. That will more or less serve the same purpose.

Then I come, Sir, to another clause and that is a more contentious clause, namely the one relating to the committal proceedings. I will just read out one small note written by Mr. N. C. Chatterjee after the Bill passed through the Lok Sabha. He was a critic of some of the provisions. He is a distinguished lawyer and an ex-Judge of the Calcutta High Court. He himself says that many of those objections that he raised had practically been met, and further he says:

> "The second important and radical change that Dr. Katju proposed in his original Bill was the deletion of the committal proceedings and in my view there was considerable justification for such a provision."

So he agrees there. In fact, in this book of opinions, in all these books of opinions that came to us, there is a large consensus of opinion from lawyers, judges, magistrates and Government officials that these committal proceedings should be abolished, that it is very much in the interest of the accused himself that they should be abolished. Now he is sent to the committing court and the committing magistrate takes a long time, may be six months, four months or three months, because in the committal proceedings one witness is examined today, another witness some 15 days later and so on. In the case of a murder, for instance, the man who carried the corpse has to be examined, the man who sealed the thing, the man who brought something else and so on and so forth. If it is dacoity, there is the identification of the property, whether they were seen by the accused, whether they were identifiable whether they were shown to the accused, all these details take a long time. If the committal proceedings are abolished, then what happens? The man goes to the court and if there is acquittal he will be acquitted much sooner than otherwise. In the court of the magistrate a preliminary note is taken after all these papers are examined and when he goes to the Sessions Judge's court, a quick disposal of the case takes place. That is a very good proposal. Now, what has happened in the Lok Sabha is this. I will say with due respect to Dr. Katju that if you take the Old Criminal Procedure Code and examine it—and I have compared the sections very carefully—you will find that practically the same thing has come back here. The accused goes to the committing magistrate and the committing magistrate examines him and then all the witnesses of the actual commission will be brought in and the accused

has been given the right of cross-examination:

> "The accused shall be at liberty to cross-examine the witnesses examined under sub-section (4) and in such case, the prosecutor may re-examine them."

So the whole thing is there.

SHRI JASPAT ROY KAPOOR: The right is more specifical now than before.

SHRI J. S. BISHT: In the original Code also the right to cross-examine is given there and the same thing has been repeated here. It says:

> ". ....and if the Magistrate is of opinion that it is necessary in the interests of justice to take the evidence of any one or more of the other witnesses for the prosecution, he may take such evidence also."

And if in one or two cases the magistrate did not take such evidence, then the Sessions Judge will say that the magistrate has failed to follow the proper course and there may be revision applications to the High Court that those witnesses should have been examined. So all the prosecution witnesses, except the formal ones will be examined there. And then he is put before the Sessions Court. What the Select Committee had recommended was a very simple procedure. The original plan in the original Bill was this, that the police papers should be sent to the magistrate's court and he will immediately draw up a draft charge. What the Select Committee has done is to make only a little change and they said that the whole police papers will go to the committing magistrate and there he may examine one or two witnesses—who are called "Katli" witnesses—the persons who witnessed the actual occurrence, if they are available. The accused was not given any right to cross-examine there. That was an important thing. The original plan was also that the witness's statement should be recorded under section 164. That was dropped, the Lok Sabha dropped it. Let us agree to it. He comes here and the statement is recorded before the committing magistrate—no cross-examination and immediately a charge is framed and he is sent to the Sessions Judge. Everything is done expeditiously. But now you introduce the cross-examination and you repeat the whole thing here.

And the same thing is done in the warrant cases. The idea was that sessions cases mean a serious offence and a warrant case is of a less serious nature. So both must be put on parallel bases. In the warrant case there is preliminary enquiry and then the charge is framed, then the cross-examination goes on, of the witnesses, and the whole thing is repeated, cross-examination twice, thrice and four times and so forth. That is cut off.

That was cut out because one provision was made with regard to section 173. That is a very important provision but it does not exist today. It would cost the State, that is to say the Central and State Governments, nearly a crore of rupees every year. That expenditure was intended to be incurred in order to make these trials expeditious and quick and at the same time to give the accused every material that he needs. Instead of having this preliminary enquiry, he is given all the papers, the First Information Report, medical report, the Chemical Examiner's Report, if there is any, all the evidence of all the witnesses recorded by the police, etc. These will be given free of cost. He will know what the case against him is. If there is a *prima facie* case against him, he is charged; witnesses are produced and he cross-examines them. He is then examined under section 342 and he enters his defence. When his defence is finished the court gives judgment. It was a repetition of the procedure that obtains today in a Sessions trial; exactly the same thing. This was done merely because of this huge expenditure that had to be incurred by the State in supplying the accused with every bit of information

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at the disposal of the police and which the police is likely to use against him so that he was fully armed, his counsel was fully armed with the material. My objection to this is this: You will notice, Sir, that a new sub-clause has been added to clause 251A and in the proviso to sub-clause (7), it is said, "Provided that the magistrate may permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined, or recall any witness for further cross-examination". This is practically a repetition of the present law and a new proviso has been added when he summons witnesses. Sub-clause (9) says, "If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination ". Again, there is a proviso to this sub-clause (9), "Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness after the charge is framed, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the purposes of justice". This has been put down here but the difficulty is this: All the provisions that exist today in warrant cases have been, more or less, put in there There is some slight change as I said, in the committal proceedings in that the defence witness need not be produced. As a matter of fact, they are not produced. In 99 per cent. of the cases, they are not produced. As a matter of practice today, in 95 per cent. of the cases, the prosecution witnesses are not cross-examined because the defence does not want to take any risk. They will say that they will do it in the Sessions. In this, the same thing has been repeated. I want to make an appeal to the Government to reconsider this point very carefully. Is it worth while to incur this huge expenditure of nearly a crore of rupees—it may be more than that also—by supplying to every accused—please remember that; there may be ten and in rare cases fifty accused—with a bundle of papers in each warrant case and on each Sessions trial at public expenditure? Is all that worth as a result of the provision that you have made? My submission is that if the Government is going to retain this provision, then let the Code be retained as it is so far as these two points are concerned. That is to say, the procedure in warrant cases and the procedure as regards committal proceedings in the Sessions trials may remain as in the Code; but, if you want to give all these facilities on account of the criticism that was levelled by some lawyer Members in the Lok Sabha, I submit that it is much better not to incur this expenditure at all. Let the present provisions remain for three four or five years and then a new law be brought up when the people are fully tired of this sort of procedure, but merely giving these facilities to the accused without any recompense to the prosecution, without any recompense to the State for the expenditure that it is going to incur is going to bring benefit to nobody.

I will only submit this much, Sir, There is plenty of time. My request to the hon. Deputy Minister and to the Government is this: The best procedure in these circumstances would be to proceed to deal with the 110 clauses which are of a more or less non-controversial nature, leaving the three or four, that is to say, the clause with regard to defamation, the clause with regard to committal proceedings and the clause relating to warrant cases—all these are covered by clauses 23, 25, 29 and 30 with which are linked 35, 36 and 115, six and a half clauses—to be considered at the end.

SHRI H. C. DASAPPA (Mysore): Clause 22?

SHRI H. C. MATHUR: He does not consider it to be of a controversial nature.

SHRI J. S. BISHT: That is a different thing. That has nothing to do

with committal proceedings or warrant cases. I submit that these clauses may be held over till the end. We may dispose of all the other clauses; the other clauses are independent of these seven clauses that I mentioned earlier; they are disjointed and can be separated from the others. With regard to these seven clauses, Government may, in the light of the discussion, very carefully consider the points again. A chart may be got out showing the original proposals of the Joint Select Committee, the changes made by the Lok Sabha and the old Code as it is without this amendment. This chart may be examined and the net gain that Government expect to get may be assessed. It can also be assessed whether it will help in bringing in more accused into the net. When practically the same rights—even more than that—have been given with the added advantage of the supply of all the papers at public expense, there is no justification for taxing the tax payer to this tune unless the tax payer is able to see that a very large number of these criminals who are put up for trial are put behind the bars

I will, in the end, just quote some figures; they are very important and they are from the latest report on the administration of Justice in the Uttar Pradesh. For offences under the I.P.C. alone, 1,90,000 people were acquitted or discharged as against 50,000 people who were convicted. This works out at 20·8 per cent. of the people who are sent up for trial being convicted.

SHRI H. C. DASAPPA: Are they all police cases?

SHRI J. S. BISHT: All cases under the Indian Penal Code.

SHRI H. C. DASAPPA: Are they police cases or private cases?

SHRI J. S. BISHT: That has not been given separately. As I have already quoted in Sessions cases only 30 per cent. are convicted. Out of 23,157 people committed to Sessions, 7,167 were convicted and the rest were acquitted. With regard to the offences under the I.P.C., as my hon. friend has raised the point, I will just read out the types of offences. Mostly they relate to criminal conspiracy, offences against the State; offences relating to Army and Navy; offences against public security; offences relating to public servants; offences relating to elections; offences relating to contempt of competent authority; offences against public justice; offences against Government stamps, weights and measures; offences against public health, decency and morals; offences relating to religion; offences affecting the human body like causing miscarriage, injuries, hurts, wrongful restraint, kidnapping, rape, criminal breach of trust, etc. 50,000 people were convicted on such charges. It means that 70 per cent. of the people are getting away whereas 70 per cent. of the criminals should get in if you want to stop crime in this country. I do not know but perhaps my hon. friend is an urban dweller and he has perhaps not lived in a village.

SHRI H. C. DASAPPA: He says they are criminals. It is a wonderful argument.

SHRI J. S. BISHT: That is what we see because they are criminals. Of course I can make an allowance of about 10 per cent. at the most for those who are really innocent and who are getting away acquitted, not more than that. I submit, Sir, my hon. friend, if he goes and lives in the villages, in any of the villages.....

SHRI H. C. DASAPPA: I live in a village.

SHRI J. S. BISHT: If so, he will find that a dacoit makes the life of the villagers insecure throughout the whole year. In the night people do not know where to go; nobody is safe, and these dacoities are being committed now with the help of weapons. They take pistols. Even the services of ordinary smiths are being utilised for having these weapons made and half inch pipe is used as the barrel of a ·12 bore gun and with a small device, with a spring you can put a ·12 cartridge and

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that is enough to kill a man. With the help of such weapons 20, 30 and 50 persons join together and murder people, loot the properties of the people. This has got to be stopped. The number of dacoities that are happening in India is alarming and you must stop them and it is your duty to those living in the villages. Even in a city like Delhi the reports were about 80 murders last year; something like that. I do not remember the exact figure. Now even dacoities have occurred in the city of Delhi, you will be surprised to know. Why are they getting so emboldened? It is because they get acquitted. I have noticed that, Sir, when I was the public prosecutor, in many of the criminal cases in which criminals of other districts, outside districts, were found implicated in these cases of dacoity. Why, I asked them later, why is it that you have come to commit dacoity here? They said that the Judge in the district in which the dacoity was committed had acquired the reputation that he was an acquitting judge. I say why. That is the real technique of their work; they are very clever. So they have five or six districts in which they operate and they have got a full plan and they know where is an acquitting judge or where is a convicting judge and if they find that there is a convicting judge in a district they will transfer their operations to some other district where there is an acquitting judge. So that is my answer to my hon. friend who asks how many. That is the minimum and for the exact number you may make an enquiry and have a chart made out. You will find that wherever an acquitting judge is posted, the number of crimes goes up more and more because they find that it is easy now; now the chances of acquittal are so great. The moment you reduce.....

SHRI H. C. MATHUR: Have you got any figures to prove that where the magistrate is an acquitting magistrate the crime has gone up?

SHRI J. S. BISHT: Yes, it is a practical experience. We have seen practically crimes going up and down; it is always like that. Now, therefore, I submit that it is the duty of this Parliament to so tighten the law that a criminal should think thrice before he commits a crime. He must know that the arm of law is strong enough to get hold of him and punish him and that there is not a 50 : 50 chance but a 75 per cent. chance of being sent to jail and being duly punished, not as it is today that there is only a 10 per cent. chance of conviction and 90 per cent. chance that he will get away with any type of crime. I hope, if you look at it from that point of view you will support the Government in this measure and I hope the Government also will consider those particular points which I have represented today.

Thank you, Sir.

SHRI H. C. MATHUR: Mr. Deputy Chairman, it is common knowledge and if we are honest we must admit that the administration of criminal justice has deteriorated to an abnormal extent. And, Sir, it is therefore only natural that we all here should be anxious to take all the steps that could possibly be taken in the direction of making the administration of criminal justice easier, to make it speedier and let every citizen feel that the dilatoriness and the sufferings and the inconvenience with which he is all the time faced are being removed. Sir, the ordinary citizen is naturally concerned and he is anxious only to the extent that he gets speedy justice and that he gets fair justice. I think this Code of Criminal Procedure (Amendment) Bill before this House intends to give us that speedier justice, and, Sir, if that is the intention we must appreciate all the steps that have been taken and they will go to the expeditious disposal of the cases. We all appreciate that attempt but I wish the House to understand—let us not be under any misapprehension; let us be very clear in our minds—that we will not get anywhere nearer this desired objective by the amendments which have been brought about in the Bill. On the other hand, Sir, I feel that by laying

unnecessary emphasis on some of the amendments we are, as a matter of fact, sidetracking the main issue; we are hoodwinking the people, and when I say all this, Sir, I say with all the conviction and all the confidence. Anybody who had anything to do with the administration of criminal justice, as a lawyer or as a legislator or as an administrator, should be able to tell you in a straightforward manner that the cause of trouble lies somewhere else. It is not by changing the procedure as we are wanting to do here that we will be able to get over any of these troubles. Nothing of the sort, and I think the hon. the Home Minister would have done much better if he had accepted the very sane advice which had been made available to him by those people who are in the highest of authority and who have no other concern but this that speedy and fair justice is made available to the citizens.

Sir, I would invite your attention to what the Chief Justice of India has on more than one occasion said in this connection. He says: "Generally speaking, the machinery that is responsible for the administration of the system has become inefficient, indolent, dishonest and corrupt. No reform in the system can improve matters if the machinery for the administration remains the same." Mr. Deputy Chairman, I know it as a matter of fact and I just invited the attention of the hon. the Deputy Minister who was speaking the other day to it and requested him just to take up the telephone and find out from the nearest magistrate in Parliament Street how many of those criminal cases which he is dealing with under the summary provisions are pending with him for over six months. I do not think, Sir, the provisions which we are making in this Criminal Procedure will compare to any extent so far as the expeditious disposal of the cases is concerned. The provisions which we make for the disposal of cases in summary trials are such that it should enable a magistrate to finish with the proceedings within a few weeks' time. But I submit that it is a common feature that today any number of these cases have been pending for any number of months and I wish to emphasise this particularly because I do wish the hon. the Home Minister under whose nose these courts are functioning here in Delhi to enquire into the facts and let this House know how the matter stands. He will be throwing good light on this subject and we will be able to judge then what the position is and what is necessary for the administrative machinery. Sir, this has become all the more necessary in the present context of things. We have been talking of the separation of the judiciary from the executive for one reason. That reason was that we do not want the judiciary to be under the influence of the executive. We want the judiciary to function in an independent manner, in a manner.....

SHRI S. MAHANTY: Sir, the hon. Minister is going.

SHRI H. C. MATHUR: Don't you think, Sir, we suspend for about ten minutes?

MR. DEPUTY CHAIRMAN: Shrimati Lakshmi Menon is taking notes.

SHRI H. C. MATHUR: Let us wait for ten minutes; it does not matter.

We wanted the separation of the judiciary from the executive for two reasons. One was that we must have magistrates who are independent of the influence of the executive. (*Observing hon. Ministers leaving the House*)—Sir, hon. Ministers are leaving.

SHRI B. N. DATAR: There is a Division in the other House. Mrs. Lakshmi Menon would be taking down notes in the meantime. (*Interruptions*).

SHRI B. C. GHOSE (West Bengal): It is unfair. One vote does not matter. It is for you to uphold the prestige of the House and if you feel that the prestige of the House is upheld in that way, I have nothing to add.

MR. DEPUTY CHAIRMAN: There must be somebody to represent the Government. I do not think any question of prestige of the House is involved And after all it is a matter of five minutes She will be taking down notes and the entire speech is also being recorded.

SHRI B C GHOSE. We know that the hon Ministers do not take any notice of the speeches made here At the same time there is the convention that the Minister should be present If anybody can take down notes, then the Ministers need not be present here at all

PROF. G RANGA (Andhra): I am in agreement with my hon friend's objection but the only point is that there is a Division going on in the other House

SHRI H C DASAPPA: The other day a similar situation arose and this very Parliamentary Secretary took the seat here on behalf of the Government for a short while and the hon Members opposite agreed to it They never raised any objection

PROF. G RANGA: That is exactly the trouble The other day they showed consideration and therefore it is being made a precedent. The only point is, as I said, there is a Division in the other House

SHRI B C GHOSE. There have been Divisions here and when one of our Members is there, we have never found him coming back.

SHRI H C MATHUR: Sir, we must strike a balance After all, one vote on that side would not make that much difference as the absence of any Minister makes to this House (*Interruptions*).

(*At this stage Shri B N Datar entered the House*)

SHRI B C GHOSE He could not enter He is here

SHRI B N DATAR The hon Member did not allow me to go in time. The doors were closed.

SHRI H C MATHUR: I think the doors were more reasonable than the Member.

SHRI H C DASAPPA. May I rise on a point of order? On important occasions like this when a vote has got to be recorded in the other House on important measures, I think we must establish a healthy convention to permit hon Ministers in charge of Bills here to go there just for a short while Not that they should take it as a precedent, I entirely agree with my friend Mr Ranga in the general proposition But we must establish a healthy convention.

SHRI B C GHOSE. If a decision is going to be given, I entirely oppose it.

MR DEPUTY CHAIRMAN· We need not spend much time on this small matter There is no point of order Let us go on with the debate. Please continue, Mr Mathur

SHRI H C MATHUR Now, Mr Deputy Chairman, what I was trying to emphasize was that far more important than the procedure is the administrative machinery It is not only the separation of the executive from the judiciary that is in my mind At the present moment there are many other causes that have contributed to the present state of affairs I am at the present moment confining myself to what the Government possibly can do. After all what are the reasons which have contributed to such an abnormal deterioration in the administration of justice? Here we have to take into consideration several factors Justice has become impossible and I sympathise with the Government in this matter because the citizen has not displayed that sense of responsibility which he should Until a few years back if they took an oath, if *gangajali* was administered, it meant quite a lot and the people who presented themselves in the witness box had some fear of God in them They would certainly

like to help the court by telling the truth But the position is very much different today. That fear of God has gone away The tenets of religion and all these other elements which went into our character have disappeared and a great vacuum is left We have not yet developed any national character We have not yet developed that sense of responsibility which we owe to ourselves, which we owe to the courts where we appear. After all the courts are meant for the dispensation of justice to the ordinary citizen.

Again our lawyer friends are there. Fifty per cent of the troubles, as one of the most eminent Judges has put it, are due because our lawyer friends have not been able to discharge their duties because there is no other consideration with a vast majority of them except money Nothing counts but money Somehow, most hon Judges who have been dealing with them all the time have very clearly stated that It is really a matter of shame for all of us It is not a complaint against any particular section. but the fact is there

SHRI H C DASAPPA: I do not think my hon friend is at all justified in casting a general aspersion on the whole of the profession It may be here and there.

SHRI H C MATHUR I wish my hon friend had carefully gone through the material which the Government was good enough to supply with particular reference to the matter which we are dealing with at the present moment and if I am voicing this opinion

MR. DEPUTY CHAIRMAN You should not make any general allegations

SHRI H C MATHUR· Sir, you are now forcing me to quote the authority on the basis of which I am making these remarks

MR DEPUTY CHAIRMAN Please do.

SHRI H C MATHUR. The authority is the Chief Justice of India and he has said exactly what I have said.

MR DEPUTY CHAIRMAN. Please read the concerned passage, Mr. Mathur

SHRI S MAHANTY (Orissa): Sir, he merely refers to it He need not . .

MR. DEPUTY CHAIRMAN. I do not think the Chief Justice has made any such general remarks He might have made some specific reference about .

SHRI H C MATHUR: No, Sir. The Chief Justice has said that as a whole with very few exceptions—and it is really unfortunate that the exceptions are very, very few—but generally it has been

MR DEPUTY CHAIRMAN: On such occasions it is better to rely upon the actual words than make such general allegations

SHRI S MAHANTY Sir, I wish to raise a point of order and I want a ruling from you that on future occasions whenever any statement is made the authority will have to be quoted

MR. DEPUTY CHAIRMAN: Members should please avoid such general allegations You cannot castigate the entire class of lawyers.

SHRI S MAHANTY Mr Deputy Chairman, I want your ruling that whenever we make reference to statements it will be necessary to lay a copy of the authority from which it is quoted

MR DEPUTY CHAIRMAN It depends upon the allegation you make. Each case will have to be examined and a ruling given each time.

SHRI M GOVINDA REDDY (Mysore) It is all right if a Member makes a statement one need not require the authority; but when you make a derogatory remark and that made by some one else against a whole

[Shri M. Govinda Reddy.]

class of people, I do not think it would come as an ordinary statement..... (*Interruptions*).

MR. DEPUTY CHAIRMAN: Order, order. Please avoid such remarks or references.

SHRI H. C. MATHUR: I shall be only too happy to read what the honourable Chief Justice has said.

MR. DEPUTY CHAIRMAN: Yes, let us have it.

SHRI H. C. MATHUR: And you will find that I have been a little bit more modest. Now, the Chief Justice has said.....(*Interruptions*).

MR. DEPUTY CHAIRMAN: Order, order, let him read.

SHRI H. C. DASAPPA: Is that a confidential document?

SHRI S. N. DWIVEDY: It has been circulated by the Government.

SHRI H. C. MATHUR: It is a confidential document.

SHRI J. S. BISHT: Sir, on a point of order. There was a report circulated to the members of the Joint Select Committee with the express letter that this was strictly confidential and not to be disclosed anywhere. And is the hon. Member entitled to disclose it here?

SHRI V. K. DHAGE (Hyderabad): We are forced to do it.....(*Interruption*).

MR. DEPUTY CHAIRMAN: Order, order.

SHRI J. S. BISHT: I want your ruling, Sir.

MR. DEPUTY CHAIRMAN: It is not a proceeding of the Select Committee.

SHRI H. C. MATHUR: I can tell you, Mr. Deputy Chairman, that I was not a member of the Select Committee. This report was made available to me, not as a member of the Select Committee. I was never a member of the Select Committee. This report has been made available to me as a Member of Parliament and it was only you who have forced me to quote it.....

MR. DEPUTY CHAIRMAN: Yes, you can read it.

SHRI H. C. MATHUR: But you have forced me to read it.

MR. DEPUTY CHAIRMAN: All right, let us have it.

SHRI H. C. MATHUR: This is what the honourable Chief Justice said. I will read the whole para:—

"In my opinion, there is nothing very much wrong with our system of administration of justice. I respectfully differ from those who think that there is really very much wrong with the existing system of administration of justice as such. The system devised by the British is quite simple and provides necessary safeguards for ensuring just conclusions. The dissatisfaction generally voiced regarding the administration of justice is not due to any material defects in the system itself, but is due to its faulty administration. Generally speaking, the machinery that is responsible for the administration of the system has become inefficient, indolent, dishonest and corrupt. No reform in the system can improve matters if the machinery for its administration remains the same. One has to own with some sense of shame that the most learned profession of law that was designed to help in the administration of justice has become not only inefficient and dishonest but simply a devotee at the shrine of mammon. Money has to be earned, no matter how. When I am saying this, I am not forgetful that there are honour-

able exceptions in the profession but they are a drop in the ocean. How many lawyers are there who give honest advice to their clients that their cases are not worth fighting, that they should not go to a court of law, and that having got an adverse decision, it is not worth while appealing against it? I can say from experience that such persons constitute a very small minority amongst the number of practising lawyers in India at the present moment. If all lawyers acted honestly in this matter, more than 50 per cent. of the litigation in our courts would not be there and the problem that looms large before our vision at the present moment would not attract attention."

I think Mr. Dasappa will now feel satisfied.

SHRI H. C. DASAPPA: Will my friend kindly refer to his own previous statement? He castigated the whole profession.

SHRI H. C. MATHUR: It would have been much better if my hon. friend had not forced me to read out all that has been written there.

MR. DEPUTY CHAIRMAN: He has not made a general castigation as you have done. Even he has made some exceptions.

SHRI H. C. MATHUR: Sir, please ask the reporter to tell you what I have said.

DR. RADHA KUMUD MOOKERJI (Nominated): Was it a published document?

SHRI S. N. DWIVEDI (Orissa): Yes.

SHRI V. K. DHAGE: Please read out as to wnat was the statement that Mr. Mathur made. Will you kindly do it?

SHRI H. C. MATHUR: I think I was more cautious. (*Interruptions*).

MR. DEPUTY CHAIRMAN: Please continue your speech, Mr. Mathur.

SHRI V. K. DHAGE: I would like to know as to what was said by Mr. Mathur, for the benefit of the House, for the information of the House.

MR. DEPUTY CHAIRMAN: It is not quite proper. We are digressing too much. Please continue your speech.

SHRI V. K. DHAGE: We want the ruling of Mr. Deputy Chairman with regard to this matter which was raised by Mr. Dasappa.

PROF. G. RANGA: You follow your own point of argument.

MR. DEPUTY CHAIRMAN: We will take it over again.

SHRI H. C. MATHUR: Well, Sir, I have not the least intention, I am not a mad man to say that against one single lawyer as such. As a matter of fact, I want to be more liberal, but I have been misunderstood. My own brother is a lawyer. I know he is an honest lawyer.....(*Hear! Hear!*)

MR. DEPUTY CHAIRMAN: Are you also one, Mr. Mathur?

SHRI H. C. MATHUR: If my brother can be an honest lawyer, there are many lawyer brothers here who can be honest.

MR. DEPUTY CHAIRMAN: But according to you, they are all exceptions. What I said was that there should be no such generalisations and even the Chief Justice has not made any such generalisations.

SHRI H. C. MATHUR: The Chief Justice has said that it is a drop in the ocean. I do not know, Sir, if there can be a more proper generalisation.

MR. DEPUTY CHAIRMAN: All right, please go on. After all, it is an opinion.

SHRI H. C. MATHUR: It is not an *obiter dictum*, but it is a definitely recorded opinion of the hon. Chief Justice, particularly with this refer-

[Shri H. C. Mathur.]

ence when he was asked his opinion as to how this should be improved. What are the ailments from which we are suffering? *(Interruptions.)*

MR. DEPUTY CHAIRMAN: Mr. Mathur, please continue your speech.

SHRI H. C. MATHUR: This opinion has been given by him on this Criminal Procedure Code (Amendment) Bill. I am not reading any *obiter dictum.*

MR. DEPUTY CHAIRMAN: Please go on with your speech.

SHRI H. C. MATHUR: Now, Sir, I was just pointing out that so many causes have contributed to the deterioration. I pointed out first to myself as a citizen, how we have not been able to co-operate with the administration. Then, I pointed out to my lawyer friends who have a major share in helping the administration in the dispensation of justice. And then, Sir, comes the administrative machinery and the investigating machinery. The state of affairs, so far as the investigating machinery is concerned, Sir, is equally deplorable, and there has been a very great deterioration during the last few years. My hon. friend, the Deputy Home Minister, when he was making his opening speech on this Bill, made particular references to our investigating machinery. And he asked: If in England, they could depend on the police statements etc., why can't we do the same thing in our own country? Who would be happier, Sir, than myself, if we could have an investigating machinery as efficient as we have in England? As a matter of fact, it has been our endeavour all the time to do that, but let us face facts. What is the position today? Who is going to investigate the cases today? And, what is the recorded opinion about the investigating machinery today? We have, every day, certain cases reported in the High Courts where we find adverse comments. My hon. friend who just spoke before me asked: "How are you going to take into consideration these stray cases?" There may be one out of a hundred. But, Sir, my hon. friend has got to remember that all the cases do not come to light. As a matter of fact, there are so many thefts committed in this country. But only those cases which come to light are dealt with. And it is a common knowledge and a common experience, Sir, which would be shared by many who have got anything to do with the administration of criminal justice, that there has been a very great deterioration in this respect. Again, there is a plethora of opinions on this point, and particularly the Chief Justice has again made very relevant remarks in this direction. But I am not going to refer to them, because it is not necessary to do so.

Then, Sir, the administrative machinery of the second form is the magistracy. The magistrates have suffered a very great set-back, and if there was any necessity or need for the separation of the judiciary from the executive before independence, that necessity has become ten-fold today. Even when we were discussing the Constitution, we thought it necessary that it was such a vital and important matter that it should find a place in the Directive Priniciples. And we wanted to do it as expeditiously as possible. But unfortunately, the position is that there has been very little of the separation of judiciary from the executive. On many previous occasions, the hon. Home Minister, who is now in charge of the Defence portfolio, had to refer to this subject. And I was really surprised when, the other day, in answer to certain questions by me, he ridiculed the idea of a Judicial Service. That only showed the trend of his mind, as to how his mind was working. What happens now is that most of these magistrates, apart from the fact that they are under a great influence of the executive, are not permitted to function. So many extraneous duties

are cast on them, and so many duties of an executive nature are overburdening them, that they find it absolutely impossible to discharge their legitimate duties. How can you have any expeditious disposal of cases, if the magistrate who is meant primarily for the dispensation of justice, for the disposal of such cases, has got to give priority to his executive job? And not only that, Sir, but with the democratic set up coming into force, we have not yet unfortunately settled down to democracy. And those who are now newly in power do not hesitate to make use of the executive machinery, which also happens to be the judicial machinery.

Sir, I will only take two aspects of it. One aspect of it is the legitimate duties which are cast on them. There are so many types of tours performed by the magistrates, by the Ministers, by the Deputy Ministers, and by so many other officials. And these poor magistrates have got to attend on them. And the result is that all cases have got to be adjourned, and all the witnesses who have come for evidence have got to go back. They cannot help it. And tours are becoming common. Of course, I do not accuse the Ministers for undertaking tours. They may be undertaking tours in the discharge of their legitimate duties. But the fact remains that the magistrate has got to attend on them, and he has got to neglect the criminal cases which are on the file.

MR. DEPUTY CHAIRMAN: What has a magistrate to do with a Minister's tour?

SHRI H. C. MATHUR: Well, Sir, I thought you knew it. Sir, S.D.Os. are first class magistrates. Then there are the district magistrates. And they have invariably to be at the railway station or in the company of the Minister. And when the Minister goes to the tehsil, the S.D.O., who is the principal magistrate for that place, has all the time to be with him. There are certain extra magistrates who may stay on to their job. But most of these officers, who are also magistrates, have got to be in attendance with the Ministers and with the other important persons who visit the tehsils and the districts. And then, apart from that, now that we are developing into a welfare State, there are so many other duties which are being cast on these officers, who are also entrusted with the job of magistracy. All this has done two great things. Sir, it has developed in these officers an executive bias. There are very few of these officers who are judiciary-minded, though they are meant to perform the judicial duties. And that has gone on developing during all these few years.

MR. DEPUTY CHAIRMAN: Do you mean to say that there are no magistrates who are other than revenue officers?

SHRI H. C. MATHUR: There are revenue officers, but still in the districts and in the cities you have certain people who are exclusively to function as magistrates. I am not talking only of Rajasthan, but I am also talking of Punjab and other places where I have gone on tour. And as a matter of fact, even the persons who have been put in charge of the community projects have been given magisterial powers. I opposed all this, Sir, and I also asked a question about it here on the floor of this House. I also wrote to the hon. Minister for Planning asking him, "What is all this humbug that is going on?" I am giving you a most disagreeable surprise when I am telling you that in most of the places, these magistrates combine a lot of executive duties, and their judicial duties are being neglected very much. So, why I say all this is because I wish to suggest to the Government that if they are really earnest that there should be an expeditious disposal of cases, they should come forward with their definite views on this matter. Otherwise when I come to discuss the clauses of this Bill, I will tell you how the mind of the Government is working, and what my reasons are for thinking that way.

[Shri H. C. Mathur.]

The first thing that we must do is that we must have the separation of the judiciary from the executive as early as possible. That is very necessary, not only to relieve the magistrates of their executive influence, but also to enable them to devote their whole time to the judicial cases coming before them, and to discharge their duties efficiently and honestly. But, Sir, if for any reason it is not possible to do that straightway, then there are two or three steps which can be taken immediately. At every place, in the districts, we have two or three officers who are doing these things. Let us have at least some Judicial Magistrates. There are two officers. The S.D.O. is there; then another officer is there. At least some of them can be exclusively put on to the judicial work. I am not satisfied there but what I would certainly want and which I consider to be of much greater importance is that they should be put definitely under the control of the High Courts, *i.e., the* Judicial Magistrates. They should be given only judicial work. Let there be other S.D.Os. also doing the work of magistrates, but the transfers and promotions of these magistrates must definitely be in the hands of the High Courts. Sir, you will be surprised to know that we are now faced with a very curious position, a position which has never existed before, something absolutely unimaginable. In Rajasthan we have accepted the I.A.S. cadre and we have District Magistrates in the grade of Rs. 800—1,800 and we have District and Sessions Judges in the grade of Rs. 600—800. Just imagine the District and Sessions Judges to whom appeals from the District Magistrates go, being in the grade of Rs. 600 to 800 or something like that, while the District Magistrates themselves are in the grade of Rs. 800 to Rs. 1,800. I am not here arguing for a revision of the grades, but this has a very unhealthy effect on the minds of the people that the highest officers who are entrusted with the administration of criminal justice have got no place in the Government's scheme of things. This is bound to create a very unhealthy atmosphere and it is bound to undermine the prestige of the judiciary. I wish that the hon. the Home Minister pays some attention to this matter. Previously the position was a bit better. As you possibly know, some of the District Magistrates who were in the I.C.S. became Commissioners on promotion. Some of the others who wanted to go to the judicial side, became District and Sessions Judges, *i.e.,* on promotion from Collector they became District and Sessions Judges. We had District and Sessions Judges from the I.C.S. cadre. Those people belonged to an all-India service. Those people were far superior, but today the position is just the reverse. We have no District and Sessions Judges of that cadre. Nobody belongs to the all-India services. Everything unfortunately is topsy-turvy, and this very important matter of judicial administration has been given a very shabby treatment. If we want to create respect and confidence in the minds of the people for our judiciary which we must, we will have to do something about this. Ninety per cent. of the people have got to deal with Sub-Divisional Magistrates, First Class Magistrates, etc., below the District Magistrates, and it is these people who are very much under the influence of the executive and who are very much burdened with executive responsibilities and not very much time to do their judicial functions. I do not wish to make any reflection on the High Courts. Our Judges are men of great character and they command universal respect, but nobody can be immune from the impact of circumstances, and today we find things to be not what we would wish them to be. For that again, I accuse the executive authority at the Centre. In the matter of selection, in the matter of postings, there has been a very unfortunate tendency. The High Court Judges who are mostly picked from among

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the lawyers have to stay all the time in the same place, though there is provision in our Constitution for the transfer of High Court Judges. But there have been very few or rather no transfers. I have to mention with very great regret that the executive authority did not even hesitate to break—but they could not break—healthy conventions even so far as the Supreme Court was concerned, and it was only because of the high character of the Judges that the healthy convention relating to the appointment of the Chief Justices could not be tampered with. This attempt is certainly to be viewed with great dismay.

Now, having said all this about the administrative machinery, I wish to refer to the main provisions of the amending Bill which is before the House. You will permit me to say—and anybody who has made a little study of the original Bill and also taken a little care to go through the various stages through which it has passed will tell you—that it is obvious that the hon. the Home Minister who is the god-father of this Bill, not the present Home Minister but Dr. Katju.....

SHRI S. MAHANTY: He is the father. Mr. Datar is the god-father.

SHRI H. C. MATHUR: Thank you for the correction.

.....is possibly obsessed with one idea and one idea only. It is obvious from the amendments which he has made in the Bill. His idea, his obsession, is that a number of guilty persons are being acquitted and that he must do something to see that no guilty person gets away from the clutches of the law. I do not accuse the administration or the Home Minister for wishing to see that guilty persons are punished. It is certainly the responsibility of the administration, and no good Government can function if guilty persons feel that they enjoy a sort of immunity or that the law will not be able to touch them or put them in their proper place. That is only natural, and we should have no quarrel with this anxiety of theirs, but when this anxiety develops into an obsession, it does more harm than good, and we find that position from a reading of the provisions of this Bill. That would be more clear to us if we examine the original draft. Fortunately enough that original draft has undergone radical changes. When I say all this, it would be unfair for me not to mention at the same time that certain very healthy changes have been brought about. There are certain very good amendments which have improved the existing procedure. We have done away with the assessors. It is very good. We have also made a provision that if the case is not disposed of within two months from the first date which the court has fixed for the recording of evidence, the accused will be released on bail. That is a very healthy provision though my hon. friend who spoke before me said that he could be released as a matter of right. I don't think so. The magistrate has been given a discretionary power to refuse that bail to the accused even after 2 months, —and I don't grudge that provision, I think the magistrate must have that discretion—to retain an accused even after two months if for any good reasons he finds it necessary. We have also made another change that we are now permitting the accused to appear as a witness. Under section 342 he can go into the witness box and though my hon. friend sitting here opposed this provision and he thought that it would work to the detriment of the accused, I think he had not a full appreciation of the entire clause because this is only an enabling clause. It gives only discretion to the accused to put himself in the witness box and give evidence and there is a further safeguard provided that the accused must make that request in writing and also they have gone a step further to say that no adverse inference would be drawn against the accused if he does not go into the witness box. This provi-

[Shri H. C. Mathur.]

sion will, I am sure, help the courts in arriving at justice though it appears to me that for some time to come, the accused will not feel like entering the witness box and he will not avail of this opportunity but as time passes, I hope he will, at least those persons among the accused who are honest certainly like to go into the witness box and take the oath and give evidence because you can always depend upon the truth of your statement But there are certain clauses, to which I take very strong exception, and it really surprised me very considerably, when the previous speaker made certain attempts to defend those clauses He went beyond the Deputy Home Minister and I think he wanted even to outdo the hon. Minister who had framed the original draft of this Bill. Before I go to those clauses which were referred to by my hon friend, I will go clause by clause I will first refer to clause 9.

MR. DEPUTY CHAIRMAN. Mr. Mathur, let us know how the Bill is defective or can be improved Mr. Dwivedy wants to go If possible, please give him some time He wants to go from Delhi and if you can give some time, he will be thankful to you.

SHRI H. C. MATHUR: You are putting me in a very awkward position. I cannot refuse my hon friend That is why I did not speak yesterday because Dr. Kunzru wanted to speak and I gave in.

MR. DEPUTY CHAIRMAN: You can take another fifteen minutes and finish.

SHRI H C MATHUR It is extremely difficult but I will try to leave out some of the points and concentrate on .....

MR DEPUTY CHAIRMAN: Please concentrate on how the Bill can be improved or how it is defective. That would be enough.

SHRI H C MATHUR: Well, Sir, then I will be able during these few minutes before me, only to refer to a few clauses. Unfortunately I will not be able to deal with the other parts of this measure.

So much has been said about section 162 and section 163. I strongly oppose the innovation that has been introduced. It has been said by my hon. friend somehow—I don't know by what construction and interpretation and meaning he felt that it is not going to work to the detriment of the accused I don't know what else has been done by this new provision but to give a certain facility to the prosecution. Now the prosecution can use the statements recorded by the police and contradict those statements. It is common knowledge with all of us how the police statements are recorded Even when a police officer is honest in his intentions to record a statement, what generally happens is that the officer goes on the spot, makes an investigation, makes enquiries from a number of people and then he comes back to the Thana and then records the statement It is absolutely the common practice and what he records is mostly his own impressions of what the witness has told him and now to contradict any witness with these impressions of the police officer is certainly doing great injustice to that witness himself. Apart from that, there may be—and I don't deny that there are many good police officers —but there are other circumstances which in the heat of the moment, and due to other factors—go to goad a particular witness to say a particular thing at that time. If this provision is there, it will work as a great deterrent against the man telling the truth We will be denying the court the benefit of that man's evidence Take the case of anybody whom the police find almost unmanageable. You have recorded certain evidence—I don't want to say it—which suits the police investigation, and I want to tell what the truth is, what will happen? I will be of no avail to the magistrate. The police officer can record anything that he likes in his diary and then can go and contradict me in the court and

see that my evidence can become inadmissible and is not of any use to the court. Sir, to permit such a right to the police officer, to the investigating officer who is investigating and who is also one who goes and helps the court in the prosecution, to permit such a right to the police, is almost fantastic and it cannot be defended on any ground whatsoever. I do not know what are the reasons which prompted the giving of such a right. That was a very healthy clause that had been put in the Code. The hon. Minister wanted to take away the clause as it is, but when pressure was brought upon him and he was told that he could not take away this right of the accused to contradict the witness, then this clause came in, along with this innovation of this right to the prosecution. This right to the prosecution is indefensible and this right given to the prosecution will certainly be a great deterrent against the witnesses telling the truth before the court. As an hon. Member said, they will be now confused and the evidence will be contradicted. You are just trying them down to the statement which they had already given. There can be no contradiction. This will also indirectly affect the accused person's right and the case will not be what it would otherwise have been. So I very strongly oppose this provision.

Then I will refer to the clause seeking to amend section 145. I think if we had accepted the original Bill as it was, then certainly we would have accepted one scheme of things, that scheme being to see that somehow or other to secure a conviction, to see that no guilty person escapes, even if at times it happens that out of ten convictions one is an innocent person. That scheme of things would have gone through; but now it has become such a complete mess that it is neither this way nor that way and in trying to improve the provision, we have, at places, introduced such innovations, as make this Bill quite unworkable. I say this with particular reference to section 145. Now the magistrate has got to refer the case to a Civil Court and ask it to say what can be done with the property, who has come in possession of the property. But how are you going to ensure that the Civil Court will submit its report within three months? It is quite fantastic and un-understandable. How can the magistrate when he remits the case, fix a period of time and ask the Civil Court to submit the report within a definite period. We must differentiate or distinguish between the two. A Civil Judge is not a subordinate of the Magistrate who refers the case to him. He cares a twopence for the Magistrate. Knowing as we do the state of affairs in the Civil Courts, particularly when even in the case of criminal cases, it is not possible to get quick justice, and to think of the Civil Court giving the report within three months is absolutely unworkable. And we are putting this innovation which will embarrass the magistrates. The magistrate would all the time be complaining to the High Court or to somebody else that he had referred the case to the Civil Judge more than three or four months back and nothing had yet been done. After all, the Civil Judge is not subordinate to the Magistrate and he has his own standing. A magistrate can only refer a case to his subordinate magistrate on whom he has got control and then he can see that the report is submitted within a limited time. But it is entirely different so far as the Civil Judge or the other authorities are concerned.

Since I have only a few more minutes, I will refer only to a few other clauses. I take that clause which has been so much talked about, that controversial clause about defamation. Sir, we must appreciate that there is a difference between a Government servant and another citizen. This provision puts the Government servant on the same footing as the other citizen so far as defamation in private life is concerned

[Shri H. C. Mathur.]

A difference is made only so far as defamation concerns his activity in the public sector. So it cannot be argued with very great force that we have differentiated for no reason. There are differentiating circumstances, there is not the least doubt about it. But the question is whether these differentiating circumstances warrant the procedure which has been adopted. I firmly think, Sir, that there is no justification whatsoever for that, that the circumstances do not warrant this procedure. Certainly Government servants must be allowed certain facilities and these facilities can be allowed in more than one way, as has been suggested by Dr. Kunzru the other day. There is absolutely no justification for the departure so far as the procedure is concerned. I say this for many reasons. It does make a difference, for as my hon. friend who spoke before me, asked, will the magistrate be able to pull his weight when he knows that an influential Government servant is the complainant in the case? It does make a difference when the Government servant is the complainant, and when the governmental machinery is behind him and when the sanction from the Government is there. The Government will sanction such prosecutions after applying their mind to it. And when they sanction such prosecutions and send them for trial, it is bound to have an effect on the mind of the magistrate. Whether he is a Sessions Judge or anybody else, it is bound to have an effect. If not on the Judge, it is bound to have an effect on the mind of the accused person. It is bound to have an effect on the mind of the witnesses who appear. And it was not fair to confuse defamation with blackmailing. The term "defamation" is such a wide one that anything can come within it. I think, if my hon. friend views it that way, he can say that half of my speech is defamation. It certainly can be construed that way. The scope of the word defamation is so wide that to give this particular procedure in the case of defamation will be having nothing but a very unhealthy effect. I do not see why a difference has been made between the spoken word and the written one so far as the procedure is concerned. So far as the crime of defamation is concerned, it should make no difference. But it is only the written word that has been proceeded against, and only in respect of that this special procedure will apply. So it is definitely an attack on the press. And, Sir, when I say this, I wish to stress very strongly that now at this stage, when we are in the formation of, or when we are settling down to, democracy, it is most essential that we have a healthy and good press and we do nothing absolutely to stifle the atmosphere and to create an impression that the Government will have a heavy hand waiting for the press. There is absolutely no reason why a Government servant should be given all these facilities and why he should not, as an ordinary citizen, be able to defend himself and defend his prestige. If the Government is interested in the Government servant, they can certainly help him monetarily or in any other way that they like. So, I feel that we will be open to very serious criticism and very justifiable criticism in making this innovation so far as defamation is concerned.

I will now say one word about committal proceedings. So far as the committal proceedings are concerned, I at least for one feel that we should do away with it so far as the present state of affairs is concerned. Committal proceedings can be of some help and some assistance if the magistrates have really some power. We must give them some power to discharge the accused. As you know, Sir, the rulings which have been given by the High Courts at present are such that a magistrate is bound hand and foot and all that he can do in almost 99 per cent. of cases is to commit the accused to the Sessions Court. We must do away with the effect of these rulings if we want

to retain committal proceedings. Let us be earnest about it, let us see that the magistrates really function Otherwise it is no use having this procedure Apart from it the other objection which I have to the present provision is the duality of the procedure that has been introduced duality of procedure in respect of cases brought up by the police and in respect of complaints filed by a private citizen I do not think there is any justification whatsoever for this and I think this clause requires further reconsideration

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FORCE-LANDING OF AIR INDIA INTERNATIONAL CONSTELLATION

SHRI V K DHAGE (Hyderabad) Sir, I wish to make a submission This morning Mr Mazumdar had raised a question with regard to the report on the tragic accident to the Air India Constellation It was stated that a statement would be made I would like to know when that statement is going to be made The House is likely to rise at 5 P M

MR DEPUTY CHAIRMAN: He did not say that it will be made today Information has to be collected After all the accident has occurred on the way to Djakarta

SHRI V K DHAGE We should know as to what Government has to say in the matter

MR DEPUTY CHAIRMAN Information has to be collected At the earliest opportunity, as soon as they have collected the information the statement will be made

SHRI R P N SINHA (Bihar): The latest information is that three persons have been recovered

MR DEPUTY CHAIRMAN The Government will give the information

SHRI S MAHANTY (Orissa): In view of this information which has been given by my esteemed friend on the floor of the House, don't you think, Sir, it is incumbent on the hon Minister for Communications to come and make a statement?

MR. DEPUTY CHAIRMAN. They are waiting for fuller information At the earliest opportunity the statement will be made

SHRI JASPAT ROY KAPOOR (Uttar Pradesh) Sir, we are obliged to Mr Sinha for giving this happy news that at least two passengers have been saved.

SHRI S N MAZUMDAR (West Bengal) Three

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL, 1954—*continued*

SHRI S N DWIVEDY Mr Deputy Chairman I am grateful to Mr Mathur for accommodating me by cutting short his speech

[THE VICE-CHAIRMAN (SHRI V K DHAGE) in the Chair]

Fortunately for us and perhaps unfortunately for Dr Katju this Bill was not passed by both the Houses during his regime as the Home Minister I, therefore, venture to suggest that the whole question should be reconsidered I quite realise the anxiety of Dr Katju to get a measure of this kind passed being a lawyer of many years standing but the whole purpose of this Bill must be considered in the changed circumstances Since it was moved in the House and referred to the Joint Select Committee, some vital changes have occurred In the Parliament, we have decided that we would have a socialistic pattern of economy, the welfare State has now been extended to a socialistic pattern and it is no longer the Police State as was visualised by Dr Katju I would most respectfully beg of the Government to consider whether, by bringing this amending Bill, they are going to serve the purpose that we have in view

There is another aspect to this question As has been seen both from the discussions in the Select Committee and in both the Houses—both at the time of reference to the Select