[Secretary.]

Sabha at its sitting held on the 12th April, 1955 in accordance with the provisions of article 368 of the Constitution of India".

I lay the Bill on the Table.

MR. DEPUTY CHAIRMAN: The House stands adjourned till 2-30 P.M.

The House then adjourned for lunch at one of the clock.

The House re-assembled after lunch at half past two of the clock, the VICE-CHAIRMAN (SHRI V. K. DHAGE), in the Chair.

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

SHRI H. C. DASAPPA: Mr. Vice-Chairman, I was dealing with the question of efficiency of the investigation establishment officers. I gave one instance of what happened in the case of certain hon. friends at Swarnakuppam and I shall quote another instance of a different sort. That was a case of double murder which took place at a place called Gopalpura in Mysore Taluk. That occurrence seems to have been about a mile and a half from the village but during the investigation probably the police officers thought that if they located the occurrence at a mile and a half from the village they might not be able to get witnesses to speak to the occurrence. So they located it in the village itself while the whole pool of blood and some of the other incriminating materials were all about a mile and a half from there. Though I am not in a position to take up briefs now-a-days my old clients would come and tell me what was happening with regard to their cases. When they told me about this case I said: "You have no fear about your case. It is not going to stand." And true enough, in the sessions court it could not stand for the simple reason that the venue of the incident was changed over by the police evidently in order to give it the verisimilitude of truth and fit it in with the evidence given by the prosecution.

Sir, the third case is even more recent and that has become a little famous now-a-days and it has been reported in most papers.

SHRI K. S. HEGDE: Famous or notorious?

SHRI H. C. DASAPPA: Not notorious, I suppose. It is yet to become that. Possibly it will.

SHRI H. P. SAKSENA: Which case?

SHRI H. C. DASAPPA: That is the preparation of two F.I.Rs. by the police. Even the 'Times'.....

SHRI K. S. HEGDE: It is *sub judice.* The matter is being tried by the magistrate.

SHRI H. C. DASAPPA: Mr. Hegde must surely credit me with a little more knowledge of these things. The case may be *sub judice* but I am referring to the fact about the two F.I.Rs. which are not denied and about which the Chief Justice of a High Court has clearly passed strictures. It came up before the High Court. I am not referring to anything except what the Chief Justice has already said and my hon. friend the Deputy Home Minister must be fully conversant with the facts and findings. But the fact is there. I have got the whole report here and I can quote it, but it is unnecessary to take the time of the House because it is not denied that there were two F.I.Rs., the second one in substitution for the first one with alterations, additions, so on and so forth. So Mr. Hegde need not be under any apprehension that I was trying to trespass into the domain of the judiciary and doing something which was not quite professional—I may say by the way I have been declared to have been guilty of unprofessional conduct.

Sir, let me proceed to the next point and that is what contributes really to delays and such imperfections as there are in the present administration of criminal law. Of course quite a number of highly placed dignitaries

have referred to the quality of the magistracy that we have now. There I think it must be conceded even by my hon. friend that it does permit of a lot of improvement.

I will again give one instance which has come recently to my notice. There was a District and Sessions Judge and there was an Additional Sessions Judge at the same place. The High Court thought that there ought to be two Sessions Judges, but somehow the local Government thought it is possible with one Judge to manage both the courts, and, true enough, when that one Judge, a fairly active and intelligent man, took over the work of both the courts, he was able to cope with the work. Therefore what I say is, so much depends upon the personnel of the judiciary that is charged with this task.

Let me also refer to what my friend said about the lawyers. Sir, I am the last person to minimise the importance of lawyers and how much they can contribute by way of co-operation in not only securing justice but also in expediting the process of law.

SHRI K. S. HEGDE: Are they doing it? I am sorry they are not.

SHRI H. C. DASAPPA: Yes, yes, that is what my friend Mr. Mathur referred to. What I say is infallibility is not the virtue of any man. There are bound to be failings, but to castigate the whole profession in the manner in which the learned judge has done—he was not the Chief Justice then; he was only a Judge of the Supreme Court—I think, is extremely unfair. I have got the reference here. Supposing, Sir, I say something very drastic about the way in which witnesses behave in the land, if, supposing, I say there is no witness in India who does not lie, who has a pang of conscience, I wonder if anybody could subscribe to such a view as that, whether even Mr. Mathur would do it. Are there not honest witnesses in India? And yet we find sometimes even these highly placed dignitaries go to the extreme length of saying things which, I think, are totally removed from truth. Now let me just quote from the same learned judge the following sentence and see if it can find support at the hands of any one individual in the land. This is what he says later on in the very passage. "Every person appearing in a law court thinks that it is his privilege to tell lies there without the slightest pang of conscience." Sir it is a thing which strikes me as a very extraordinary statement. Let us test it even by this simple method. There are two sides to a case whether it be a civil case or a criminal case; there is truth on one side; there is falsehood on the other side. At least those people who speak to the truth, 50 per cent. of them at least must be honest. Can we justify an unqualified statement like that? So I can give to the remark which the learned judge has made about lawyers and to which my hon. friend referred, no more value than what I can give to the other statement about witnesses. Sir, there must be no doubt co-operation between all these various sectors of society and the Government and then along things will improve, and of course the learned judge has himself said that unless the whole national trait of the people is improved, it will be difficult for us to achieve the result we have in view and any amount of codification and reform in law is not going to be of much avail.

Let me then come to clause 22 which I was dealing with and with reference to which I took up this matter about the police efficiency and integrity. Sir, it is stated here that it is open for the prosecution to treat its own prosecution witnesses as hostile and cross-examine, a privilege which the present law does not accord to the prosecution.

Now, both the hon. Deputy Minister who spoke on the motion and my friend Mr. Bisht seemed to make out this new provision to be a very innocent thing, that it does not really go to the root of the matter and it is not going to prejudice anybody's case. That is how I understood them. Mr. Bisht was very particular about its

[Shri H. C. Dasappa.]

innocence. Let me say that it is not so innocent as it looks, because my lawyer friends will, at any rate, concede that if the prosecution has not the privilege of treating its own P.W. as a hostile witness and cross-examine him, his evidence to the extent it is helpful to the accused stands and the accused can take advantage of the admissions and other statements emanating from him. Every value attaches to the statement of the evidence of that P.W. But when the prosecution chooses to treat him as hostile and cross-examine him, the whole of his evidence goes to nothing, it is of no value, it is as good as a scrape of paper.

SHRI K. S. HEGDE: Why?

SHRI H.C. DASAPPA: If the prosecution treats him as hostile, the whole of the evidence will be absolutely.....

SHRI K. S. HEGDE: I am sorry to interrupt, but on a point of information, it is not the correct position. Even if the witness is treated as hostile, still his evidence has got to be considered.....

SHRI H. C. DASAPPA: Sir, I know the law.

SHRI K. S. HEGDE: I am sorry two lawyers cannot agree.

SHRI H. C. DASAPPA: Otherwise, lawyers would not thrive, if one lawyer does not differ from the other.....

SHRI K. S. HEGDE: Sir, I want to know from my friend, because there are enough of cases—not that I am not supporting that clause.....

SHRI H. C. DASAPPA: Sir, I do not want to quote—any commentator on the Criminal Procedure Code will tell us, I think it is section 145?

SHRI K. S. HEGDE: It is section 154 of the Evidence Act.

SHRI B. K. P. SINHA: I do not see why we should argue about interpretation of law. Men differ in their interpretation of law. He is giving his own interpretation; my interpretation may be different.

SHRI K. S. HEGDE: Sir, it is the law as it is interpreted now.

SHRI H. C. DASAPPA: I know, Sir, there have been certain interpretations of law. My point of view is that section 145 of the Evidence Act, if read properly, will show what exactly is the use that the prosecution can make of it and what exactly is the use that the accused can make of it. Let us take section 162 as it is. Why is it in section 162, there is only *a reference to the accused being* enabled to make use of the statements before the police by way of cross-examination? And why is it that the privilege has not been accorded to the prosecution? If my hon. friend says that the prosecution has already the opportunity and the advantage of cross-examining the P. W., with reference to the police statements well, then, there is no need of this new provision at all. It is obvious the present section 162 does not confer on the prosecution the right to treat him as hostile and cross-examine him on the police statements except it be to have anything clarified. In case, there has been a cross-examination by the accused, then he can refer to the police statement and then have things clarified and it is stated specifically only to the extent of explaining matters and no more. Well, Sir, I will quote chapter and verse to the eminent advocate, but I cannot yield to him merely because he is a live advocate and I am an extinct volcano. So, there is a lot of difference and if the P.W's evidence can be neutralised in this manner,. then I ask my hon. friend whether it is right that the accused is denied the opportunity of making use of the admissions of the P. W.? So, my hon. friend has introduced it in a very seemingly innocent manner, but there is a lot of mischief in that clause. I cannot, Sir, subscribe to the view that the prosecution should be enabled to cross-examine its own witness using his statement before the police for the purpose.

Then, Sir, there is the other aspect which I shall deal within a minute, because I do not want to repeat things which I have already touched. The nature of the recording in a police diary is very imperfect and it would be, I think, a grave wrong and injustice for us to confront the P. W. with the so-called statement recorded by the police and try to treat him as a false witness. There are the further sections which are punitive in character, where for false evidence he can be prosecuted or proceeded against. I think it is a most dangerous weapon to be entrusted to any prosecution to have this kind of a provision in the law to enable him to treat his own witness as hostile on the strength of the police statements.

Then, Sir, I go to clause 19, that is the clause relating to the question of breach of peace and possession of immovable property. There, it is stated that if the Magistrate is unable to come to a decision as to in whose possession it was, he may attach it and draw up a statement of the facts of the case and forward the record of the proceedings to a Civil court. I ask why this kind of perambulation or shunting up and down between a Criminal Court and a Civil court? It may be the Civil Court is situated in a different place and the parties have to engage different lawyers and be put to additional expense. How is this going to help us either for expedition or for cheapness? I think, Sir, in this matter it is far better that the provisions are left alone. It is not going to help us very much. In any case, on the original side they can go to a court of law and they can always have relief and that is not prohibited by this provision. Because on the original side one can always go to a civil court. No criminal Court can deny a party the right to go to a civil court on the original side and get whatever redress it wants. So, this is not going to be of much help.

Then, I proceed to clause 23, that is with regard to the supply of copies of various police statements and so on. I am rather surprised that my friend, Mr. Bisht, should not have welcomed this provision. He has been a Public Prosecutor of long standing, but why the furnishing of these copies of the police diary to the accused is a thing which will not help either the expedition of the case or the ends of justice, I for my life have not been able to understand. The only reason that he seems to have advanced is the financial one. That is, if you take the whole of India, so many crores of copies have to be made. And each accused has to be supplied the copies. Well, the cost will be enormous. Now, I think, my learned friend, Mr. Bisht, was more worthy to be in the Finance Ministry than in the bar. So, I do not think that it is at all correct for us to say that that is not a helpful provision in law.

Then, Sir, I come to one of the most important clauses, clause 25 with regard to defamation. I must say that I listened to my friend, Mr. Mahanty, with considerable amount of interest and I racked my brains as to what the relation was between a lunatic and a Minister. And he was harping on that point. I do not think that is going to help him at all. It may be all right as a bit of a joke and a fun, but I feel that in a democratic country like ours, where there is so much of freedom of speech and of expression, there should be this salutary provision to enable an unjust criticism being tested in a court of law. I do not think anybody could take exception to it.

SHRI S. MAHANTY: It is the procedure.

SHRI H. C. DASAPPA: Yes, it is the procedure. As the Bill originally was framed, it was to make the offence of written defamation of a public servant cognizable. Now, there are hundreds of cognizable cases and my friend Mr. Mahanty has no objection to it. No doubt, there are also a number of non-cognizable

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cases where it is only the private complaints that are entertained; where the individual aggrieved must go to court. Does it mean, because there is a provision like that for non-cognizable cases, you will have no cognizable cases? Supposing, in the first instance, this was made a cognizable case, so far as public servants are concerned, what would have been the objection? In that case it is the police who would have charge-sheeted and not the person defamed.

Now, Sir, in order that our press friends should not be at the mercy of these ordinary investigating officers, there is a safeguard which has been provided here. And it is the strangest logic that I listen to on the floor of this House when it is said that this is not a healthy check on the vagaries of the police. Therefore, Sir, I must welcome this safeguard which is given to the press so far as defamation is concerned. What I cannot understand is this. You are making the person, against whom the offence is alleged, to have committed, liable to pay compensation to the acquitted accused. I cannot connect the two. Unless you have got a written consent of the public servant to the effect that a prosecution could be launched, I cannot understand.....

SHRI GULSHER AHMED: In England, recently they have passed a law whereby the courts can allow compensation to the people who have suffered as a result of their relations being murdered—or any other crime.

SHRI H. C. DASAPPA: I am not going to dispute that at all. I do not know whether my friend was following my speech. Why do you make a person, who has not had the slightest part in initiating the complaint, liable for compensation? For instance, I am a public servant. There is some defamatory matter published; the sanctioning authority sanctions the prosecution; the public prosecutor goes and lodges a complaint, while I am completely ignorant of the whole situation. Then am I to be made liable for compensation? And therefore, Sir, I would like to have some safeguard here. I have given notice of an amendment for the insertion of the proviso as follows:

> "Provided however that before according such sanction the consent of the person against whom the offence is alleged to have been committed is taken by the sanctioning authority for lodging such a complaint."

Then, you will have some moral justification for claiming compensation from him. Otherwise, you must take away this compensation clause altogether and leave it for the general law of damages etc. to have its free play. I think it is criminal for us to see that a person against whom an offence is alleged to have been committed by the press or anybody else is made liable for compensation, when he has no part in lodging the complaint. Therefore, either you get the consent of the person concerned, or you remove this clause.

Sir, there are quite a number of healthy provisions made in this Bill. I do not want to mention the whole lot of them. For example, assessors are done away with. I wish they had removed the jury also. Likewise there are various other provisions which I welcome in this Bill. The time is also up. Therefore, in conclusion, Sir, let me hope that the hon. Deputy Home Minister will take into consideration the points to which I have referred, at the time when we come to the clause-by-clause consideration of the Bill.

SHRI BHUPESH GUPTA (West Bengal): Mr. Vice-Chairman, it is after all a long time that the Criminal Procedure Code was enacted in this country and we have taken up the question of amending somewhat comprehensively the measures bequeathed to us by the Britishers. One should have thought that we would bring our democratic mind to bear upon the proposed amendments

and see that the law is altered in the direction of making justice not only cheap and expeditious, but also fair and democratic. Unfortunately, the present amending Bill has failed to achieve this end.

Let me, Sir, make it clear at the very outset that we are not at all opposed to the idea of amending the Criminal Procedure Code. In fact, Sir, it is very urgent that this law should be amended. But at the same time, we are opposed to amending it in a manner which goes against, in a sense, the fundamental rights of the citizens, which starts with the bias against the accused, which rejects the principle that no one is to be guilty until he is proved to be so in a court of law by offering evidence. Now, somehow or other, as you will see, these amendments start with the assumption that the accused person, who is once brought up before the court of law, should be treated as if he has committed a crime, and it is for him to prove that he has not committed the crime with which he is charged. That is the position now. I am not saying that the French principle has been adopted here in so many words, but the amendments bring it to that position. That is what I am going to say.

Sir, we have heard many speeches on the subject made by the hon. Members from that side of the House, and especially by the gentlemen who decorate the Treasury Benches, and at the same time, we have also heard the public opinion on the subject. Opinions have been expressed by the various Bars in the country, which have all condemned the proposed amendments. We have also seen as to how the Indian press has reacted to this measure. There again we find that they are opposed to making all these amendments that are proposed in this Bill. One should have thought that our former Home Minister would take note of all these protests on the part of the various sections of public opinion and would recommend to his successor not to proceed with this measure. That door was open to him. But unfortunately this measure is being flaunted before us in a manner unworthy of the Government. Sir, I think, nothing would have been lost, if the present amendments had not been pressed in this manner especially when there is a proposal to appoint a Law Commission to go into the whole question of the legal system in our country. I think they could have easily waited for some more time and seen as to what the recommendations of the Law Commission were going to be. If the terms of reference of the Law Commission did not permit such things, then they could have extended their terms of reference and left the whole matter to them. But nothing of the sort they have done. Now, Sir, we find that in the name of expediting justice, the same has been somewhat handcuffed. In the name of cheapening it, I think the freedom has been made a very cheap thing, as far as the accused is concerned. If these provisions become the law of the land, the accused would be put in a very great difficulty, because he would have to prove that he is an innocent man. Now, it is contended by the Government that they are interested in making justice speedy. Ever since the lawyers have started speaking on legal reforms, we hear them talking about speedy justice. But the speed of justice does not depend on certain procedures that are laid down here. The speed of justice depends, in the first instance, on the machinery for investigating crimes. We are dealing with criminal offences in this Bill. Therefore, what is most important here is the machinery for investigation, that is to say, before these cases come up before the court of law, there should operate a certain machinery for investigation, which would settle many matters. Unfortunately, in our country, Sir, we have got some machinery of investigation, namely, the police, which is not only inefficient, but at times, also found even to be corrupt. That is the most unfortunate part of it

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Now as you will see, I have been accused in a number of cases. I think I started my career of being accused in a court of law when I was fifteen. And I have not been spared that honour and that privilege even under this regime. Now I have found that it is always the policeman who has the better of the whole situation. He proceeds in his own way, where neither justice, nor fairness, nor democracy has any say at all. You will find that the investigations are dilatory. In most cases it is extremely dilatory. When the investigation is against some political offence, you will find that the machinery of law moves at a terrific speed. I remember that when I was a student in the Second Form in the school, I was arrested for some alleged offences. There were so many charges against me that when the District Magistrate came to the *hajrat* he could not believe that a boy of fifteen could be guilty of so many offences like dacoity, murder, waging war against the King and so on. I knew that most of the charges were fake and false. The prosecution was very quick, and immediately I was sent up along with the other co-accused of mine to a court of law and was put on trial. False witnesses were brought forth and gave evidence but they could not stand the cross-examination, and ultimately some of them even retracted their previous statements. I was given the benefit of the doubt and acquitted, but some of the other accused got sentenced to various periods of imprisonment ranging from one to five years, but when they went to higher courts, most of the others were also acquitted. Justice moved so speedily because they thought that it was necessary that they should put us in jail somehow or other. On the whole, the machinery was very quick. But there were other cases when it lacked that speed. I know of another case in which I was arrested almost the next year. There was not even a grain of evidence available to them. What happened was that they took a long time to investigate and we were kept in the lock-up. Eight or nine months went on like that. No charge-sheet was framed, and ultimately I was discharged. Speed does not depend merely on the question of law. The whole trouble is that the police administration today is not efficient, is not above board, so that you can rely on it for the speedy administration of justice. That is my whole complaint. Many lawyer friends from that side have spoken and I hope they will bear with me when I say that it all depends on the nature of the case as to whether justice is going to be speedily administered or not. It does not depend on the provisions of the Criminal Procedure Code. The same set of provisions or laws may be used either for delaying justice or speedily administering justice depending on the nature of the case and on the mood of the gentlemen of the Police Department.

3 P.M.

Another reason for injustice lies in the fact that there is no separation between the judiciary and the executive. This is a long story and I need not go into it. The Congress Party at one time was clamouring for the separation of the judiciary from the executive, and some of the States, I believe, are taking measures for that purpose, but we cannot say that the Congress Party has taken up this position in respect of all the States uniformly, with the result that this matter has been left to individual States.

[MR. DEPUTY CHAIRMAN in the Chair.]

You may say, "where is the harm if these two are inter-connected or retain their existing contact and relationship?" My whole objection is this that in our country there is a great deal of executive interference in the administration of justice. This was the position under foreign rule and the position has by no means improved even today. I think that this is a factor which should have been taken into account when we

are thinking of amending the Criminal Procedure Code. The judiciary should have been put completely outside the reach of the executive, where the Magistrates could not function on the one hand as Judges and on the other hand as executive officers, where the Police Superintendent would not be in a position to interfere directly or indirectly with the processes of law. Nothing of this sort has been done in the proposed amendment. I think these are fundamental questions.

Then, talking of our Police Department, I do not know to what extent they are interested in detecting crime. Now, there is the question of detection and also the question of prevention of crime. We are not in a society which is not without criminals. We are living in a fairly civilised society, where crimes are committed due to certain social conditions. Now, if our Police Department is more interested in the social angle of trying to prevent crime rather in becoming wise after the event and detecting the crime, much of this trouble would not have been there. But what do we find today? A large part of our Police Department is now being utilised for doing certain things that are not done in any democratic society. You take our army of plain clothes men. What are they doing? They go after political workers, chase them, dog them, follow them, attend their meetings and waste their time there. These men on the other hand should have been utilised in detecting crime and in eliminating the criminal gangs in the country. This is not done. This measure does not touch these aspects at all. Therefore let us not be regaled with the story that this thing is going to make justice speedy. Sir, it is not speed alone that is important . Suggestions are made here that justice will henceforth be speedy, and the people who have to spend a lot of money and undergo a lot of trouble in the courts will probably feel relieved now under the impression that justice will really be speedy, but the moment you go into this measure, the moment you examine the clauses of this Bill, any such illusion will vanish because what will emerge out of the whole gamut of the provisions here is that justice is not going to be speedy; it is going to be manacled in many ways, it is going to be shackled, it is going to be shattered, and this is what we take serious objection to.

Now, with regard to cheap justice, I do not know what they have in mind, because there are no financial provisions. If they mean that by making justice speedy, they are going to make it cheap also I cannot accept that proposition. The fact that you are going to dispose of a case in seven days or eight days does not mean that you are going to make it cheap. The whole thing must be imagined in terms of human freedom. Therefore this kind of argumentation on the part of the Government beats one. It defies good conscience. Sir, we are told that we are living under the rule of law, but as you go through this Bill, you find that that law is lascerated everywhere. The rule of law becomes a farce if you look at some of the provisions of this amending Bill.

Therefore I say that it is the rule of law that is being given the go-by in the proposed amendment.

Now I come to some of the clauses of the Bill. There are so many clauses—it is a comprehensive Bill and it has touched upon many of the provisions of the original Code *viz.*, the Criminal Procedure Code. The most objectionable part of this is, first of all, that the rights of the accused persons are being curtailed. One would have thought that while amending this measure, we should address our mind to enlarging the rights of the accused persons. We have adopted the principle that no one is guilty unless and until his guilt is proved in a Court of Law. Here again you find that the trend of the amendment is in the opposite direction. For instance, the summons and the

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warrant cases are put more or less on the same footing. Now I shall give you a few examples. You know that summons cases are dealt with somewhat summarily and in warrant cases the accused has the right of cross-examination after the Examination-in-Chief has been completed. Here there would be no right on the part of the accused to defer cross-examination. In these cases he has to start it immediately as if in summons cases, unless of course the magistrate or the trying judge at his discretion makes it possible for him to defer the examination. That is unfair. Why do I say this? Because in such cases the accused person should have a little time. Not only that. Some picture of the case he should have in his mind before he proceeds to the cross-examination of the witness. Here the prosecution will have time to deal with the witness, tutor him, coach him and drill him to the witness box as they like and then immediately after the Examination-in-Chief is over, the accused will be called upon to cross-examine him. Now naturally, in such a situation, he will not have either the opportunity or the necessary instructions to proceed with the cross-examination. This is a curtailment of the rights of the accused person which is not permissible if you really want to enlarge the rights of the accused person. Then you find that in the commitment case, it is for the magistrate only to examine the eye witness. As far as the other witnesses are concerned, it is for the magistrate to decide as to whether they should be called to the witness box. Here again the interest or the rights of the accused person suffer. As you know, the eye-witnesses are a specific type of people They are sometimes interested in the prosecution case and they are brought there and now if the Court in the investigation stage were to rely solely on the eye-witnesses, it would prejudice inevitably in most cases the interest of the accused person. That is to say, the case would be committed to the Sessions Court without the accused person having a fair chance of proving even on the basis of the prosecution witnesses that he cannot be committed to trial—Sessions trial. He will have no idea, as a matter of fact, of the case against him except that some of the witnesses will have appeared in the witness box to tell a story which goes against him. Then he will be taken unawares in the Sessions trial; when he goes to the real trial, he would be there with no idea of his case, no picture of his case and nothing to work upon his defence. That naturally would prejudice his position. Therefore I say that also goes against the interests of the accused person. Then you find that under the existing law the accused person may be examined by the Court only for the purpose of enabling him to explain the circumstances appearing to be against him. The whole provision under the existing Code is conceived with a view to protecting the accused person or conferring on him, if I may say so, certain rights of extenuation and all that. Those things are gone. What happens now? Now the trying magistrate or judge can start cross-examining the accused person any time he likes in the court, at any point in the proceedings. He can also ask incriminating questions. This he cannot do under the existing law. The magistrates under the existing law can put questions to the accused only in his favour to put him in a better position at least only to justify his defence. Now if the magistrate likes, he can ask incriminating questions as if he is the prosecution counsel I think that is yet another unfair provision in the amendments. This will operate against the interests of the accused and as you know, in Courts many accused persons are not at all well versed in law and some of them are ill-educated and illiterate even and they will be terrified and they will be put under a sort of terrorism because they know that the magistrate can come down upon them and ask any questions and if perchance the magistrate is unsympathetic, he can so direct his questions to the accused

that the accused person will make himself liable to be punished because he may get nervous and he may not answer properly. And all such things may be construed against him to justify the prosecution case against the accused. Such a thing was absolutely unnecessary in this law. I don't see why our Congress lawyers did not see this simple point. How would they have liked in the old days when they were in the courts of law with the judge asking questions to incriminate them? How would they like even today if they were before a Court of law and taking up the defence in a case to see that a judge is putting incriminating questions to the accused person in whose defence they have stood up in a court of law? I simply cannot imagine that any lawyer would accept such a thing unless and until his object is to satisfy the police bias in this whole business of the amendment. That again is another point which the country takes exception to.

Then there is Section 162 that the statement made to the Police can be used only for the purpose of contradicting prosecution witness and only by the accused. That is the existing law. Now what happens? In the amending Bill what is sought to be done is to allow the statement to be used by the prosecution in order to declare the prosecution witness hostile. It may not seem so bad—it may seem somewhat innocent but you know that when the cross-examination is being conducted, the prosecution might dig up certain statements and on the strength of those statements might seek that the prosecution witness be declared hostile. This will again operate against the interests of the accused person and would curtail the administration of fair justice. Similarly there are many other provisions—some small and some big—which go against the interests of the accused person. I don't find many provisions here which really protect the rights of the accused person, protect or shield the accused from unjust, unfair and misconceived prosecution. But on the contrary I find a number of amendments proposed which go against the interests of the accused persons. As I went through this Bill—this original Bill and the one amended by the other House, I felt, who was drafting that Bill? Was it a lawyer, was it a Congressman or was it a Police Prosecutor who was drafting that Bill? It seems that the spirit of the Police Prosecutor hovered over the Home Ministry when this Bill was being prepared by the Home Ministry here. I should have thought that they would have taken care to eliminate the police bias from the existing Criminal Procedure Code and made a law conforming to the democratic system and proper jurisprudence. Nothing of this sort has been done.

You again find that the whole game is given up when they come to themselves *viz.*, clause 25 which deals with defamation. Now the hon. Ministers, the Deputy Ministers and the big ones in the administration are all given an umbrella protection. What is this? They have said that the spoken word against them would not be considered to be defamation under the provisions of this Bill but if the press makes comments on them, the press is liable to be hauled up in a court of law. They only console us by saying that a Public Prosecutor will file a petition and the sanction of the competent authority or of the one named in that behalf would be obtained. What a consolation! Suppose, I am the press and I write against a certain Minister. All that he has to do is to get from his colleague, whoever it may be, the Home Minister or some other Minister to be named on that behalf or some other bureaucrat sitting in the Secretariat as the competent authority to sanction this thing and there goes the gallant gentleman, the police inspector to a court of law and files this petition of defamation against the press and the press will be hauled up on a charge of defamation. Now.

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they ask, "what is wrong in that? Their honour is to be protected. Their pride is to be protected. Their glory is to be protected." And such fatuous stories will be told. But, Sir, I say that the public servant of the land, whether he be the Minister or a Secretary, should offer himself and be subject to public criticism. He should not be afraid of public criticism. If their hands are clean, they will not be criticised. If their hands are unclean, then they should jolly well be criticised. If in thus criticising them, some people make the mistake of going to excess, I would say it would be for the good of society, because the damage done by this sort of thing is far less than the damage done by officers or the Ministers who are guilty of corruption, nepotism and that sort of thing. Sir, we find that as the elections are coming, as they are being spoken about in public meetings and in the press, they are becoming a little touchy of criticism now. Therefore, they like such enactments in the Procedure so that the press may not say anything against them, so that the press can be kept under a constant threat of police action. That is the whole motive behind this amendment. Sir, let us not talk of honour and that sort of thing. We are not here to defame these hon. gentlemen. No sensible press, no democratic press will take it as a sort of fun to defame anybody, let alone public servants. The press has got that sense of responsibility and public duty. They do not believe in this kind of unfair criticism. But when there is ground for criticism, when there are certain charges against a Minister, it is the duty of the press to come forward with such criticism and charges and let the public know and let the Government take note of it. Now, what will happen? What will happen is this. Every press before writing about a Minister or Secretary or officer, would consider the possibilities and the consequences with which it may be faced if such writings went to the press and were published. Indeed, Sir, this is a kind of a threat to the press, for indirectly they are telling the press, "Do not write anything against us. Here we have got an amendment to the Criminal Procedure Code which will enable Tom, Dick and Harry of the Administration to file a petition in a court of law and get you into court and to put you into all sorts of trouble." Sir, is it right, is it justice, is it fair, I ask, is it democratic? Does it fit in with all this kind of big talk in which they are indulging? That is what I would like to ask of the hon. Ministers. Whose honour does this amendment seek to keep? If they want to retain their honour, if they want to cherish it and prize it and protect it, there is none in the country who can soil it. But it is unfortunate that some of the Ministers—not all, for there are very honest Ministers—not only some of the Ministers—but some officials and some public servants are there who are soiling their own honour with their own hands. For this reason, why should the press be penalised? That is something which I cannot understand. Of course, they ask? "How do you say that the press is being penalised? It is only a procedure." Well, Sir, we know once there is the procedure, action would follow. This is only preparing the stage for action, for a show-down against the Press.

Therefore, I say, Sir, even at this late hour in this House, the Government would do well, since we have got a new Home Minister who talks less of police action and more of political action, to realise this thing and take away this obnoxious and atrocious amendments, because it is absolutely unnecessary, either from the point of view of protecting the honour of the honest public servant or from the point of view of promoting fair criticism in our public life.

MR. DEPUTY CHAIRMAN: Mr. Gupta, there is a time-limit and you have already taken half-an-hour.

SHRI BHUPESH GUPTA: No I have taken only 20 minutes, Sir.

MR. DEPUTY CHAIRMAN: No. half-an-hour, for you started at five minutes to three and now it is 25 minutes past three.

SHRI BHUPESH GUPTA: I will finish soon.

Therefore, Sir, I say this particular provision should be taken back. We do not want to amend the Criminal Procedure Code on this score. Let these gentlemen at least in this respect, remain on the same footing as any other hon. gentleman in the country. Of course, we have now got the V.I.Ps. and so many suffixes and other things, titles and that sort of thing. But let them not place themselves on a higher pedestal as far as the law is concerned. Otherwise it is an insult to law, it is an insult to jurisprudence, it is an insult to the principles underlying the rule of law, that they should put one set of people, these people who are already privileged, into a further privileged category and make it possible for them to operate the machinery of law in a different way than is at the disposal of the common citizen. That is very wrong. I think the Government should reconsider this matter and the new Home Minister should give new thought to this matter. That is all I would like to say as far as this point is concerned.

Then Sir, I would like to say that in this measure, section 144 of the Criminal Procedure Code should have been given the go-by. We have still got that section on the Statute Book. It is not being abolished even today. Let me ask this question: Was there not a time in the history of our freedom movement, in the history of our country, when Congress leaders spoke very vehemently and strongly against this law? Was there not a time when this law was administered in action against the people for suppressing the liberties of the people? And is it not a fact that today the same law is being utilised, not for maintaining public law and order, as they call it, but for suppressing the democratic rights and liberties of the pepole? Why is it, Sir, that the Congress Government today does not see the necessity for abolishing this section altogether? I think, history demands, our tradition demands and our past experience demands that section 144 of the Cr. P. C. should be made a dead-letter by the enactment of the law, by the enactment of this Parliament. But unfortunately they retain it and we know what is the result of it. Do I understand it, that in offering these amendments, they want to carry forward the ugly traditions of the British law-givers, all the ugly traditions of imperialism? There is no evidence of good intention as far as this provision is concerned.

Then there is section 107 of the Criminal Procedure Code, and that also remains. Not only that, the powers are being extended now, with regard to the jurisdiction. A Magistrate can operate this thing where the apprehended breach of the peace is supposed to take place or the person concerned is in his jurisdiction. Now this thing will make it possible for the Magistrates or the police to proceed against a person anywhere in India, so long as he can show that the person lives in his jurisdiction or the place where the breach of the peace is likely to be committed falls within the jurisdiction of a certain court. Suppose I live in Calcutta and some proceedings can be started against me in Calcutta, in order to prevent a breach of the peace in Delhi, because I, the target of the law, happen to be within the jurisdiction of the police court of Calcutta. How does this serve the ends of justice, I cannot understand. Such are the provisions one after another, which corrode justice, which shackle justice, which go against the proper administration of justice. Therefore, I say that all these things have to be changed.

I know Sir, that once a law is passed in the other House, there is a ten-

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dency on the part of the Government here not to make any alteration whatsoever because they think it would mean complication. I think the best course would be to withdraw this thing, not to proceed with it. Let the Budget Session go, let another Session go and let this thing not be brought up. Let it not be taken up at all. That way, we can save the situation. It is most regrettable that even after the strong opposition that has been voiced in the country especially from the Bar, from the lawyers, that the Government should have still proceeded with this amending Bill. Amendments are to be made. I agree, but not those that have been proposed here. One can say many more things about this matter but I do not like to say much except that I am not able to understand the reason for retaining the Special Magistrates. Is it not a fact that you opposed this system? How have you then suddenly fallen in love with this institution of Special Magistrates? This is something which is beyond my comprehension. Are not the ordinary courts of law enough for dealing with these cases? Are they not enough for administering justice? This provision is being made in order to give the whole thing a police bias, in order to make it possible for the police to carry on in their old ways and at times have the better of the accused. That is the mentality behind this On all issues over which controversies had arisen in the past, Government yielded to the police and not to the public opinion and it is one of the most significant facts that has to be noted when we deal with this measure. The discussions in this House should, I think, convince the Government that this measure is not to be proceeded with. I heard the hon. Mr. Dasappa speaking in defence of the defamation provision as it is here today. He is a great lawyer, greater when he speaks. I wish he had not demonstrated his legal bias, his wrong bias in that manner in speaking in support of this thing. How many Judges have expressed themselves against this? How many eminent lawyers have expresed themselves against this measure? He should be knowing all that and if he had known all these things, he would have been well advised not to hold the brief on this score. These amendments to the Code of Criminal Procedure, instead of improving matters, worsen them in many respects; instead of making justice free, it really, as I said before, handcuffs justice; instead of making it cheap for the people, it makes it cheap for the police to carry on arbitrary, ill-conceived prosecutions against the common man. The accused is left to the mercies of the malevolent police force and the uncharitable Magistrate. I see the hon. former Home Minister coming in. I am very glad that he is present here when we are discussing the heritage that he has passed on to us. I wish, Sir, he had advised his successor in the Home Ministry of our country that Shri Govind Ballabh Pant would be well advised not to proceed with this law. It was a very bad day—I do not know if it was a sad day—for the hon. Dr. Katju that he had to sponsor a measure like this. I think he should have considered it a happy day for him not only to have vacated his position but also to have seen that along with him went this measure. I am very happy that he is in the Defence Ministry; I do not know how he is holding the gun but I should have thought that before he left the Home Ministry, he would have advised that this law which is directly against the people, whose target is the accused, whose target is the rights and liberties of the people, should be given the go-by, should be abandoned by his successor. Between them, they could have certainly made an arrangement and we could have been spared the ignominy of having to discuss such an obnoxious and atrocious measure. I hope, Sir, sense will dawn upon them even at this late hour and they will be well advised, looking at public opinion, to withdraw this measure,

to scuttle it, if they like, or to take it back. We in this Parliament are not here to discuss measures such as this; we are here, we should have thought to improve upon what Macaulay gave us; those bunch of British Imperialist lawyers gave us a set of laws and we should have been here, with our wisdom, to improve upon it, to nullify the evil effects of it, to nullify the bad clauses of it and to enlarge the rights and liberties of the people and to make law conform to modern standards, to democracy and good public life. We do regret that we have not been given this opportunity and the responsibility for that rests with the Government. Government would be responsible for the injustices that will follow from these amendments and Government will have to answer today or tomorrow at the bar of public opinion that they carried forward this evil legacy of Macaulay into dreadful extremes, extremes which are embodied in the proposed amendments that we have before us.

SHRI B. K. P. SINHA (Bihar): Mr. Deputy Chairman, after the eruption of the volcano, I rise with considerable diffidence to address this House. This is a long measure running into 119 clauses and one very long schedule.

SHRI BHUPESH GUPTA: Yes.

SHRI B. K. P. SINHA: Like all long measures, it has some good features, some bad features and some indifferent features. I must say at the very beginning that the number of good features is not inconsiderable. I would simply catalogue them and I would do so with a purpose. The speeches in this House would give an outsider or somebody who reads the report of the speeches later on an impression that all the Members were opposed to the Bill as a whole. Nothing like that. While speaking we have kept silent about the clauses on which we have no difference with the Bill and we have addressed ourselves only to the clauses on which we have our differences with the Bill. Therefore, such an impression will not be proper. What are the good features? I would simply catalogue them because the time is short. Number one is the abolition of assessor trials. The assessors were in the court but they were not part of the court. Their opinions are not binding on the Judges and they serve no useful purpose. That system has been properly abolished. The second good feature, Sir, is that we will now have itinerary Sessions Courts. Sessions Courts not sitting only at the headquarters of a district but moving about. That will mean a lot of advantage to the accused. It may not mean so much of advantage to the prosecution but for the accused it is something which will give him greater protection.

Clause 26 says that the statement of witnesses shall be recorded along with that of the complainant, if they are present. That is a clause which in my opinion, operates in favour of the accused. The accused are very often taken aback when at the last moment witnesses are produced and they are hard put to it to cross-examine them but if at the very early stage they have the advantage of the statement of witnesses, they would have better protection. The next clause is 28 which says that "no summons or warrant shall be issued against the accused.....until a list of the prosecution witnesses has been filed." This is a clause which operates in favour of the accused. Under clause 38, in summary trials, the recording in appealable cases shall be more elaborate now. This is something which, in my opinion, operates in favour of the accused. The provisions regarding jury have been systematized and they have been made more scientific. There are restricted provisions regarding adjournments; adjournments will not be so easy. Adjournments have always been very harassing to the accused. I know of

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a case in which the accused was ultimately let off; the charge, on the face of it, was not very proper but all the same, the accused had to appear before the court on ten or twenty days. That shall be put a stop to. Under clause 66, there is provision for a Stenographer. That was a longstanding demand of the judiciary. This would mean speedier and more effective justice. That demand has been conceded. The implication of clauses 81, 82 and 83 read together is that all appeals shall now be to the judiciary. Previously cases decided by Third Class and Second Class Magistrates went in appeal to the District Magistrate but under the amendment all these cases will go to an Assistant Sessions Judge or somebody even higher. There is another aspect to it. This may mean that work in the Sessions Courts will increase but, all the same, the accused shall, at the appeal stage, be assured of better justice.

There is a stricter provision regarding perjury. I think clause 90 operates in favour of the accused. Similar is the provision for punishment for non-attendance by witnesses. Then comes clause 95 in which a new sub-section (3A) is proposed to be added to section 497 which says that bail shall be given to an accused where the trial is not concluded within a period of sixty days from the first date fixed for taking evidence. These are provisions which operate in my opinion in favour of the accused.

There are some other good provisions also. Now the lady Members are not here just now. They will be entitled to sit on the jury if they are agreeable. Then the amount of maintenance for a deserted wife and children has been raised from Rs. one hundred to Rs. five hundred. These are some of the good features of the Bill.

I would come next to another aspect of the Bill. Now this Bill widens the ambit of summons cases by clause 2 and clause 17. Then clause 37 widens the ambit of cases in which summary trials may be held.

Then the limit of fines to be imposed by magistrates has been raised in this Bill and clause 64 enlarges the number of offences that can be compounded with the permission of the court.

Then clause 7 raises the power of Assistant Sessions Judge. These are all provisions which have one effect. They strengthen and enhance the power of the judiciary and by judiciary I mean the magistrates also. Now there is a corollary to this. Whenever we talk of strengthening the powers of the judiciary as if by reflex action the thought of separation of the judiciary and executive comes to our mind. But I find that we are falling a victim to the notion that the age of judicial purity will dawn as soon as judiciary and executive are separated. Separation of the judiciary and executive is good and proper. That is a long standing demand. But that is a means to an end; that is not an end in itself. The end is that the people going to courts should be assured of better and purer justice. This requires, in my opinion, that the judiciary should be strengthened. Their stature and their standard should be raised. Sir, I have found of late a disquieting decline in the standard of judiciary. Of course my experience is confined only to my State, but I think, things are no better in other States.

SHRI GULSHER AHMED: You are right.

SHRI B. K. P. SINHA: Till sometime back we assumed that the integrity of the judiciary was beyond all reproach, and that they could not be tampered with. But sometimes in our enthusiasm to make the judiciary and executive separate as soon as possible we have depressed our stan-

dards. I know at one stage, some three years back, since my State was serious about effecting this separation. they asked of the Public Service Commission to recruit about 60 or 100 munsifs or subordinate judges. The Public Service Commission protested and then they referred the proposal back to the Government and told them that it was not possible to recruit men of the requisite standard in one year. All the same the State Government was insistent and recruitment of the requisite number was made. It has been our unfortunate experience that this rather rapid and considerable recruitment has been to a great extent responsible for depressing the standard of the judiciary. Therefore, if we give greater powers to the judiciary we must have good and efficient magistrates and we must see that their standards are raised. When the British were here all the magistrates, even munsifs had to undergo a very severe training in revenue matters, such as, survey training. In my State that has been abolished—the system of having survey trained men. These survey trained men got an insight into the habits, customs and manners of the people and they came to know the people through and through and in deciding cases that was of considerable assistance to them, at least in assessing justice and coming to a right conclusion about facts. That training of late has been abolished though I understand there is the proposal again to introduce that training. Therefore, I would urge that while giving more powers, while separating the executive and the judiciary, we must always keep one objective in mind that the standard of the judiciary should not only not be depressed but should be positively raised, and I have every hope that Government will take positive steps in this direction.

Now I shall very briefly refer to some of the clauses to which I have submitted my amendments so that by the time the amendments come before the House the hon. Minister may know my viewpoints and those of others and make up his mind to accept them or not. Now clause 19 deals with section 146. To me it appears that this section is rather an amalgam of conceptions which have no place in criminal law. It says that when a magistrate is not able to decide as to who was in possession the matter may be referred to a civil court. It talks of references but I know that reference is made only in two cases, the sales tax matter and the income-tax matter. Now when a matter goes before the highest revenue authority and they are not able to give a proper interpretation of the law and they are in doubt about it then they make this reference so far as the question of the interpretation of law is concerned to the High Court and when the reference comes back they decide the case in the light of the opinion of the superior court. Now there the law is laid down. But then something more has to be done. Facts have to be assessed in these cases in the light of the law laid lown. Here the matter is referred to the civil court to decide the question of possession. But that is the only point to be decided in the case. If the reference is made for this purpose then there is no use providing that the matter will again come back to the criminal court. Because there is only one issue to be decided, the issue of possession. If the civil court decides it, let it be final. Why should it come back to the criminal court? That means it is lengthening the disposal of the case. It is against the very principle of the Bill, the principle that there should be expeditious justice. This prolongs and lengthens the proceedings for nothing. Moreover there is no difference in their competence. This of course assumes that there is a difference in the competence of the criminal courts and the civil courts to assess the truth and to come to the truth. That is not so. In the criminal courts we don't go into elaborate evidence and the civil courts do so Therefore, in view of the difference in the nature of their powers, of the

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nature of the duties entrusted to them this provision is made in these cases. But here if you want that there should be a final determination, then the provisions which you have introduced in section 146 may be introduced in section 145. Let the magistrate take some more evidence and come to some conclusion—'yes' or 'no'. You make it obligatory on him to come to some conclusion. If not there is no use making this law. Abolish it altogether. Let the old provision be retained. This is only lengthening the whole procedure. The procedure prescribed for the Sales Tax Act and Income-tax Act cases only, is not very proper here.

Then I come to clause 20 dealing with section 147. There I would like the deletion of two words 'if possible' in line 14 on page 5. Because what is the scheme of 147? In 147 the land belongs to somebody else. Now somebody else claims a right of passage, right of easement or some other right over that land. That is admitted. According to the scheme of the present Act it is obligatory on the court to come to a decision whether the man who claims that right has a right over it or not. If he has the right, the right is given. If the court cannot come to a conclusion that he has a right, there is an end of the matter. But here the words 'if possible' create some confusion. Now, it would be open to the court to say "you are in possession; or possibly you are not in possession." Probably, they are importing the same conception, the conception which is embodied in section 145. Now, section 145 is different from section 147. In one section, there is one piece of land; two contestants claim possession of the same piece of land Both cannot be in possession of the same piece of land. Therefore, their claims are exclusive of each other and it is possible, therefore, for the court not to come to any conclusion. In section 147, it may not belong to one man but ten men can have the right over a piece of land. Moreover, here one man who claims the right over the property of another, if he can prove it he gets it. If he does not prove it, he does not get it. Where is the necessity then for these words "if possible"? In my opinion, this creates confusion.

Then, I would briefly refer to clause 22, section 162. I would like the deletion of the words "and with the permission of the Court, by the prosecution." This point has been dealt with at very great length by other speakers. I entirely concur in their views. This is something which makes the measure weigh against the accused and this must not be so.

Then, I come to new section 198B, the most controversial section. I must make it very clear that I support this section, except the sub-clauses towards the end. I say that Government servants should be treated apart. Sir, when a man is defamed, a man is defamed, the individual is defamed. There is an end of it. When a Government servant is defamed, it is not only that the individual is defamed, the Government, the whole system, the whole machinery, as it were, is brought into contempt and disrepute. It affects not only the man; it affects a much wider circle and it is proper that in these circumstances, the reputation of the man should be cleared so that not only his reputation is re-established, but the system itself does not suffer. Now, it may be asked why should he not have the right of filing a complaint? Sir, in this country there is an extreme unwillingness on the part of the people to file defamation prosecution. I was reading a small book dealing especially with defamation. There the author has illustrated the whole thing by a reference to foreign cases, to judgments from British and American courts and in the preface the author writes that he has to perforce.....

MR DEPUTY CHAIRMAN It is time.

SHRI P K P SINHA Yes, Sir I have five minutes more, I think

MR DEPUTY CHAIRMAN You have already taken twenty minutes

SHRI B K P SINHA I will finish in a few minutes, I will not take much time This is the most contentious clause, therefore, I must deal with it So in the preface the author writes that there is such a great unwillingness on the part of the people here to launch defamation prosecutions, that he has perforce to refer to foreign judgments like British and American courts If you leave it to the people, it is possible—not only possible it is our experience—that prosecution will not be launched And not only the man will suffer, the whole system of Government, the whole machinery will be brought into disrepute and contempt My hon friend Mr Mahanty said that there are very few erring persons or presses, why legislate for them? Legislation and laws have been made precisely for the few people who come under the mischief of the law, who violate the law in that respect Take the case of murder for example If the whole society is composed of murderers, I am sure murder would not be a crime at all It is only because a few people are murderers that it is practical politics to frame a law making murder a crime. Otherwise, if the whole nation were to be a nation of murderers, murder would cease to be a crime Murderers would send their representatives to the legislatures and the legislature would take murder out of the province of crime

SHRI GULSHER AHMED: Don't you think that during the war the nations became murderers!

SHRI B K P SINHA That is another kind of murder The law is always meant for the few who are law breakers, it is not meant for the law abiding people Moreover, we are not laying down the law for an ideal press, operating in ideal conditions Let us see what are the conditions here My hon friend said that so many shady transactions have been brought to light because of the press I challenged him then and I challenge him even now

SHRI S MAHANTY Yellow press is meant for yellow Ministers and yellow public servants not for all

SHRI B K P SINHA I challenge him Let him give me even one instance in which a shady transaction has been brought to light because of the writings of the press

SHRI S MAHANTY Jeep scandal.

SHRI B K P SINHA That was brought to light because of the report of the Public Accounts Committee not because of some report in some press Point out to me one single instance and I will support your point of view

SHRI S MAHANTY Jeep scandal

SHRI B K P SINHA I have already told you that it was because of the Public Accounts Committee

SHRI RAJENDRA PRATAP SINHA: No, no, before that

(Interruption)

MR DEPUTY CHAIRMAN Order, order

SHRI B K P SINHA All I wish to say is that we are not laying down the law for ideal conditions and for the ideal press What are the practical conditions in this country? I hope, Sir, you will give me some more time because this is a very vital matter

MR DEPUTY CHAIRMAN You must close by 4 P M

SHRI B K P SINHA I will close by four definitely What are the conditions in this country? I have found that one organ was writing—I will not name the gentleman concerned—against one very important person in this country It is, of course, about

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someone in some State, one particular journal—whatever you call it, journal, press, newspaper, organ or writing, I do not quarrel Suddenly I found that the journal became full of praise for that gentleman, so much so that once it wrote: he is the only man who can take the place of Jawaharlal Nehru in this country. I was rather intrigued and made an enquiry as to how that great change came about and learnt—it must have been known to you, Sir, especially . ...

SHRI H. P. SAKSENA: What happened? I could not understand.

SHRI B. K. P. SINHA: Better not. That is how things move here People go to officials. I know of a case. A man goes to an official for some favour. The official is helpless. Now, I do not say that the officials are all what you call washed with milk; they are not all purity. Nobody is. We are all liable to commit some mistakes some day or other. When he does not get what he wants from the official, he says: "You have committed these mistakes at such and such time." Thereafter, there is a big column with big headlines, even in a box sometimes, "Read the story of such and such a man" and that mistake which the official might have committed at some stage, is mentioned.

SHRI H. C. MATHUR: How is it going to be stopped?

SHRI B. K. P. SINHA: It is not only genuine mistakes of officials. Very often I find mistakes are manufactured, grievances are manufactured and then the poor official is put to a lot of trouble, he is put to shame. These are the conditions obtaining in this country and we are legislating for these conditions I, therefore, feel that some such check on the licence of individuals is needed. It is not only the press that is to be blamed. Sometimes I have found people printing leaflets defaming officials and distributing them I know of several cases in my district when persons came and sought my advice. I have advised them: "Don t do that, because you will be hauled up for this." This is happening every day and we are laying down the law for them. We have in this clause sufficient checks, checks that are there even in a country like Great Britain.

SHRI GULSHER AHMED: Why don't you have a separate press law?

SHRI B. K. P. SINHA: There is no time left for me to discuss this. I, therefore, feel that this provision is proper But then I agree with Mr. Dasappa that in this clause the provision for compensation is rather out of place. It is practically bodily lifted from section 250 of the Criminal Procedure Code and is introduced there.

SHRI K S HEGDE: It is a mixture of conceptions.

SHRI B. K. P. SINHA: The whole thing is a mixture of two contradictory conceptions Here the prosecution is launched by a different man. The man defamed has nothing to do with that. It is not only vicarious responsibility, it is something worse. I know of only one such law. That is the law passed in the reign of Queen Elizabeth about Queen Anne. Whenever there is some rebellion on behalf of some person, that person will be hanged. We are introducing that conception in this and I think the latter part of this clause should be deleted.

4 P.M.

Then again, Sir, about the appeal against acquittal, I do not see why a private complainant should be given the right of appeal The clause dealing with this thing should be amended. And then in the clause dealing with perjury they have put in so many qualifications "for the eradication of the evils of perjury and fabrication of false evidence." These are all subjective things for the court to determine What is the use of putting all that here? If a man lies, let him be prosecuted, irrespective of the fact whether it is in the interest of justice or not. I assume that it is always in

the interest of justice to do so. Therefore, all these things are, according to me, unnecessary.

MR. DEPUTY CHAIRMAN: Mr. Hegde.

SHRI B. K. P. SINHA: Sir, only one minute more?

MR. DEPUTY CHAIRMAN: Your amendments are coming up, Mr. Sinha.

SHRI B. K. P. SINHA: I want to explain them here. Clause 91, in my opinion, should appear in a better language, because it prescribes that when a witness does not attend, he is to be punished. There is no provision in the Criminal Procedure Code for punishing a man for something which is not an offence. I have also given notice of my amendments in this connection. I have made non-attendance an offence and then prescribed punishment for it.

Then, Sir, I come to clause 115, which is perhaps the last clause. They have said that the offences under sections 379, 381, 406, 407 and 408 which were not compoundable before become compoundable when the value of the property does not exceed two hundred and fifty rupees and permission is given by the court before which the prosecution is pending. But what about other cases? In this connection, Sir, I have given my amendments in order to make the whole thing clear. Of course, the sense is there. But we should make all these things very clear in the Bill. I think that is all that I have to say.

SHRI K. S. HEGDE (Madras): Mr. Deputy Chairman, in a large measure I extend my welcome to this Bill. This is a long expected and a long delayed measure. There has been a cry in the country that justice has been very costly. The law's delays have been very proverbial, and every genuine reformer has conceived the idea that justice should be made cheaper and quicker. I am merely repeating the oft-repeated statement when I say that justice delayed is justice denied. That has been the case in the country.

Last week, Sir, a junior member of the Bar brought to me a brief to argue a case. I went through the whole case. I found it had suffered 84 adjournments. It had lasted for over two years. And you can very well appreciate what the fate of that case would be. It is the knowledge of every lawyer on the criminal side—for the present I am confining my remarks only to the criminal law—that one way of getting an acquittal for his accused is to drag on the proceedings as long as he can. And if he can succeed in dragging on the proceedings, he is more or less sure of the acquittal of his accused. What really happens is this. The moment the crime takes place, there is a good deal of social enthusiasm. People want to punish the offender. But as time drags on, that enthusiasm fades and there are many people who sympathise with the accused by saying "After all, the dead man is dead. Why should we hang another?" That temperament always appears, and more so probably in the Indian conditions. Probably mainly it is from this point of view that this Bill has been now brought forward. I am glad that we have an occasion to pass this measure and thereby make prosecutions cheaper and quicker.

As I examine this measure, I find two broad principles in this measure. One is to cut down the law's delays, and another is to make the sanctions of the law very effective. Of course, there are other subsidiary clauses also. But the main principles underlying the Bill, as I understand it, are these two. Many tears have been shed for cutting down the dilatory provisions, so far as the committal proceedings and the warrant cases are concerned. These criticisms are probably because of the fact that we do not want to change anything. We are always afraid of a change. Many of us probably think that the people who drafted the 1898 Code of Criminal Procedure were more intelligent, and

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we have no more further wisdom from which we can improve upon the measure. By temperament, we always demand precedents. In fact, Sir, one eminent Judge very recently said that law is one generation behind society, and the lawyers are yet another generation behind law itself. And if I may add, Sir, I will say that the Judges are yet another generation behind lawyers. By temperament we are very conservative. (*Interruption.*) ......There is time for self-criticism. Now from this point of view, there is always a feeling existing, and wh . . . change a law, we are not sure of the position. We think we are going against some precedent, as if we are afraid of it. But there is another section of the people who oppose it, like my friend, Mr. Bhupesh Gupta, and who always consider crime as their fundamental right He thought he had a right to commit crime. I am not speaking individually of him, but of his class whom he tries to represent. He thinks he must have all the privileges. He has drawn the presumption of the accused being not guilty or innocent to a very extreme position. That is how the law has now become a condemnable piece in many courts in any way. Now, I do not subscribe to that view at all. And there is yet another class of lawyers who think that litigation is a vested interest. I am sorry that there are some of us who still think that litigation is a vested interest of ours. I have heard some as saying "If you remove the committal proceedings, then we lose much of our earnings," as if the whole litigation is created for the purpose of our earnings. That approach is not a thing which is conducive to our best society, nor is it conducive to the credit of the class to which we belong. We are sorry for such an opinion being expressed. In fact, I had read it in the newspaper itself that one Bar Association passed a resolution to the effect that the committal proceedings must continue as it is now, because otherwise much of the work of mofussil lawyers will go. This is not the way to approach the matter at all. The essential question is that justice must be done, justice not merely to the accused, but to the man who has suffered, and to the State as well. While we must see that no innocent accused is convicted, we must also see that, as far as possible, no guilty person is acquitted. Today what really happens is that by too much emphasising the doctrine of the presumption of the accused being not guilty many guilty persons are acquitted. It is an every day occurrence that probably 95 per cent. of the accused are acquitted in courts of law, at least in some of the districts, though not in all. Now, that state of affairs does not contribute to strengthening the sanctions of the law, and the law is systematically undermined by this process of extending the doctrine of the innocence of the accused. Undoubtedly, there is the presumption that the accused is innocent......

SHRI GULSHER AHMED: May I just remind the hon. Member that in England also there is the same practice? But there it never happens like that. I think there is something wrong with our machinery of police, conviction and other factors.

SHRI K. S. HEGDE: There is some difficulty in trying to imitate another country; when we do not have here the entire atmosphere of the other country, we probably catch only the artificial side of it and not imbibe the spirit of it. It is true that in England even under this doctrine, they are able to get many convictions, but I may enlighten my friend by saying that the law in England is very different from the law in this country at least so far as the procedural aspect is concerned. Now, I should certainly have been glad if the hon. the Home Minister had found it convenient to examine the whole gamut of the criminal law. It is not sufficient merely to amend the Criminal Procedure Code. It is absolutely necessary side by side to examine the provisions of the Indian Penal Code and

the Indian Evidence Act, and even in so far as we are trying to amend the Criminal Procedure Code, the examination is neither complete, nor conclusive Surely many more provisions still require amendment, but that is no argument to say that, so far as it goes, it is not good So far as cutting down delay is concerned, undoubtedly the present procedure will minimise the length of time that could have been taken by the prosecution Mr Bhupesh Gupta was repeatedly saying that this will not cut down the delays I am afraid that he has not carefully gone through the provisions of this Bill Undoubtedly the time that is given for investigation is still too long, and it may have been usefully cut down It is no doubt difficult for an investigating officer to finish his investigation within a stated time There are difficulties and difficulties, but at the same time I consider that he should have been compelled to take the permission of the Magistrate for any extension of time This might have been a useful procedure Probably now the police officers who are investigating cases are left free to take as much time as they please for the purpose of investigation This is a lacuna in the present Bill When I heard Dr Katju introducing this Bill, I thought that he would bring in some provision by which he would limit the time that would be given to a police officer to investigate cases, but unfortunately that provision is not here

Now, coming to the question so far as the courts are concerned, I know that preliminary enquiries and investigations in murder cases in committal proceedings often take over a year, but this is not possible under the present measure at all, and any committal proceedings will have to be finished within two months, and if there are exceptions, they must be very rare, and certainly in very difficult cases it might take a little more time, but normally the period should not be more than two months Now the question should be viewed both from the point of view of the accused or from the point of view of the prosecution From the point of view of the accused, let us consider the strain on the mind of the accused with a murder charge on his head, if the case drags on for months In fact I know of one instance where I was the Public Prosecutor and I asked for an adjournment in a murder case, but the learned Judge said that he would not grant an adjournment unless I agreed to release the accused on bail The accused was released on bail and yet the High Court came down and said, 'You do not realise the effect on the accused in a murder case, the immense amount of worry he will be having" They said that an adjournment was not called for So, if you genuinely feel for the accused, let the whole thing be pushed to its finale quickly, either acquittal or conviction

Coming to the procedural side, much complaint has been made that there is no occasion now to have the evidence before the accused in a preliminary enquiry Obviously, this complaint has been made by non-lawyers They do not know that even under the law as it now stands most of the accused specially in police cases more or less invariably are committed to the sessions Discharges are few and far between It is probably two per cent, but I doubt whether it will be even two per cent What really happens is that the prosecution witness is cross-examined for hours and days together in the committal court for no purpose at all What the witness says on one point he goes back upon on another point This cross-examination serves no useful purpose at all from the point of view of the prosecution as well as from the point of view of the defence I have had long experience both as a Public Prosecutor and a Defence Counsel, and I am of the view that in the committal court no useful purpose will be served by cross-examining the witnesses in question In fact, every time any mofussil lawyer comes to me for advice, I tell him, "Do not cross-examine the witnesses. Let them be com-

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mitted to the sessions." As it is, much time is wasted in the committal courts so far as the preliminary enquiries are concerned. Here is a very useful provision. Right from the very beginning, the accused are supplied with all the relevant papers. I should congratulate the Government and I had expected the Opposition also to congratulate the Government for this very liberal provision. Oftentimes the difficulty is for the accused to know what exactly is the case against him. In many cases a lot of money is spent on pilfering the case diary. That is considered very valuable for purposes of defence. Now the Home Minister comes forward and says, "Here is the case diary. If you *think it will help you, make as much* use of it as you like. By all means help yourself" Not merely the case diary but also the statement made under section 164. Now, the accused does not know what it is. Today, under the amended provision, all the relevant papers, including the statements made under section 162 are made available to the accused right from the very beginning so that he can shape his defence accordingly. I do not know genuinely speaking whether anything better could have been done so far as the accused is concerned. To the extent I know the law of other countries, even in countries like England where the Grand Jury commits the accused, all this rigmarole of this committal procedure is not indulged in.

SHRI GULSHER AHMED: There is a committal procedure.

SHRI K S HEGDE: Yes, by the Grand Jury, but you do not have the farce of all these cross-examinations. Today what is really happening is that we are having not one cross-examination of the witnesses but probably three or four cross-examinations You have one cross-examination before the charge is made, another cross-examination after the charge is framed, and then another cross-examination if the case is transferred to some other court. This is more or less reducing the law to a farce. When now all the materials are made available to you, I see no reason why you should have more than one opportunity to cross-examine witnesses. The present provision certainly reduces law's delays to a very large extent. I would certainly have welcomed a provision restricting the delays on the part of the investigating officers

Another aspect which I would like to urge is whether it would not be more useful if the Public Prosecutor is brought into the picture much earlier than conducting the case Today he has absolutely nothing to do in the shaping of investigation His advice may or may not be sought If his advice is invariably sought,—and it may be sought—I am sure, it would be very useful so far as the prosecution is concerned specially in the cases which are true and it may be a hindrance in cases which may not be 100 per cent true It is from this point of view that I would have welcomed any measure which would have made the Public Prosecutor a permanent official of the Government and whose advice is sought and made use of from the beginning That is an omission and I am sure that at a very early stage this omission will be rectified My friend Mr. Sinha says. "Why not have a Director of Public Prosecution in every district'" In fact that is a good idea with which I entirely agree. Once before also, you will remember, that I canvassed the idea of appointing a Director of Prosecution in every district. It would be an extremely welcome thing because, today, many cases fail because of want of sufficient technical or expert knowledge on the part of the police officers Some of them are new, some of them have not got sufficient equipment for the purpose of investigation and as such good prosecutions and true prosecutions fail. It would be extremely useful, as suggested by my hon friend, to have a Director of Public Prosecution in every district.

I shall deal with one other subject, viz., the question of defamation and the amendment that has been suggested by the amending Bill. There has been a good deal of furore about it. Many objections have been raised. One is that our Fundamental Right is encroached upon. Secondly there is no equality before law. We are worshippers of words and dogmas today and we have not any concrete or precise idea about them. What is this Fundamental Right that is being encroached upon, I don't understand. Is the right of defamation a Fundamental Right that is guaranteed under the Constitution? I am surprised at that. What is proposed to be prosecuted today is defamation and not any honest criticism or impartial or *bona fide* criticism. Today, if you examine the provisions relating to defamation, you will find that even mistaken criticisms, if they are *bona fide*, are a just defence. It is said "Where is the equality before law? You don't treat everyone as equal." Sir, this conception of equality before law is an abstruse idea which serves as a very good objective but if we try really to reduce it as a rigid equality, then it becomes meaningless. Equality before law is not something very rigid. It is not a fetter that is put on you. It is not going to imprison you. You must take the realities into consideration. That is why the American courts have developed the doctrine of classification. You may deal with one class of people—you are bound to deal with one class slightly in a different way for the very reason that their conditions are different, administrative set up is changed and administrative conditions are different. While you defame an individual, it was correctly said by Mr. Sinha, you are defaming an individual, nothing more or less; but while you defame a public official, you defame the administrative set up entirely. If you defame A who is in charge of administration, you discredit the whole administrative set up and thereby you bring the administration into chaos. It is not for the purpose of protecting a particular individual that this measure has been conceived of. The particular individuals could have protected themselves by taking recourse to law as it stands. But the framers of this amendment had the idea of maintaining the purity of the administration and the dignity of the administration. Coupled with this, I am sure they will take administrative measures to see that every genuine complaint against an official will be examined, scrutinised and carefully gone into because two things are necessary if you want to maintain the standard of administration. One is, while you should be very strict about the character of your official, while you must see that he behaves like Caesar's wife and his reputation is always high, at the same time you must protect him against unwarranted criticism, uncharitable and frivolous and malicious remarks. These are the necessary ingredients before you can have a good administrative set-up. What exactly this measure is proposing is, if the defamatory remarks are true, the official in question will come to trouble surely because the moment an article of this nature appears in the press, the Government is bound to enquire into it. It will go into the whole matter.

AN HON. MEMBER: How do you say that the Government is bound?

SHRI K. S. HEGDE: In order to prosecute the defamer, they are, *ipso facto*, bound to go into the whole matter. Without doing that they cannot prosecute the man. Otherwise they cannot straightaway go and prefer a complaint against him without finding out whether it is defamatory or not. The whole question should be gone into. The moment there is a very serious allegation against an individual officer, the Government will go into the matter with a view to seeing whether the man who defames should be prosecuted or not. While going into the matter there will be two aspects—whether it is true or at least substantially true or a wholly false allegation. If there is any truth then undoubtedly necessary action will be taken—either administrative or punitive. If there is no truth in the

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allegation, then it is equally necessary that the person who makes the defamatory statement should be prosecuted.

SHRI H. C. MATHUR: Why has this conscientious Government not been doing all this even now? What is stopping them? They not only don't investigate into the complaints appearing in the press but have been giving an explanation on the floor of the House. Why have they not been doing that?

SHRI K. S. HEGDE: My friend thinks that conscience is the monopoly of his Party. I am not able to subscribe to that. He is under some misapprehension. Even today, any legitimate complaint—if they have been *prima facie* cases—made by any individual against an official, is enquired into by the Government. I don't know whether the Government in which he had a hand was doing it or not but I can assure him on behalf of the present Government that any legitimate complaint which may be of a *prima facie* character, is enquired into. But suppose on the other hand instead of making a complaint to the administrative superiors, you are merely making a scandalous attack against a particular official, it is equally necessary in the interests of the purity of administration that you must go into the matter and protect the official. You can never expect a good administration unless the official feels that he is in an atmosphere where his work is appreciated, where he is encouraged and if unwanted allegations are made against him, he is protected against them. It is not correct to say that officials are made a class by themselves. I don't know of any superior position given to them.

Sir, I have a few remarks so far as some of the other provisions of the Bill are concerned. I am rather surprised at the amendment that has been given notice of, in section 162 of this measure particularly. As the law now stands, the police official who makes a record cannot ask the person who has been examined to sign a statement under section 162, quite correctly for the reason that the person who gives a statement may be an illiterate person, he may not know the statement he has given. As such he should not be bound by the statement he has made and that is why he should not be compelled or he should not be asked to sign the statement. That provision still continues but what surprises me is that a statement which is not required to be signed, which, not in the eyes of the law is to be presumed to be a correct statement of the person, can be put to him as his statement and contradiction may be sought under section 145 of the Evidence Act. Slightly confused argument was developed in the House on this aspect. There was a certain argument raised that once a witness is hostile, his evidence is of no avail. Probably they were following the English doctrine—*Falsus in uno falsus in omni*. But the contrary has been upheld by the courts in India. Actually there is nothing like a hostile witness in the Evidence Act and it is entirely a misconception, and we have followed the English phraseology here. But so far as section 154 of the Evidence Act is concerned, it permits the prosecution, with the permission of the Court, to cross-examine its own witnesses and it is for the court to give such weight to the evidence as it pleases, the ultimate arbiter being the judge himself who decides whether the evidence is acceptable or not. That is so far as the present law is concerned. But what is being done now? Before giving permission for cross-examination the judge has to see the statement under section 162 to see whether the prosecution has made out a case to cross examine his own witness. And when you use the section 162 statement, that will be put to the witness for the purpose of contradicting him. Sir, you may visualise for a moment the difficulty of the witness, when he is challenged with the statement supposed to have been made by him. He is told, "You have made a statement like this on a particular date to the police officer. But now this is what you say." That is exactly the predicament

in which the witness is likely to be put today. There is contradictoriness in this particular attitude that is taken in the amendment in question. On the one side you say, do not ask the witness to sign the statement, for the obvious reason that you do not want to fully trust the investigating staff. On the other you want to use that as evidence in the case. I am afraid this point had not been carefully examined, I mean the implications of the suggested amendment. It would have been better if the law had remained as it has stood.

The other minor charge I have is with reference to the amendment to section 342 of the Criminal Procedure Code. I am afraid the present amendment may be opposed to article 23 of the Constitution. As the law now stands, the Magistrate or the Judge can question the witness to elucidate certain information as regards the circumstances which were against the accused and for no other purpose can he put any question to the accused. You cannot put any question to incriminate the accused. Questions should only be put to explain the incriminating circumstances that appear against the accused. But today that safeguard is taken away and in the first part of the proviso it is laid down that the magistrate at any time and for any purpose can put any question to the accused without previous warning. This question may incriminate or not incriminate the accused. It may be one that compels the witness to give an answer which will be incriminating. That will be the position and I am not sure whether this point has been carefully examined by the constitutional lawyers, whether it will not offend article 23 of the Constitution. Apart from being opposed to article 23 of the Constitution in its letter, undoubtedly according to the spirit of that article, it is opposed to the Constitution. Of that there is no doubt. The framers of the Constitution had in mind the general condition, the social condition, the illiteracy of the people and the difficult position in which the accused would be placed, if he is to be cross-examined by the Magistrate. That is the only reason why the Constitution makers laid it down that in no case should the accused be made to give an answer which may incriminate him. But leaving aside the constitutional aspect of it, even from the point of view of jurisprudence I don't think it was a happy idea to make the Magistrate who may be camping in certain places at times to try to play the role of the prosecutor and it is not unlikely that many times the accused will be giving very incriminating answers, if the answer is torn out of the context and it is likely to be used against the accused.

Criticism is levelled against the provision making the accused a competent witness in his own favour. I am afraid this criticism is an ill-informed one, for it is a very beneficial provision that has been introduced. There is no compulsion on the part of the accused to go into the witness box to give testimony in his own favour. It was only a privilege granted to him, not a duty cast on him. No inference will be drawn against him if he does not go to the witness box, to give testimony on oath. On the other hand there are many cases where the accused could very usefully have explained the position. Once the Madras High Court was faced with a case of a peculiar nature. The accused person immediately on being challaned for a particular offence of a grave character, sent a note to the police explaining the position. The police put it on record and did not make use of it. Later on he had to tell the Magistrate that he had sent a petition at a very early stage and produced a copy of it before the Magistrate. The Magistrate refused to look at it, because of section 162. But when that particular case went to the High Court, the Judge remarked that it would have been useful if there was provision for the accused to have gone voluntarily to the Magistrate and given a sworn testimony under section 164 or for the accused to be a witness in his own favour. There are many circumstances where

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the accused could be a very useful witness. There are also circumstances, if an accused is an illiterate person which make it difficult for him to escape harassing cross-examination. So the law has taken both the situations into consideration and the law was formulated that while the accused is given the opportunity of going to the witness box, he is also given the privilege not to. Criticism was levelled that it may be that so far as the law is concerned, but the Judge will draw an inference against the accused if he did not come to the witness box. That is the position in England and for everything we seem to be quoting what is being done in England, without thoroughly informing ourselves about the conditions there. In England the Judge is entitled to draw an inference against the accused if he refused to come to the witness box and give evidence. That is the law there. But so far as the law in this country is concerned, it is made specific and explicit that if the accused does not come to the witness box, that point does not go against him.

Taking these arguments and the overall picture, there can be hardly any room for criticism that the whole provisions of the present Bill are in the right direction and it is going to be useful so far as the public is concerned. The period of litigation is to be shortened and if you cut short the law's delays, automatically you cut down the expenses also. Today litigation is a harassing thing. In fact, the worst curse that you can pronounce on a man is: "Let there be litigation in your house", for once such a litigation starts, it goes on for years and years, the man will have to dance attendance at the lawyer's chambers, for days together he and his witnesses will have to be coming to the court, the witnesses in many cases will not only have to be paid their allowances, but the man would have to meet other requirements of their household. This is a measure which should be examined from the point of view of the clientele, not from the abstract theory only, not from the point of view of what obtains in some other country under different circumstances, not from how far it will be useful to the lawyer. That is not our approach. We are mainly motivated by the desire to bring about social good, how this measure will help the ignorant public, how we can cut down litigation expenses. It is in that spirit that this Bill has been brought forward. It is only from that standpoint that we have to consider it. It is no good saying that we have one set of circumstances in another country and we should bring them here. Neither conditions in Russia nor conditions in England can be a good guide so far as legislation in this country is concerned. We have to examine our own system, our own past, our own traditions and our own social environments. Examined from this point of view, I am really happy and I congratulate Dr. Katju for having brought this measure, though I do differ on certain points in the clauses. Those I will discuss when the particular amendments are under discussion. By and large, this Bill is one in the right direction and I am sure the country will bless the hon. Minister for this measure however much individual criticisms from lower and higher quarters might have come.

MR. DEPUTY CHAIRMAN: Mr. Saksena, I may inform hon. Members that the House will adjourn at 4-45 P.M. today.

SHRI H. P. SAKSENA (Uttar Pradesh): Mr. Deputy Chairman, I would like to devote a few minutes of my time to some of the remarks and observations of my dear friend, Mr. Bhupesh Gupta.

SHRI BHUPESH GUPTA: I always engage the attention of the hon. Member.

SHRI H. P. SAKSENA: To me, it appeared that my hon. friend was still under the impression that he was living under the British rule and the Government machinery and administration was as bad and as untrustworthy and as unacceptable today as

it was during the days when he and I both fell victims to the injustice of the Britishers.

Now, Sir, I am very glad that he is going to play the role of a democrat. Occasionally, rather frequently, he speaks of democratic justice; he appeals in the name of democratic justice and perhaps somewhere else he also swears by democratic justice. I do not understand how so soon after his elevation to the post of the Leader of his Party, he is going to defame that Party by swearing for democracy forgetting all the philosophy of the totalitarian methods of his Party. This is perhaps going to prove to his detriment and he may very soon lose his dignified leadership, I believe. Sir, he appealed to the hon. Home Minister for the abolition of section 144 of the Criminal Procedure Code. Who, I wonder, ever wants section 144 to remain on the Statute Book? Nobody wants it. It is an obnoxious section, as he said, and we all agree but then it is those very friends who are responsible for the retention of section 144. Otherwise, even if this section remains there, it remains there as a dead letter; it will never be put to any use, if my hon. friends on the right desire it but it is they who force and compel the hands of the executive to bring section 144 into operation.

Sir, I am in entire agreement with him that in the eyes of law nobody should be treated on a different footing howsoever high and mighty he may be. I am in entire agreement with him but then to have a surmise and doubt and misgivings that some higher-ups are being favoured by law and that others are being victimised by it is not a fair and just balancing of the state of affairs as they exist.

I have a right to speak on matters relating to the press, a reference to which was made by my hon. friend, Mr. Bhupesh Gupta. He says that some of the clauses of this amending Bill are open threats to the press. I assure him that during my long relationship with the press, nothing threatened, nothing intimidated, nothing put me in the fear of law when I knew that my hands were clean, when I knew that my writings were just and honest, when I knew that I never published a single sentence unless I had judged its veracity. In such circumstances, I had nothing to fear and so, nothing can be a source of threat to an honest journalist, to the press which does not indulge in cheap sensationalism, which publishes the news and views as they are and does not make them an item of news for the paper to be sold. If that is the objective then it is indeed a matter of threat for the press to be hauled up before the police for defamation, libel, slander or anything like that. So, I do not see anything wrong even so far as the clause relating to defamation is concerned. There is nothing wrong in it. Nobody is going to be hauled up for writing defamatory material if the material is not defamatory. It all depends upon the nature and the content of the matter complained against. This is all that I had to say with regard to the remarks of Mr. Gupta.

MR. DEPUTY CHAIRMAN: You may continue on the next official day.

The House stands adjourned till 11 A.M. tomorrow.

The House then adjourned at a quarter to five of the clock till eleven of the clock on Friday, the 15th April 1955.