resigned his seat in the Rajya Sabha with effect from the 16th April 1955.

SHRI S. MAHANTY (Orissa): Why?

MR. CHAIRMAN: Why? If a Member resigns I do not ask why.

STATEMENT *RE* ANSWER GIVEN ON 30TH MARCH 1955 TO A SUPPLEMENTARY TO STARRED QUESTION NO. 455

THE DEPUTY MINISTER FOR COMMERCE AND INDUSTRY (SHRI N. KANUNGO): Sir, during the course of answering supplementaries to Starred Question No. 455 of Shri M. Govinda Reddy, on the 30th March 1955, in this House, regarding the factory for manufacture of explosives, I stated that Government had no share in the Indian Explosives, Ltd. The correct position, however, is that according to the terms of the agreement between the Government of India and the Imperial Chemical Industries, the Government of India will subscribe 20 per cent. (Rs. 40 lakhs) of the capital of Rs. 2 crores issued initially. I regret the error that crept in the earlier statement.

PAPER LAID ON THE TABLE

AUDIT REPORT (CIVIL), 1954—PART I

THE MINISTER FOR REVENUE AND CIVIL EXPENDITURE (SHRI M. C. SHAH): Sir, I lay on the Table, under clause (1) of article 151 of the Constitution, a copy of the Audit Report (Civil) 1954—Part I. [Placed in Library. *See* No. S—126/55.]

MOTION FOR ELECTION TO THE CENTRAL SILK BOARD AND PROGRAMME OF ELECTION THERETO

THE DEPUTY MINISTER FOR COMMERCE AND INDUSTRY (SHRI N. KANUNGO): Sir, I move:

"That in pursuance of clause **(c)** of sub-section (3) of section 4 of the Central Silk Board Act, 1948, this House do proceed to elect, in such manner as the Chairman may direct, two members from among themselves to serve as members of the Central Silk Board."

MR. CHAIRMAN: The question is:

"That in pursuance of clause (c) of sub-section (3) of section 4 of the Central Silk Board Act, 1948, this House do proceed to elect, in such manner as the Chairman may direct, two members from among themselves to serve as members of the Central Silk Board."

The motion was adopted.

MR. CHAIRMAN: I have to inform hon. Members that Wednesday the 20th April 1955 has been fixed as the last date for receiving nominations and Friday the 22nd April 1955, for holding elections, if necessary, to the Central Silk Board. The nominations will be received in the Rajya Sabha Notice Office up to 12 noon on the 20th. The elections which will be conducted in accordance with the system of proportional representation by means of the single transferable vote will, if necessary, be held in Secretary's Room (Room No. 29) ground floor, Parliament House, between the hours of 11 a.m. and 1 p.m. on the 22nd.

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

MR. CHAIRMAN: Mr. Saksena will resume his speech. He has taken six minutes and so he has nine minutes today.

SHRI H. P. SAKSENA (Uttar Pradesh): Only nine minutes?

MR. CHAIRMAN: Yes.

SHRI H. P. SAKSENA: Mr. Chairman, I rise to present the old ration of last week in a fresh form. I was speaking on the Bill amending the Code of Criminal Procedure. I had hardly dealt with the sections and provisions of that Bill when the House rose for the day.

Sir, there has been a battle royal going on between the lawyers in this House, hon. Members whose profession is hair-splitting of the law and nothing else; and as is always the case, they differ among themselves. One set of lawyers hold one view about a particular section and the other set of lawyers hold another view. There are only three clauses in this amending Bill in which I am interested; and they are clauses 22, 25 and 29.

Clause 22 substitutes a new section for section 162 of the principal Act, and it relates to the right that is being given by this amending Bill to the prosecution to contradict and cross-examine those witnesses who have made their statements before the police and are again making other statements before the court. This right, as is well known, was only reserved for the accused up till now. This is a serious departure from the old practice and doubt has been created that this will go seriously against the interest of the accused. But it is my duty to point out the background of the whole of this amending Bill itself. Sir, a very serious situation has, of late been created by the enormous percentage of acquittals in serious offences and crimes.

My hon. friend Mr. Mathur the other day spoke of some obsession under which the ex-Home Minister was suffering when he thought of bringing this amending Bill. If my mind were to be expressed here, I am also suffering under the same obsession not that it is a matter of sorrow that an innocent accused person should be acquitted but because of the difficulties of the prosecution and because of some lacuna somewhere, by which serious cases like murders, robberies, dacoities, etc., are resulting in acquittals. This produces a very demoralising effect round about the locality in which those persons who are acquitted reside. People have begun to think that they can commit any type of offence, serious offence, with impunity and get acquitted at some stage or the other of the trial. This is a very serious state of affairs and it is up to each one of us who has the interest of the country at heart to bestow serious consideration upon it. On this point I may, Sir, with your permission, quote the opinion of a very eminent and seasoned Parliamentarian of the world who says,:

> "The first duty of a Member of Parliament is .. ..

SHRI S. MAHANTY (Orissa): Who is he?

SHRI H. P. SAKSENA: If the hon. Member is anxious to know the name, I shall tell him.

> .... ..to do what, in his faithful and disinterested judgment, he believes is right and necessary for the honour and safety of our beloved country."

I want to emphasise that the country is placed first and foremost; above all other considerations, the country is placed. I invite my hon. friends to the right to take lessons from this quotation and to bestow upon the safety of the country the same regard that every loyal citizen of a great country ought to bestow. That is from Sir Winston Churchill, ex-Prime Minister of the United Kingdom. I hope, Sir, that the obsession that was taking possession of some of my hon. friends will now have disappeared and that love

of the country will henceforth be placed first and foremost. Party considerations vanish into thin air when the question of the interests of the country comes in the forefront. Even the interests of the constituencies, individually and separately, do not carry much weight when the interests of the country require something to be done. That is what I have to say with regard to clause 22 and the substitute section which is now proposed. Therefore, I see no difficulty in supporting it. Then there is section 25 in which.....

SHRI V. K. DHAGE: Clause 25.

SHRI H. P. SAKSENA: It does not matter much.

MR. CHAIRMAN: He is not interested in that.

SHRI H. P. SAKSENA: If legally it should be clause, I adopt the correction and henceforth shall use the word "clause". Under clause 25, a new section 198B is to be added after section 198A of the principal Act. This relates to committal proceedings. My grievance here is that the change proposed in the committal procedure has made the commitment proceedings still more complex and complicated. The object of this change is to shorten the commitment proceedings but, in my opinion, they have been made more complicated and, therefore, it is for the sponsor of the amending Bill to bestow necessary care upon it and to see if the matter can be improved.

MR. CHAIRMAN: Two minutes more.

SHRI H. P. SAKSENA: This regimented timing is not, Sir, to my taste.

MR. CHAIRMAN: I am sorry. Nor is it to my taste, but I have got to do it.

SHRI H. P. SAKSENA: Let me finish in two minutes the question of defamation which has been engaging the attention of most of us because that is a matter with which we cannot simply play. If the caluse, as has been drafted, is faulty, there is no loss of prestige in amending it, in re-drafting it and in making it more explicit. The point is that a prosecution can now be launched at the instance of somebody defamed by the prosecuting agency, of course, with the permission of the Government concerned. I would beg of the Government not to treat the prosecution as its own affair; the matter ought to rest between the defamer and the defamed person. If the defamed person happens to be a top-level Government official or a Minister or some other bigger dignitary of the Government, it does not follow that Government should devote all its attention and money and resources towards getting the man who has been accused of defamation punished. That should not be the object; the only thing that this clause ought to do is to permit the prosecuting agency, if the Government is satisfied that there is a *prima facie* case, to take proceedings against the defamer. That should be done but beyond that Government should not in future, while the case is being conducted, be a party to it.

With these words, Sir, I support the Bill.

THE MINISTER FOR DEFENCE (DR. K. N. KATJU): Mr. Chairman, I would not take a long time, but would only just clear up a few points. Speeches have been delivered—very reflective—and practically the whole Bill has been examined at great length by several speakers. It has been suggested, however, that inasmuch as Government has decided to appoint a Law Commission this Bill should be held over. I suggest, respectfully, that this ignores the background of this Bill altogether. As the Deputy Home Minister has pointed out, the Bill is not the result of a sudden effort or a sudden brain-wave. It really, originated in

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1951 and, over and over again, opinions have been invited. Probably, during the last one hundred years, on no single occasion has any Amending Bill received such exhaustive consideration as the Code of Criminal Procedure (Amendment) Bill. The opinions form five big volumes. They have all been circulated to the Members of Parliament; and I, respectfully, say that there is not a single Judge, either of the Supreme Court or of any High Court in India, who has not expressed an opinion of his own; and hundreds of District and Sessions Judges have favoured us with their detailed consideration. Literally, thousands of lawyers assembled in their different Bar Associations, have considered every single provision of the Bill and have favoured Government with their opinions. We have also considered it. Therefore, the Bill represents as it is, good or bad, the considered views of practically the whole of judicial India and executive India. What then could the Law Commission do? Of course, it would have eminent men on it, but they would go about the country seeking the opinion of Judges of the High Courts, of the Supreme Court, of District and Sessions Judges, Members of Parliament, Bar Associations and so on. It would be merely duplicating the labour. Not only had this Bill, when it was drafted, had the benefit of these opinions but also it had been examined by every one. I want to express my gratitude to the very strong Select Committee—I am referring to the Joint Select Committee—on which were many members of the legal profession, many eminent public men. They devoted one full month to this Bill. Therefore, this suggestion that this should be held over till the Law Commission considers it, is not really understood by me. The matter has become very urgent. I think over and over again, during the last 30-40 years, it has been represented to us that the criminal procedure is cumbersome, is dilatory and is expensive and, therefore, it should be modified. Reference has been made to say: You should deal with this procedure; you should deal with the police—the police is inefficient, the police is corrupt. And all sorts of allegations have been made against the police. Then the magistrates also have not escaped criticism and magistrates have been supposed to be under the thumb of the executive and not mindful of their duties; and last of all extremely unkind things have been said about the legal profession. I do not know whether they were seriously made, namely: You should first try to reform this and then think of the criminal procedure. I am not saying that these three institutions are perfect, but gross exaggeration has been made. And so far as the police is concerned, the police is roundly condemned; and, somehow, sometimes the black sheep are mistaken for the hundreds of good white sheep among them. I have said over and over again, during the last two or three years, that this habit of exaggerated criticism is not a desirable one; it does not serve its purpose; it really defeats its purpose and demoralises the police. I am not holding any brief for the police, but please remember that the police in India, the Indian police, has to deal with 36 crores of people. It involves multifarious duties, and as some one quoted figures from the different administration reports, the police prosecutes lakhs of cases—probably, if you were to take the figures for the whole of India, millions of criminal cases—and if the High Court or any judge finds cause to criticise a particular investigation, then, on the basis of that criticism it would be a great mistake to generalise and to say that the whole investigation is bad. And apart from that, it is not that nothing is being done to improve the methods of investigation. I think, I have said on numerous occasions that Government is doing its best to introduce new methods, scientific methods, crime laboratories; everything is being done. So far as

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the magistracy is concerned, whenever I hear criticism of the magistracy I tell you I am deeply pained because, in this Free Independent India, we ought to be proud of our magistrates You have only to look at the figures and go into the districts and find out whether there is any complaint on behalf of the bar that any magistrate is a subservient magistrate I also recognise that magistrates now, inasmuch as the State is becoming a Welfare State, have to devote a good deal of their time to administrative duties, and not only to administrative duties but to development work and all that To get over this difficulty I think in many States there has been introduced the institution of appointing what is called judicial magistrates These are officers who do nothing else excepting this that they decide cases and the very name indicates that their main function is to dispose of judicial work, and wherever there are judicial magistrates—3 or 4 in any particular district —they are mostly appointed directly from the bar, and I say that they do their work very well indeed.

Then so far as the legal profession is concerned, it is an extraordinary state of affairs and I think from the days of the Romans it has been the butt of ridicule. I was reading last evening a recent book, a very fine book which has been published It is entitled the *American Lawyer*, and as the Americans are statistics-minded, it has been the result of a great survey carried on by 400 persons, and one of the points was: What is the esteem in which the American lawyers are held by the public at large? The report says that the total number of lawyers in active practice are a little over 200,000 and the answer to this question is that they are held in very poor esteem The misfortune is this. Whenever anybody gets into difficulty about his life, liberty, property, etc., he rushes to a lawyer; and after having made good use of the legal advice, having become free from the difficulty, when he goes to a public platform and whenever he opens his lips, condemnation of the lawyer is, generally, his attitude. Now probably it may be that people do not understand this idea of talking to a brief They say: Well, you know that your client is guilty, but here you are arguing his case and therefore you are morally bad

Now, I respectfully suggest, when we are considering this Bill, leave all these things aside This Bill is intended to simplify the procedure and to render it less expensive and to see to it that a case is decided this way or that way within six months or four months. Then someone referring to me by name to draw my attention said. He is a convicting judge He is a prosecution-minded man Now, I want any Member to tell me, to point out a single provision in this Bill, which contains a hundred clauses, which in any way goes against the accused or holds the scales against the accused persons. I just tell you, Sir, with great confidence, that we have gone out of our way to help the accused and give him all possible information of the case that he has got to meet and that finds a place in the provision which says that before the proceedings commence the accused should be supplied free of charge with copies of all statements, recorded in official police diaries, of the witnesses whom the prosecution intended to examine, of what you may call, the medical reports, of the first information report; and other material papers. Now, you see the significance of it This assists the accused at the very threshold of it. I am not emphasising this I say: Point out to me a single provision where you may say: Well, here it is; it benefits the prosecution and it defeats the accused It is all very well to say and the old maxim is that even though nine guilty men should escape not one innocent man should suffer. I am for this proposition that every human effort should be made to see to it that justice is done that not a

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single innocent man suffers and that the justice is so administered that the guilty men do not escape either It is not a question of one against the other and saying this and that The question is that justice should be done

I tell you with some confidence and with a tinge of regret that respect for law and order is diminishing in the countryside Everybody knows it because on the civil side no decisions take place If a decree is obtained years pass by before a single rupee is realised in execution of the decree And on the criminal side as the figures were quoted acquittals are the order of the day I am not blaming the judge If the evidence is false, the judge is bound to acquit But what happens? Ours is an agricultural economy We live in small numbers in cities 85 per cent live in villages If a murder takes place in Delhi, what do I know of it? I know nothing I do not know who the guilty man is But in a village, with a small population, the moment some crime is committed, it is public knowledge as to who has done it Legal proof is a different matter Public knowledge is a different matter And what has happened? I think I quoted it on the last occasion Cases have happened over and over again in my experience—I pleaded for them when I was at the bar, I know them, too—where, though a man is acquitted by the Sessions Judge, there are the relations of the deceased, of the murdered man, his son, his nephew, and they would not tolerate this gross travesty miscarriage of justice The acquitted man is shot, shot in the court compound, is killed before he sets his foot back in the village and his life is really not worth living People will not tolerate it I am only saying that we should see to it that justice is speedy And I think one hon Member very rightly pointed out that mere passage of time dulls human instinct When an offence is committed, public conscience is shocked Every one is ready and eager to assist in the administration of justice, to assist the investigation, to tell the story to the police as he knows it But as time passes that ardour cools down a little And then come into play various factors It is said, ours is a caste ridden country Well, caste plays a very important part in these investigations All sorts of pressures are brought upon witnesses It is commonly said that the police diary is a fabricated one I am not defending the police diary at all, but, if you go to a magistrate and then he says, 'Well, police diary may be changed," it may be that the police diary was wrongly recorded, but it may also be that the witness may have been won over after six months, after eight months And, therefore, you have to confront him with the diary

That brings me to a small point There was great criticism made with regard to a provision in this amending Bill, about section 162 They say that the police diary is not admissible in defence That is quite right Everyone knows that a statement is recorded by the investigating officer It is not signed by the man who makes it The diary runs as follows I went into the village I enquired of Mr 'A' I enquired of Mr 'B' I enquired of Mr 'C' and 'A' stated this to me, 'B' stated this to me, 'C' corroborated and finished It is not read over to the witness It is not signed by him If you want to pin the witness down to a statement of his, then you have got to take him before a magistrate The magistrate administers an oath to him and records his statement in the regular, formal manner and then it is signed Now, section 162 says that the statement in a police diary is not admissible Obviously it is not admissible because it is not signed it is not admissible But it may be used by whom? By the defence for the purpose of contradicting a witness If there is a slightest departure between the statement recorded in the diary and the statement made on oath by the witness, it is then open to the defence to say to him· "Did you not make

such and such a statement before the police?" And the witness may say "I never did", or "I did it." The defence does so Now, under the present amendment, if it is open to the defence, why should it not be open to the prosecution? Please remember that in either case the statement is not a signed statement What was pointed out as being the objectionable part of it would apply to the defence as well as to the prosecution And normally when a witness is confronted with his diary statement by the cross-examining counsel for the defence, the answer is, "I never made such a statement" or "I did so" and something like that Here, in order to provide against witnesses who are deliberately won over it is said that he may contradict it—and please remember, I ask hon Members to remember—that it is subject to the consent of the court If the court is satisfied that the witness is a witness who has been deliberately won over by the other side and who is concealing the truth, then he may be contradicted by the diary statement And that so-called contradiction really does not amount to much, because the moment the question is put the witness says, "I never did it" or "I did it", and it is not read over to him

Now, with these preliminary observations on the several points which have been made, I respectfully suggest that the Bill, taken by and large, every single aspect of it, is a proper one and every single provision has been carefully made after the most profound consideration Now, I give you one example Take, for instance, what is called section 145 You know, Sir that whenever there is any dispute in regard to possession of property and that dispute between two parties is likely to result in a breach of peace, then the magistrate may interfere, make an enquiry as to which is the party in possession and make a suitable order Now, we found from all parts of India that these proceedings take years, not months but years, pending, going on, and witnesses attending, cases being adjourned, sometimes for this reason, sometimes for that reason Well, this is a shocking state of affairs Now, what did we do? What does the amendment do? The amendment says this The proceedings generally start on a police report about breach of peace He calls upon the parties concerned to file their written statements The magistrate reads the written statements, reads the documentary evidence which may be filed by either party And if he is satisfied that there is a reason for breach of peace, there is a possibility of breach of peace, and he is also satisfied that party 'A' is in possession—there is no doubt about it—then he immediately passes an order and there is an end of the matter We have set a limit of about two months for the closure of the proceedings But if he finds that this question of possession is a complex one, an intricate one and it is difficult to give some judgement,—these magistrates are not accustomed to go into these questions of civil law and of possession—then we have suggested a remedy, namely, you frame what is called an issue The issue is only this Please tell him which party is in possession That is all And you send all the papers, written statement, documentary evidence, everything on record to the nearest Civil Judge and that Civil Judge is given three months to send his finding on that issue, namely, which party is in possession As soon as that finding comes, the magistrate is not going to sit in judgment over it He is not going to see whether it is right or wrong His function will be to decide the case before him in terms of the judicial findings of the Civil Judge And the idea was that this proceeding under section 145 should not last for more than six months, and I submit that that idea has been well-served

Then, Sir, another general matter which has weighed greatly in the formulation of this Bill is our anxiety to cause the least possible

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inconvenience to the parties concerned Mr Chairman, you may not personally have knowledge, but having spent my life at the bar, I know the series of adjournments—sometimes 20, sometimes 30. And each adjournment is so expensive Witnesses come and go And I know further that sometimes witnesses deliberately refuse to come forward to assist in the administration of justice, because they say to themselves, "The moment we say that we have some knowledge, we will be dragged in, and we will have to go to the police station and we will have to go to the magistrate And goodness knows how many times we will have to go" When an examination commences, in any serious case, appearance three times is the minimum limit And if it is a Sessions case, there will be another two or three appearances. And the result has been that particularly the administration of criminal justice is suffering in this country very greatly for want of public co-operation If you ask any judge: What is the outstanding feature? He will say, "The outstanding feature is that truthful witnesses do not come before me." They know it. As I said, most of the offences are committed in the villages. The truth is known; the eye-witnesses are there. But sometimes, they deliberately keep away, not for the purpose of protecting any one else, but for the purpose of protecting themselves. Now in this particular Bill, we have made an effort to reduce the number of these appearances, so that every witness should now know that normally he will have to go only once, and not three times Take for instance a warrant case. What is the procedure there? In a warrant case, the procedure is that the witness is examined. He may be cross-examined. But generally, he is not cross-examined. And then the magistrate, having heard the various witnesses, frames a charge. That may be after three months, because two witnesses may be examined today, three witnesses may be examined five days later, and the charge may be framed by the magistrate weeks later. When the charge has been framed, then all the witnesses who were examined before, are called for cross-examination, cross-examination after the charge. That is number two Then, when the cross-examination is over, and the magistrate thinks that there is a case to answer, he calls upon the accused to enter upon his defence. And the accused may then again call one of the prosecution witnesses who have been examined and cross-examined to give further evidence. So, you will see that three times the witness is actually examined. Now what we have done is that we have cut all that out We have now said. The file goes before the magistrate; he reads the diary statement; he reads everything else. If he thinks that there is a *prima facie* case to answer, he hears also the accused There is no witness before him And then, he says, "Well, I now frame the charge" Framing the charge, in colloquial language, only means this: "I, the Magistrate, call upon you, or charge you with having committed the theft Now you answer the case You have committed the theft on such and such occasion, at such and such place." After framing the charge, the witness will be called only once, when the accused enters upon his defence And if he wants to get the witness back again, then the magistrate will ask him, "Why do you want him back again? What is the reason?" And unless the magistrate is satisfied that there is some exceptional reason for the witness being called again, the witness will not be called The result is, Mr. Chairman, that the number of appearances of the witness is reduced, in the majority of cases, from three to one. And I say that is a very great advantage.

Similarly, in the case of commitment proceedings, it has been said by somebody, "Well, the original proposal that there should be no commitment proceedings is a much better one, and the present procedure is a complicated one."

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

They had an anxiety that all important witnesses should be made to give their evidence and take their oaths before a magistrate at the earliest possible moment. It may not be that they are examined by the investigating officer in the month of May 1955, and the case commences in the month of January 1956, and the Sessions case comes along in the month of May 1956, and till then there is no statement at all. The Bill says that so far as these eye-witnesses are concerned, under one of the relevant sections—I believe it is 164—every single important witness should be taken to a magistrate and his statement should be recorded there. In the Select Committee, objection was taken that this examination would be unsatisfactory, because it would be in the absence of the accused. And it was further said that the police might induce anything to be said and recorded before that magistrate, and therefore, this examination should be in the presence of the accused. This suggestion was accepted. And what has now been done is that instead of going, under section 164, to any magistrate from time to time, we have now said that when the commitment proceeding start and the magistrate takes up the case, he will find that the statements of some witnesses have already been recorded before the magistrate. He leaves them alone. As to the other eye-witnesses, the magistrate may record their statements in the presence of the accused, and to make such a statement admissible on a future occasion, the accused will also have the right and opportunity of cross-examination. The lawyers know also that that right is never exercised. But this record is limited to what are called the eye-witnesses. And the committing magistrate then hears the case summarily, and he either commits the accused or discharges him. As one hon. Member pointed out, the number of commitments is enormous. It goes up to really 98 per cent. or 99 per cent. But if there is a solitary case of a person against whom there is no evidence, he might be discharged. Otherwise the case goes on.

Now, the basic thing is this. I do not want to trouble the witnesses too much by their having to come to the courts. The aim is that they should come just once. There should be no postponement. There is another section which prohibits postponement. They should come just once, they should be examined, cross-examined and discharged, and I submit that, if this scheme is carried out, you will find that it will not only be inexpensive to the prosecution but also to the accused. Hon. Members who are not acquainted with the courts of law do not probably realise what it means; they do not know how much expense the accused has to incur these days. It is an act of mercy to him to shorten the proceedings, to simplify the proceedings and to save him and his wife from all these unnecessary expenses.

There is just one point about section 107 of the Criminal Procedure Code. This was rather curious. We had an example, I think, two years ago in Delhi. There was an agitation here to defy the law, and volunteers were called from all over India. I myself saw it in Rajasthan. They came to the railway station and then announced that they were going to Delhi in order to break the law, do something in defiance of the law. They were heavily garlanded, there were processions in Rajasthan at that particular place, but nothing could be done. Now, the power is expressly given to every magistrate of the First Class that, if he finds that any individual is going to break the law in his district or any individual under his jurisdiction has announced his intention to break the law in any other part of India, he can take action under section 107 to prevent him from doing that.

Then, there is just a minor point practically about what we call section 30 magistrates, *viz.* competent

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magistrates with ten years' experience They would be entitled to try cases, serious cases, and inflict sentences up to seven years We found that there was a curious thing We found that the system of what is popularly called section 30 magistrates was in force in one-half of India but was not in force in the other half, and in the half where it was in force, the unanimous opinion was that it was working very well It was speedy, there was no complaint that there was any miscarriage of justice We thought that, this being so, it would relieve the pressure on the Sessions Judges if competent, experienced, magistrates were to try these cases.

Similarly, I thought that there was a good deal of prejudice here against honorary magistrates I have always been of the opinion that the system of honorary magistrates, provided you get competent men, provided you get honest men, is a desirable system of giving an opportunity to the people to serve their country In England even the Viceroys of India, on retirement, used to go there and serve as honorary magistrates in their own home towns Even the biggest men, military men, Civil Service men, retired officials, all these people used to do it Previously it was considered here a question of patronage, but we have laid down that there must be legal training The person to be appointed may be a retired judge, may be a retired magistrate I would really welcome it when a retired judge of a High Court, out of a sheer spirit of service for his community, would agree to work like this for four hours a week or ten hours a week This point has been completely set right

I now come to the clause to which some objection has been taken, and that is what is known as the defamation c'ause, *viz* section 197 It seems to me that there is a good deal of prejudice against this, and there has been, if I may say so respectfully, a lack of understanding of the scope of this clause My hon friend who spoke this morning, said "Leave it to the defamed servants" But the point is that it is not merely the concern of the public servant The Government is most deeply interested in it On the one side you hear complaints of corruption everywhere; every public servant is supposed to be corrupt and charges are made in writing in the press but no action is taken If no action is taken, it becomes a sort of a vicious circle I say with confidence that normally if no action is taken, people become bold to make these charges I have often said it that, when a charge is made against a public servant there ought to be an open judicial enquiry He goes before a magistrate The charge is, "You have taken bribe You have done this nefarious thing" The man goes there and denies it on oath It is for the judge to see that there is no harassment, no irrelevant cross-examination It is said that this is a sort of gagging the press But I expect that anyone who published a defamatory article charging a public servant with corruption and with other illegal activities, does so with a sense of responsibility If a newspaper editor says something about a Minister or other public servants, then I expect that before he does it, he will make competent enquiries and will publish it only if he is satisfied that there is some substance in the charge When he prints it, he takes the consequences I suggest here that Government is vitally interested It is not as if the Government is trying to protect its servants Some people have suggested that we are conferring a privilege, but where is the privilege? The procedure has not been changed at all As some hon Members have said, it is only a question of opening the door How to get access to the law courts? In the case of defamation, under the ordinary law, the rule is that the door can only be opened and access had if a complaint is made by the person defamed Now the change is that the door can also be opened by the Government but the moment you enter

the court, the procedure is exactly the same. No question of any favour shown to the prosecutor. He starts. I shall tell you what happened in the Select Committee. The newspaper people—to do them justice,—said that there should be no change at all but they read the Press Commission's Report and they became aware of the opinion of the Government. Then they said, "what do we want? What we want is that we should have nothing to do with the police. That is No. 1. We should have a fair trial before a Sessions Judge" because whatever may be said against the magistrate, whatever allegation may be made that he is subservient, that he is under the thumb of the executive, by God's Grace, our High Court Judges and our District and Sessions Judges are considered to be the embodiment of independence, judicial independence and judicial integrity. Therefore, they said "We don't want to go before a magistrate. We don't want to have anything to do with the police" and they actually quoted, I think, section 194 of the Criminal Procedure Code it is rather important because some suggestion was made that there was a question of discrimination in such cases. What is section 194? It says that it is open to the Advocate General to lay any information before the High Court and the High Court will entertain it and will try that criminal case and the suggestion was made that in this case the proceedings should be started by the Advocate General before the High Court. We considered that and the Select Committee considered it and they said that it was very cumbersome and it would be rather expensive to both because the High Court is situated at one place—it may be so in many places. So we thought of the next best. Instead of the advocate General, we substituted the Public Prosecutor—the Government pleader in the district concerned—and instead of the High Court, we had the Sessions Judge and as was pointed out by Mr. Deputy Chairman the other day, a defence case today is triable by the Sessions Judge, Additional Sessions Judge and a First Class Magistrate. There was no departure from the law and, therefore, we said, no question of any police. Here is a Public Prosecutor and he will draw up a complaint. If the case is on the face of it a hopeless one, he will probably say so to his authorities. The Government will probably consider, as soon as the matter comes to the notice of the Government, and will make some enquiry. They will probably ask the person defamed, "What have you to say about it?" And the defamed person will say, "This is a wrong charge". The Public Prosecutor will take charge and will produce the case before the Sessions Judge who would then try it as an ordinary case. Some doubt was expressed that the public servant may not be examined as a prosecution witness. We even went out of our way—and Mr. Bisht, I think, said that this really should not have been done—and we left it to the Sessions Judge. If he thought that it was really not necessary for the public servant to enter into the witness box, well, he may not do it, otherwise it would be done. And I emphasise over and over again that the procedure is exactly the same as it would be for any other accused. The burden is upon the prosecution. The case is heard. Please remember one thing more. If the Sessions Judge hears the case, then the appeal goes before the High Court. There is appeal. That is also a great privilege *viz.*, an appeal on the facts. Now I tell you that we have gone out of our way to see to it that in a case like this, the trial would be the fairest one and the accused should have the fullest opportunity of defending himself and he should never have in the least sense a sort of an embarrassment or feeling that he might not get a free trial. Now it so happened—I did not know it—that this was introduced in the Bill. I may add here that all the State Governments who were consulted upon this point, pressed for it and they said that it was a great evil,—it is not a question of yellow press or green press—they say that it is an evil because it demoralises the administration, it brings the

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administration into contempt and in a serious case it is only the Judicial enquiry which will satisfy the public Now, we framed our Bill and we put it before the Select Committee It so happened that while the Select Committee was sitting, the Press Commission submitted their report and my hon colleague the Deputy Minister for Home Affairs has read to the House at length passages from the Press Commission Report, which bear on this matter I remind the House that the Press Commission was an independent body It was presided over by a most distinguished judge of the Bombay High Court Among its members was another gentleman who was very eminent, eminent as a lawyer, eminent as an administrator eminent as a public man, eminent as an educationist I refer to Mr Justice Rajadhyaksha who was the Chairman and Dr C P Ramaswami Ayyar who was a member and his career is well known Now it is true that there were 11 members and on this point the report is a majority report But of the four members who dissented two were journalists—members of this profession—and I don't blame them because their view has always been that there should be no change and two members took the other view, but it is a curious coincidence that while the Select Committee was sitting they found that the Press Commission a completely independent body completely impartial body found—in so many words they said it—that it was desirable, it was essential that Government should have a right should have the responsibility of opening the door of the court of law and having an investigation into these persons And now having done that please remember what did they recommend? They recommended the starting of the proceeding by a complaint filed by the superior officer and a preliminary enquiry by a magistrate and then a magisterial trial The procedure that we have suggested, I suggest, is a great improvement upon that procedure We were most anxious that this whole enquiry, in so far as the accused was concerned and in so far as the public at large were concerned, should inspire the greatest confidence and everyone should feel that the enquiry was going to be a free one, unfettered one and an absolutely and completely free from bias, one way or the other I say that this clause which has now been passed by the Lok Sabha should also commend itself to the approval of this House I want to disabuse the mind of every hon Member of the impression that there is any feeling of vindictiveness or any feeling of doing anything improper by the journalists Nothing of the kind I know that by God's grace we have a good press, we have very responsible newspapers, but in this country, with all our illiteracy, the printed word still carries great influence When one thing has been printed published and broadcast, then unless it is checked, unless it is shown to be incorrect it carries on its influence You have heard complaints on all sides of corruption being rampant in every branch of public life and I say that this measure, while it is not directly concerned with checking it, will at least satisfy the public whether the charges made are true or untrue This much I wanted to say about these matters I should not forget that as I said, this is also a sort of an indication of the scrupulous care that we have taken to protect the accused in such a case. Please remember that there is a connected clause, about payment of compensation The proceedings are started by the Government pleader The presumption is that the Government, before it sanctions the prosecution and before it asks the Government pleader to take action, would have made enquiries from the public servant concerned and it is the duty of the public servant, if he has dared to admit his error and to say, "I am very sorry" But if he says, "No, no, it is all wrong and false" and he goes and gives false evidence in court, then we have provided for payment of compensation in the case of false and frivolous complaints

SHRI H C DASAPPA (Mysore): May I just ask for a clarification?

Can you in a law, in a piece of legislation, have an astonishing presumption like that, that in every case the public servant will have been consulted and he would have agreed to the Government lodging a complaint? Should not that be provided for in the piece of legislation itself?

DR K N KATJU My hon friend will probably move an amendment. I was going only by the rule of commonsense, that where there is a publication in a newspaper, and Government's attention has been drawn to it, Government would make enquiries from the public servant concerned, it is not necessary that it should be provided in the law itself Before the Government takes action or decides to take any further action, the first thing, I take it, that any Government would do would be to ask the public servant, "What have you got to say?" It need not be put in the language of the law It does not require any legal provision That is my view

SHRI H C DASAPPA But what is the objection to having it here?

DR K N KATJU Anyway, that is my view

Now, I come to the final point There was something said about trial by jury Assessors are to go, unwept, unhonoured and unsung No one has said a single word in favour of assessors So far as juries are concerned, one extraordinary feature has been this that in States where the jury system does not prevail, the feeling against the jury system is strong based on complete ignorance Where the jury system prevails, there to put it low, the feeling is very mixed For instance, in Bengal there is jury system not only on the original side of the High Court, but also in the District Court You ask any lawyer from Bengal and you will know In the Lok Sabha Mr Chatterjee publicly said, "We are very much satisfied with our juries They do it very well" In theory, if you want an independent tribunal completely free from subservience, then it is the jury, because they come just for one case, they sit through, they hear the evidence, they decide and they go away There is no question of their expecting any advancement, or any official preferment, any reward, nothing of that kind There is no question of their being called again Now, we thought over this matter, because it so happened that at the time the Bill was drafted there was actually a Bill introduced by a private Member pending in the Lok Sabha where the argument was that the jury system should be abolished throughout India When that Bill came on for discussion, violent opposition was expressed to it by many Members from Bengal and elsewhere and we have left it over The provision in the Criminal Procedure Code is this Option or power is given to the State Government either to introduce the jury system or not to introduce the jury system If they want to introduce the jury system then they may do it all over the State or they may limit it to different portions of the State They may introduce the system in all sorts of cases, including most serious ones like murders and others, or they may limit it to smaller kinds of cases In Uttar Pradesh, with which I am familiar the jury system prevails only in six districts, and in those districts also, it is limited to a number of offences, the more serious offences not being included The only thing that we have done is that we have left the law alone The only improvement that we have sought to make here is that a section has been introduced with regard to cases of a much complicated nature, or which require much too technical evidence or are going to be lengthy, having regard to the number of accused—there may be 40 accused persons to a case and it may take six months—and if you impanel a jury they may get exhausted, because they do not keep notes They do not even remember So a section has been introduced which says that in cases of this type even where the jury system prevails, on application made to the High Court, the High

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Court may decide that the case may be decided without jury

Before concluding, I will just refer to one aspect of this clause. I strongly feel that our courts suffer from the great evil of over-centralisation The British people introduced this system, because for their own purpose they established courts hundreds of miles away, sometimes, from the place where the event might have occurred The witness would go to the district headquarters, as a complete stranger, there will be four witnesses for the prosecution and four for the defence, four for the plaintiff and four for the defendant They come quite new to the place, no one is known to them, no friends, and they would tell as many lies as they possibly can, without fear of public opinion Sir, I personally strongly feel after a great deal of experience that a man who is prepared to tell lies at a strange place before strangers, a strange judge, a strange counsel and strange surroundings, that man would not be prepared to tell lies in his own home surroundings Therefore, I personally have always been a very strong advocate of the *panchayat* system of administration of course for smaller offences Today it is open to a magistrate I think, to go and hold trial in his jurisdiction wherever he likes In olden days if a magistrate used to go on tour he might hold a trial Now we have introduced a beginning and we have said that the Sessions Judge can hold his court at the place where the State Government may fix for him But if he thinks that for the convenience of the case, for the convenience of the accused for the convenience of the witnesses, and more particularly for the promotion of justice it is desirable that this court should be held at a particular place, at the place where the offence was committed, then with the consent of the accused, and all parties concerned, he might hold the court there I personally think, Sir, subject to your judgment, that that is a very desirable beginning and I hope and trust that this provision will be wisely used Thank you

1 P. M.

THE VICE-CHAIRMAN (SHRI V K DHAGE) The House stands adjourned till 2, *not* 2-30 P M

DR P V KANE (Nominated) Sir, 2 P M will be too early Let it be at least 2-15 P M

THE VICE-CHAIRMAN (SHRI V K DHAGE) There are many speakers.

Is it the pleasure of the House that we adjourn till 2-30 P M ?

(No hon Member dissented)

THE VICE-CHAIRMAN (SHRI V K DHAGE) If necessary, we will sit after 5 P M

The House stands adjourned till 2-30 P M

The House then adjourned for lunch at two minutes past one of the clock

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

SHRI FAKHRUDDIN ALI AHMED (Assam) Mr Vice Chairman, at this stage when this Bill has been discussed for nearly four days I feel diffident to speak on this motion, but, I shall be failing in my duty if as a practising lawyer I do not place my experience and viewpoint at the disposal of the Members of this House regarding such an important matter.

Sir, it is alleged that this Bill seeks to bring about amendment with the sole purpose of doing away with dilatory procedure, doing away with the procedure which is expensive and doing away with cumbersome technicalities so far as the existing procedure is concerned Then, Sir, it is alleged that the statute under which the procedure in criminal matters is regulated was brought on the Statute Book as long ago as 1898 and during the last 57 years there has been no substantial change except a modification in 1923

I shall take the last point first of all. It is natural that when a society is not static, laws also should not be made rigid and static. It is only in the fitness of things that our law makers should take into consideration the question of bringing a suitable amendment so far as the criminal procedure is concerned. But over and above the fact that no amending law has come into existence for the last 57 years, we must consider this question that about seven years ago we became independent. Ours is now an independent country. The law which was framed and which was in existence was a law which was given by the British people, a foreign power, and the objective of that law was entirely a different objective altogether. The British people, though they brought in the basic British jurisprudence when they framed this law, they had no other objective but the objective of a Police State at that time and with that end in view our Penal Code and our procedural law were framed and put on the statute book, and they have been in existence for the last 57 years. We call ours a Socialistic Welfare State; our objective is to bring in a socialistic pattern of society. I feel it becomes necessary for us to search our heart and say whether the procedural law which is now existing will be helpful in bringing that state of society for which we are all striving and for which we have proclaimed from house-tops all over India and all over the world. Sir, I feel that if we have to change the law, that law which was brought into being with the objective of a Police State, it has to be changed in such a way so as to serve the end which we have in view. For that purpose, I submit, Sir, that the amendment which had been brought, which had been discussed before the Joint Committee, which had been passed by the Lok Sabha and which have been discussed here for the last four days are not adequate enough. For that purpose it will be necessary for us to take into consideration other cognate statutes, such as, the Indian Penal Code, the Evidence Act and the Oaths Act. The present procedure does not take into consideration many defects which are found prevalent in those cognate Acts and, therefore, it has also not given proper consideration to such other provisions as will bring about a desired change, which will fit in with our objective of having a socialistic State. Sir, I feel that if we really want that our procedure should be such as will do away with delay, as will do away with dilatoriness, as will remove the cumbersome and technical procedure which we have at present, I consider three things are absolutely essential.

First of all we have to take into consideration the fact that our investigation must be improved. Without providing for a proper investigation it is futile for us to say that whatever amendment we may suggest will bring about the desired change. I have gone through all the opinions which have been collected. I have carefully read the speeches delivered in Lok Sabha and also listened to some of the speeches delivered in this House and I feel there is not a single person, perhaps, with the exception of Mr. Bisht, who says that our investigation is perfect, who is of opinion that there should be no change so far as the investigation is concerned. My submission is that this is an aspect which has been totally not taken sight of and ignored when this Bill was framed and introduced in Parliament. So far as the investigation is concerned, I do not propose to find fault with our officers who are in charge of investigation. No useful purpose will be achieved by finding fault with individuals here and there, but the entire system, the basis of investigation, is wrong. Unfortunately, when the British people were here, they had only one objective of having a Police State and, therefore, for that purpose they manned this department with officers who were trained for the purpose of only serving that end. But when we are a socialistic State it becom[illegible]

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to have in this department such officers with such qualifications as will make them investigate the cases with diligence, with intelligence, keeping in view the objective, and we have already said that our State is a socialistic State Now for that purpose it will be necessary for us to have well-trained officers in that department and unless and until we provide adequate number of trained officers in the investigation department and unless and until we give them high salaries I am sorry to say that it will not be possible for us to make any improvement so far as that department is concerned

Then, secondly, I consider that in addition to an improvement in the investigation department, we must have an independent officer who will supervise and who will give his opinion before the prosecution is launched Unless and until that is done, it is not possible for us to make any improvement in the procedure which exists at the present day

Then, thirdly, Sir, I feel that in addition to these two requirements, we must have separation of judiciary from executive These are the three essentials about which we ought to have paid first and foremost consideration before making an attempt so far as amendment of the existing procedure is concerned. I need not lay much emphasis so far as separation of the judiciary from the executive is concerned, because this is a fact about which there are no two opinions I feel that some States have gone to the extent of appointing judicial magistrates, but in other States, as for instance, my own State, we still have the same old magistrates who are looking after their work in the same way as they used to do before we became free Therefore, the Government before making or before attempting to make certain amendments in our procedure ought to have found out, ought to have ascertained from all the States concerned, how far the States have gone with the separation of judiciary from the executive I feel that unless and until that is done, many of the amendments which ave been made on the basis, on the presumption that State Governments have gone for the appointment of judicial magistrates, will, instead of helping, delay all such cases and will be detrimental and prejudicial to the interests of the accused persons This is an aspect to which we must give serious consideration and unless and until these defects are removed, I submit that we shall be able to remove neither the delay nor the technicality which exists at the present day

Now, Sir, I shall try to make my submission with regard to the amendments which have been proposed under the Bill which is under our consideration I have carefully gone through this Bill and I find that out of over one hundred clauses which are contained in the present Bill about 16 or 18 clauses are really of importance and regarding them there is some controversy It has been alleged that the sole object of this legislation is to remove the delay which now takes place in the matter of disposal of cases in the criminal courts And for that purpose what is the scheme of the Bill? The Bill provides for extension of the powers of the summons procedure to cases for which there is a conviction of about a year At present summons case procedure is only in respect of such offences for which there is a punishment of about six months But the present procedure which is being considered is being extended to, for instance, where the punishment will be a year or so My submission is that if we carefully look into the existing provisions of the Criminal Procedure Code, we shall have no difficulty in seeing that so far as this amendment is concerned, it will not have the desired end because there are very few such cases which will be tried under the amended clause and it will serve no purpose Then, secondly, in the name of removing delay what we are doing is, that even in such serious offences as section 108 and section 109, —sometimes innocent persons are

dragged and security bonds are taken from them so far as those matters are concerned—the summons procedure is being substituted for the warrant procedure. My submission is that at least so far as section 108 and section 109 are concerned, we ought not to have gone for the substitution of summons procedure for the warrant procedure; because, here really sometimes innocent persons are involved. Take for instance, one of the sections where a security bond is obtained when a person is either poor or on economic grounds. It will be undesirable if he is not given the opportunity to defend himself, as the opportunity is only found under a procedure for warrant cases. The procedure for summons cases is not adequate enough.....

SHRI K. S. HEGDE (Madras): Even now the procedure for warrant cases is like that in section 107.

SHRI FAKHRUDDIN ALI AHMED: It is not in section 108 and section 109. My lawyer friend, Mr. Hegde, will remember that I did not mention section 107, which is a provision asking for security so far as breach of peace and those things are concerned.

SHRI K. S. HEGDE: I am sorry.

SHRI FAKHRUDDIN ALI AHMED: I was referring to sections 108 and 109 where the present procedure is the warrant procedure.

THE VICE-CHAIRMAN (SHRI V. K. DHAGE): But please remember one more thing; you have taken 17 minutes. You can proceed, but I just wanted to remind you.

SHRI FAKHRUDDIN ALI AHMED: Sir, with your permission I shall proceed. So, this is an important aspect which I would ask the hon. Deputy Minister to take into consideration. Unfortunately, I shall not be here when these amendments are before the House and I would very strongly suggest that, at least so far as sections 108 and 109 are concerned, we should think twice before substituting the procedure for summons cases instead of the procedure for warrant cases.

Then, Sir, the Bill is sought to be improved by providing certain innovations in procedure for warrant cases and in procedure for commitment cases. My submission is that on the one side it is claimed that technicality should be removed. On the other side, by making two different procedures for the same kind of cases we are increasing the technicalities in our procedure. So far as complaint cases from private individuals are concerned, the procedure in warrant cases and commitment cases will remain the same as it exists today. But so far as cases where information is given or report is submitted by the police are concerned, only the procedure is sought to be modified by saying that the accused should not get a chance of cross-examination twice. My submission is that it will produce more confusion, more delay and will not serve the purpose for which this procedure has been introduced. On the other hand, in the name of doing away with delay, we are taking away a very valued and precious right of an accused person of cross-examining the witnesses who are produced on behalf of the prosecution. Sir, as a lawyer I can say that it is very seldom that a good lawyer avails of this opportunity of cross-examining at the early stage particularly when commitment proceedings are concerned, and also in warrant cases. But there are cases when it becomes necessary to cross-examine the witnesses produced on behalf of the prosecution at the earliest stage. Take for instance a case where the question is: "Where was the accused at a particular time? The prosecution side may have led evidence to the effect that particular man was in Bombay or in Calcutta. But it may be that that person happened to be at that particular time, say, in Parliament, in Delhi. And if he is not given the opportunity of putting that simple question as to where that particular person was at that particular time, and thus is prevented from bringing this fact to the knowledge of the magistrate, the result may be that he may either be charged or he may either be committed to take up his trial for the things for which he

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was not responsible at all" In this connection, Sir, we have also to remember that if we deprive the accused of this opportunity of cross-examination in proceedings for commitment, then supposing that particular witness dies, his evidence, in that case, cannot be availed of and made use of in the commitment proceedings That is a thing which both the prosecution and the defence have to take into considera tion If today I am prevented from putting a question to a witness who is examined on behalf of the prosecution, under the Evidence Act, I shall not be allowed to make use of his evidence if that person dies, when the case goes up for trial before the Sessions Judge That is a thing about which no one has said anything, and which we should take into consideration, whether that will help the prosecution or the accused My submission is that in such cases the result will be that the court will not be in a position to get the benefit of such witnesses who were alive and who could have been examined and cross-examined at an earlier stage And, therefore, I submit, Sir, that the amendments which are now proposed are not helpful even from the prosecution point of view, and we should think twice before going in for those amendments

Then, Sir, it is said that we want to reduce the time taken for these criminal matters by giving more powers to the magistrates. Now, we have what we call section 30 of the Criminal Procedure Code That section 30 of the Criminal Procedure Code is not applicable everywhere But wherever it is applicable, special powers are given to certain magistrates Under the Bill, it is proposed to extend the provision contained in section 30 to all the magistrates with a ten years' standing If that provision is extended to them, they will be able to try such cases where the punishment is up to seven years My submission is that it is a very dangerous procedure which has been suggested, particularly in the areas where we have no judicial magistrates, where we have no separation of the judiciary from the executive. Not only that, but there are also certain technical difficulties Now those who are acquainted with the Criminal Procedure Code will remember that under Chapter XVIII of the Criminal Procedure Code there is a Schedule, and under that Schedule, there are offences which are bailable, which are cognizable, and which are triable by a Sessions Court, and where the punishment is only seven years I particularly refer to sections 473 and 474 where we find that certain cases are particularly triable by a Court of Sessions, and there the maximum punishment that has been provided is seven years Now here if we say that a magistrate of ten years' standing will be able to try an offence where a person can be convicted up to seven years, then supposing we have in a place such a magistrate and also a District and Sessions Judge, then what will happen is that two persons will be having the same Jurisdiction My friend, Mr Hegde, says, "no" I do not agree with him because under the Civil Procedure Code, if there are two or three officers having the same jurisdiction, then there is a provision under which the officer of the lowest grade can try that case But so far as the Criminal Procedure Code is concerned, we have no such provision whereby it will be compulsory for, or mandatory upon, the magistrate to take up such cases

SHRI K S HEGDE. As a sort of an explanation, Sir, since my name has been dragged in, I might say that wherever it is earmarked for a Sessions Judge as a part of the legislative enactment, it will have to be tried by the Sessions Judge alone If, however, there is no earmarking for the Sessions Judge, then it will be tried either by the Sessions Judge or by the magistrate, whatever arrangement might be made

SHRI FAKHRUDDIN ALI AHMED: Sir, whatever has been said, makes my position very clear On the one hand, we are giving jurisdiction to magistrates to try such cases where the punishment is up to seven years, and on the

other hand, we have a Schedule which stands in our way. And my submission is that that brings into existence a qualification which cannot be supported. And I feel very doubtful if it will be supported either by the Supreme Court or by any High Court. In fact, while going through the opinions submitted by the judges, I find that one judge has expressed his opinion about this, and he says that he is in doubt whether the amendment which we now propose to make in section 30 will be a constitutional provision or not. He has expressed his doubts about this matter. And, Sir, my submission is that we very well know the case of Anwar in Calcutta. And there we have also the result of the ruling that classification, only under certain circumstances, can be accepted. But I cannot understand how it is possible to give the same jurisdiction to the District and Sessions Judge, as also to the magistrate of ten years' standing. I cannot understand how that can be supported in any court.....(*Time bell rings*). Only five minutes more, Sir. So, Sir, my submission is that the amendment that we now propose will not only not remove the delay, but will also bring about the complications and the results which will neither be in the interest of the prosecution, nor will they be in the interest of the defence. I, therefore, submit that we should think twice before we support this amendment.

Sir, I shall be failing in my duty, if I do not say something about section 162. The Bill, as it was proposed by my friend, Dr. Katju, actually wanted to delete that section altogether. But the provision, as it has now emerged out, suggests certain modifications, and is an improvement upon what he had proposed.

I submit that even the provision as it stands in the Bill here and for which our ratification is sought is very harmful to the accused person for this particular reason that we know our police, we know the manner in which and the method by which these statements are obtained from the witnesses. I do not know of any other State, but so far as my own State is concerned, I have often heard judges of the District and Sessions Courts and also of the High Courts severly rebuking the Inspectors for the manner in which they have recorded these statements, and I think it will be a very bad day for us if on the basis of such statements an opportunity is provided to the prosecution to declare a witness hostile when he happens to be speaking the truth before the court. On that ground it is a very dangerous thing for us to have a modification to the extent that even the prosecution will have the same benefit as was only given to the accused in former days. My submission is that, so far as this provision is concerned, it neither serves the purpose for which this Bill has been introduced nor will it help the Government. Therefore, my point is that it should not be accepted by this House and that the existing provision in section 162 should be allowed to remain on the Statute Book until the Law Commission which is proposed to be set up goes into all these Acts—the Indian Penal Code, the Evidence Act, etc.

SHRI N. C. SEKHAR (Travancore-Cochin): Mr. Vice-Chairman, I am one of those who do not feel happy with this amending Bill. This Bill, instead of taking away what the Britishers did to our people, intensifies the stringency and the seriousness of the present law. Today, we heard the hon. Dr. Katju making a speech in defence of this Bill. The other day, when moving his motion for the consideration of this Bill, the Deputy Home Minister, Mr. Datar, said that the fundamental principles which were laid down for the first time in 1861 were good enough in the year 1955 and that they were being maintained even in the present Bill. One was surprised, rather staggered, at these remarks from a Minister, representing this nation, representing our people, and representing a Congress which has sixty to seventy years of tradition in the anti-imperialist fights. He says that the principles underlying the Code when it was first made are still good enough. Sir, it is

[Shri N. C. Sekhar.]

a well-known fact that this Code was promulgated by the Britishers to suppress and oppress our people. Now, instead of throwing away this Code the principles underlying it are being lauded, are being boosted, by a Minister representing our nation, representing a Government which claims to be democratic. In order to understand the real character of this Code, we have to go back to what the British lawyers who first promulgated this Code said about this. One Mr. Stokes says (this was some time in 1861):

> "The law relating to criminal procedure is more constantly used and affects a greater number of persons than any other law. The offender and the individual injured are, as a rule, the only persons immediately affected by the commission and punishment of a crime. But in the measures prescribed for preventing crimes and prosecuting criminals, anyone, however, unconnected with a given offence, may find himself involved."

This is how he describes this Code of Criminal Procedure. When you come to realise the number of jails in every district in every province and also the number of prisoners who have been in jail during the time of the Britishers, you will come to realise the enormity of this Code.

Then in 1898, Mr. Chalmers said like this. He was a British lawyer and was Home Member in the Government of India. He was commissioned to modify this Code. He said:

> "Looking at the Code of 1882, as an English lawyer, I cannot say I am much enamoured of it. Many of its provisions appear to me to be cumbersome, complicated and overminute. But, then, I am aware that India is not England. There may be good reasons for regulating the minute details of procedure here, which in England are dealt as matters of discretion or court practice."

This is what he says. What is the difference between the British law and the Code of Criminal Procedure here? In England the people are democratic. Each and every individual there has his civil rights to be exercised freely and also the magistracy is given the power of discretion, but here every magistrate, every police officer, is detailed to function in a certain way. Why? It was because the Britishers had no faith in the Indian magistrates. Therefore, they wanted them to follow certain details. "You cannot do this, you cannot do that." Otherwise the Britishers would not have been able to suppress our people. That is why every day, every week, every month, every year, people were thrown into jail. But Dr. Katju comes here and justifies this Bill, as if he were a British lawyer. I was very much surprised, very much pained, to hear an Indian lawyer who participated in the struggle for national freedom, talking in defence of this criminal Criminal Procedure Code.

Then, Sir, in 1923, when this Code again came up for revision, Justice Seshagiri Iyer, who was then a Member of the Legislative Assembly, argued like this. I would like to read a portion of his speech to refresh the memory of the ex-Public Prosecutors here and also my hon. friends here with all respect. Even though he supported that Bill, he said in his speech:

> "The revision was undertaken at a time when the Government felt that the hands of the Executive should be further strengthened. It cannot be said that the Code, as enacted, enlarges to any appreciable extent, popular rights. A great deal has yet to be done if the Code is yet to conform to the rules and regulations which other civilized countries adopt in this behalf."

It was not in his opinion that India was not a civilized country but the

Government administering this country was not civilized enough to treat the people as people with certain rights Then he said:

"For example, the powers given to the Police and to the Magistrate by Section 162 require great alteration The security provisions hould be thoroughly re-written At present the 'old offender' is very much at the mercy of the Police In regard to proceedings relating to immovable property the Public should have greater safeguard against abuse of power The question of appeal demands serious consideration The appeal to the District Magistrate is an illusory privilege These should be abrogated. The bail chapter should be thoroughly revised so as to make it clear that except where public safety demands, every accused should be enlarged on adequate bail. The present provision offends against the maxim that the accused should be presumed to be innocent until his guilt is proved Above all, the imaginary racial distinctions should no longer be a blot on the criminal administration of this country. There are other changes which the condition of the country demands. I am sure that the next revision would make our Code a model one for other nations to follow."

This is what he said with regard to Criminal Procedure Code amendment Do we find any difference today from what he expressed then? Certainly even today what Justice Seshagiri Iyer expressed then 32 years ago holds good with regard to the Bill as it is being amended today

(Time bell rings.)

THE VICE-CHAIRMAN (SHRI V K DHAGE) 2 or 3 minutes more.

SHRI N. C. SEKHAR: How many minutes do you allow?

THE VICE-CHAIRMAN (SHRI V K DHAGE): 15 minutes.

SHRI N C SEKHAR: Dr. Datar mentioned in which years the Code of Criminal Procedure underwent changes

SHRI H C MATHUR (Rajasthan): Dr Datar—it is well deserved in view of the amendment.

SHRI N C SEKHAR: It was amended in 1882 1898 and 1923, he said If one happens to read the history of India today, one will realize that they were the periods of trouble for the Britishers—periods in which our Indian people rose in revolt against the then administrators. It was in those periods that the administrators felt that it was incumbent on them to intensify the power of the police and strengthen the hands of the executive to suppress our people Do similar conditions exist today? It is my opinion that it no longer exists in our country. Our interest is in the hands of our national leaders and in the hands of our democratic Government. Our Government has declared its goal as one of Parliamentary Democracy. In that condition it is incumbent upon our administration to really allow more civic rights to our people to assert themselves in order to help the Government to implement their economic plans and social reforms and also their peaceful political administration Instead of that, the Government want to intensify the powers of the police. I don't want to expand this. By the new section 162 the power of the police is being very much intensified. Even today the witnesses are prepared by the police by terrorising and by torturing and by third degree methods—certain accused are brought to the police station and confessions extorted from them That course of action is now intensified and sanctioned by this amending Bill. According to Dr Katju 43 major and 20 minor amendments were made by this amending Bill All these are certainly not democratic but are towards establishing a Police State which are certainly going to tell upon the very Administration, very shortly. The

[Shri N C Sekhar]

people are not going to be satisfied with it In spite of all the intensity of the Criminal Procedure Code and the Penal Code, the people revolted against the British in such a way as to make them run away from our country Similarly if the administration is not wise enough, history will repeat itself I express here that the Administration should take lessons from history otherwise history will repeat itself very shortly This is what I have to express I have no time I wanted to speak on 2 or 3 clauses out for want of time I conclude my speech with my disapproval and feelings of unhappiness about this amendment Mention was made of a person like Dr. C. P Ramaswami Ayyar I wanted to explain who was he and what was he etc but I have no time today I was given only fifteen minutes You must also understand that I am speaking as a person representing a big section of the people—not a minor section of the people—from the West Coast who have expressed themselves against this amending Bill not through hundreds and thousands but through lakhs of people assembled in public meetings and hall meetings and everywhere else They expressed their disapproval in very strong terms Also a great progressive section of our lawyers in our country in Bombay, Calcutta, Nagpur, even in Delhi, Madras and in other parts has expressed itself against this amendment Even the hon Law Minister Mr Pataskar had spoken against the defamation clause, against the inclusion of the public servants in that clause I don't know what stand he will now adopt in relation to that clause By this defamation clause the police power is intensified, the magistrate's power is increased and his hands are strengthened Now the Ministers are made supreme—the President is made supreme, the Rajpramukhs, the undesirable elements in the society, are made supreme, and now the public servants—even *chaprassis*—are made supreme and there can be no complaint against them If anybody writes against bribery about any official or Minister, then he is booked and brought before the court as an accused That is how the Government is going against the people and the Government is moving towards establishment of a Police State This is all that I have to say

DR P V KANE Mr Vice-Chairman, Dr Katju has told us that very great endeavour had been made to consider the vast mass of opinion and everything else and I am prepared to admit that this new Amending Bill is an improvement in certain respects no doubt, but somehow or other, it is a fatality in this world that nothing is purely good and good and evil are always mixed up Similarly, this new Bill is also a mixture of good and evil There are good points, *viz.*, the abolition of the assessor system, and transportation for life are now gone and certain rules are tightened up as regards Honorary Magistrates and so forth I need not refer to them But there are certain other vital matters in which, I must say, the Bill is retrograde and at least not what we expect in a Welfare State or at least a State which wants to pass from a Police State to a Welfare State As the guillotine might fall on me at any time, I will go not in the order of the clauses but in the order of importance

First, I shall take up the clause dealing with defamation about which so much has been said, clause 25 of this Bill deals with this matter and one is wonderstruck at the manner in which it is done It requires 2 full pages nearly, to deal with this matter here At present, everybody is talking about the removal of casteism, provincialism and all sorts of isms But reading this clause I find that this is a kind of a new *ism* that is coming up —a sort of "bureaucratism" Now let us read the first part of it It speaks of what will be an offence dealt with under this clause and here let us note that the spoken word is excluded That has to be remembered Spoken words are not to be brought under

this clause at all. Therefore, if this clause is bad, in my opinion, I would advise people to carry on a whispering campaign against a Minister or anybody else whom they want to attack, because that would not come under this clause. Also they can say in a public meeting anything they like. That is also only spoken word. But under section 499 of the Indian Penal Code, no distinction is made between the spoken word and the written word or even pictures. They are all put together. But here the spoken words are put in a different category. What they are afraid of is writing, particularly writings in newspapers, yellow press, as we heard an hon. Member say, the gutter press or whatever it may be. But I would submit that defamation by a campaign of whispering is much worse, worse than what is done by the written word. As regards written words, you have so many things. Why add to the already weighted scales against the accused person? If I write a letter damning some Minister or officer, there are three or four prosecutions possible. Suppose it occurs in a newspaper, then I come under that other Act—the Press Objectionable Matter Act of 1951, I think, which we have extended with additions to which I am not referring just now. Under that Act, the press of the newspaper may be proceeded against. A large security may be demanded and forfeited. That is one thing. Then comes the newspaper. The newspaper also may be called upon to make a deposit and it also may be forfeited later on, for some reason or for no reason. That is the second thing. And now there is the third one here. If I am the writer; I as the writer may be proceeded against. You will remember what is said at the end of this clause; subclause (11) says:

> "Nothing in this section shall be deemed to be in derogation of the right of the person aggrieved under section 198."

This is an additional remedy. Supposing for some reason or other the prosecutor thinks it fit, it may withdraw the case from the court altogether and the man may have to face another trial, when the officer or Minister may bring in a private suit or complaint. So, for four times the man may be dragged into court for the same thing, first the press, then the newspaper, then the man himself and then after withdrawal the private complaint may be filed. There may also be a suit for damages. This is too much. As against the man you have got so many things. So why do you want this one also? That is my question.

Moreover, I do not think matters are going to be improved as regards the character of our public servants, rather things will get worse. They will think that they are sacrosanct, that they cannot be touched, unless this procedure is followed. As regards the President and the Vice-President, I have no complaint to make about this provision, but why put in a Minister especially, and any public officer? And a public officer includes even the *chaprassi* right up to anybody.

SHRI AKBAR ALI KHAN (Hyderabad): All public servants.

DR. P. V. KANE: Yes, and there is no definition of a public servant—if anybody would help me in this respect I would be thankful—except in section 21 of the Indian Penal Code, but I think none of these people will be public servants under that section. By means of section 5 of the Criminal Procedure Code, words defined in the Penal Code are to be taken here. So I have doubt whether these people, Ministers and others, would be public servants at all. But let us suppose they are, for I do not want to go into such purely technical matters. I am on the clause itself. My question is, why do you make only the written word punishable and not the spoken word? There is no reason assigned here. They only say:

> "Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (Act XLV of 1860) (other than the offence of defamation by spoken words) .....

(Interruption by Shri H. V. Pataskar.)

[Dr. P. V. Kane.]

But this is what I have got here in the copy of the Bill as passed by the Lok Sabha. If I am wrong, I may please be corrected. This is what I have in my hand here. In the Penal Code there is no distinction between the written and the spoken word. Why make a distinction here?

My other objection is that from the President, right down to the *chaprassi*, they are all to be public servants and that is like saying it in Sanskrit:

विचाखान् पाणिनिरंकसूत्रं श्वानं युवानं मघवानमाह ।

That is to say, the dog, the young man and Indra are all together. That is true, but only for grammatical purpose, for the purpose of Panini's *sutra* or aphorism. Grammatically, the words may be treated the same way, but not at all in their meanings. A dog is a dog, a young man is a young man and Indra is Indra. But here you put the President and the *chaprassi* on the same level, applying this Panini's *sutra*:

श्वयुवमघोनामतद्धितं ।

You may have a separate law for the President, Vice-President and other such people. It goes against my aesthetic sense, maybe I am wrong, but there it is and ...

SHRI JASPAT ROY KAPOOR (Uttar Pradesh): They are going to have a democratic and socialistic pattern of society.

DR. P. V. KANE: But all that is yet to come.

SHRI JASPAT ROY KAPOOR: And this is just the beginning.

DR. P. V. KANE: At present it is all in the air, this socialistic pattern of society is still in the air.

SHRI H. P. SAKSENA: But the law is no respecter of individuals.

DR. P. V. KANE: The law respects the President and others, they have special powers and facilities. But making all this for all public servants is too much. And how many million public servants have we? There must be some millions, I should think. I am not sure. But we have a population of 360 millions and there must, I think, be at least one million public servants; and about 500 Ministers in all the States put together. Here itself we have at the Centre some 39, composed of Cabinet Ministers, Ministers, Deputy Ministers and so on. So in all the different States there must be about 500 of them. So it looks as if we are going to create a new caste for them. A new sort of casteism is being produced. Our old caste system is going. We have practically abrogated it in the Constitution itself. Castes have been abrogated. Now untouchability is an offence. If a man treats another as an untouchable, he commits an offence. But this is a new kind of casteism that is coming up. These people think that they are something apart, they are like idols, nobody should touch them. So what I say is, this thing must be amended completely. I am for removing it altogether. Let the public servant file a suit or file a complaint. A Minister may be here today and tomorrow he may have to resign and face a trial. We heard something similar happening in one State. Why should we include Ministers? They must be excluded. The President, the Vice-President and other such big ones may be there; that is my concession, if you want to retain the provision.

Another thing that I wanted to refer to is this. An hon. Member said that there was a growing sense of disobedience to law. I entirely agree with that observation. But why is that so? It is so because you have too many laws. You have laws to punish the landlord and the tenant. The debtor and the creditor can be punished. Then there are the ration laws and so many other laws too. When I came to Bombay 55 years ago, there were only four magistrates

in Bombay and now there are 29 because you have a larger number of laws and the population has also increased On account of prohibition also, life has become very cheap in Bombay If I complain that so and so has got a still, I am sure he will stab me That was not so in the old days People are making lots of money by illicit liquor and, therefore, the lesser the number of controls the better for society There are always loop-holes for evading or disobeying laws People are trying to find loop-holes If you want to change this, then at least change it in a better way You are all proud of saying that ours is a democratic country, that ours is a republican country I am certain of all that but I challenge the Law Minister to point out any democracy or a republican State which has enactments like this A Minister is to be protected by the Secretary, that is what is done here "in the case of a Minister of the Central Government of the Secretary to the Council of Ministers, if any or of any Secretary to the Government" The Secretary is subordinate to the Minister, practically, and he has to protect the Minister It is ridiculous at least to me, a man brought up in the old ways I am 75 years old and it really looks ridiculous to me A Minister should say that he does not want any protection I do not know whether such a thing will be done. The President has limited powers, he can only give assent to Bills and so on, the Vice-President has no powers excepting presiding here and, therefore, the Ministers are the really important persons, the V I Ps, as they say, and you will find that under sub-clause (5) the person concerned, namely the Minister or the public servant, need not actually come into the witness box This should be removed altogether But if that is to remain, then the man who makes the allegation, the Secretary or whoever it is, must be the first person to be examined as a witness No such thing is provided here He must face cross-examination first I have the greatest respect for the courts because I have spent 44 years in courts but still human beings are human beings and why should power be given in this way? There is no real reason for that When a man's honour is to be protected, why should he fight shy? He must first come forward and tender evidence There is this loop hole in sub-clause (5) and he need not come forward at all (*Time bell rings*)

As regards the compensation clause, who is to pay compensation? If the Public Prosecutor files a complaint and if it fails, is the Public Prosecutor to pay the compensation or is the Minister to pay it? The Minister may say that he never went into the witness box and that he did not do it. That is the danger and, therefore, my submission would be that, in the first part, it must be with the consent of the person defamed That must be added somewhere In the first part it is said, "when the Court of Session takes cognizance of an offence" and I want that we should add "and accepted under his signature by the man defamed" somewhere The man must be bound down to that complaint and he must be examined in the witness box These are the different points that I had to urge I should like to ask the Law Minister or the persons responsible, whether there is any democracy or republic, whether in England or in America, where there is any parallel for this I am trying to make some research but, of course, my ability is limited, I am an old man but I want those people who have got Secretaries, Parliamentary Secretaries, Law Officers and all sorts of people to find out and let me know whether there is any such provision anywhere in the world Our democracy is only five or six years old and our independence is only 7 1/2 years old We must throw this out altogther

THE MINISTER IN THE MINISTRY OF LAW (SHRI H V PATASKAR) That amendment was made at the instance of the Lok Sabha They thought it was better

DR. P. V. KANE: It should not be altered, I understand, but my point is that both are in the same category in the Penal Code. Let us not make any difference here. That is my idea. It will be difficult for the Minister to prove spoken words but that is another thing. We are not concerned with that. We are only concerned with the reason of the thing. We are not concerned with the inconvenience. If any inconvenience is caused, it is the accused person to whom inconvenience is caused. It is said that the Public Prosecutor shall file the complaint; there are many Public Prosecutors and it will be difficult. In May's 'Parliamentary Practice', this is what is said to be the practice in England: "If any question of privilege arises then the House may also ask the Attorney-General to file a complaint". Dr. Katju said that under section 194 of the I. P. C. these things could be lodged by the Advocate-General. Do the same thing here; but you do not want to do it; you want to leave it to any Public Prosecutor even in a *taluk* to do it.

I want to say one or two things about the other clause.

THE VICE-CHAIRMAN (SHRI V. K. DHAGE): Dr. Kane, you have already taken five minutes more.

DR. P. V. KANE: If you do not want me to proceed, I shall sit down.

THE VICE-CHAIRMAN (SHRI V. K. DHAGE): You can proceed but I want you to be as brief as possible.

DR. P. V. KANE: If the guillotine falls on me, I shall sit down.

One more clause to which I have great objection is clause 22 which seeks to substitute section 162 by a new section. My learned colleague here—I forget his name—said that Government wanted to do away with section 162 altogether. That was the original draft but now we find that that section has come in some other form. If they did not want to remove it altogether, then they could have let the old section remain as it is. They have added a proviso to this section and that is what I object: "Provided that when any witness is called for the prosecution in such inquiry....." —the important thing comes now— any part of such statement is so used by the accused, any part thereof may also be used by the prosecution with the permission of the court for contradicting the witness and in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination. The important thing is new.

SHRI K. S. HEGDE: No; that portion is there in the old section.

DR. P. V. KANE: The new words are, "with the permission..... any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination".

SHRI K. S. HEGDE: It can be used by the prosecution. It is there already but not for contradiction.

DR. P. V. KANE: That is what I am objecting to. I have left off active practice for the last three or four years and so I am not sure about it but my point is this. For nearly 80 years, from 1882, this thing has been going on very well. Why should the prosecution now have the right which was never given to it? I say this that the prosecution already knows what that man has said. If the man comes before the court and says something else, then the prosecution says that it would like to bring before the court what the witness said earlier. It knows all along what was said by the witness and if it finds that he is saying something different, then it can at once say he is hostile and give him up for lost. The wording used is, "with the permission.... for the purpose only of explaining any matter referred to in his cross-examination".

SHRI K. S. HEGDE: That is the old section.

DR. P. V. KANE: But the whole was not there.

SHRI K. S. HEGDE: It is there already.

THE VICE-CHAIRMAN (SHRI V. K. DHAGE): Let him proceed.

DR. P. V. KANE: Then I come to section 342A which is sought to be inserted and it is about oath being administered to the accused. It is clause 62. Look at clause 62 which reads:

> *"Accused person to be competent witness.*—Any person accused of an offence before a Criminal Court shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial:
>
> Provided that ....."
>
> —'provided' is very important—
>
> "(a) he shall not be called as a witness except on his own request in writing; or
>
> (b) his failure to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against himself or any person charged together with him at the same trial."

This is all good on paper, but two things have to be remembered. Among the accused persons that come before the court, at least 80 per cent. or 90 per cent. are illiterate; they cannot sign even. How are they to request in writing? The pleader or somebody else can request, "except on his own request in writing" means nothing here in the case of most of the accused persons. Therefore this is one thing which is to be deleted. The second is much worse, namely, "his failure to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against himself or any person charged together with him at the same trial." Now what is the psychological effect? Suppose somebody puts an application that the accused should be examined on oath and he refuses. Now the judge may not write anything commenting on it, but the psychological effect produced thereby is there. In England also this is very recent, namely, the accused giving evidence on oath. There also I have read in works by jurists that the psychological effect produced from the accused refusing to give evidence on oath in the mind of the judge remains. Of course, no presumption is to be drawn but the whole thing is coloured by the refusal of the accused, although he was afforded an opportunity to give evidence on oath, and yet he refused to do so; this creates an impression in the mind of the deciding judge. Therefore I say, for the present, until literacy very much increases amongst us, this also should be omitted. That is all I have to say at this stage.

SHRI RAGHAVENDRARAO (Hyderabad): Sir, I rise to make a request to the mover of this Bill and before that, however, I want to express my support to this Bill.

Here is a measure which has been long overdue. Legal *pandits* have been finding in this either an object worthy of bestowing minutest detail or a product deserving severest condemnation. That is the way of the experts. But, as a layman or as a pressman I do not venture this. That being the case, Sir, I want to ask why the press is being dragged in by this Amending Bill. The fate of the pressman under this Bill, I am afraid, is very much jeopardised. Some may even question whether from now on in the place of the proverbial "Sword of Damocles" there is going to be a defamation *lathi*. No doubt there have been for some time past glaring and unworthy lapses on the part of an insignificant section known as the yellow press, which has been drifting into the rabid path of scurrilous writings. It is a matter of regret that the Indian press which always held its head high and set up a high standard in journalism should feel in a way humiliated by this miserable section which stoops so low sometimes

[Shri Raghavendrarao]

as to tarnish its columns with defamation, corruption and what not There is no escape from the fact that we have been helpless witnesses to a degenerated state of affairs everywhere where photostats and forgeries have become galore in journalism No democratically constituted Government has so far been successfully able to cope with these yellow rags These somehow manage to escape through the age-old or time-worn legal loop-holes

Sometimes such a press threatens to become a highway menace in the countryside and far off States In such places life from the highest to the lowest in society and the Government is at the mercy of these, what we call, highway mercenary journalists Naturally, the question arises when such is the real situation why then single out only the authorities in power for affording safety escorts or legal protection from the clutches of these mercenaries? Why should there be any distinction in the matter of affording equal opportunities of justice to all irrespective of the consideration whether the one happens to be an honest public servant or the other an innocent man in the street? After all he is the people, the people themselves

This reminds us or takes us back to that revolutionary method which once existed in the then Aundh State where along with the Public Prosecutor there was a provision for a Public Defender also Some such system would not only be able to strike a responsive chord but would also help to meet the requirements of law in relation to the people Really speaking in respect of all our legal laws and social codes there is need for a new reorientation and a new set-up based on our morals tradition, culture, etc

Now, Sir, what is the definition of "defamation"? Is it just vague or is it a double edged weapon whereby even an honest press for want of sufficient resources for presenting the required evidence on the spot may itself be hauled up? Have the framers of this measure ever thought of affording equal opportunities or making equal facilities available to the press also? Then there is an apprehension that this new clause may even lull the Administration into relaxing its vigilance or alertness just to lie in wait and hide its time or just to be carried away by the vagaries of the yellow press This would mean that the defamatory columns alone should help to rouse the Administration from self-complacency to investigate into the integrity or otherwise of its various units or individuals That would lead to a dangerous method of practically allowing the yellow press to arm itself with unlimited power for blackmail and for playing with the lives of the services Thus, every morning the fate of the authorities, from the Minister down to the lowest rank, would be hanging in the balance depending entirely on the antics of the yellow press

Broadly speaking the question of special or discriminatory treatment to the authorities in this case involves a serious matter of principle In this country yellow journalism might have been represented by an insignificant section, but its power for mischief is proverbial Under clause 25 the defamed public servant may be called upon either to present his defence and prosecute the press or to face condemnation and departmental action In law it may be the Government that would sanction the prosecution, but it would be the superior officer who would first move in the matter. Thus the junior public servant would be entirely at the mercy, firstly, of the antics of the yellow press, and, secondly, on the whims of his superior, especially if that person happens to be of a vindictive type belonging to the same section

While in the case of public servants there has been a provision for previous sanction of the Government, in

the case of Ministers and higher-ups there is no such condition. This may ultimately tell very heavily on the aggrieved Ministers. In the eyes of the public such a defamed Minister would be adjudged as guilty if he by any chance fails to file a complaint within the six months' time limit. And at times even the very move for the prosecution might be interpreted as a harassment of an unfortunate defamer.

Now, one thing is clear. The public servant is no more considered as heaven-born or sacrosanct. But doubts on the other hand arise whether the clause does not unduly threaten to expose the so-called defamed public servants to new dangers, such as a court case may involve.

One aspect seems to be obvious. Whether the yellow press could ever be successfully brought to book or not, there may be another danger and every possibility that the national press will be held to ransom for the misdeeds of an irresponsible press. Some such fear must have forced the nationalist press to protest with one voice against the proposed defamation provisions. Strangely enough, the Press Commission, which unfortunately happened to consist of an overwhelming majority of such eminent men, who having had nothing to do with the working and the life of the press, arrived at an unhelpful conclusion, and took a stand broadly in support of the defamation clause entirely in opposition to the interests of the press. Sir, another thing I want to say is this. Whatever be the findings of the Press Commission, let it be known that no press, however wretched it might have been, would ever submit tamely, its resources and sources of information in any shape or form. To expect this of a pressman amounts to a betrayal of his tribe, a dangerous ethics especially to attempt to import in the journalistic world of India.

Then there is a new code of censorship for not including the "spoken word". How could any one in these days of democracy and modern advancement think of a press not faithfully reporting the news and the events? The press would be failing in its rightful duty if it were not to bring out or expose without favour or fear, any genuine or blatant charges broadcast to thousands of people and audiences. While in public meetings any damnable defamation would be allowed to be broadcast and allowed to gather momentum and in course of time become a settled fact, the same would be threatened with a defamation clause if an honest journal tried to expose and record such a "spoken word" in its columns, such an exposure even though it might have been in the interests of the country and the people. The new censorship on the press means depriving it from discharging its rightful duty and essential service

History tells us that no amount of stringent or sedition laws in the past in any way were able to cow down the Indian press. Today could this defamation go down as more seditious than sedition? Defamation or no defamation, special laws would not help to mend matters in this battle of wits against the Indian press. Let the existing laws of the land take care of themselves. Mere requisitioning of an amendment here or a clause there in relation to the proper conduct of the press may not serve the purpose for ever. With that background of history and tradition of the Indian press new and everlasting healthy approaches should be sought for by the powers that be. Allow the Press Commission's recommendations for a Press Council to take immediate shape so that the chances of any more survival of the yellow press would no longer exist. Nothing but a Press Council would be able to facilitate control and guidance of the press (*Time bell rings*). Sir, with these words I say, any other attempt in the meantime through such sporadic amendments and the like would mean curtailment of the freedom of the press. I, therefore, request that this amendment may be either withdrawn or be kept

[Shri Raghavendrarao]

suspended till the arrival of the Press Council. With these words I support the Bill.

DR. P SUBBARAYAN (Madras): Mr. Vice-Chairman, I really had no intention of taking part in the debate, but after hearing my friend Dr. Katju's speech I thought I should say a few words You may remember that when this Bill was introduced I said the introduction of section 198B was a procedure unknown to, what I call, the rule of law; that any particular citizen should be permitted in the manner it was done in the original Bill, that is making defamation a cognizable offence. I felt it was very wrong Dr Katju was at great pains to explain that what has been done now is not cognizable at all but really what he called opening another door.

I object to opening of this door because I do feel that if a person feels that he has been defamed, it is up to him to go before the court; he ought to have the same rights as any other citizen, and we need not have so much consideration for the official concerned, because, after all it is open to the Government to have an enquiry of their own under the Government Servants Conduct Rules. And they could find out whether he is really guilty of what he has been defamed of and they could even go to the extent of dismissing him on the report that would be submitted by the court of enquiry which they have got a right of appointing and which they have appointed I also think that this amendment which has been made, as Mr. Dasappa pointed out, does put the official concerned in a more difficult position than he would have been, because when a court finds that there is no case and the defamation complained of is not of any value, then you can see the plight of the Government servant concerned. In the first place, as it is provided for in this amendment, he would have to pay damages, compensation to the accused concerned and also come under the disciplinary action of the Government So, really if he does not choose to go before the court, I feel it is not for the Government to compel him to go before the court by allowing a case by the Public Prosecutor concerned I agree with Dr. Kane that after all it is not necessary to do all this when you have got the power already in you to get at the truth by a court of enquiry.

I want to say a few words also on the amendment of section 162. As my friend, Mr Hegde, pointed out, there is not much change, but there is this particular change that the prosecution can contradict the witness with the statement which is in their possession long before the accused had any knowledge of it And you know, Sir, what happens in the villages. where most of them are illiterate, ninety per cent. being illiterate; and if the record is read out to the witness concerned, he will at once feel that he may get into trouble if he contradicts what he has said before the police And, therefore he will not be inclined to tell the truth even though he may be inclined when put into the box. He does not know what he said before because he has forgotten what he has said before the police officer concerned but when this statement is put before him he may be afraid to contradict it. I would, therefore, like to retain the law as it was before.

I cannot say there are no improvements in this Bill Certainly, for instance, where they say in clause 3, that in amendment of section 9. That is, a court could be held in a place near where the offence was committed. This is an improvement, because it will help to get witnesses who may not like to travel a long distance But I would like to say this to the hon. Minister in the Ministry of Law who is deputising for the Deputy Minister for Home Affairs. After all what is necessary is public opinion. Dr. Katju, for instance, was complaining that in a small village a crime might have been committed, most of the people know about it, but they will not come forward to

give evidence. Why? That is what I ask of Dr. Katju. That is because in this country we have a fear of the police, we have a fear of the village *patwari*, we have a fear of anything that is near us. And, therefore, we do not want to go and get into trouble, as they call it, by giving evidence before the court. Therefore, I feel what is needed is education, education of the people concerned, responsibility in themselves, so that they could feel that it is their duty, in the interests of society, that they should tell the court what they know themselves. Unless that is done, I do not think any amount of amendment of Criminal Procedure is going to get what you want.

And, finally, Sir, I do want to say this. It is important that there should be separation of the judiciary and the executive. There are Provinces, or States as they are called now, like Madras where it has been completely done and I think it is up to the Home Minister to see that this salutary reform is adopted all round so that this amendment of the Criminal Procedure Code will really help the speedy procedure to bring to bear on the cases before them a judicial mind, apart from any executive experience they might have had.

श्री कन्हैयालाल डी० वैद्य (मध्य भारत): उपाध्यक्ष महोदय, मैं इस बिल का हृदय से समर्थन करता हूं। वास्तव में हमारे देश में जैसी स्थिति है और सौ वर्ष से अधिक समय से जो कानून बने हुए चल रहे हैं उनमें बहुत बड़े सुधार की आवश्यकता थी, और मैं, जैसा कि दूसरे हमारे माननीय सदस्यों ने भी कहा है, उनका समर्थन करते हुए यह कहना चाहता हूं कि यह कानून अभी पूर्णतः उतना सुधरा हुआ नहीं कहा जा सकता है जितना कि देश को इसकी आवश्यकता है। वास्तव में जिस लॉ कमीशन को नियुक्त करने की योजना है यदि उसके साथ ही इस प्रकार के सारे कानूनों को एक पीनल कोड के साथ सुधरे हुए रूप में लाया जाता तो अधिक अच्छा होता।

इस कानून की बहुत सी धाराएं वास्तव में जनता के हित को लेकर के हैं और जैसा कि डा० काटजू ने अभी हाउस को बताया, इनमें बहुत कुछ न्याय प्राप्त करने के जो साधन हैं, तरीके हैं वे विकेन्द्रीकरण के आधार पर सम्मिलित होंगे और जो लोग अपराध की स्थिति में सींखचों के अन्दर बंद होते हैं उनको भी राहत मिलेगी। यह बात जरूर है कि इस सदन में हमारे बहुत से माननीय सदस्यों को और माननीय मंत्रियों को तमाम विस्तारों की पूरी जानकारी अधिकांश नहीं है क्योंकि जहां तक पार्ट ए राज्यों के शासन की व्यवस्था का सम्बन्ध है वहां तो एक कानूनी ढांचा मौजूद था, लेकिन पार्ट बी और सी स्टेट्स जहां पर रियासतें थीं और राजाओं के राज्य थे वहां तो एक जंगल का सा कानून चलता था। वहां की जो कानूनी व्यवस्थाएं चली आ रही हैं उनमें यद्यपि अब बहुत कुछ सुधार हुआ है, फिर भी वहां की परिस्थितियां इस प्रकार की हैं कि वहां पुराने सामन्तवाद जैसी व्यवस्था प्रचलित है; वहां न्याय के सिद्धान्त हैं, किन्तु पुलिस के सामन्तवादी विचारधारा के कर्मचारियों के रहते हुए लोगों को न्याय नहीं मिलता। इस कानून के अन्तर्गत जिस प्रकार की व्यवस्था की गई है और पुलिस को जो अधिकार दिया गया है कि बिना दस्तखत कराए हुए गवाह या अभियुक्त का बयान, जिस तरह से चाहे उसके विरुद्ध काम में लाया जा सकता है, उससे तो मैं समझता हूं एक भयंकर स्थिति पैदा हो सकती है क्योंकि आप कल्पना नहीं कर सकते कि जब केस डायरी के बदलने के बारे में पुलिस क्या कुछ कर सकती है, तब बयानों के बारे में पुलिस क्या नहीं कर सकेगी। श्री बिष्ट ने बहुत सी बातों का बड़ा समर्थन किया है। लेकिन मैं उन सब बातों को ध्यान में रखते हुए कहना चाहता हूं कि इस धारा का बहुत भयंकर दुरुपयोग पुलिस ऐसे पिछड़े हुए क्षेत्रों में करेगी जहां पर कि शासन की बहुत पिछड़ी हुई स्थिति रही है और आज भी जहां बहुत कुछ एक जंगल के कानूनों का राज्य चलता है, जिसके सुधार के लिए सरकार की ओर से भी बहुत सी कोशिशें की जा रही हैं।

[श्री कन्हैयालाल डी० वैद्य]

मैं कुछ बातें सिद्धान्त की भी कहना चाहता हूं कि जहां तक इस बिल का सम्बन्ध हैं, हम एक विचित्र स्थिति का निर्माण करने जा रहे हैं। हमने संविधान के अन्तर्गत सब को बगैर भेदभाव के बराबरी का दर्जा देने की स्थिति रखी हैं और कानून में भी समान दर्जा दिया हैं। प्रेस कमीशन ने जो रिपोर्ट दी हैं, जिसका यहां पर बहुत कुछ उल्लेख किया गया हैं उसमें भी सिद्धान्ततः इस बात को स्वीकार किया गया हैं और यह कहा गया हैं : The proper functioning of a democracy requires that every individual should have equal opportunity, in so far as this can be achieved to put forward his opinion. तो प्रेस कमीशन ने जिस प्रकार से यह सिद्धान्त रखा हैं और जिस प्रकार की स्थिति पंचवर्षीय योजना में प्लानिंग कमीशन ने देश के सामने रखी हैं उसको देखते हुए हमारे लिए यह आवश्यक हो जाता हैं कि जब हम इस कानून पर विचार करें तो उन बातों को ध्यान में रखें। प्लानिंग कमीशन ने कुछ सिद्धान्त भ्रष्टाचार के विषय में और शासकीय लेवल पर जो बुराइयां होती हैं उन्हें दूर करने के विषय में अपनी योजना रखी हैं और उनको रखते हुए इस बात के ऊपर जोर दिया हैं कि किस प्रकार से हम एडमिनिस्ट्रेशन की लीडरशिप में इंटीग्रिटी पैदा करने और शासकीय व्यवस्था के अन्दर जो भ्रष्टाचार बना हैं उसे दूर करने के लिए कदम उठाएंगे । इन बुराइयों को दूर करने के लिए जिन बातों का उल्लेख किया गया हैं उसमें यह तरीका निर्धारित किया गया हैं कि अगर इस तरह के भ्रष्टाचारी अधिकारी होंगे और उनके विरुद्ध कोई ऐसी बात या आरोप लगाए जाते हैं तो उनको मौका दिया जाएगा कि वे मुकदमा चलाएं। मुकदमा चलाने के लिए सरकार खर्च के लिए रकम मंजूर करेगी। अगर वह मामला गलत साबित हो जाता हैं और अपराधी को खर्च की रकम मिली तो वह सरकार में जमा करा दी जाएगी। इस तरह से प्रथम पंचवर्षीय योजना के अन्तर्गत प्लानिंग कमीशन ने भ्रष्टाचार के सम्बन्ध में एक योजना हमारे सामने रखी हैं और इस सम्बन्ध में उसने हमारा मार्ग दर्शन किया हैं। अतः उन सब बातों को ध्यान में रखते हुए जब यह कानून हमारे सामने आता हैं तो हमें प्लानिंग कमीशन द्वारा दिए गए उन सुझावों को ध्यान में रखना होगा और इस कानून में जो बातें उसके विपरीत जाती हैं उन्हें भी हमें ध्यान में रखना होगा ।

जहां तक येलो जरनलिज्म का प्रश्न हैं, इस सम्बन्ध में सदन में बहुत सी बातें रखी गई हैं। मैंने प्रेस कमीशन के सिद्धान्तों को सामने रखते हुए बहुत से अमेंडमेंट्स द्वारा सुधार के सुझाव दिये हैं। माननीय सदस्य श्री काणेजी ने अपने भाषण में यह कहा कि हमें इस कानून द्वारा राष्ट्रपति, उप-राष्ट्रपति और गवर्नरों को संरक्षण देना चाहिए किन्तु मैं यह बात नहीं मानता हूं कि राजप्रमुखों को भी इस कानून के अन्तर्गत किसी प्रकार का संरक्षण दिया जाए। राजप्रमुख तो हेरीडेटरी प्रथा के अनुसार चले आ रहे हैं, जनता द्वारा उनका चुनाव नहीं किया जाता हैं। उनको राष्ट्रपति और गवर्नरों के मुकाबले में कानून के अन्तर्गत इस प्रकार का संरक्षण दिया जाएगा तो यह हमारी जनतंत्रीय प्रणाली के विरुद्ध होगा। अगर हम इस कानून द्वारा सब शासकीय अधिकारियों को संरक्षण देंगे तो यह प्लानिंग कमीशन के सुझावों के विरुद्ध होगा। प्लानिंग कमीशन ने तो कुछ ही आदमियों को संरक्षण देने का सुझाव दिया था किन्तु हम इस कानून द्वारा सब ही शासकीय अधिकारियों को संरक्षण दे रहे हैं। इस तरह से हम जनता के कोष का और जनता के धन का अपव्यय करेंगे और उनके ऊपर एक नया बोझ डालेंगे। हम इस तरह से समाज में एक नई श्रेणी का निर्माण कर रहे हैं। जिस समय डिप्टी होम मिनिस्टर महोदय ने यह बिल पेश किया था तो उन्होंने अपने भाषण में कहा था कि हम इस तरह के डिस्क्रिमिनेशन को इस बिल द्वारा दूर करने की कोशिश कर रहे हैं किन्तु देखने में यह आता हैं कि इस कानून द्वारा हम समाज के अन्दर नए डिस्क्रिमिनेशन क्रिएट कर रहे हैं। जिस

प्रकार हमने रेलवे में एयर कंडीशन्ड क्लास शुरू करके एक नई श्रेणी को जन्म दिया है उसी प्रकार हम इस कानून द्वारा देश में एक नई श्रेणी की व्यवस्था करने जा रहे हैं जो कि उचित मालूम नहीं देता।

जहां तक "येलो जरनलिज्म" का सवाल है, मैं यह बात मानने को तैयार नहीं हूं कि छोटे अखबार इसके अन्तर्गत आते हैं। हमारे देश में बहुत से दैनिक पत्र हैं, जिनका सरकुलेशन बहुत ज्यादा है फिर भी वे हमारी राष्ट्रीयता के विरुद्ध आलोचना करते रहे हैं। मैं भी एक पत्रकार रहा हूं और पत्रकारिता के बारे में अनुभव रखता हूं। देश की स्वतंत्रता की रक्षा के लिए यह बड़ा आवश्यक है कि हम डेमोक्रेसी को पनपने के लिए लोगों को बोलने और लिखने का मौका दें और हर प्रकार से विचार व्यक्त करने का अवसर दें। आज जो छोटे छोटे अखबारों के विरुद्ध कहा जाता है कि वे "येलो जरनलिज्म" के अंतर्गत आते हैं, मैं इस बात को मानने को तैयार नहीं हूं। हमारे राष्ट्रपिता महात्मा गांधी जी ने "हरिजन" नाम का पत्र निकाला था। वह केवल ८ पेज का पत्र था। उस पत्र ने जिस तरह से हमारे देश की सेवा की है वह सब को विदित ही है। हमारे देश को स्वतंत्र कराने में उस पत्र का बड़ा योग है। आज जो बड़े बड़े दैनिक पत्र हैं, जो राजभक्त पत्र हैं, वे "येलो जरनलिज्म" में आते हैं। वे सरकार की तरह तरह की टीका करते हैं और इस तरह से जनता के सामने एक गलतफहमी पैदा करते हैं। वास्तव में इस देश के अन्दर स्वतंत्र पत्रकारिता का विकास ही नहीं हो रहा है। जनतंत्र में स्वतंत्र पत्रकारिता का विकास नहीं हुआ है यह हमारे शासन और डेमोक्रेसी के लिए एक बड़ा प्रश्न है। हमारे राष्ट्रपिता ने जिस तरह का ऊंचा आदर्श हमारी पत्रकारिता के सामने रखा है उसका अनुकरण हमें करना चाहिए। मैं यहां पर यह बता देना चाहता हूं इंग्लैण्ड में महात्मा गांधी जी के विरुद्ध भारत के कुछ पत्रों के गन्दे आक्षेपों का ट्रांसलेशन करके जनता में, पार्लियामेंट के दोनों सदनों यानी हाउस आफ कामन्स और हाउस आफ लार्ड्स में बंटवाया गया। इसी तरह से पंडित जी के विरुद्ध भी कई तरह की गलत बातें अखबार वालों ने निकालीं। किन्तु इन दो सज्जनों ने जिनमें एक तो हमारे राष्ट्रपिता महात्मा गांधी हैं और दूसरे पंडित जी हैं, कभी भी अदालत की शरण नहीं ली। उन्होंने अपना आदर्श हमेशा ही ऊंचा रखा। इसी प्रकार हमारे अधिकारियों को भी अपना आचरण उच्च रखना चाहिए। हमारे शासन का सिद्धान्त "सत्यमेव जयते" है। अतः हमारे शासकीय कर्मचारियों और मंत्रियों पर जिस प्रकार की जिम्मेदारी है और सरकार जिस तरह से उनके बचाव के लिए यह कानून ला रही है उनका भी यह कर्तव्य हो जाता है कि वह जनतंत्रीय व्यवस्था के अन्दर अपने चरित्र को ऊंचा रखें। अगर वे अपने चरित्र को ऊंचा रखेंगे तो उनके ऊपर किसी प्रकार के आरोप नहीं लगाए जा सकेंगे। देश उनसे चरित्र की अपेक्षा करता है। देश चाहता है कि हमारे शासन का कार्य करने वाले जो कर्मचारी हैं वे ईमानदारी से कार्य करें। भ्रष्टाचार के विषय में पचासों बातें कही जा सकती हैं और माननीय मंत्री महोदय जानते हैं कि जब राजा महाराजा राज्य करते थे तो बहुत से राजा महाराजा अपना भेष बदल कर के जाया करते थे और बुर्का ओढ़ कर के भी जाया करते थे और अपराधों का पता लगाते थे। मैं यह तो सजेस्ट नहीं करता कि हमारे गृह मंत्री या अन्य मंत्री बुर्का ओढ़ कर जाएं लेकिन और तरीके से जा कर आप इन सब चीजों की जांच कर सकते हैं। जब आप ऐसा करेंगे तो आपकी आंखें खुल जाएंगी। दिल्ली में ही जा कर देखिए तो आपकी आंखें खुल जाएंगी। कानूनी दांव-पेंच के आधार पर आप कह सकते हैं कि यदि किसी आदमी ने यह कहा कि यह भ्रष्टाचार की बात है तो वह इसको प्रमाणित करे और अगर प्रमाणित नहीं करे तो जेलखाने जाए और उन बातों को कानून के दायरे में ले कर आप उसे सींखचों में बन्द कर सकते हैं लेकिन सत्य को इस प्रकार से कुचला नहीं जा सकता है। जो सत्य है वह सत्य ही रहेगा।

[श्री कन्हैयालाल डी० वैद्य]

देश की स्थिति बडी ही नाजुक होती जा रही है और आप देख रहे हैं कि सोने का भाव भी दिन प्रति दिन बढता जा रहा है। सोने का भाव क्यों बढता जा रहा है इस बात की भी आप जाच करें। मैं मद्रास आवडी काग्रेस में गया था और वहा अपने एक मित्र के यहा ठहरा था। उनके दूसरे मित्र एक ज्वेलर हैं। उन्होंने बताया कि मैं आपको दो तीन तारीखें देता हू उन तारीखों पर आ कर देख लें और मैं उन ब्लैक मार्केटियर्स की, कैपिटलिस्ट्स की, इडस्ट्रियलिस्ट्स की और ऐसे प्राफिटियर्स की जो कि इकम टैक्स बचा कर अपना पेट भरते हैं और दो दो बहिया रखते हैं उनकी, लिस्ट आपको देता हू आप उनको देख लीजिए। जैसे पुराने जमाने में लोग सोना खरीद कर अपने यहा रख लेते थे उसी तरह से आज ये सब के सब नोटों की गड्डियां ले कर बाजारों में पहुचते हैं और सोना चादी और ज्वेलरी ले कर घर जाते हैं और यही कारण है कि पिछले दिनों सोने का भाव बहुत बढा है और बढता जा रहा है। यह कोई अच्छी निशानी नही है। तो भ्रष्टाचार की ये सब बातें हैं। मैं किसी व्यक्ति विशेष के बारे में कुछ नही कहूगा क्योंकि परसों माननीय डिप्टी चेयरमैन की ओर से यह इशारा किया गया था कि हम कोई व्यक्तिगत बातें यहां नहीं कहें लेकिन मैं बडे अदब से कहूगा कि भ्रष्टाचार के बहुत से मामले कई राज्यों में पकडे गये और पकडे जाने के बाद भी कोई कार्यवाही नहीं की गई। आक्षेपों की बात को छोड दीजिए आक्षेपों की बात मैं नहीं करता, लेकिन जिन मामलों में इनफोर्समेंट विभाग ने कार्यवाही की और लोगों को रंगे हाथों पकडा, लोगों को लाखों और करोडों का ब्लैक मार्केट करते हुए और रिश्वत लेते हुए पकडा झूठे एकाउंट बनाने के कागज पकडे उन सब केसेज में भी कोई कार्यवाही नहीं की गई।

श्री जे० एस० बिष्ट (उत्तर प्रदेश) इसका क्रिमिनल प्रोसिजर (अमेंडमेंट) बिल से क्या ताल्लुक है?

श्री कन्हैयालाल डी० वैद्य: ताल्लुक यह है कि जब ऐसी हालत है तब यदि आप एक और नई बात इसमें जोड़ देते हैं कि जो व्यक्ति किसी बात को कहने की चेष्टा करेगा तो सरकारी अधिकारियों को उसका गला घोटने का पूरा अधिकार होगा, इससे आप भ्रष्टाचार को रोक नहीं सकते बल्कि यह तो भ्रष्टाचार का पोषण करना है। छोटे लेवल पर राज्यों में क्या क्या अंधेर नही होता है? इसीलिए मैं कह रहा था कि जब राज्यों में इस प्रकार के मामले वास्तव में पकडे गए तो भी उन पर कोई कार्यवाही नहीं हुई तब फिर उन मामलों की क्या सुनवाई होगी जिनमें कि केवल आक्षेप ही किया जाता है। उसमें तो उल्टे इस कानून का सरक्षण ले कर कोई सेक्रेटरी महोदय उस व्यक्ति के विरुद्ध नोटिस ही निकाल देंगे और उल्टे उसके खिलाफ कार्यवाही हो जाएगी और उससे भ्रष्टाचार का पोषण होगा। वास्तव में हमें इस कानून में ऐसी व्यवस्था करनी चाहिए थी जिससे कि इस देश में हम भ्रष्टाचार का अन्त कर सकें। इस सम्बन्ध में प्लानिंग कमीशन ने जो सुझाव दिए हैं उनको भी ध्यान में रखना चाहिए। जहा तक राजप्रमुख और दूसरे मंत्रियों की बात है उसके बारे में श्री काणे ने बिल्कुल स्पष्ट कहा है कि मंत्रियों को इस बारे में बिल्कुल निशक रहना चाहिए। अगर उनका चरित्र अच्छा है और उनके विषय में कोई आक्षेप होता है तो जनता उन आक्षेपों पर कभी भी विश्वास नही करती। बहुत सारे स्केंडल्स फैलते भी रहते हैं लेकिन जनता उन पर विश्वास नही करती है। तो मेरा कहना है कि देश की स्थिति को सदस्यगण और मंत्रिगण जानते हैं इसलिए इस पर गम्भीरतापूर्वक विचार करना चाहिए कि छोटे मोटे कर्मचारियों को लेकर सारे देश के अखबारों के लिए हम यदि कोई ऐसी चीज करते हैं तो उसका देश पर क्या असर होगा। मैं तो यह समझता हू कि ऐसा करना वास्तव में एक नए प्रकार का भेदभाव करना है और सविधान के विरुद्ध एक नया कदम उठाना है। **(समय की घंटी)**

अंत में केवल एक मिनट में जो सशोधन मैंने रखे हैं उनमें से एक सशोधन के विषय में

कहना चाहता हूं। जो संशोधन मैंने रखा है वह धारा ११५, अमेंडमेंट टु शेड्यूल सेकेंड, के बारे में है। शायद इस तरफ हमारे माननीय मंत्री महोदय का ध्यान नहीं गया हो कि इसमें यह व्यवस्था रखी गई है कि अगर किसी आदमी को गैरवाजबी तरीके से हवालात में रख दिया जाय और वह उसका बाद में प्रोजीक्युशन करे तो उस आदमी को काम्प्रोमाइज करने का अधिकार दे दिया गया है। तो यह एक अनुचित सी बात है। अगर किसी व्यक्ति को गैरकानूनी तरीके पर कोई व्यक्ति जेल में रखता है और उसकी स्वतंत्रता का हनन करता है तो ऐसे मामले में यह स्वतंत्रता उस व्यक्ति को नहीं होनी चाहिए कि वह राजीनामा कर सके। इन शब्दों के साथ मैं इस बिल का समर्थन करता हूं।

SHRI KISHEN CHAND (Hyderabad): Mr. Vice-Chairman, we are discussing the Code of Criminal Procedure and in considering this Code, we have got really to consider what is our attitude towards and also the efficiency of our judiciary, the police, the legal profession and also the common man, because you will see from the list of amendments that have been sent to us, for every little item, there are two different sets of views expressed. For instance, in the case of the definition of a warrant case, certain hon. Members have said that it should be brought down to six months. Some others have asked that it should be brought down to cases where the punishment extends to three months only. Formerly, in the original Bill the period of six months was prescribed for a warrant case, and in this amending Bill it is being raised to one year. By this I want to show that it really depends upon our attitude and our estimate of the three or four factors involved in the processes of law. The hon. the *ex*-Home Minister had given a very lucid disquisition this morning extending over one hour in which he tried to show that this Bill was trying to simplify the dispensing of justice, trying to expedite the dispensing of justice; in so far as this ideal is concerned, every hon. Member will entirely agree with it, but I submit that this assumes certain qualities, certain good points about the judiciary, about our police, about our investigating officers, about the witnesses that come forward and also the general public, which are not correct. In an ideal State where these things are fulfilled, it is quite possible that justice may be dispensed quickly but in our country it is not possible. Everyday this Parliament is passing legislation making almost everything a criminal offence. I submit that in this session also Parliament has passed half a dozen laws in which penalties extending to three years, even seven years, have been prescribed. Everyday new offences are being created. The result is that the police and the judiciary are not sufficiently strong to cope with all this increased work. Therefore, it is a very right request that this thing should wait till the proposed Law Commission is set up. After all there is going to be a Law Commission. The Government has agreed to its being set up and it is going to review the entire Penal Code of the country as well as the Civil Code.

I think our concept of punishment should change. We should not really try to make everything as a penal offence and naturally if our Penal Code changes, this Criminal Procedure Code will also change. Because these two are inter-linked with each other. Therefore, when our concept of a jail is changing, when we want to reform the people and when we think that crime is most often committed out of sheer necessity, where the object is not really to punish him somehow or other, where the idea is to reform the person, I think it is a very right request that consideration of this amendment of Criminal Procedure Code be postponed till a Law Commission has gone into the entire Penal Code and the Civil Code. Further, hon. Members have already pointed out that this amalgamation of the judiciary and executive authority is still found to be surviving in certain States. I admit that certain States have separated judiciary from the

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executive and in those States the work of the judiciary is much better carried out Till such time that this separation is carried out, I think that trying to expedite criminal proceedings may lead really to perpetration of greater injustices The hon *ex*-Home Minister was quite right in saying that so far the concept was that if 9 guilty persons were let off, it was all right as long as one innocent person was not convicted We want justice but in our country either due to the fault of the judiciary or of the police, we find that a large number of cases are leading to acquittals and in a large number of cases when it is openly and definitely known that a crime has been committed by a particular person, he is let off because there is some sort of a mistake in either the evidence or there is some point which enabled the lawyers with their forensic ability to press home to the judiciary and get an acquittal much against the common conviction that the person was guilty. In such cases, I submit that we should be very careful that we don't, in our enthusiasm and in our desire to make justice quick and cheap, really further let off the guilty persons We should be very careful that the crime which is increasing in our country—the crime which is not being punished properly and therefore, is increasing—is not allowed to increase further in our country. I submit that in the Amending Bill, in our desire of making justice cheap and quick, we are giving too many powers to the police. We know that there are honest officers among the police—I don't deny that some officers in the police are honest —but in the lower ranks, there are a large number of officers who can be tempted and the result will be that this type of amendment is going to give a very big power in the hands of the police to harass the people For instance making summons cases extend up to one year will mean that the policeman without securing a warrant will just go and harass and search

SHRI J S BISHT Is that a cognizable offence?

SHRI KISHEN CHAND. For any petty offence carrying a punishment of six months, the police will have the power to go and search The result will be that eventually the man will not be proceeded with, he will be let off but the police will have, by the methods of harassment, secured some reward, some unfair reward Therefore, I submit that the hon Home Minister should be very careful and should carefully examine every clause and see that there is no undue harassment.

We have got to raise the standard of our police and the standard of our legal profession It is not a reflection on the legal profession but the attitude of the legal profession in our country is that the person is innocent and it is the duty of the legal profession to defend him by all means—fair and foul—and get him acquitted. If there is the slightest loophole in the evidence, in spite of his knowing full well that the person is guilty, they try their level best to get him acquitted This attitude of the legal profession may be right but it adds to the difficulties in the criminal investigation The result is that with the difficulties in the Evidence Act, with the difficulties in getting proper witnesses and with the long delay that goes on from beginning to end of a case, the result is that the defence counsel gets an opportunity of getting an acquittal So we have here a dilemma One side is that the cases should be quickly decided. We want the cases to be quickly decided and yet we don't want to give too much power to the police to harass the people and, therefore, I request the hon Home Minister to carefully examine it and try to find out some means whereby the standard of the police investigation officer is raised up. The Home Minister is also in charge of the police and he should see that the standard of the investigation officer is raised up, and see that the thing is done and there is no harassment In particular, I will draw the attention of the hon. Minister to two or three points When the clauses are considered and discussed, we will have opportunities of pointing out what is the right solution for a particular case but

I may submit that hon. Members have pointed out that defamation—criticism, fair or unfair, in newspapers against officers—will become a cognizable offence if in the opinion of the Public Prosecutor the article is defamatory.

I submit that in a free democratic country, it is the right of everybody to express his opinion and other democratic countries give the option to the officer to defend himself if he thinks that an article is defamatory. He should have the right of defending himself by proceeding to a court of law. Why should the Government try to defend him and come forward to give all its resources to harass a journalist simply because he has expressed his correct opinion and convictions in that paper? An hon. Member pointed out that truth could not be hidden and if the officer was honest, the newspaper might temporarily print defamatory articles but they would themselves get convinced. You cannot really go on defaming a person who is absolutely honest. Naturally the public will realise that that type of journalism is incorrect and they will not read those newspapers. But if there is genuine criticism, if there is really some dishonesty, it is only through journalism that the fact can be brought up and in this way to gag the press, to bring pressure on the press not to find out faults with officers is very, very unfair. I think the *ex*-Home Minister has all along been trying to somehow or other gag the press and support the officers. I think it is a very laudable object really that he defends the officers under him but in that enthusiasm of defending his officers, let him not defend the officers who are guilty of corruption by this. Let him not defend officers who are not following the straight path and, therefore, I am strongly opposed to any clause in which a restriction is placed on the newspaper by which the Public Prosecutor is authorised to file cases against these newspapers.

SHRI R. C. GUPTA (Uttar Pradesh): Sir, I rise to support the motion before the House. I really think there should have been a chorus of approval so far as the present amending Bill, amending the Criminal Procedure Code is concerned. Dr. Katju, who is the sponsor of this Bill has taken immense pains. Before he framed the Bill he took the Members of Parliament into confidence. He also sent round the various proposals to the various authorities in the country and as he himself said today in his speech, practically everybody who is concerned with the criminal law reform has been consulted, and the opinion of everyone who can speak with authority has been taken on this matter. Sir, can it be doubted that this present Bill does not confer very great benefits on the accused? The very object of this amending Bill is that the proverbial delay in the disposal of cases should be eliminated. Does it achieve that object or not? I submit that it does achieve that object to a very considerable extent. The duration of criminal cases will be very considerably reduced. The other objective is to see, if possible, that litigation in criminal courts should be made as inexpensive as possible. That also is possible if the duration of the litigation is curtailed. I submit that if the various provisions which are being introduced in this amending Bill are properly read, it would be seen that the net result of them all is a considerable saving in the time taken for the disposal of criminal cases.

This Bill, Sir, does not incorporate or embody any political issue. It is purely a legal reform and for the benefit of the public at large. The way in which a large number of amendments were accepted by the hon. Dr. Katju in the Lok Sabha shows that he had an open mind and so he accepted a very large number of amendments there. He made it plain there and I submit that it is the correct interpretation of the various provisions of this Bill, that the only objective of this reform is to avoid delays and make the criminal litigation as inexpensive as possible.

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Really, Sir, my complaint is that the Bill does not go far enough. There could have been some other and far-reaching changes made in the law because such amendments are not made possible everyday This amending Bill has come after such a long lapse of time But it seems to me that the sole consideration has been that there should be no fundamental change in the matter of legal reform, so far as criminal justice is concerned Otherwise, it was necessary that certain fundamental changes should have been made, as for instance, in the matter of getting the criminal law set in motion and the case decided as early as possible

The Bill, as it has emerged from the Lok Sabha, seems to me very much less objectionable There may be one or two points here and there on which we might differ, but on the whole the Bill is a very great improvement and it will help the accused in getting justice

There is, however, one thing which I would like to place before the hon. Members of this House and that relates to the law and order position in the countryside Law and order in the countryside is not what it ought to be Therefore, I would make one suggestion to the hon Minister and that is this If he agrees, offence under section 216 of the Indian Penal Code *i e*, harbouring an offender, should be made non-bailable At the present moment section 216 is bailable There are at present lots of cases in which dacoits and kidnappers of the worst type are harboured by apparently respectable people and whenever they are apprehended, they are allowed bail simply because the offence is bailable. I would, therefore make this suggestion that offences under section 216 if they relate to harbouring of dacoits or kidnappers should be made non-bailable

Another suggestion that I would like to make is this that this Bill does not take note of cross cases In many riot cases generally there are two sides to the question and both sides are either challaned by the police or they are sent up to the Sessions Court or even before the magistrate. According to the present law, each case has to be tried separately and a lot of time is taken in this manner The same evidence practically is repeated in each case. It would have been much better if some section had been devised in order to make it possible for such cases to be tried together and the evidence of one case might be read in the other case Such a question was actually considered by the U P Judicial Reforms Committee and they suggested at page 52 of their report that a section of this type might have met the ends of justice I will read out the proposal of that Judicial Reforms Committee

> "Where the Court considers two or more cases to be cross cases, it shall be open to the Court, after notice to the parties at the commencement of the trial, to dispose of both or all of them by a single judgment and refer to the evidence recorded in any of the cases for the purpose of arriving at the decision. Copy of the judgment shall be placed on the record of the other case or cases."

If a proposal of this kind had found a place in this amending Bill it would have saved a lot of time of the court and would have meant a lot of saving of the expenditure for the accused on both sides without any injustice to anybody concerned with the matter

Sir, I have heard a lot of criticism with reference to two matters, one relating to clause 22 and the other relating to clause 25 So far as clause 25 is concerned, it has been suggested that it is a measure intended to gag the press and that the Government is afraid of proper and legitimate criticism Sir to say the least, I have not been able to understand this criticism How is this section going to gag the press? That is beyond me to see If really the intention had been to gag the press, then the procedure would have been, as people always speak of

magistrates being under the executive, to say that all such cases would be cognizable by a magistrate. By that means, with the influence of the executive, the Government would have probably achieved the object of gagging the press. But what has actually been provided here? We find here something far from that. They have said that such a complaint if filed would be tried by the Sessions Judge. Nobody has suggested either now or ever before, that Sessions Judges are under the influence of the executive.

This Bill provides that cases coming under this law would be tried initially by the Session Judge. Is it really gagging the press or is it allowing the fairest possible trial of a serious matter to be decided in the public interest? My submission is that the fact that such a case is made cognizable by the Sessions Judge and not by the magistrate completely negatives the arguments that have been advanced on behalf of some of the Members who have spoken that the intention of the Government is to gag the press. I submit that it is absolutely wrong. It was suggested that nobody should be protected. If a man is guilty, he should be exposed. He ought to be exposed. So far as that matter is concerned, nobody can object that dishonest persons should not be punished but it has been admitted here by practically all speakers who have spoken before me that there is such a thing as yellow press. It has also been admitted that scurrilous remarks are made by irresponsible people who own or who have a hand in the running of the yellow press. If these premises are admitted, is it not necessary to provide some kind of machinery to see that such a thing is put a stop to? In fact, this law does not make any new departure; the person defamed has even now a right to go to a court of law and set the law in motion and get the man punished if he is found guilty. It is not the intention of this law to gag the press or anybody else who comes forward with honest intentions. The whole point is that the offence is there already; the machinery is there already but this clause 25 makes only one departure and that departure is that in suitable cases whenever the information is that there has been such unfounded attacks which mean to defame any of the persons mentioned in this clause, sanction will have to be obtained from a high officer of the Government. The fact that this provision has been made about sanction shows that there would be some sort of an enquiry to be conducted by a responsible officer of the Government. That officer will satisfy himself whether the charges have any basis or are absolutely unfounded. If that officer comes to the conclusion that the charge has truth, in all probability, I am sure that that officer, instead of permitting the Public Prosecutor to file a complaint, would ask the Government servant concerned either to deny that charge or file a complaint himself. That officer would never give sanction for prosecution by the Public Prosecutor. On the contrary, if the officer who has been charged with the performance of duties under this clause comes to the conclusion that the charge is absolutely unfounded, that it has got no basis and that an honest Government servant has been accused absolutely unfoundedly, unnecessarily, maliciously and falsely, then it will be the duty of the Government servant to ask the Public Prosecutor to file a criminal complaint. What is the difficulty in it? A sort of initial enquiry will be made by that officer before he grants permission to the Public Prosecutor to initiate a criminal case in a court of law. That is one safeguard and the second safeguard is that the officer will not ask the Public Prosecutor to proceed in all cases; or, even the Public Prosecutor will not ask for permission in all cases. That will be done only in suitable cases where it is absolutely necessary in the public interest that the Government official or the High dignitary should be protected. If there is no such case, the question of giving sanction for prosecution would not arise. Hence my simple reply is that this clause does

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not create any new offence. The offence is already there and it only says that in suitable cases, the Public Prosecutor can also prosecute armed with the necessary sanction from the officer appointed by Government for that purpose. If the person defamed wants to go to a court of law, he will go to a magistrate first and then if the executive is interested in the conviction of that man, the magistrate being under the influence of the executive, as people say, it will be easier to get that man convicted than would be the case in a Sessions Court. A Sessions Judge, according to this Bill, is a person absolutely independent and absolutely outside the influence of the executive or of anybody else. Therefore, my submission is that criticism so far as this matter is concerned, is not justified. The fear that the national press would be harassed or that honest criticism would be barred by this is absolutely unfounded. Nobody is going to harass any fair criticism, any just criticism and fair and just criticism does not amount to defamation. Everybody knows the law on the subject. Therefore, there is no question of debarring honest and justified criticism. The only question is that unjustified, absolutely false and malicious criticism against high Government servants would not be allowed. Everybody has got experience and we also have experience about the small vernacular newspapers. They can write anything that they like and they all go unpunished because nobody likes to rush to the court of law and bring a charge against them and wash dirty linen on these matters. If the honest press has got any case in hand and if it has got good evidence then there is no fear. Let them come out in the press and if it can be proved then the man will be convicted or discharged from service. Nobody has got any sympathy for that kind of people.

The other point is with regard to clause 22, old section 162 of the Code of Criminal Procedure. In the original Bill, this section was deleted altogether. In the Lok Sabha there was a lot of criticism so far as this provision is concerned and the clause as enacted by the Lok Sabha makes only one departure from the old and that departure is that with the permission of the court, the prosecution can contradict such witnesses in the manner provided by section 145 of the Indian Evidence Act. That is the only departure which this clause makes. It is true that we cannot place so much faith these days on our police investigation. I have also my doubts about it but we cannot close our eyes to certain things.

THE VICE-CHAIRMAN (SHRI V. K. DHAGE): May I interrupt the hon. Member for a minute? There are some more speakers on the list and some of them are not likely to be in town on the 21st when this Bill will again be debated. I had suggested in the afternoon that the session should start at 2 P.M. but it was the wish of the House that we should sit half an hour after five o'clock. I, therefore, take it that it is the wish of the House that we sit till 5-30 P.M. today so that others may also have a chance to speak.

SHRI J. S. BISHT: But the majority of the people have to attend a meeting at five o'clock, Sir.

DR. R. P. DUBE (Madhya Pradesh): We have an engagement at five o'clock, Sir.

THE VICE-CHAIRMAN (SHRI V. K. DHAGE): But we had not been sitting from two o'clock on the understanding that we will sit after five. I would therefore like to know what is the wish of the House.

SHRI KISHEN CHAND: We will sit till 5-30.

DR. R. P. DUBE: May I point out Sir, that there may be no quorum?

THE VICE-CHAIRMAN (SHRI V. K. DHAGE): I do not think there is anything to prevent the continuation

of the House beyond five if there is a party meeting somewhere else. I am told that there is a precedent to that effect, but I should like to be guided by the wish of the House. Do I take it that we continue till 5-30 so that the speakers who are not likely to be here on the 21st may have the chance to speak? I have no desire to restrict them from speaking on this subject. I therefore take it .

SHRI JASPAT ROY KAPOOR: In any event, Sir, would it not be desirable, in view of the fact that quite a good number of speakers want to speak, that the time allotted to it may be increased? After all .....

THE VICE-CHAIRMAN (SHRI V. K. DHAGE): I wanted to do that, you being one of those persons interested in speaking. I do not want that those who have given their names should not have the opportunity to speak today. Now the House has to choose between whether they would like to have the House adjourned at 5 P.M. or they would like to sit up to 5-30 P.M. and hear those who want to speak today and who may not be able to speak on the next day.

SHRI JASPAT ROY KAPOOR: My submission was that even if we adjourn today at five, the total time allotted for the consideration of this Bill might be increased. Even if we adjourn at five .

THE VICE-CHAIRMAN (SHRI V. K. DHAGE): May I know what the Leader of the House has to say in this matter?

THE LEADER OF THE HOUSE (SHRI GOVIND BALLABH PANT): I do not want to come in the way of the Members if they want the sitting hours to be extended, but it will be difficult to extend the total number of hours allotted to this Bill. They may sit long today and they may sit during the lunch hour also on the subsequent days when this Bill is taken up. Of course, tomorrow and the day after we will have the Constitution (Fourth Amendment) Bill. After that on the other days we may find more time for this Bill if we sit through the lunch hour. But I am in the hands of the Members of the House.

SHRI H. C. MATHUR: We must continue up to 5-30 today.

SHRI J. S. BISHT: Mr. Mathur is ordinarily not in favour of sitting beyond 5 P.M. When he heard that there was a Congress Party meeting at 5 P.M today he wants to oppose it and he suggests sitting up to 5-30.

THE VICE-CHAIRMAN (SHRI V. K. DHAGE): I wish that there should be no misunderstanding. There is no desire on my part that the Members who wish to attend their party meeting should not attend it. It is only because of those who wish to speak today and would not be here the next day to speak that they should be accommodated today. But if it be the wish of the House that we adjourn at 5 P.M. I shall adjourn the House accordingly

SHRI H. P. SAKSENA: The House may go on till half past five.

SHRI T. BODRA (Bihar): Before lunch it was understood that we would sit till 5-30. Nobody objected then. Now the Members should not object to sitting beyond 5 P.M. on the ground that they have got a party meeting at 5 P.M. We should sit till 5-30.

THE VICE-CHAIRMAN (SHRI V. K. DHAGE): I do not wish it to be made a party question. The question is one of accommodating some Members who want to speak today as they will not be present on the 21st. There is another alternative which has been suggested by the Leader of the House and that is that if you agree the House can sit through the lunch hour on the subsequent days allotted for this debate. You will have to forego the lunch hour so that we may be able to carry on the debate without any break and others may have an opportunity to speak. Those who will not be here on the 21st will probably have to change their programme. Is it the wish of the House that the

[The Vice-Chairman.]

lunch hour be dispensed with on the 21st?

(No hon. Member dissented.)

SHRI R. C. GUPTA: I was speaking, Sir, on clause 22, that it seeks to make only one departure. The question is whether this departure should be made or not. I agree that it is fraught with dangers, but certainly it is an experiment worth trying and my reason is this. A very large number of cases are acquitted because a large number of witnesses who were examined by the police turned hostile, and the result is that serious offences go absolutely unpunished. Would you like that serious offences may go unpunished simply because a dishonest witness has turned hostile after he has given an honest statement before a police officer? The mere fact that such a statement is being made admissible under this clause does not mean that the court will accept that thing. The court will see, in view of other evidence on record being produced before him, whether that witness has really gone back on his previous statement he made before the police and he should be treated as hostile, and after due consideration the court will permit the prosecution counsel to put those questions. So I think, that is a very good safeguard and should be permitted.

One word with regrad to section 30 magistrates, as they are called. This is not a new clause. The clause exists in the Criminal Procedure Code and it has been existing for a very very long time and it has been in practice practically over half of the country. In certain places section 30 magistrates were not empowered to try serious cases. The U.P. Judicial Reforms Committee after a good deal of discussion and after considering a very large volume of opinion was convinced that the time had come when the provision of section 30 should be utilised and experienced magistrates, a magistrate who had exercised first class powers for at least ten years should be empowered to try such cases. I do not think that there is any harm in doing this, and if you want to reduce the number of Sessions trials, it is necessary that experienced magistrates should be given powers. Without them it is not possible to cope with the work.

I would suggest one thing more, Sir. Certain cases have been made compoundable, which were not compoundable so far. I particularly see that section 304 A, rash and negligent driving, has not been made compoundable. There are lots of cases under this section in which compensation can be paid to the heirs of the deceased and the case may be allowed to be compromised, because the punishment awarded is much less under this section than under the various other sections where the accused are convicted and get hard sentences. Therefore, I will request that this point may also be considered. That is all what I want to say.

SHRI R. P. TAMTA (Uttar Pradesh): Sir, I rise to support the Bill before the House. The main object of this Bill is to provide adequate facilities to every accused person for defending himself in a proper manner and to ensure speedy disposal of criminal business so that innocent persons should not suffer protracted proceedings. As this is a very important piece of legislation and it is going to affect the whole country and the people of this land, we have to consider it in its proper perspective.

Sir, the old Code was enacted some 50 years back and when it was enacted, it was enacted by a foreign Government and the State then was a Police State. Since then times and circumstances have changed greatly. Now, instead of a Police State we have got a Welfare State and with the Welfare State the ideas and the experience of the conditions have undergone a great change. So it is but proper that with the change of conditions we shou'd also make necessary changes in the criminal law of the country, which requires a radical change.

THE VICE-CHAIRMAN (SHRI V. K. DHAGE): Mr. Tamta, you may continue on the next day. There is a message to be read.

MESSAGE FROM THE LOK SABHA.

THE FINANCE COMMISSION (MISCELLANEOUS PROVISIONS) AMENDMENT BILL, 1955.

SECRETARY: Sir, I have to report to the House the following message received from the Lok Sabha, signed by the Secretary of the Lok Sabha:

"In accordance with the provisions of rule 96 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to inform you that Lok Sabha at its sitting held on the 16th April, 1955, agreed without any amendment to the Finance Commission (Miscellaneous Provisions) Amendment Bill 1955, which was passed by Rajya Sabha at its sitting held on the 29th March, 1955."

THE VICE-CHAIRMAN (SHRI V. K. DHAGE): The House stands adjourned till eleven o'clock tomorrow morning.

The House then adjourned at five of the clock till eleven of the clock on Tuesday, the