

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

DR. K. N. KATJU: Sir, I beg to move:  
"That the Bill be passed."

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill be passed." The motion was adopted.

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

THE DEPUTY MINISTER FOR HOME AFFAIRS (SHRI B. N. DATAR) : So far as clause 29 is concerned, two objections were raised. One was that so far as these proceedings were concerned they were practically what they were formerly, by way of an enquiry. Now, I might point out to this House that when the Bill was first drafted and introduced in the Parliament, it was the desire of Government that the commitment proceedings should be dropped altogether and all that was done was to have some sort of preliminary scrutiny for the purpose of seeing as to whether certain documents or copies have been supplied to the accused or not. The intervening authority framed what was known as a draft charge and forwarded the case papers either to a Magistrate where the case was to be tried by a Magistrate or to a Sessions Court in cases where the case is triable by a Sessions Court. That was all that the Government had originally proposed. There was also a provision to the effect that if this intervening authority considered that there was no case at all, then it was open to him to discharge the accused even at an earlier stage. When the matter came up before the Lok Sabha and also before the Joint Select Committee, certain other considerations were raised. The general consensus of opinion was in favour of giving a larger latitude to the Magistrate as also to the parties concerned for purposes of

obtaining a discharge if that were possible. In other words, it would be found, Sir, that the emphasis was switched away from a desire to curtail or eliminate the proceedings altogether to a desire to make it possible for the accused to obtain a discharge during the commitment proceedings also. So, for that purpose, in place of our original proposal, we had to introduce what can be called an attenuated form of commitment proceedings or an enquiry. In the Joint Select Committee, certain other provisions were laid down and one of the important points that was accepted was that all the witnesses need not be examined at all. Formerly, our proposal was that all important witnesses like the eye-witness or the direct witness, should be examined under section 164 but that was considered as not a proper course. Therefore, that course was dropped and, in its place, a provision was laid down by the Joint Select Committee that those who were the eye-witnesses or the material witnesses alone should be examined before the committing Magistrate. The Joint Select Committee desired that the proceedings should not go on as lengthily as possible but that they should be curtailed. In that connection, an important question arose as to whether when the committing Magistrate was examining the material witnesses the right of cross-examination of these witnesses should be given as a matter of course. The Joint Select Committee came to the conclusion that inasmuch as there was not much scope for such a discharge but still, as there was a desire that there ought to be a proper enquiry and proper opportunity for such a discharge, the material witnesses should be examined. At the same time, it was felt that there should be no lengthy cross-examination and, therefore, a provision was laid down by the Joint Select Committee that there should be no right of cross-examination as such but that it would be open to the court, at the suggestion of either party to the prosecution Or otherwise, to put such questions to such a mate-

rial witness being examined by the Magistrate as the court considered necessary. This was the provision that was adopted and then, certain other necessary provisions were made when the matter came up before the Lok Sabha. In the Lok Sabha a fundamental objection was raised that if an enquiry was to go on and if the enquiry was a judicial enquiry, as undoubtedly it was, then the examination of even the material witness ought to be subject to cross-examination. A strong body of opinion expressed itself in the Lok Sabha and, therefore, we accepted sub-clause (5) in the section to be added, namely, section 207A in clause 29. That was a concession given to the opinion expressed in the Lok Sabha very strongly and it was stated that "the accused shall be at liberty to cross-examine the witnesses examined under sub-section (4), and in such case, the prosecutor may reexamine them". Therefore, Sir, in view of this, though the original object has not been achieved at all—we would have been happy to completely eliminate the commitment proceedings because, as you are aware, the commitment proceedings have been objected to as a superfluous addition or a repetition all along—still, in deference to the wishes of the other House and of the Joint Select Committee, we have been compelled, Sir, to maintain a form of commitment proceedings. This is what we have agreed to. All the usual rights have been kept but, in spite of all this it is possible to finish the commitment proceedings as early as possible and they may not take that indefinite course that prolonged course, to which they were subject to and are being subject to, under the present law.

Then, Sir, another objection—was raised for not putting in this clause those words which are sought to be omitted under clause 31. We have got clause 31 which says that the words "for the purpose of enabling him to explain any circumstances appearing in the evidence against him" shall be omitted. What has been done is that these words have not been put in the

proposed section 207A and the words are sought to be removed or omitted from section 209 of the Criminal Procedure Code.

Now, when this question was under consideration, government took legal opinion on it. The position was fully examined and it was found that so far as this expression is concerned, it occurs at a number of places including in section 209 and also section 342. Now section 342 is the principal section. It consists of two parts. So far as the former part is concerned, it is more or less of a general nature and it applies to all proceedings. I shall read that portion. Section 342 is a general provision applying to the examination or examinations of accused in the courts of trial as also during enquiries. It is in these words:

"For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiry or trial without previously warning the accused, put such questions to him as the Court considers necessary,".

So far as this much portion is concerned, it is of a very common nature. And then the latter part of sub-section (1) of section 342 reads:

"and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence."

Now this question was examined and the view that the government had before them was this that section 342 of the Criminal Procedure Code consists of two parts. The first part is an enabling provision which gives discretion to the Magistrate to examine the accused for the purpose of enabling him to explain the circumstances appearing in the evidence against him. This part applies to inquiries and trials and must necessarily apply to commitment proceedings under section 207A. Though they are popularly known as commitment

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[Shri B. N. Datar.] proceedings they also are known as enquiry proceedings. The second part of section 342 is a mandatory provision which applies only to trials. It appears therefore that the first part of section 342 governs enquiries to be made under section 207A and therefore there is no need to repeat these expressions in section 207A and it is also not necessary to keep it in section 209. So this is the purpose for having taken away these words and not for the purpose of allowing the Magistrate or the court to go on having a roving cross-examination and a very fierce cross-examination of the accused. It is not open under any circumstances for a court to subject an accused to a cross-examination unless under the new provisions he becomes a witness on his own behalf; otherwise such questions cannot be put at all. Therefore I submit that section 342 is important and it is only for the purpose of avoiding repetition that these expressions are not used in section 207A and are sought to be omitted from the present section 209.

SHRI H. C. DASAPPA (Mysore): Would it not be better then to leave things as they are?

MR. DEPUTY CHAIRMAN: Are you prepared to accept any of the amendments?

SHRI B. N. DATAR: If there is a general desire I am prepared to accept it and I have no objection. But our object is very clear. If for example it is contended that still it is better to have a repetition of those expressions, I am prepared to accept it.

SHRI H. C. DASAPPA: I am very grateful to the hon. Minister for having accepted the amendments.

MR. DEPUTY CHAIRMAN: It is for him to say.

SHRI B. N. DATAR: All right, Sir; amendment No. 72 will be accepted, and No. 83.....

MR. DEPUTY CHAIRMAN: No. 83 is not for this section. 83 is for section

209. That is different. We are on clause 29 now, *i.e.*, section 207.

SHRI B. N. DATAR: All right, Sir, I shall accept it.

MR. DEPUTY CHAIRMAN: So I will put the amendments to vote. No. 65. Mr. Mazumdar is not here.

SHRI H. C. DASAPPA: Before that, Sir, may I submit that the hon. Minister has not said a word in reply to Nos. 74 and 75? I told him that when the accused files a list of defence witnesses, if the Magistrate so desires, he can examine any of them, and if he is satisfied, after hearing the witnesses for the defence, that there are not sufficient grounds for committing the accused, he may cancel the charge and discharge the accused before committing him to sessions. That will shorten the case. I would only say this. Now for instance Mr. Vaidya is found today here.....

MR. DEPUTY CHAIRMAN: You cannot make another speech.

SHRI H. C. DASAPPA: I am only putting.....

MR. DEPUTY CHAIRMAN: He has not accepted it.

SHRI H. C. DASAPPA: I am not making a speech. Mr. Vaidya is here. Suppose an accused.....,

MR. DEPUTY CHAIRMAN: Actually you are making a speech. I cannot allow it now. He has not accepted your amendments.

SHRI H. C. DASAPPA: But you will see the reasons for Nos. 74 and 75.

MR. DEPUTY CHAIRMAN: It is for him to see the reasons. Now the question is:

65. "That at page 8, line 47, after the words 'fourteen days', the words 'and not earlier than seven days' be inserted."

The motion was negatived.

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MR. DEPUTY CHAIRMAN: The question is:

66. "That at page 9, line 2, after the words 'the prosecution', the words 'or the accused person' be inserted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

67. "That at page 9, at the end of line 11, after the word 'furnished', the following words be added, namely: —

'and shall, if requested by any accused person so to do, adjourn the enquiry for such period, not exceeding seven days, as such accused person may desire, unless he deems it just to adjourn it for a longer period.'"

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

68. "That at page 9, line 13, the words 'if any' be deleted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

69. "That at page 9, lines 14 to 17, the words 'to the actual commission of the offence alleged; and if the Magistrate is of opinion that it is necessary in the interests of justice to take the evidence of any one or more of the other witnesses for the prosecution, he may take such evidence also' be deleted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: Amendment No. 70 of Mr. Bisht. He is not here. The question is:

70. "That at page 9, lines 18 to 20 be deleted."

The motion was negatived. 36 RSD.—8.

MR. DEPUTY CHAIRMAN: Mr. Mazumdar's amendment. The question is:

71. "That at page 9, for lines 21 to 30, the following be substituted, namely:

(6) When the evidence referred to in sub-section (4) has been taken and the Magistrate has, if necessary, examined the accused for the purpose of enabling him to explain any circumstances appearing in the said evidence against him, the Magistrate shall, if he finds that there are not sufficient grounds for committing the accused person for trial, record his reasons and discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly.

(6A) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge" to be groundless'."

The motion was negatived.

MR. DEPUTY CHAIRMAN: Amendment No. 72. This has been accepted by the hon. Minister. The question is:

72. "That at page 9, line 24, after the words 'the accused', the following be inserted, namely:

'for the purpose of enabling him appearing in the evidence against to explain any circumstances him'."

The motion was adopted.

MR. DEPUTY CHAIRMAN: The question is-

73. "That at page 9, lines 31-32, the words 'such documents being considered' be deleted "

The motion was negatived

MR. DEPUTY CHAIRMAN: The question is:

74. "That at page 9, after line 49, the following be inserted, namely:

'(9A) The Magistrate may, in his discretion, summon and examine any witness named in any list given in to him under subsection (9V)."

The motion was negatived.

MR. DEPUTY CHAIRMAN: No. 75 is more or less consequential.

The "amendment was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

76. "That at page 10, line 3, after the word 'list' the words 'and the witnesses, if any, included therein, whom the Magistrate desires to examine have been summoned and examined under sub-section (9A)' be inserted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is :

77. "That at page 10, after line 6, the following be inserted, namely:

"(10A) If the Magistrate, after hearing the witnesses for the defence, is satisfied that there are not sufficient grounds for committing the accused, he may cancel the charge and discharge the accused.

(10B) A commitment once made under sub-section (10) by a competent Magistrate can be quashed

•For text of the amendment No. 75, *vide* col. 5644 of Debates, dated 22nd April 1955.

by the High Court only and only on the point of law."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is :

78. "That at page 10, line 9, for the words 'the witnesses included in the list', the words 'such witnesses included in the list, as have not appeared before himself be substituted.

The motion was negatived,

MR. DEPUTY CHAIRMAN: The question is:

79. "That at page 10, lines 11 to 24 be deleted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

80. "That at page 10, line 25. after the words 'for the prosecution,' the words 'and the defence' be inserted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

81. "That at page 10, lines 45 to 47 be deleted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 29, as amended, stand part of the Bill."

The motion was adopted.

Clause 29, as amended, was added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 30. Amendment No. 82 is ruled out-So there are no amendments.

Clause 30 was added to the Bill

MR. DEPUTY CHAIRMAN: Clause 31. Amendment No. 83 is a negative amendment.

SHRI H. C. DASAPPA: The hon. Minister is prepared to accept this amendment in the sense .....

MR. DEPUTY CHAIRMAN: Order, order. Just wait.

SHRI H. C. DASAPPA: Can I not make a submission?

MR. DEPUTY CHAIRMAN: Let me first see what are the amendments. Amendment No. 152—Mr. Tamta is not here.

SHRI H. C. DASAPPA: Sir, my submission is this. Amendment No. 83 in the form in which it is brought may have to be ruled out possibly on the plea that suggestion for deletion of a clause is not permissible. But what I submit is that since the Minister has accepted the principle, I suggest we may oppose the inclusion of this clause in the Bill so that it may not form part of the Bill. We may vote down the clause. That is the only procedure open to us. (*Interruptions.*)

SHRI B. N. DATAR: So far as clause 31 is concerned I am prepared to accept the amendment. If necessary, I can move it as my own amendment.

SHRI JASPAT ROY KAPOOR: All these clauses are being formally taken as having been moved by the Home Minister and he might as well withdraw it.

MR. DEPUTY CHAIRMAN: After discussion he is agreeable to the omission of this clause. So I will put the clause to the vote.

The question is :

"That clause 31 stand part of the Bill."

The motion was negatived.

MR. DEPUTY CHAIRMAN: Clause 31 stands deleted.

Now, clause 32. There is one amendment (No. 84). Both Messrs. Gulsher Ahmed and Hegde are not here.

Clause 32 was added to the Bill.

Clause 33 was added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 34. There is one amendment.

Mr. Mazumdar is not here. Are you moving it, Mr. Banerjee?

SHRI SATYAPRIYA BANERJEE: Sir, I move:

85. "That at page 11, line 25, for the word 'one-half, the word 'one-tenth' be substituted."

MR. DEPUTY CHAIRMAN: Clause 34 and the amendment are open for discussion. We will take it up tomorrow. There are some messages.

#### MESSAGES FROM LOK SABHA

##### I. THE INSURANCE (AMENDMENT) BILL, 1955

##### II. THE INDIAN RAILWAYS (AMENDMENT) BILL, 1955

##### III. THE RESERVE BANK OF INDIA. (AMENDMENT) »BILL, 1955

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

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"In accordance with the provisions of Rule 157 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 26th April, 1955, agreed without any amendment to the Insurance (Amendment) Bill, 1955, which was passed by Rajya Sabha at its sitting held on the 25th February, 1955."