fixed as the last date for receiving nominations and 3rd May 1955 for ho-ding elections, if necessary, to the Public Accounts Committee.

The nominations will be received in the Rajya Sabha Notice Office, upto 3 P.M. on the 29th April 1955. The election 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 3 P.M. and 5 P.M. on the 3rd May 1955.

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

MR. CHAIRMAN: We get back to the Criminal Procedure Code Bill.

We have four hours left and a lot of work to be done. You may sit during lunch hour—it will give you an hour and a half. You may sit after five —it will give you another hour. So you may take two and a half hours extra. But Members will have to be brief because the guillotine will be applied at five. Until then, you may distribute your praise and blame for the different clauses.

Clause 34 is before the House.

There is one amendment that has been moved.

The question is:

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

The motion was negatived.

MR. CHAIRMAN: The question is:

"That clause 34 stand part of the Bill."

The motion was adopted.

Clause 34 was added to the Bill.

MR. CHAIRMAN: Clause 35, there are 12 amendments to Clause 35. Those who wish to move their amendments may do so without making speeches at this stage.

SHRI ABDUR REZZAK KHAN (West Bengal): I beg to move:

87. "That at page 11, at the end of line 43, after the word 'furnished' the following be added, namely: —

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

88. "That at page 11, for lines 44 to 49 the following be substituted, namely: —

'(2) When, in any such case the accused appears or is brought before such Magistrate and sucn Magistrate has satisfied himself that the documents referred to in section 173 have been furnished or has caused such documents to be furnished or if such Magistrate has adjourned the trial to some other date, on such date, such Magistrate shall proceed to take all such evidence as may be produced in support «*f the prosecution.

(2A) The Magistrate shall ascertain from the report under section 173 the names of any person likely to be acquainted with the facts of the case and able to give evidence for the prosecution, and shall summon to give evidence before himself such of them as he thinks necessary,

(2B) If, upon taking all the evidence^Sfeferred to in sub-sections (2) and (2A), and making such examination, if any, of the accused as the Magistrate thinks necessary for the purpose of enabling the accused to explain any circumstances appearing in evidence apninst him and after giving the piosecution and the accused an

[Shri Abdur Rezzak Khan.] opportunity of being heard the Magistrate finds that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2C) Nothing in sub-section (2B) 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 consider/s the charge to be groundless'."

SHRI JASPAT ROY KAPOOR (Uttar Pradesh): I beg to move:

89. "That at page 11, lines 45-46 for the words 'and making such examination, if any, of the accused as the Magistrate thinks necessary' the words 'and examination, if any of the accused for the purpose of enabling him to explain any circum stances appearing in the evidence against him' be substituted."

SHRI ABDUR REZZAK KHAN: I beg to move :

90. "That at page 11, line 46, after the words 'thinks necessary' the words 'for the purpose of enabling him to explain any circumstances appearing in evidence against him' be inserted."

91. "That at page 12, line 1, for the words 'upon such documents being considered' the words 'upon such evidence having been taken' be substituted."

92. "That at page 12, lines 10-11, for the words 'claims to be tried' the words 'has any defence to make' be substituted."

93. "That at page 12, for lines 14 to 16, the following be substituted, namely: —

'(6) If the accused refuses to plead or does not plead, or claims to be tried, he shall be required to state at the commencement of the next hearing of the case or, if the Magistrate, for reasons to be recorded in writing, so thinks fit, forthwith, whether he wishes to cross-examine any, and if so, which, of the witnesses for the prosecution, whose evidence has been taken. If he says he does so wish, the witnesses named by him shall be recalled and, after cross-examination and re-examination, if any, they shall be discharged. The evidence of any remaining witnesses for the prosecution whose names appear in the report under section 173 shall next be taken and, after cross-examination and re-examination, if any, they shall be discharged'."

94. "That at page 12 at the end of line 16, after the word 'witnesses' the following be added, namely: —

'which shall be ten days or less after the order by which such date is fixed, according to the desire of any accused person appearing before him, unless at the request of any such accused person the Magistrate deems it just to fix a later date'."

SHRI JASPAT ROY KAPOOR: *I* beg to move:

95. "That at page 12, for lines 20 to 23, the following be substituted namely: —

'Provided that the cross-examination of any or all witnesses shall, if so desired by the accused, be deferred until all the witnesses have been examined,, and any witness may be recalled for further cross-examination'."

MB. CHAIRMAN: Clause 35 and the amendments are open for discussion.

SHRI JASPAT ROY KAPOOR (Uttar Pradesh): Sir, with reference to my amendment No. 89, I believe the hori. Minister is going to accept it because it is on the same lines as Amendment No. 72 and No. 83 which he was pleased to accept yesterday. Am I correct in my presumption?

SHRI B. N. DATAR: Is it necessary to accept it at every place? Section 342 is in general terms and applies to all proceedings. It has been stated that it applies to trials and inquiries. I was wondering whether there is any need of repeating this particular clause In every section.

SHRI J ASP AT ROY KAPOOR: It aopears necessary to accept it because in this clause 35 of the Bill—sub-clause (2) of section 251 you say:

> "If, upon consideration of all the documents referred to in section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary."

So here you are authorising the magistrate specifically to put such questions as he may like. Here you are vesting him with an additional authority to put such questions as he likes in his discretion. It is therefore necessary not to have this and to delete it and to have the words as I have suggested, so that it may be in conformity with the general principles that you have accepted because this is in contradiction of the general principles which you have already accepted.

SHRI B. N. DATAR: This is subject to section 342 which applies to all provisions in this respect.

MR. CHAIRMAN: Let him reply at the end.

SHRI JASPAT ROY KAPOOR: That is my reason for moving this amendment.

My next amendment is No. 95 which runs thus:

> "Provided that the cross-examination of any or all witnesses shall. if so desired by the accused, be deferred until all the witnesses have been examined, and any witness may be recalled for further cross-examination."

This proviso, I move, may be substituted in place of the existing proviso. According to the existing proviso you are not giving the accused this right of deferring cross-examination of the witnesses until all the prosecution witnesses are over. You are of course leaving it to the discretion of the-magistrate. I submit that it would be both in the interest of the accused and also in the interests of the speedy disposal of the trial if you give this right to the accused. For, then I believe in most cases the Counsel of the accused would like to have all the prosecution witnesses examined straightaway and cross-examine them later on. This will avoid the prosecution witnesses being present from day to day. This is my submission. If the Home Minister is pleased to accept them, I will be so happy. That is all that I have to submit.

SHRI-H. C. DASAPPA (Mysore): Sir, I think with regard to amendment No. 89. the hon. the Deputy Minister will kindly see his way to accept it, because yesterday, in a like case where the examination of the accused was to take place in a committal case, he accepted an amendment and that is the clause which now stands in the Criminal Procedure Code. Of course, he himself referred to section 342 of the Criminal Procedure Code where there is a general clause to this effect. But still, in view of the fact that what there was already in the Criminal Procedure Code was omitted in the Bill, that might give rise to certain misunderstanding. I think that it is better to accept it with reference to the examination of the accused in a warrant case. If this clause is not going to be there, then the Magistrate will begin to find the reason why when that clause is there—that the examination of the accused is only for the purpose of explaining the case against him, why it is not provided in the other case and it will not prevent especially the subordinate magistrates from putting questions by way of cross-examination.

MR. CHAIRMAN: Mr. Khan, do you want to speak on your amendments?

SHRI ABDUR REZZAK KHAN: No, Sir.

MR. CHAIRMAN: Very well. Yes, what does the Government say?

SHRI B. N. DATAR: Sir, two points have been made. One is that amendment No. 89 might be accepted. My submission to this House is that inasmuch as section 342 is a general section which governs all other sections and which deals with examinations, I am personally inclined to believe that it would be entirely redundant. If however, the House desires to have this amendment, I have no objection at all.

So far as the other contention is concerned, I may point out to the House that the whole scheme of trial in a warrant case has been changed in certain particulars, and so far as the question of cross-examination is concerned, all the witnesses are examined after a charge is framed. Then it is possible for the other side to get the matter deferred until other witnesses have been examined, and even afterwards whenever the accused enters on his defence, it is open to him to approach the Court and to make a request for a further cross-examination, and in a proper case such cross-examination will be allowed. Therefore, to accept any other amendment would go against the scheme that has been accepted in this case. Therefore, I am not going to accept the other proposal.

MR. CHAIRMAN: Do you want me to put your amendment to vote, Mr. Khan?

SHRI ABDUR REZZAK KHAN: Yes, Sir.

MR. CHAIRMAN: The question is:

87. "That at page 11, at the end of line 43, after the word 'furnished', the following be added, namely: —

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

The motion was negatived.

MR. CHAIRMAN: The question is:

88. "That at page 11, for lines 44 to 49, the following be substituted, namely: —

'(2) When, in any such case, the accused appears or is brought before such Magistrate and such Magistrate has satisfied himself that the documents referred to in section 173 have been furnished or has caused such documents to be furnished or if such Magistrate has adjourned the trial to some other date, on such date, such Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution.

(2A) The Magistrate shall ascertain from the report under section 173 the names of any person likely to be acquainted with the facts of the case and able to give evidence for the prosecution, and shall summon to give evidence before himself such of them as he thinks necessary.

(2B) If, upon taking all the evidence referred to in subsections (2) and (2A), and making such examination, if any, of the accused as the Magistrate thinks necessary for the purpose of enabling the accused to explain any circumstances appearing in evidence against him and after giving the prosecution and the accused an opportunity of being heard, the Magistrate finds that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2C) Nothing in sub-section (2B) 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. CHAIRMAN: Now we come to amendment No. 89.

SHRI B. N. DATAR: Sir. before you . put it to vote, I want to point out one circumstance. In the present scheme a different procedure has been evolved for an ordinary complaint and for a prosecution on the report of the police. Now you will find that so far as private complaint is concerned, the provisions remain as they are, and then we have section 253, where we have got almost an identical expression, namely:

"If, upon taking all the evidence referred to in section 252 and making such examination (if any) of the accused as the Magistrate thinks necessary, he finds that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him."

What we have done is to take these very words so far as the enquiry in relation to prosecution on police report is concerned. So I would submit that amendment 89 is not necessary, because there ought to be a parity of treatment so far as this particular question is concerned

MR. CHAIRMAN: Shall I put the amendment to vote?

SHRI B. N. DATAR: I would request the hon. Member to withdraw his amendment.

SHRI JASPAT ROY KAPOOR: Sir, I must accede to his request and so request leave of the House to withdraw my amendment.

The *amendment was, by leave, withdrawn.

*For text of amendment, *vide col.* 6193 *supra.*

MR. CHAIRMAN: The question is:

90. "That at page 11, line 46, after the words 'thinks necessary" the words 'for the purpose of enabling him to explain any circumstances appearing in evidence against him* be inserted."

The motion was negatived.

MR. CHAIRMAN: The question is:

91. "That at page 12, line 1, for the words 'upon such documents being considered' the words 'upon such evidence having been taken' be sub stituted."

The motion was negatived.

MR. CHAIRMAN: The question is:

92. "That at page 12, lines 10-11, for the words 'claims to be tried' the words 'has any defence to make' be substituted."

The motion was negatived.

MR. CHAIRMAN: The question is:

93. "That at page 12, for lines 14 to 16, the following be substituted, namely: —

(6) If the accused refuses to plead or does not plead, or claims to be tried, he shall be required to state, at the commencement of the next hearing of the case or if the Magistrate, for reasons to be recorded in writing, so thinks fit, forthwith, whether he wishes to cross-examine any, and if so, which of the witnesses for the prosecution, whose evidence has been taken. If he says he does so wish the witnesses named by him shall be recalled and, after cross-examination and re-examination, if any, they shall be discharged. The evidence of any remaining witnesses for the prosecution whose names appear in the report under section 173 shall next be taken and, after cross-examination

[Mr. Chairman.] and re-examination, if any, thej shall be discharged'."

The motion was negatived.

MB. CHAIRMAN: The question is:

94. "That at page 12, at the end of line 16, after the word 'witnesses' the following shall be added, name-ly:-

'which shall be ten days or less after the order by which such date is fixed, according to the desire of any accused person appearing before him unless at the request of any such accused person the Magistrate deems it just to fix a later date'."

The motion was negatived.

SHRI JASPAT ROY KAPOOR; Sir, I would like to save my amendment No. 95 from being defeated, and I would like to withdraw it.

The * amendment was, by leave withdrawn.

SHRI J. S. BISHT: Sir, I am here before the clause is finished.

MR. CHAIRMAN; Your amendment has not been moved. I am sorry for you but how does it matter?

MR. CHAIRMAN: The question is:

"That clause 35 stand part of the Bill."

The motion was adopted.

Clause 35 was added to the Bill.

MR. CHAIRMAN: Now we come to clause 36. Amendment No. 98 being negative is barred.

Clause 36 was added to the Bill.

MR. CHAIRMAN: Now clause 36A.

SHRI J. S. BISHT; Sir, I want to make one point clear. These amendments (amendments Nos. 99 and 100)

•For text of amendment, *vide* col. 6194 *supra.*

were sent in by me as an alternative to tht defamation clause because at that time it was thought that if the defamation clause was not accepted there should be some provision. With that end in view, I sent in these amendments. Now that the defamation clause has been adopted, I do not want to move these two amendments.

Clauses 37 and 38 were added to the Bill,

MR. CHAIRMAN: Clause 39.

SHRI GULSHER AHMED (Vindhya Pradesh): Sir, I beg to move:

101. "That at page 13, line 32, the words 'either by jury or' be deleted."

SHRI N. C. SEKHAR: Sir, I beg to move:

102. "That at page 13, line 32, for the words 'either by jury or by the Judge himself the words 'by jury' be substituted."

MK. CHAIRMAN: The clause and the amendments are open for discussion.

SHRI GULSHER AHMED: Sir. as I said last time when I was speaking at the time of the consideration motion, 90 per cent, of the people are against trial by jury. They include public men, lawyers and Bar Associations. They have all expressed themselves against the retention of trial by jury. In this connection. I was also saying that Mahatmaji was against trial by jury. I do not know why, in spite of all the opinions expressed by 90 per cent, of the people, the hon. Minister personally feels that trial by jury should be retained. After all, what is the idea of inviting public opinion? I said last time that things had gone to such an extent that a Judicial Reforms Committee had to be appointed in U.P. under the Chairmanship of Mr. Justice Wanchoo. That Committee recommended that trial by jury should be abolished. A Committee of Jurors was

formed in Uttar Pradesh with a permanent Secretary and they waited on the Governor of UP. to agitate against the abolition of trial by jury. I also gave the example of Bihar where also trial by jury is being abolished.

SHRI GOPIKRISHNA VIJAIVARGIYA: It is after all optional.

SHRI GULSHER AHMED: What about those States where jury trial is already in existence? They will continue. When the majority opinion is against it, it should be done away with. I gave the example of Bihar where the jury system was prevalent. The jury became so corrupt that the Bihar Government was compelled or was forced to appoint a Committee to go into the whole matter to deal with this matter of trial by jury. That Committee came to the conclusion that trial by jury should be abolished. I also gave opinions of various Judges of the High Court as well as of the Supreme Court who have said that jury trials should not be retained. Only 5 per cent, of the people have said that jury trials should be retained and here too they have given very big conditions. They have said that if jury trials are to be retained, then Government should provide all the safeguards that are provided in the U.K. In the U.K., in the case of jury trials, once the jury has taken the oath, th$_e$ members of the jury are kept under observation by the police and they are kept in one place. They are not allowed to talk about the case till the whole case is finished. I do not think any of the States would like to incur all this expenditure, to keep these twelve men in a particular hotel or place, keep a watch over them and do that sort of thing. I do not think that anybody has expressed the opinion that jury trial should be retained. The hon. Defence Minister, who was the prime mover of the Bill, said in the course of th$_e$ reply that in U.P. and West Bengal people are for retention of this trial by jury. He is thinking of the past; he has been away from U.P. for such a long time. He probably does not know that a Judicial Reforms Committee was appointed in U.P. That Committee went into this question and this system has already been abolished in U.P. Regarding West Bengal, I think he has a little more knowledge because he was the Governor there. H$_e$ said that jury trial is being liked. He also quoted Shri N. C. Chatterjee as saying that jury trial is working very well in Bengal. As I said earlier, the Chief Justice of the Calcutta High Court has said that lawyers sometimes charge jury fees in addition to their fees. He is definitely of the opinion that juries cannot be relied upon and that it is not worthwhile to have a jury trial in the mofus-sil. If the jury trial is to be retained at all, it should be in big towns like Calcutta, Bombay and such other places. The Madras High Court has also come to the same conclusion that jury trial should be abolished in all the mofussil Courts and that it can be retained only in the High Court. The same thing is happening in Bombay. In view of all these things, in view of the opinions that have been expressed, I do not know how this has been retained. While the hon. Minister was speaking, he said that there was no necessity of appointing a Law Commission and putting this matter before it because this matt« has bee$_n$ going on for the last four or five years, that the various State Governments have written to the Central Government urging some changes in the Criminal Procedure Code, and so on. I am saying that if these opinions were to be put before the very Commission, naturally they will come to the conclusion that jury trial is not being liked by the people and that it should be done away with. I humbly request the hon. Minister that as most men, eminent lawyers, statesmen and even man like Mahatma Gandhi have expressed themselves against the retention of trial by jury, this system should be done away with.

SHRI J. S. BISHT: Mr. Chairman, I oppose this amendment. This point was raised in the Joint Committee and it was very carefully considered. My hon. friend seems to be working under a misapprehension. The position is left

[Shri J. S. Bisht.] entirely at the discretion of the State Governments. For instance, in U.P., the Government has already abolished the jury system altogether from the State. In this connection, in group D of the opinions, the hon. Member will find that there are many such individual opinions expressed here, for instance, Mr. Justice James, I.C.S., a Judge of the Allahabad High Court is strongly opposed to the retention of the jury system. There is Mr. K. G. Khambata, Chief Presidency Magistrate, Bombay, who is also opposed to this. All these points were considered by the Joint Committee. The point is that the opinion expressed as regards Calcutta is that it is working satisfactorily and people there do riot want that the Centre should force it down on them. If there are particular areas where they want to retain this system to which the people are accustomed or believe that it is a safeguard for their liberties, it should be allowed to continue. I think this system exists only in three or four States in India. Section 269 of the Cr. P. C. says: "The State Government, by like order, may also declare that, in the case of any district in which the trial of any offence is to be by jury, the trial of such offences shall, if the Judge, on application made to him or of his own

motion so directs, be by jurors ....."

It further says, "The State Government may by order in the Official Gazette, direct that the trial of all offences, or of any particular class of offences, before any Court of Session,

shall be by jury in any district....."

So, it is left entirely to the discretion of the State Governments. If, as my hon. friend says and some other gentlemen have been saying, this system is not working properly, I think the State Governments can, by notification, abolish that system. Why should we make a compulsory provision here abolishing, root and branch, this system throughout the whole of India? Why should we not leave it to the State Governments?

SHRI P. S. RAJAGOPAL NAIDU: Why not have a uniform procedure.

12 NOON

SHRI H. P. SAKSENA: I also oppose the amendment of Mr. Gulsher Ahmed. Trial by jury has been in practice here in India for a very very long time. It has proved very beneficial. It is always better to have the opinion of more persons than one if it be possible.

Now the judge is assisted very ably by jurors provided the jurors themselves are good and competent persons. There is nothing wrong with the system of trials by jury. It is only where people are not competent enough to discharge their functions properly that the trial by jury becomes a farce. My friend Mr. Gulsher Ahmed mentioned Mahatmaji in support of abolition of trials by jury. I quote a very famous instance of trial by jury of the late Lokmanya Bal Gangadhar Tilak. He was tried and sentenced to six years imprisonment by a judge who was assisted by a jury, when he made that famous declaration, "In spite of the verdict of the jury I hold and maintain that I am innocent. The truth may be that the cause I represent will be better served by my remaining in jail than by my remaining outside it."

Now so far as this practice of trials by jury is concerned, it is optional- to the States either to retain it or not to retain it. Thus it becomes all the more easy for the clause to be retained as it is. Therefore I see no good case has been made out for the abolition of trials by jury.

SHRI N. C. SEKHAR: Sir, I am not a lawyer but I have consulted so many lawyers on this subject. I understand that there are two sections among the lawyers holding different views. One section holds the view as expressed by Mr. Gulsher Ahmed and the other the opinion as expressed by our other friends here. But I propose to stand with the other section who wants the jury system to be retained. If it were a question of assessors I would have supported our

friend Mr. Gulsher Ahmed, for abolishing that system root and branch. But here it is an advantage to the accused to have trial by jury. Suppose the jurors differ with the judge, then certainly the advantage goes to the accused. Then of course it is referred to the High Court for expert opinion. From past experience too—for example in Madras it is still in existence—most often the expressed opinion of the jurors is always in favour of the accused in certain cases. The common view and the common feeling among the people as well as among certain section of lawyers is that the jury system is advantageous an" =^ould not be abolished. Here in this amending Bill it is said "shall be either by jury or by the Judge himself." Thus there is the discretion given to the State Governments that they can have trials by jury or they can abolish such trials. That is what it comes to. According to my opinion trials by jury should be made compulsory and it should be made the uniform law for all States on an all-India basis. So instead of the words "either by jury or by the Judge himself" the words should be "by jury". That is my amendment.

DR. SHRIMATI SEETA FARMA-NAND: The hon. Deputy Minister while moving the Bill had said on this clause that under this clause new opportunities were being given to women by allowing them to be appointed as jurors and for that reason, Sir. as this provision gives another chance for women being associated with public work and rendering service and gaining experience, I would like to oppose the amendment and I would leave it to every State to make use of this facility, wherever women are available to take up this work. I would like to support the clause as it is and oppose the amendment.

SHRI K. S. HEGDE: Mr. Chairman, I oppose this clause as in the Bill for another reason. Sir, in the working of the criminal courts it is the experience in most States that juries have been extremely unsatisfactory, especially in the district headquarters. It is true, Sir, in the presidency headquarters in certain places where special jurors are empanelled the jury system has worked quite satisfactorily but in the districts it is the experience of every criminal judge as well as the lawyers that the jury system has not worked well at all. But probably the Government would say: 'We are giving the option to the respective Governments. They are entitled to choose whether they want jury system or not.' But that is only saying part of the story. In a case where an accused is convicted or acquitted by a Judge there is a right of appeal and the right of appeal against an acquittal was very limited. But now we are enlarging the scope of the appeal. When an accused is convicted by a jury, there is ordinarily no right of appeal except on certain stated points of law. Now this is a restricted right on both the Government as well as the accused. Many times it is well known not only in this country but in other countries also that jurors have been extremely perverse and in this country we have had it in a larger measure than probably in other countries. As such when you take away the right of appeal in a jury case, which right is available in other cases, it would be extremely wrong. If you want the jury system to be at least in some place there must be the provision of the right of appeal both for the prosecution as well as for the accused and that would safeguard the rights of the accused also. Now as my friend. Mr. Sekhar, himself was visualising, he was thinking that the accused stood to benefit by the jury system. I do not know whether that is his experience and if that is the experience it is equally wrong because according to his own saying jurors are tempted to acquit for nothing practically and that would be a deplorable state of affairs and I think. Sir. if the Government is desirous of having the jury system, then at least there must be provision for appeals against either a conviction or acquittal by jurors.

श्री जसपत राय कपूर (उत्तर प्रदेश) : अध्यक्ष महोदय, मैं श्री गुलशेर अहमद के संशोधन के विरोध में हूं। मेरी राय में तो जूरी प्रथा को जितना अधिक बढ़ा दिया जाय उतना ही अच्छा है और मैं आशा करता हूं कि इस क्रिमिनल प्रोसीजर, संशोधन बिल के पास हो जाने के बाद, जिस रूप में यह प्रस्तुत किया गया है, प्रान्तीय सरकारें जूरी प्रथा को अधिक से अधिक बढ़ाने की कोशिश करेंगी।

यदि मैं माननीय सदस्यों का ध्यान एक विशेष मुकदमे की ओर दिलाऊं, जिसके द्वारा एक अपराधी को बहुत ही ज्यादा फायदा हुआ था, अपराधी तो उसे नहीं कहा जाना चाहिये, जिस के ऊपर अपराध लगाया गया था, और मैं समझता हूं कि उस मुकदमे को देखते हुए सभी सदस्य इस पक्ष में होंगे कि श्री गुलशेर अहमद का संशोधन स्वीकार न किया जाय। यह विख्यात मुकदमा श्री निर्मल कान्त राय का था जो कलकत्ता हाईकोर्ट में तीस वर्ष या अधिक पहले पेश हुआ था। उनके ऊपर यह इल्जाम लगाया गया था कि उन्होंने अलीपुर स्ट्रीट में एक दो आदमियों को गोली से उड़ा दिया था। इस मुकदमे की पैरवी स्वर्गीय श्री नॉर्टन और श्री सी० आर० दास ने की थी और जूरी द्वारा वह मुकदमा चला था। इस मुकदमे में यह हुआ था कि प्रथम बार जूरी ने श्री निर्मल कान्त राय को निर्दोष घोषित कर दिया। जूरी की राय पर न्यायालय ने यह राय दी कि इस मुकदमे पर पुनः विचार किया जाय। दुबारा मुकदमा चला और एक दूसरी जूरी नियुक्त की गई। दूसरी जूरी ने भी बहुमत से यह निर्णय दिया कि श्री निर्मल कान्त राय निर्दोषी हैं। फिर भी माननीय जज महोदय ने जूरी की यह राय मंजूर नहीं की और यह तय किया कि तृतीय बार उन पर मुकदमा चलाया जाय। क्योंकि उस समय देश में इस सम्बन्ध में बहुत आन्दोलन होने लगा था इसीलिए लार्ड सिन्हा ने, जो कि बंगाल सरकार की ओर से पैरवी कर रहे थे, अदालत में यह दरख्वास्त दी कि अब सरकार तीसरी बार मुकदमा नहीं चलाना चाहती हैं। इसका फल यह हुआ कि श्री निर्मल कान्त राय निर्दोष छोड़ दिये गये। श्री नॉर्टन को उनके निर्दोष होने का इतना विश्वास था और उनके छूटने पर इतनी खुशी हुई कि उन्होंने श्री निर्मल कान्त को अपने खर्चे से यूरोप पढ़ने के लिए भेज दिया और वे बहुत अच्छी पढ़ाई पढ़कर हिन्दुस्तान लौटे और इस देश के एक अच्छे नागरिक बने। माननीय सदस्य जरा ध्यान दें कि अगर वह मुकदमा जूरी द्वारा न चलाया जाता तो निर्मल कान्त राय निर्दोष नहीं छूट सकते थे। इसलिए मैं यह प्रार्थना करूंगा कि माननीय सदस्य, श्री गुलशेर अहमद के संशोधन का विरोध करें। केवल एक ही बात कही जाती है कि हमें जूरर अच्छे नहीं मिलते। मैं नहीं समझता कि यह बात कैसे कही जा सकती है और मानी जा सकती है। यदि आनरेरी मैजिस्ट्रेट्स मिल सकते हैं, जिनको कि हम फर्स्ट क्लास मैजिस्ट्रेट के अधिकार दे सकते हैं, जो कि २, ३, ४ और किसी किसी दशा में १० साल तक के लिये किसी को जेलखाने में भेज सकते हैं, यदि धारा ३० के अन्तर्गत वे मैजिस्ट्रेट नियुक्त हों तो १० साल तक के लिये किसी को जेलखाने भेज सकते हैं, तो जब ऐसे ईमानदार और योग्य मैजिस्ट्रेट मिल सकते हैं जो कि एक मुलजिम को १० साल तक के लिये जेलखाने में भेज सकते हैं तो मेरी समझ में नहीं आता कि हमें ऐसे जूरर क्यों नहीं मिल सकते हैं जो कि जज महोदय की ईमानदारी और योग्यता से सहायता करें। इसलिये मैं प्रार्थना करता हूं कि सब लोग एकमत हो कर इस संशोधन का विरोध करें और इसको गिरा दें।

श्री कन्हैयालाल दाँ० वैद्य (मध्य भारत) : अध्यक्ष महोदय, श्री गुलशेर अहमद का जो संशोधन है वह ध्यान देने योग्य है। हम लोग जब यहां सारे देश के लिये कानून बना रहे हैं तो कोई कारण नहीं है कि प्रान्तों की गवर्नमेंटों को इस सम्बन्ध में स्वतंत्र कर दें कि वे जैसा चाहें करें। माननीय सक्सेना जी ने और माननीय कपूर जी ने उदाहरण दिये, तो वह

विदेशी राज्य का जमाना था और ऐसे प्रख्यात मुकदमों में जहां लोकमान्य तिलक जैसे राष्ट्र के नेता का सम्बन्ध था कुछ ऊंचे दर्जे के लोग मिले लेकिन जहां कि निचले दर्जे के लोगों का प्रश्न है वहां जब कि हमारे देश का स्तर नीचा गिर गया है तब जूरी प्रथा को चालू करना हानिप्रद ही होगा। जब कि इन सारी रिपोर्टों के अन्दर इस प्रकार की रायें मौजूद हैं जो कि जूरी प्रथा के पक्ष में नहीं हैं और जब कि हम सारे देश के लिये एक कानून बना रहे हैं तो फिर कोई कारण नहीं है कि सारे देश के लिये इस बारे में एक निश्चित सिद्धांत क्यों न स्वीकार करें। यह तो कोई बात नहीं है कि हम केवल भावनाओं में ही रह जायें। यदि मां बाप यह समझें कि बच्चे के हाथ में यदि तलवार दे दी गई तो वह अपनी गरदन काट लेगा तो मां बाप के नाते उनका यह कर्तव्य हो जाता है कि वे बच्चे के हाथ में तलवार देने की व्यवस्था को छीन लें और बच्चे के हाथ में तलवार न दें। इसी तरह से जूरी प्रथा एक घातक प्रथा है। डिस्ट्रिक्ट लेवल पर जो जूरी प्रथा होगी उसके लिये हमारे देश में निचले दर्जे का स्तर गिर जाने के कारण निष्पक्ष और न्यायप्रिय व्यक्ति नहीं मिल सकेंगे। तो इसलिये मैं समझता हूं कि इस प्रथा को समाप्त ही कर देना चाहिये और जो संशोधन श्री गुलशेर अहमद ने रखा है उसको मंजूर करना चाहिये। खाली भावनाओं में बह जाने से कोई काम चलने वाला नहीं है। जब प्रान्तीय गवर्नमेंटों के ऊपर ही सब कुछ छोड़ना है कि वे जैसा कानून चाहें बनायें, तो फिर सरकार को चाहिये कि संविधान में संशोधन ला कर यह सुविधा भी प्रान्तीय गवर्नमेंटों को दें कि वे जैसा चाहें वैसा क्रिमिनल प्रोसीजर कोड और इंडियन पीनल कोड बना लें और वे अपने अपने प्रान्तों की स्थिति के अनुसार क्रिमिनल प्रोसीजर कोड और इंडियन पीनल कोड का निर्माण करें।

श्री जे० एस० चिष्टी : कांस्टीट्यूशन में पावर है कि वे बना सकते हैं।

श्री गुलशेर अहमद : वे बना सकते हैं और इसी वजह से तो हर स्टेट्स में अलग अलग बनते हैं।

श्री कन्हैयालाल दाँ० वैद्य : अगर इस प्रकार की स्थिति का निर्माण करना हो तब तो दूसरी बात है लेकिन यह ठीक नहीं होगा। इस विषय में अदालतों में प्रैक्टिस करते हुये मैं भी बहुत कुछ अनुभव करता रहता हूं और मैं समझता हूं कि यह बहुत आवश्यक है कि जूरी प्रथा का अन्त हो। हमें इस सम्बन्ध में यहां से स्टेटों का कुछ मार्ग दर्शन करना चाहिये और इसलिये यह संशोधन स्वीकार करने योग्य है। इन शब्दों के साथ इस संशोधन का मैं समर्थन करता हूं।

SHRI B. N. DATAR: Mr. Chairman, I am not in a position to accept this amendment for a number of reasons. In the first place what the Government have done on this question is that they have left the matter to the various State Governments. It is open to them to keep the system if they like as it has now been before us or to abolish it as the UP. Government have done. But so far as Government's opinion is concerned, the Government are in favour of the retention of the jury trial because it has got a very valuable and also a psychological reason. The reason is that the trial by jury is a system under which we associate the public gene-I with the administration of justice and it is for this reason that we desire that this system ought to continue but we have no desire to force our views on this question because there is some controversy and the opinion is not unanimous. Then, Sir, this particular question was before the Joint Select Committee not only in connection with the Bill that we are now considering but an hon. Member of the Lok Sabha. Shri S. V. Ramaswamy, had brought forward a private Bill. In that Bill he desired the abolition of the system of trial by jury and with the aid of assessors. When that matter was discussed, that private Bill was also referred to this Joint Select Committee and a reference has been made

[Shri B. N. Da.ar.] in the Report of the Joint Select Committee to this fact in para 2 as also in para 22. In para 22 it is stated "The Committee took up consideration of Shri Ramaswamy's Bill in accordance with the directions of the House contained in the motion for the reference of the Government Bill to the Joint Committee. The Committee decided that the system of assessors had outlived its utility." And this is important. Sir. "However, opinion with regard to the continuance of the Jurv system was not unanimous and therefore it was considered advisable to leave, the matter to the discretion of the States as provided in the Government Bill. The Committee therefore consider that the provisions contained in Shri Ramaswamy's Bill are superfluous and unnecessary." They are superfluous so far as the question of trial with the aid of assessors is concerned. So far as the question of trial with jury is concerned, the opinion of the Joint Select Committee was that it was unnecessary because that question was left to the various State Governments. I am happy to find that there is considerable opinion in this House also which supports the retention of the trial by jury. Then I may also point out that all the State Governments are not against this. In fact, so far as the Bombay Government and the West Bengal Government are concerned, they are in favour of the continuance of this" system because in Bombay town as also in some four or five districts they have found that their experience is not so unsatisfactory as it is in some other States.

SHRI GULSHER AHMED: Only in big towns.

SHRI B N. DATAR: Yes. in big towns where you can have a good number of jurors for trial. As I already pointed out. this system has j not been tried properly and we might introduce gradually due safeguards for the purpose of getting good jurors for assisting the judge so fai as the administration of criminal justice is concerned.

Secondly, my hon. friend, Shri Hegde, contended that there ought to be a provision for appeals against the [decisions given by the jury. Now, the Government had before them a proposal in this respect that in such cases appeals might be allowed but we have got under »the present provision a rule according to which the verdict of the jury cannot be called in question unless it is perverse. The Government were considering as to whether a larger number of appeals should be allowed by removing the present restrictions but it was found, both in the Joint Select Committee as also in the course of opinions that the Government have received, that the general desire was that the opinion of the jury should be respected and should not be lightly interfered with by an appellate court. It was because of this that the Government did not proceed further with the question as to whether appeals should be allowed. In any case, I am not in a position to accept this amendment because it is better to leave the question to the States. An important auestion of principle is involved and therefore it is better to keep this system and later improve it in any way possible.

MR. CHAIRMAN: Do you press your amendment (No. 101)?

SHRI GULSHER AHMED: Sir, I withdraw my amendment.

The *amendment was, by leave, withdrawn.

SHRI N. C. SEKHAR: Sir, I would like to press my amendment.

MR. CHAIRMAN: The question is:

102. "That at page 13, line 32, for the words 'either by jury or by the Judge himself the words *by jury' be substituted."

The motion was negatived.

"For text of amendment, *vide* coL 6202 *supra.*

MR. CHAIRMAN: The question is:

"That clause 39 stand part of the Bill."

The motion was adopted.

Clause 39 was added to the Bill.

MR. CHAIRMAN: Clause-.40. There are three amendments.

SHRI GULSHER AHMED: Sir. I move:

103. "That at pages 13 and 14, lines 38 to 49 and 1 to 2, respectively be deleted."

SHRI N. C. SEKHAR: Sir. I move:

104. "That at page 13, line 44, for the word 'two' the word 'ten' be substituted."

105. "That at page 13, lines 45 to 47. the words or that the case would involve consideration of evidence of a highly technical nature, which renders it undesirable that it should be tried by a jury be deleted."

MR. CHAIRMAN: Clause 40 and the amendments are before the House.

SHRI GULSHER AHMED: Sir. I would like to draw the attention of the hon. Minister to the fact that in clause 40, sub-clause (b), under proposed sub-section (4), discretion has been given to the Sessions Judge to do away with the jury in certain circumstances.

[MR. DEPUTY CHAIRMAN in the Chair.]

I feel that a provision like this is going to create a kind of discrimination. And it is most likely that in trials where the Judge himself will try without the aid of a jury, in appeals this point might be raised. I also fear that probably writs will be moved if the Judge dispenses with jury trial because he thinks that there are certain reasons which are not in favour of asking the jury to try. I think this opinion has also been expressed by many of the Judges and I would request the hon. Minister to be kind enough to make some amend ment so as not to give any discretion to the Sessions Judge to do away with trial by jury .....

SHRI J ASP AT ROY KAPOOR: No discretion has been given to the Sessions Judge.

SHRI; GULSHER AHMED: you please read the clause: "When, in respect of a trial in which r.he accus ed is charged with an offence triable by jury, it appears to the High Court ..... "

SHRI JASPAT ROY KAPOOR: So, it is the High Court.

SHRI GULSHER AHMED: I am sorry.

MR. DEPUTY CHAIRMAN: Mr. Sekhar.

SHRI N. C. SEKHAR: No speech, Sir.

SHRI JASPAT ROY KAPOOR: Sir. I seek one clarification. Would it mean that even in the Presidency towns, if the High Court considers it desirable that the trial should not be with the aid of jury, then the jurors should be dispensed with?

SHRI B. N. DATAR; I may point out to this House that this new clause has been specially inserted for the purpose of avoiding unnecessary hardship to jurors. It will be found that in this case it has been stated that "having regard to the volume or complexity of the evidence in the case, the trial is not likely to be concluded within two weeks....."—after all the work that the jurors have to carry out is public work, but they are also very busy people and therefore if a trial is likely to be protracted beyond two weeks and in some cases for more than two weeks, then in the English Law they have got a provision according to which if jurors are called and if it is found that the trial is a protracted one then the High Court or the particular Court has the authority to exempt the appearance of such persons from jury, for a number of years.....

SHRI K. S. HEGDE: Even here it is being done.

SHRI DATAR: In fact, I remember in one case where Lokamanya Tilak had filed a suit for damages, there the jury was exempted for a period of twelve years, though it was a civil case. So. here we have no such provision. Therefore, what we have now done is that in all ordinary cases, whenever ordinary questions of fact are under consideration and there is no complexity of evidence nor any volume of evidence, then the system of trial by jury should be retained. Then, it should also be noted by the House that merely because a case goes on beyond two weeks, it will not be open to exempt the jury. It must be by reason of the volume or complexity of the evidence it has to give. Therefore, you will find that this is a very good provision meant to avoid unnecessary hardship to the jury. And it is also stated that when the questions are of a highly technical nature, naturally the jurors' opinions would not be of any use at all. So, it is only for the purpose of avoiding all this hardship that this provision has been put in the circumscribed way in which it has been placed before the House. And then lastly in all these cases it !s for the High Court to pass orders and not for any subordinate court. Therefore, the provision should be allowed to remain as it is.

MR. DEPUTY CHAIRMAN: What about your amendment (No. 103)?

SHRI GULSHER AHMED: I withdraw my amendment.

The * amendment was by leave, withdrawn.

MR. DEPUTY CHAIRMAN: What about your amendments?

SHRI N. C. SEKHAR: I press them.

MR. DEPUTY CHAIRMAN: The question is:

*For text of amendment, *vide* col. 6215 supra.

104. "That at page 13, line 44, for the word 'two' the word 'ten' be substituted,"

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

105. "'That at page 13, lines 45 to 47, the words 'or that the case would involve consideration of' evidence of a highly technical nature, which venders it undesirable that it should be tried by a jury' be deleted.

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 40 stand part of the Bill."

The motion was adopted.

Clause 40 was added to the Bill.

Clause 41 was added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 42. There is one amendment (No. 106). It is a negative amendment; so it is ruled out.

Clause 42 was added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 43. There is one amendment (No. 107). It is a negative amendment; so it is ruled out.

Clause 43 was added to the Bill.

Clause 44 was added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 45. There is one amendment (No. 108). It is a negative amendment; so it is ruled out.

Clause 45 was added to the Bill.

Clauses 46 to 51 were added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 52. There are two amendments, one of which (No. 109) is a negative amendment and is ruled out. What about amendment No. 110? Mr. Jaspat Roy Kapoor, are you moving it?

SHRI JASPAT ROY KAPOOR: Yes, Sir. Sir, I move:

110. "That at page 15, line 33, after the word 'thereof the words 'signed by the Judge' be inserted."

SHRI B. N. DATAR: Sir, I am going to accept amendment No. 110.

SHRI JASPAT ROY KAPOOR: It is very good he is accepting it.

MR. DEPUTY CHAIRMAN: The question is:

"That at page 15, line 33, after the word 'thereof the words 'signed by the Judge' be inserted."

The motion was adopted.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 52, as amended stand part of the Bill."

The motion was adopted.

Clause 52, as amended, was added to the Bill.

Clause 53 was added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 54. There is one amendment (No. Ill) which is a negative one and is ruled out.

Clause 54 was added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 55. There is one amendment (No. 112). It is negatived and is ruled out.

Clause 55 was added to the Bill.

Clause 56 was added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 67 stand part of the Bill. There is one amendment (No. 113). Do vdu move it Mr. Gulsher Ahmed?

SHRI GULSHER AHMED: No, Sir.

MR. DEPUTY CHAIRMAN: You are not moving it. Mr. Hegde also is not moving. Then there are no amendments.

Clause 57 was added to the Bill.

Clauses 58 to 61 were added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 62. There are two amendments. Amendment No. 114 is negative and is ruled out. Regarding amendment No. 154, Mr. Gupte is not here. So, i; is not moved.

Clause 62 was added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 63. There are four amendments, Nos. 115 to 118.

SHRI B. N. DATAR: Sir, I beg to move:

115. "That at page 17, lines 44-45, the words 'or the recording of their statements' be deleted."

116. "That at page 17, lines 47-48, the words 'or, as the case may be, their statements have been recorded' b_e deleted."

117. "That at page 18, line 7, the words 'or recording their statements' be deleted."

SHRI JASPAT ROY KAPOOR: Sir, I beg to move:

118. "That at page 18, line 8, .he words 'in writing' be deleted."

MR. DEPUTY CHAIRMAN: The clause and the amendments are now open for discussion.

SHRI JASPAT ROY KAPOOR: Sir. I suppose the hon. Minister is going to accept my amendment. The words 'in writing' are superfluous. It does not seem to be proper that in the same clause, sometimes you say simply 'recorded', and sometimes you say 'recorded in writing'. 'recorded' means 'recorded in writing'. So, there is no reason why my amendment should not be accepted.

SHRI B. N. DATAR: Sir, the amendment moved by my friend might lead to certain anomalous decisions. Therefore, I am not going to accept it.

MR. DEPUTY CHAIRMAN: Do you press it, Mr. Kapoor?

SHRI JASPAT ROY KAPOOR: Yes, Sir, I press it.

MR. DEPUTY CHAIRMAN: The question is:

115. "That at page 17, lines 44-45, the words 'or the recording of their statements' be deleted."

The motion was adopted.

MR. DEPUTY CHAIRMAN: The question is:

116. "That at page 17, lines 47-48, the words 'or, as the case may be, their statements have been record- - ed' be deleted."

The motion was adopted.

MR. DEPUTY CHAIRMAN: The question is:

117. "That at page 18, line 7, the words 'or recording their state ments' be deleted."

The motion was adopted.

MR. DEPUTY CHAIRMAN: The question is:

118. "That at page 18, line 8, the words 'in writing' be deleted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 63, as amended, stand part of the Bill."

"The motion was adopted.

Clause 63, as amended, was added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 64. There are two amendments, Nos. 119 and 155.

SHRI KANHAIYALAL D. VAIDYA: Sir, I beg to move:

119. "That at page 18, lines, 26 to 32 be deleted."

MR. DEPUTY CHAIRMAN: Then about 155, Mr. R. C. Gupta and Mr. Tamta are not here.

SHRI SUM AT PRASAD: I am not moving it Sir.

MR. DEPUTY CHAIRMAN: Clause 64 and amendment No. 119 are open for discussion.

श्री कन्हैयालाल दाँ० बैद्य : उपाध्यक्ष महोदय, बिल में जो तीन विशेष धाराएं रखी गई हैं उनका आशय यह हैं कि यदि कोई व्यक्ति ३ दिन या उससे अधिक समय तक अनधिकृत रूप से बंदी रखा जायेगा अथवा १० या अधिक दिनों तक बंदी रखा जायेगा अथवा इससे अधिक या कम समय तक गलत तरीके पर छिपा कर रखा जायेगा, तो जिस व्यक्ति को बंदी रखा गया था उसको बंदी रखने वाले व्यक्ति के विरुद्ध चलाए गये मुकदमे को वापिस लेने का अधिकार होगा। प्रायः कानून की सीमा में बंदी रखने वाला व्यक्ति पुलिस का अधिकारी या उच्चाधिकारी होता हैं और साधारणतया वह किसी ऐसे व्यक्ति को बंदी रखता हैं जो अशिक्षित होता हैं या अज्ञानी या दरिद्रता की अवस्था में होता हैं और उसका रक्षण इन कानूनों की सीमायें करती हैं। प्रायः वह बंदी कभी ही भाग्यशाली होता होगा कि वह गलत तरीके से बंदी बनाये जाने के बाद अपने आप को अदालत के सामने जा कर उसको प्रमाणित कर सके। ऐसे मामलों में इस प्रकार के अधिकार कानून के अन्दर देना, जिनका मैं उल्लेख कर चुका हूं, उसका मतलब यह होता हैं कि हम सरकारी नौकरों को यह खुली छूट देते हैं कि वे उस व्यक्ति को एक बार गलत तरीके से बंदी भी रख देंगे और दूसरी तरफ इस कानून की आड़ ले कर अपने कसूर से बच जायेंगे क्योंकि उनको ऐसा करने की स्वतंत्रता मिल जायेगी। किन्तु उस साधन हीन गरीब व्यक्ति के ऊपर अन्य तरीके से सरकारी

मशीनरी की कुर्सी पर बैठने वाले लोग अपने प्रभाव के बल पर एक गलत प्रेशर इस तरह का लायेंगे जिससे वह व्यक्ति उस मुकदमें को भी नहीं चला सकेगा और अन्त में उसे सरकारी नौकर के साथ राजीनामा करने पर विवश हो जाना पड़ेगा । इस प्रकार उस व्यक्ति को जिसने अकारण ही किसी व्यक्ति को बंदीगृह में डाल दिया हो, उसको इस व्यवस्था के जरिये जो हम छूट देने जा रहे हैं, उससे मैं समझता हूं, हम एक गलत सिद्धांत का प्रतिपादन करते हैं । जब कि हम एक जनकल्याणकारी राज्य की स्थापना करने जा रहे हैं और कानून के अंदर हम व्यक्ति के रक्षण का सिद्धांत स्वीकार करते हैं, तो फिर हम क्यों इस तरह की व्यवस्था करने जा रहे हैं ? यदि सरकारी मशीनरी को सब तरह के अधिकार और छूट हम देते जायेंगे तो वह जनता की नागरिक स्वतंत्रता पर गलत तरीके से प्रहार करने लगेगी और इसका मतलब यह होगा कि हम सरकारी मशीनरी का रक्षण करना चाहते हैं, न कि उन लोगों को जो गलत तरीके पर बंदी किये गये हैं । आप छोटे छोटे स्थानों पर जा कर देखिये कि वहां पर कितना दुरुपयोग कानूनों का होता है और किस प्रकार गलत तरीके पर अधिकारी और पुलिस के कर्मचारी नागरिक जीवन के साथ खिलवाड़ करते हैं, और उसके ऊपर भी यदि हम कानूनों से इस प्रकार का और रक्षण उनको देंगे तो मैं समझता हूं कि हम एक बहुत बड़ा अन्याय इस देश के नागरिक जीवन के साथ करेंगे । अतएव मेरी यह अपील है कि इस प्रकार के संशोधन द्वारा गलत सिद्धान्तों का प्रतिपादन हमें नहीं करना चाहिए और मैं माननीय मंत्री महोदय से निवेदन करूंगा कि मेरे संशोधन पर वे बहुत गम्भीरता से विचार करें और जिन अधिकारों को वे देने जा रहे हैं उनको न दें । इसी में जनहित है, इसी में नागरिक जीवन के अधिकारों की रक्षा है, अन्यथा उनका सरासर दुरुपयोग होने वाला है । जिस रूप में मैं इस कानून में दिये गये इन अधिकारों को समझ पाया हूं, उसमें मैं समझता हूं कि सरकार मेरे संशोधन को स्वीकार करेगी ।

SHRI B. N. DATAR: Sir, I am not accepting this amendment for the reason that what has been done in clause 64, so far as the present amendments are concerned, is that they would be compoundable only wi'h the permission of the court. The court is there to safeguard the interests of the public. The court would not grant composition unless it is in the interest of the public. Now the underlying principle in such cases is that the court would consider the question to what extent it would be in the interests of the society also, apart from the interests of the parties concerned, that such composition should be allowed. If, for example, there is such a composition, then, good and cordial relations would be established between the parties. That also is the factor which has to be taken into account. But here it would be the court that would be screening this question not only from the point of view of establishing cordial relationship between the parties, but also from the public point of view. And therefore this safeguard—the court's permission—is more than sufficient for meeting the particular viewpoint expressed by the hon. Member.

MR. DEPUTY CHAIRMAN: The question is:

119. "That at page 18, lines 26 to 32 be deleted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 64 stand part of the Bill."

The motion was adopted.

Clause 64 was added to the Bill.

Clauses 65 and 66 were added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 67. There is one amendment, No.

[Mr. Deputy Chairman.]

120, but it is ruled out, as it is a negative one.

Clause 67 was added to the Bill.

Clause 68 was added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 69. There is one amendment (No. 121) but it is only a consequential amendment.

Clause 69 was added to the Bill.

Clauses 70 to 84 were added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 85. There are two amendments.

SHRI JASPAT ROY KAPOOR: Sir, I move:

122. "That at page 23, lines 47-48, the words 'Subject to the provisions of sub-section (5)', be deleted."

123. "That at page 24, lines 10 to 22 be deleted."

MR. DEPUTY CHAIRMAN: Clause 85 and the amendments are now open for discussion. Any speech?

SHRI JASPAT ROY KAPOOR: Sir, I want to make only a few observations; they need-not be called by the dignified name of a speech. My submission with regard to my amendments is that I do not consider it advisable that the scope of appeal against acquittals should b$_e$ increased even in the slightest degree. I have two or three reasons in support of my amendments. Firstly, the work of the High\ Court will be considerably increased if the clause stands £ts it is. In fact, one of the main objects of this Bill is to shorten litigation. The right given here to the complainant to file an application in the High Court for permission to file an appeal against an acquittal would simply increase the work of the High Court, as in the majority of cases I am sure that a private person, if the accused is acquitted, would file an application before the High Court seeking its permission to file an appeal. My second reason i$ that a complainant even now has the right to apply to the local Government requesting it to file an appeal against acquittal. Now, what you have provided in this new clause is that, ins lead of making an application to the local Government, he will make an application to the High Court. Now, I do not think that this is necessary, because even now he has got one opportunity to move the local Government requesting it to file an appeal against acquittal, and if the local Government feels that it is worth while making an appeal in that case, it would certainly file an appeal. My next reason is that in private cases, the complainant is very often actuated by malice against the accused. It is not so in the case of the Government. So, while Government should have this right of appeal, a private complainant should no; have this right to go in appeal, and he should not have the right to make an application to the High Court for permission to appeal. So, in order to lessen the work of the High Court, I think it will_ be worth while accepting my amendments.

SHRI J. S. BISHT (Uttar Pradesh): I regret very much that I have got to oppose the amendments moved by my learned friend. If he carefully studies the clause, he would find that in sub-section (3) it is definitely laid down:

> "If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants, special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court."

An appeal does not follow automatically in case of private complaints.

SHRI J ASP AT ROY KAPOOR: I never said that. <

SHRI J. S. BISHT: He must make an \ application for leave to appeal, and only when the High Court grants leave, an appeal can be filed, otherwise not. Secondly, if you look at sub-section (5), it says:

> "If, in any case, the application under sub-section (3) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1)."

If the Government does not appeal, then the private complainant can make an application to 'ihe High Court for leave to appeal. This is only fair. We have provided for two types of trials both in warrant cases and sessions cases, *viz.,* trials on complaint by private complainants and trials by the Public Prosecutor. So, in the case of the Public Prosecutor, the Government will appeal, and in the case of private complaints, you must give this permission to apply to the High Court for leave to appeal, and if there is sufficient cause, the Highi Court will give the permission, otherwise not.

SHRI K. S. HEGDE (Madras): Mr. Deputy Chairman, I am entirely in favour of the proposal made by the Government. It is said in England that equity depends upon the foot of the Chancellor. In this country, to a large extent justice depends upon the foot of the Magistrate. There has been a good deal of divergence of approach both on questions of fact as well as of law from Magistrate to Magistrate. To some extent the human element is there. What really happens is that the fact that there is no appeal agaist acquittals has many times encouraged Magistrates and Judges to acquit even in cases which should not have ended in acquittal. I am quite sure that if this provision had been in the Code earlier, much of the complaint against loo many acquittals would not have been there, because there is always the fear of the matter going on appeal. Today every Judge and Magistrate thinks that once he decides the case, there will be an end of it. I think, Sir, that this provision should be there as it is in the Bill.

As regards private cases, it is not correct to say that in private cases, the complaint is always actuated by malice; though it is true that some private cases are actuated by malice, but there is a very sharp difference between private cases and police cases. The Magistrates think that every private case must end in acquittal. Except in rare cases the police would not take >up a private case as a matter of administrative policy. Now, the complainant who has been harmed by the action of somebody must have the satisfaction that his case is heard on merits and decided on merits. In this clause it is provided that he will have the right to take the matter in appeal to the High Court, but the ordinary precaution is taken that he cannot do it unless leave is granted. That is why application for leave to appeal har been provided for. For these reasons, I think that the provision, as now put down in the Bill before us should be accepted.

KAZI KARIMUDDIN (Madhya Pradesh) : Mr. Deputy Chairman, I oppose the amendment. My submission is that as the law stands today there is absolutely no right of appeal and it is suggested by the gentleman who proposed the amendment that the local Government can be moved. Unless the case is of public importance, the case is never referred to the High Court and no appeal is filed at present. If the complainant cannot show to the District Magistrate or to the State Government that the case is of public importance and there has been a miscarriage of justice, there is no appeal filed and a step-motherly treatment is given to the complainant. Now in this there is absolutely no right of appeal to the complaint. The application will be presented to the

[Kazi Karimuddin.] High Court and if the High Court thinks that it is a fit case that leave should be granted, then leave will be granted to the complainant. Then Clause 85 says:

> "Subject to the provisions of sub-section (5), the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court, other than a High Court."

Now which Public Prosecutor is to present an appeal—that will be a point. Because if the State Government says that the Public Prosecutor should present it generally the Public Prosecutors are at the District Headquarters and if the Public Prosecutor concerned has to present an appeal, will he be required to go to the High Court and present an appeal or will it be done through the Advocate General?

SHRI B. N. DATAR: There are public Prosecutors attached to High Court-s.

KAZI KARIMUDDIN: In the Madhya Pradesh High Court there is no Public Prosecutor. There is only Government Advocate. The Public Prosecutor is in charge of the Sessions cases in the District Courts. There is no Public Prosecutor in the High Court.

MR. DEPUTY CHAIRMAN: There is an Advocate General.

SHRI K. S. HEGDE: Public Prosecutor is defined under section 494. Whether you call him Public Prosecutor or not, if he discharges the *I* function of a Public Prosecutor, he is Public Prosecutor in law.

KAZI KARIMUDDIN: Public Prosecutor does not discharge the duties of Government Advocate. Government Advocate is a different person from the Public Prosecutor. Therefore if you study the provision in the Circulars in Madhya Pradesh, you will find that Public Frosecutor is a different person from the Government Advo cate. So there will be very great difficulty if this law is applied because at a District .....

SHRI J. S. BISHT: They can appoint one.

SHRI K. S. HEGDE: Need not.

SHRI B. N. DATAR: Public Prosecutor means any person appointed under section 492 and includes any person acting under the direction of the Public Prosecutor and any person conducting a prosecution on behalf of Government in any High Court in exercise of his discretion.

MR. DEPUTY CHAIRMAN: The person who performs the function. So you are not accepting it?

SHRI B. N. DATAR: No, Sir.

SHRI JASPAT ROY KAPOOR; I also realize that the acceptance of my amendment will lessen the work of lawyers .....

SHRI J. S. BISHT: That is not fair.

SHRI JASPAT ROY KAPOOR: So I beg to withdraw my amendments, Nos. 122 and 123.

*The amendments were, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

> "That clause 85 stand part of the Bill."

The motion was adopted.

Clause 85 was added to the Bill.

Clauses 86 to 89 were added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 89A.

SHRI N. C. SEKHAR (Travancore-Cochin); Sir, I beg to move;

> 124. "That at page 24, after the existing clause 89 the folioiving new clause be inserted, namely:

*For text of amendments, *vide* col. 6225 *supra.*

'89A. *Amendment of Section* 478, *Act V of* 1898.—In sub-section (2) of section 478 of the principal Act, for the word and figure "Chapter XVIII" the words and figures "section 208 to section 220 inclusive" shall b$_e$ substituted'."

MR. DEPUTY CHAIRMAN: The question is:

"That at page 24, after the existing clause 89, the following new clause be inserted, namely:

'89A. *Amendment of Section* 478, Act *V of* 1898.—In sub-section (2) of section 478 of the principal Act, for the word and figure "Chapter XVIII" the words and figures "section 208 to section 220 inclusive" shall be substituted'."

The motion was negatived.

Clauses 90 to 92 were added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 93.

SHRI R. P. TAMTA (Uttar Pradesh) : Sir I move:

156. "That at page 26, line 28 for the words 'five hundred' the words 'two hundred' be substituted."

MR. DEPUTY CHAIRMAN: The clause and the amendment are open foi discussion.

SHRI R. P. TAMTA: Sir, under the present law the maintenance allowance that a court can award to a discarded wife or a neglected child is Rs. 100. By this amendment the amount is sought to be increased to Rs. 500. I submit that the allowance that can be awarded under this clause will be Rs. 500 and that the amount is too high because the proceedings under section 488 are of a summary nature and no evidence in detail is taken. The provision is just to help the wife or the neglected child so that they may not have to stray here and there in the street for want of maintenance. It is a summary proceeding that is provided and the order passed under this section is not applicable. So in cases where the magistrate passes an order under this section, it will be realized as a fine and there is no appeal to the High Court against this order of awarding maintenance allowance. Now if the maximum amount that is provided, *viz.,* Rs. 500 is awarded, it will cause great hardship to the husband and in many cases it might encourage vexatious applications from wives and shall bring discord in the families. Further there is another legal provision that in case the wife claims higher maintenance allowance, she can go to the civil court and get her remedy. The higher allowances will be claimed only from persons who have got income of about Rs. 1,000 or over and the wife claiming Rs. 500 per month too should be of good status and therefore they could go to the civil court and get the matter adjudicated there because a lot of evidence will be required in such cases regarding the circumstances etc. of the wife. So it will be very hard if this amount is raised to Rs. 500. I submit that this should in no case be raised to more than Rs. 200.

SHRI B. N. DATAR: SO far as this amount is concerned, Rs. 100 was fixed 100 years ago and naturally a larger amount is necessary.

KAZI KARIMUDDIN: Socialistic pattern of society.

SHRI B. N. DATAR: So far as sufficiency of the amount for the wife or a discarded or neglected wife is ! concerned. Therefore the amount of \ Rs. 500 may be necessary in certain cases where the husband has substantial property to his credit but still

IShri B. N. Datar.] Is Jieglecting or has discarded his •wile.

It DUV be noted that in all such cases the enquiry has to be properly held and this provision nas been purposely introduced in the Code of Criminal Procedure because such domestic quarrels are likely ulti mately to lead to breach of the peace also or they are likely to dis turb public tranquillity. As far as possible, in the interests of the society the law has stated that a wife if she is discarded or neglected at all, has to be provided with si leans or resources. That is lh" reason why the amount has bee:: increased and in certain cases only on a?cou it of the fact that the amount mentioned is Rs. 100, it may not be possible for the magistrate to give more. Therefore it may not be that in every -case Rs. 500 would be given. So I am not accepting the amendment.

The amendment was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

"That Clause 93 stand part of the Bill."

The motion was adopted.

Clause 93 was added to the Bill.

Clauses 94 and 95 were added to the Bill.

MR. DEPUTY CHAIRMAN: Clause S6.

SHRI J ASP AT ROY KAPOOR: Sir *I* move:

128. "That at page 27, line 4, after the word 'bail' the words 'by its own direction' be inserted."

I move this in the hope and belief that it may be accepted.

•For text of amendment, *vide* col. ' <S231 *supra.*

MR. DEPUTY CHAIRMAN: The clause and the amendment are open for discussion.

1 KM.

SHRI JASPAT ROY KAPOOR: Sir. my amendment runs thus:

"That at page 27, line 4, after the word 'bail' the words 'by its own direction' be inserted."

To this amendment I have moved another amendment, Sir, so that in its final form my amendment would be .....

MR. DEPUTY CHAIRMAN: But where is that amendment?

SHRI JASPAT ROY KAPOOR: Sir, it is already in our possession.

MR. DEPUTY CHAIRMAN: Would you take some more time? Do you want m?re time for this?

SHRI JASPAT ROY KAPOOR: For what Sir?

MR. DEPUTY CHAIRMAN: Do you want some more time to speak on Jour amendment?

SHRI JASPAT ROY KAPOOR: Only a couple of minutes.

MR. DEPUTY CHAIRMAN: Is the House inclined t'l sit during the lunch hour?

SEVERAL HON. MEMBERS: No.

MR. DEPUTY CHAIRMAN: I don't think it is necessary. Now we will adjourn for lunch and Mr. Kapoor can resume his speech when the House reassembles at 2-30.

The House stands adjourned till 2-30 P.M.

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

The House reassembled alter lunch at half-past two of the clock, Mr. DEPUTY CHAIRMAN in the Chair.

SHRI J ASP AT ROY KAPOOR: Sir, I beg to move: .....

MR. DEPUTY CHAIRMAN: You have already moved it.

SHRI J ASP AT ROY KAPOOR: Have I mqved it in the final amended form, Sir? There is an amendment to my amendment. Have I moved it in the proper form?

MR. DEPUTY CHAIRMAN: Please move the other amendment.

SHRI J ASP AT ROY KAPOOR: Sir, I beg to move:

> "That in amendment No. 128 in the *Consolidated List of Amendments* dated the 19th April, 1955, for the words 'by its own direction' the words 'by its own direction or by the direction of any court subordinate to it' be substituted."

MR. DEPUTY CHAIRMAN: The clause, amendment No. 128 and the amendment to that amendment are now open for discussion.

SHRI J ASP AT ROY KAPOOR: During the interval, I have had the advantage of looking into this subject a little more carefully and I have also had the advantage of having a discussion on the subject with the official Draftsman. Though a superficial reading of the proposed amendment v/ould lead one to the conclusion that my amendment is not necessary, if the whole thing is carefully and minutely looked into, it would be obvious that the acceptance of my amendment is very necessary. The object of my amendment. I may straightaway submit, is that if a person is released on bail by the High Court, it should not be open to the Court of Session to rearrest him at a subseauent stage. If my amendment is not accepted then it will be open to the Court of Session to rearrest the person who has been released on bail by the order of the High Court.

SHRI S. MAHANTY: On different charges or on the same charge?

SHRI J ASP AT ROY KAPOOR: On the same charge, in the course of the same case. If my interpretation of the law and the proposed amendment I by the Government is correct then I ! submit that it would lead to a very awkward position and it should not be allowed to remain as it is. Let UJ read section 498 which is proposed to be amended by clause 96 of the Bill. Section 498 of the Criminal Procedure Code runs thus: "The amount of every bond executed under this. Chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive;". We are not concerned with this. Now follows the relevant portion, "and the High Court or Court of Session (that is, either of them) may, in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail, or that the bail required by a police officer or Magistrate be reduced". This part is now to be renumbered as subsection (1) of section 498 and a new sub-section is proposed to be added OS sub-section (2) which reads thus: "A High Court or Court of Session may cause any person who has been admitted to bail under sub-section (1) to be arrested and may commit him to custody". Sub-section (2) that is proposed means that if a person has been admitted to bail under sub-section (1) of section 498 by a High Court, then under the proposed subsection (2), the Court of Session can re-arrest him and may commit him to custody. This meaning should appear to be obvious. I am told that the proposed sub-seci.ion (2) is based on the wording of sub-section (5) of section 497 which reads thus: "A High Court or Court of Session and, in the case of a person released by itself, any *other* court may cause any person who has been released under this section to be arrested and may commit him to custody". I am

[Shri Jaspat Roy Kapoor.j told that if a subordinate court cannot cancel the bail order made by a superior court under sub-section (5) of section 497, then similarly, a sub-ordinate court cannot cancel a bail order granted by a superior court. My submission is that to argue like that would be basing the argument on a wrong presumption that under section 497 the bail order can be passed by a superior court like the High Court. Under section 497, a bail order can be passed only, firstly by the officer who arrests the person or the court before whom the accused is brought.

SHRI K. S. HEGDE: Section 497?

SHRI JASPAT ROY KAPOOR: Under section 497, it is not the High Court which admits a person to bail; a person is admitted to bail by the High Court only under section 498. So, it is no use arguing that a person, if he is released under section 497 by the High Court; cannot be re-arrested by the order of the Sessions Court. It is only under section 498 that the High Court releases a person in a case, whether it is subject to appeal or not. What I mean is that even if there is an enquiry going on in a Magistrate's court or a case going on in the Sessions Court, the High Court can release a person on bail by its order under section 498.

MR. DEPUTY CHAIRMAN: Read sub-section (5) of section- 497.

SHRI JASPAT ROY KAPOOR: I have already read it. During the interval I have read and re-read it. Under section 497 "A High Court or Court of Session and, in the case of a person released by itself, any other court may cause any person who has been released under this section to be arrested, and may commit him to custody." If any other court releases a person then it can cancel it:; own previous order, or a superior court, *i.e.,* a High Court or Court of Session can do so. That is what it means. Initially a High Court never releases a person under section 49/. A High Court exercises its powers of releasing a person on bail only under section 498 and not under 497.

MR. DEPUTY CHAIRMAN: 498 is not for release on bail at all.

SHRI JASPAT ROY KAPOOR: It is. Please look to the latter portion: "and the High Court or Court of Session may, in any case, whether there *be an appeal on conviction or not, direct that any person be admitted to bail, or that the bail required by a police officer or Magistrate be reduced."

So the High Court exercises its power of releasing a person on bail only under section 498 and the Magistrate, or the Sessions Court when the case is before it as a sessions case may exercise their power to have the person released on bail under section 498 arrested. So my submission is that if a High Court releases a person on bail, then it should not be open to the Sessions Couri—eve'ryfbody will surely agree here, I believe—to cancel that order.

SHRI K. S. HEGDE: It is not open.

SHRI JASPAT ROY KAPOOR: It is not open, but it will be open if you accept the proposed Government amendment as you are now going to authorise the Sessions Court to exercise that power because you say: "A High Court or Court of Session may cause any person who has been admitted to bail under sub-section (1) to be arrested and may commit him to custody."

MR. DEPUTY CHAIRMAN: Mr. Kapoor, the wording in the latter part *ic* "and the High Court or Court of Session may, in any case" etc. The same wording is repeated here: "A High Court or Court of Session may cause any person" etc.

SHRI JASPAT ROY KAPOOR: That is exactly my difficulty, Sir. The repetition of the same words leads to difficulty because section 497 refers

to a person released by any other court. Under section 498 onJy a person can be released by the High Court au.d if he is released by the High Court it should not be open to a Sessions Court to rearrest him even though it may be at a subsequent stage and under some altered circumstances.

MR. DEPUTY CHAIRMAN: It goes without saying.

SHRI JASPAT ROY KAPOOR: No, it does not go without saying though I readily admit that no Sessions Court would cancel an order of bail passed by a High Court. But if we accept the proposed amendment in its present form, certainly it will be open to the Sessions Judge in the light of some new circumstances arising at a later date to rearrest the man. The High Court on a particular date might pass the bail order. Two months thereafter the police might move the Sessions Court saying that the accused is tampering with the prosecution evidence and certainly the Sessions Judge would then be well advised, if we authorise him with the authority under the proposed subsection (2), to rearrest him. I do not want that it should be like that.

SHRI J. S. BISHT: Why not?

SHRI JASPAT ROY KAPOOR: No, it should not be. Once a High Court has passed an order of release, it should be the High Court which should be moved again to cancel its previous order. Otherwise this authority may be abused.

MR. DEPUTY CHAIRMAN: That will do, Mr. Kapoor. He has understood you.

SHRI B. N. DATAR: No long reply is necessary because the whole position is very clear. We have simply borrowed the words from section 497 (5) in section 498(2).

SHRI JASPAT ROY KAPOOR: Borrowing is sometimes dangerous.

SHRI B. N. DATAR: There is no incongruity, nor any difficulty arises.

MR. DEPUTY CHAIRMAN: He has not accepted your amendment, Mr. Kapoor.

SHRI JASPAT ROY KAPOOR: Then I am IWpless.

MR. DEPUTY CHAIRMAN: Are you withdrawing it?

SHRI JASPAT ROY KAPOOR: No, Sir.

MR. DEPUTY CHAIRMAN: I shah first put the amendment to amendment No. 128.

The question is:

"That in amendment No. 128 in the Consolidated Liat of Amendments dated the 19th April 1955, for the words 'by its own direction' the words 'by its own direction or by the direction of any court subordinate to it' be substituted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is

128. "That at page 27, line 4, after the word 'bail' the words 'by its own direction' be inserted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 96 stand part of the Bill."

The motion was adopted.

Clause 96 was added to the Bill.

Clause 97 was added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 98. There are the amendments Nos. 129 to 134.

SHRI N. C. SEKHAR: Sir, I move:

129. "That at page 27, line 17, for the words 'any Magistrate' the words 'any District Magistrate, Presidency Magistrate or Sub-Divisional Magistrate' be substituted."

130. "That at page 27, lines 19 to 24 be deleted."

132. "That at page 27, lines 22-23, the words 'or the Vice-President or the Governor or Rajpramukh of a State' be deleted."

134. "That at page 27, for line 25, the following be substituted, namely:

'(c) in sub-section (2), for the words "or presidency magistrate" the words "Presidency Magistrate or Sub-Divisional Magistrate" shall be substituted'."

SHRI J. S. BISHT: I move:

131. "That at page 27, for lines 21 to 24, the following be substituted, namely:

'Provided that where the examination is necessary of the President, or the Vice-President, or the Governor or the Rajpramukh of a State, or a Minister, as a witness, or as a complainant in a complaint made under Chapter XXI of the Indian Penal Code in respect of his conduct in the discharge of his official functions, a commission shall be issued for the examination of such a witness or complainant'."

SHRI KANHAIYALAL D. VAIDYA: I move:

133. "That at page 27, line 22, the words 'or Rajpramukh' be deleted."

MR. DEPUTY CHAIRMAN: The amendments and the clause are open for discussion. Yes, Mr. Bisht.

SHRI J. S. BISHT: This is a new provision which is being inserted and

iys:

"Provided that where the examination of the President or the Vice-President or the .Governor or Rajpramukh of a State as a witness is necessary for the ends of justice, a commission shall be issued for the examination of such a witness."

Because we have now admitted the defamation clause in 98(b) and we have also admitted that portion of it which has been added by the Lok Sabha, namely, that even where the Public Prosecutor files a complaint they may have to be—in fact they shall be—called as witnesses, it doet not seem proper in the circumstance* to give them a relief only half-heart ed, that is to say, only if they are called as witnesses, so to say, and not as complainants, there might be some difficulty about that and there might be some misinterpretation about that. That is why I have moved my amend ment. So I think that eve.i where there is a complainant both the par ties will be present there and the right of cross-examination wil' be.....

MB. DEPUTY CHAIRMAN: Even the complainant is a witness. Usually he is the first or second witness.

SHRI J. S. BISHT: Yes, and then it can be done.

MB. DEPUTY CHAIRMAN: So it does not improve the matter.

SHRI J. S. BISHT: Sir, I do not want any Minister or other high dignitary to be summoned to the court.

श्री कन्हैयालाल दाँ० वैद्य : उपाध्यक्ष महोदय, मेरा अमेंडमेंट बहुत सरल है । इस बिल में राजप्रमुखों को जो अधिकार दिया जा रहा है उसका मैं विरोध करना चाहता हूं । देश में गवर्नरों का जो दर्जा है वही दर्जा राजप्रमुखों को भी दिये जा रहे हैं। राजप्रमुखों के

प्रति देश की जनता के दिल में कोई अच्छी भावना नहीं है ।

श्री जे० एस० बिष्ट : यह तो आपका प्रिजुडिस है ।

MR. DEPUTY CHAIRMAN: That is another matter. Rajpramukhs are today Constitutional Heads of States and as long as they remain in the Constitution, you will have to provide for them.

SHRI J. S. BISHT: Sir, has the hon. Member any authority to say that the whole people are against them?

श्री कन्हैयालाल दाँ० वैद्य : किन्तु राजप्रमुखों के प्रति देश की जनता में प्रतिकूल भावना है । मैं यह बात कोई पर्सनल प्रिजुडिस से नहीं कह रहा हूं । श्री बिष्ट जी के कह देने से ही यह चीज पर्सनल प्रिजुडिस नहीं हो सकती है ।

श्री जे० एस० बिष्ट : इसके लिए आपके पास कोई सबूत है ?

श्री कन्हैयालाल दाँ० वैद्य : देश की जनता की राय सर्वोपरि है और अगर देश की जनता कहेगी कि वह राजप्रमुख संस्था को नहीं चाहती तो उसका बिल्कुल खात्मा हो जायगा ।

श्री जे० एस० बिष्ट : जब होगा तब देखा जायेगा ।

श्री कन्हैयालाल दाँ० वैद्य : बिल्कुल ठीक है । मैं तो देश की जनता की जो भावना है, राय है, उसको आज के संशोधन द्वारा सदन के सम्मुख रख रहा हूं । हमने इस बिल द्वारा गवर्नरों को जो संरक्षण दिया है वह राजप्रमुखों को नहीं दिया जाना चाहिये, यही मेरा संशोधन है ।

SHRI B. N. DATAR: I am not prepared to accept this amendment. I am not prepared to say that the Minister should not go into the witness box. Let him appear before the court

MR. DEPUTY CHAIRMAN: All right. I will put the amendments to the *vote.*

SHRI J. S. BISHT: Sir, I would like to withdraw my amendment (No. 131).

The *amendment was, by leave, withdrawn.

SHRI KANHAIYALAL D. VAIDYA: I would also like to withdraw my amendment, No. 133.

The *amendment was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

129. "That at page 27, line 17, for the words 'any Magistrate' the words 'any District Magistrate Presidency Magistrate or Sub-Divisional Magistrate' be substituted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

130. "That at page 27, lines 19 to 24 be deleted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

132. "That at page 27, lines 22-23, the words 'or the Vice-President or the Governor or Rajpramukh of a State' be deleted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

134. "That at page 27, for line 25, the following be substituted, namely:

'(c) in sub-section (2), for the words "or presidency magistrate" the words "Presidency Magistrate or Sub-Divisional Magistrate" shall be substituted'."

The motion was negatived.

*For text of amendments Nos. 131 and 133, *vide* col. 6241 *supra.*

MR. DEPUTY CHAIRMAN: The question is:

"That clause 98 stand part of the Bill."

The motion was adopted.

Clause 98 was added to the Bill.

Clauses 99 to 102 were added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 103. There is one amendment.

SHRI JASPAT ROY KAPOOR: Sir, I move:

135. "That at page 28, line 9 after the words 'so to do' the words 'the nature of expediency being recorded' be inserted."

MR. DEPUTY CHAIRMAN: Clause 103 and the amendment are open for discussion.

SHRI JASPAT ROY KAPOOR: Sir, my amendment is to this effect: "That at page 28, line 9, after the words 'so to do' the words 'the nature of expediency being recorded' be inserted." This is with reference to section 516A of the Criminal Procedure Code which I will read out with your permission. It runs as follows: "When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced before any Cri-linal Court during ,any inquiry or trial, the Court may make such order •it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy or natural decay"—and these are the important words with which we are concerned at the moment—"may after recording such evidence as it thinks necessary, order it to be sold or otherwise *disposed* of." To this section, it is proposed by the Government that the following words be added—"or if it is otherwise expedient so to do, the Court"—after the words "speedy or natural decay". It means that hereafter it will be open to the court to destroy or sell away or dispose of the material evidence even if it is not subject to speedy or natural decay but if the court considers it expedient for certain other reasons to destroy it. I submit, Sir, that if the court thinks it is expedient to destroy or dispose of the material evidence for reasons other than its being subject to speedy or natural decay, then it must record the nature of the expediency.

MR. D E P U T Y CHAIRMAN- In writing?

SHRI JASPAT ROY KAPOOR: Of course, in writing, because otherwise he may pass an order to dispose of or destroy it without recording any reasons as to why he is passing such an order. It may be argued that the existing words of section 516A are sufficient and that he will do so as the words "after recording such evidence as it thinks necessary" are there. Under this provision he will indicate the nature of the material evidence but he will not record the nature of the expediency under which he considers it necessary to destroy the material evidence. Everybody knows .that the material evidence is very material and important in the case and it must be specifically recorded as to why the court considers it necessary to destroy it.

SHRI B. N. DATAR: There is no need for these words at all. It is clearly stated already there that after recording such evidence as he thinks necessary he will make an order and that order is a judicial order. Whenever there are special circumstances, he will surely note them.

MR. DEPUTY CHAIRMAN: Do you want to press it, Mr. Kapoor?

SHRI JASPAT ROY KAPOOR: I beg leave to withdraw my amendment No. 135.

The * amendment was, by leave, withdrawn.

*For text of amendment, *vide* col. 6245 *supra.*

MR. DEPUTY CHAIRMAN: The question is:

"That clause 103 stand part of the Bill."

The motion was adopted.

Clause 103 was added to the Bill.

Clauses 104 to 110 were added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 111. There is one amendment.

SHRI JASPAT ROY KAPOOR: Sir, I move:

136. "That at page 30, line 11, for the word 'substituted' the word 'inserted' be substituted."

MR. DEPUTY CHAIRMAN: The clause and the amendment are before the House.

SHRI B. N. DATAR: Sir, I shall accept that amendment. It is in fact a printing mistake.

MR. DEPUTY CHAIRMAN: The question is:

136. "That at page 30, line 11, for the word 'substituted' the word 'inserted' be substituted."

The motion was adopted.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 111, as amended, stand part of the Bill."

The motion was adopted.

Clause 111, as amended, was added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 112. There is one amendment. Are you moving that, Mr. Kapoor?

SHRI JASPAT ROY KAPOOR: Yes, Sir. I move:

137. "That at page 30, line 25, for the words 'with the previous sanction of the State Government' the words 'in consultation with the State Government' be substituted."

MR. DEPUTY CHAIRMAN: The clause and the amendment are open for discussion.

SHRI B. N. DATAR: I should like, with your permission, to make a motion regarding the substitution of the word "sanction" by the word "approval" because that is the word which has all along been used in the Constitution.

MR. DEPUTY CHAIRMAN: Will that satisfy you, Mr. Kapoor?

SHRI JASPAT ROY KAPOOR: That satisfies me completely, Sir. He has anticipated my suggestion. I would therefore beg leave of the House to withdraw my amendment (No. 137).

The * amendment was, by leave, withdrawn.

SHRI B. N. DATAR: Sir, I move:

"That at page 30, line 25, for the word 'sanction' the word 'approval' be substituted."

MR. DEPUTY CHAIRMAN:. The question is:

"That at page 30, line 25, for the word 'sanction' the word 'approval* be substituted."

The motion was adopted.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 112, as amended, stand part of the Bill."

*For text of amendment, *vide* col. 6248 *supra.*

The motion was adopted.

Clause 112, as amended, was added K> the Bill.

Clauses 113 and 114 were added to tne Bill.

3 P.M.

MR. DEPUTY CHAIRMAN: Clause 115. There are eight amendments.

SHRI KANHAIYALAL D. VAIDYA: Sir, I move:

139. "That at page 31, lines 10 to 15, the words 'or najpramukh of a State or a Minister or any other public servant employed in connection with the affairs of the Union or of a State' be deleted."

141. "That at page 31, lines 30 to 35, the words 'or Rajpramukh of a State or a Minister or any other public servant employed in connection with the affairs of the Union or of a State' be deleted."

143. "That at page 32, lines 14 to 19, the words 'or Rajpramukh of a State or a Minister or any other public servant employed in connection with the affairs of the Union or of a State' be deleted."

SHRI H.-C. DASAPPA: Sir, I move:

145. "That at page 33, line 15, after the words 'is pending' the words 'and not compoundable in other cases' be inserted."

MR. DEPUTY CHAIRMAN: Clause 115 and the amendments are open for discussion. Mr. K. D. Vaidya.

श्री कन्हैयालाल वी० वैद्य : उपाध्यक्ष महोदय, इन तीन धाराओं, ५००, ५०१ और ५०२ में, जहां तक हम राष्ट्रपति, उपराष्ट्रपति और गवर्नरों को इस व्यवस्था के अन्तर्गत अधिकार देते हैं वहां तक मैं समझता हूं कि वह उचित है किन्तु उसके आगे अगर हम राजप्रमुख को, जो हमारे चुने हुये मंत्रीगण हैं उनको और जो हमारे सब सरकारी नौकर हैं उनको यह अधिकार देते हैं तो वास्तव में हम एक ऐसी स्थिति का निर्माण करने जा रहे हैं, जिसके अन्तर्गत इस कानून का काफी दुरुपयोग होगा और जो स्वतंत्रता विधान के अन्तर्गत हमने जनता को दी है उसका भी काफी हनन होगा। जनतंत्र में हमें अच्छी आलोचनाओं का स्वागत करना चाहिये और देश के अन्दर समाजवादी जनकल्याणकारी राज्य की स्थापना करने के लिये जिस तरह की स्थिति का निर्माण करने जा रहे हैं, उसमें शासकीय मैशीनरी में जो भ्रष्टाचार की सारी बातें चल रही हैं, उनको जानने के लिये हमें जनता को अधिक से अधिक व्यापक मौका देना चाहिये। यह कह कर कि देश के अन्दर कुछ अंश ऐसा है जो कि गलत तरीके की आलोचना करता है। ९९ प्रतिशत लोगों की आलोचनाओं का गला घोंटने का अधिकार हम सरकारी मशीनरी को नहीं दे सकते और सरकारी कोष के ऊपर इस तरह का खर्च का बोझा लादने का अधिकार दे देना तो बहुत ही गलत सी चीज दिखाई देती है। विधान के अन्तर्गत इस देश की व्यवस्था का जो नया ढांचा हम बनाना चाहते हैं, उसके सम्बन्ध में पंचवर्षीय योजना के अन्तर्गत प्लानिंग कमीशन ने हमारा बहुत कुछ मार्ग-दर्शन किया है। प्लानिंग कमीशन ने शासकीय भ्रष्टाचार के सम्बन्ध में बहुत सी बातें कही हैं। उनके विषय में मैं नहीं समझता कि सरकार की तरफ से कोई कानून लाया गया है या कोई व्याख्या कर के हमको बताया गया है कि शासकीय लेविल पर देश के अन्दर जो भ्रष्टाचार है उसका किस प्रकार से अंत हो। यदि हम आंख मूंद कर सरकारी कर्मचारियों को स्वच्छंदतापूर्वक यह अधिकार देना चाहते हैं कि जनतंत्र को, इस जनराज्य को, मजबूत बनाने के लिये और भ्रष्टाचार का अन्त करने के लिये बिल्कुल सच्चाई के साथ भी छोटे अखबार या जिलों और प्रान्तों में काम करने वाले, छोटी लेविल के ऊपर काम करने वाले, व्यक्ति किसी सरकारी कर्मचारी की आलोचना करें तो उनको

यह स्वतंत्रता हो कि उसका गला घोंट दें और वह भी सरकारी कोष के आधार पर या सरकारी बल पर ऐसा करें, तो मैं समझता हूं कि हम एक बड़ी विचित्र स्थिति का निर्माण करने जा रहे हैं। इस स्थिति में जनतंत्र कैसे पनपेगा, यह एक बहुत विचारणीय प्रश्न है। जब से यह बिल आया है, तब से सारे देश के अन्दर इसकी प्रतिक्रिया समय समय पर होती रही है और उस नाते से मैं समझता हूं कि इन धाराओं में जो यह अधिकार दिया गया है, वह सर्वथा अनुचित है। आज इस सम्बन्ध में देश में जो इसकी प्रतिक्रिया है, वह इसके पास होने के बाद कुछ अच्छी नहीं होने वाली है। जहां तक कि राष्ट्रपति, उपराष्ट्रपति और जो हमारे सम्माननीय गवर्नर हैं, उनका सम्बन्ध है, यदि उनको इस योग्य मानते हैं तो भले ही उनको ये अधिकार आप दें दें कि यदि उनके विरुद्ध कोई ऐसी अभद्र आलोचना हो, जिसके कारण उसकी शान में बट्टा लगता हो, तो वे सरकारी कोष से, जन-कोष से, उसकी व्यवस्था कर सकें, परन्तु और दूसरों को ऐसा अधिकार देना उचित नहीं है।

इसी उद्देश्य से मैंने इस अमेंडमेंट को रखा है और मैं माननीय मंत्री महोदय का ध्यान इस ओर खींचता हूं कि वे जनमत को ध्यान में रख कर ऐसी स्थिति का निर्माण न करें और मेरे अमेंडमेंट को स्वीकार कर के इस

Sma H. C. DASAPPA: Mr. Deputy Chairman, my amendment No. 145 does not alter the substance of the case, but it makes things very clear. If you will kindly see all these in column 6, of the Schedule, entries relating to sections 379, 381, 406, 407 and 408, you will find it is not compoundable now. But we have given a rider here to the effect that when the value of the property involved does not exceed two hundred and fifty rupees and permission is given by the court before which the prosecution is pending, then it is com-poundable. So, what I thought *wax* that the particular offences under those sections are not compoundable, that is the general rule; and we are here introducing an exception in the case of all these offences where the property involved does not exceed two hundred and fifty rupees. We ought to add after the words "is pending" the words "and not compoundable in other cases", because all these offences are non-compoundable in nature. I think it will be a better form, because these are non-compoundable offences. We ought to say "non-compoundable" first; and then say "except in cases where the property involved is less than two hundred and fifty rupees in which case it would be compoundable." That would have been all right. Now, what they say is: remove the expression "non-compoundable" and use only this much. Therefore, the proper thing is for you to have it "non-compoundable", except in these following cases—because this is an exception. The main feature of these offences is "non-com-poundable". By a stretch of analogous reasoning you may say it is all right, but the proper form is "non-compoundable except in the following cases". Or, if the hon. Deputy Minister thinks that it is "compound-able", you must say "non-compoundable" in other cases.

MR. DEPUTY CHAIRMAN: Do you mean that in all these cases they are not non-compoundable?

SHRI H. C. DASAPPA: It is non-compoundable, except in cases where the value of the property does not exceed two hundred and fifty rupees. It is an exception to the general rule "non-compoundable". It is not stated like that. They should have said: "non-compoundable except in the cases where the value of the pro perty

"

MR. DEPUTY CHAIRMAN: The wording is "in the entries relating to

[Mr. Deputy Chairman.] sections 379, 381, 406, 407 and 408 in the 6th column, for the words, 'Not compoundable' wherever they occur, the words 'Compoundable when the value of the property does not exceed two hundred and fifty rupees and permission is given by the court before which the prosecution is pending' shall be substituted." Ordinarily they are not non-compoundable. That is, they will become compound-able with the permission of the court and if the value of the property is less than two hundred and fifty rupees. What is the difficulty?

SHRI H. C. DASAPPA: Sir, shall I read it once again?

MR. DEPUTY CHAIRMAN: If they had said "and not compoundable in other cases" also, it would meet your case?

SHRI H. C. DASAPPA: Naturally, Sir. Please see, when only these offences are made compoundable within that particular monetary limit.....

MR. DEPUTY CHAIRMAN: It goes - without saying.

SHRI H. C. DASAPPA: How can it be? Please see the structure of the «ntrieS in dolumn 6, compoundable or non-compoundable? Now, you say "compoundable in the case of so and so....."; whereas I would much rather have said "non-compoundable, except in the case of where the value of the property does not exceed two hundred and fifty rupees ....."

MR. DEPUTY CHAIRMAN: Or compoundable without so and so, compoundable only. It is not necessary.

SHRI H. C. DASAPPA: It is. Pardon me, Sir. This is a Procedure Code. If you say 'compoundable', bow can you imagine all this?

MR. DEPUTY CHAIRMAN: If the word was only '<x»*>poundahie', then your interpretation would have been correct .....

(Interruption.)

MR. DEPUTY CHAIRMAN: See, for example, cheating. The words there are "compoundable when the permission is given by the court, before which the prosecution is pending." In addition to the permission of the court, a money limit has also been put, when the value of the property is less than Rs. 250. Mr. Vaidya, are you withdrawing your amendments?

SHRI KANHAIYALAL D. VAIDYA: Yes, Sir. I beg leave to withdraw my amendments (Nos. 139, 141 and 143).

The * amendments were, by leave, withdrawn.

SHRI H. C. DASAPPA: Sir, I beg leave to withdraw my amendment (No. 145).

The *amendment was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 115 stand part of the Bill."

The motion was adopted.

Clause 115 was added to the Bill.

Clause 116 was added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 117. There is one amendment.

SHRI J. S. BISHT: Sir, I am not moving it. It is only consequential.

Clause 117 was added to the Bill.

Clause 118 was added to the Bill.

The Schedule was added to the Bill.

*For text of amendments, *vide col* 6249 supra.

MR. DEPUTY CHAIRMAN: Clause i. There are two amendments.

SHRI B. N. DATAR: Sir, I beg to jTiove:

2. "That at page 1, line 4, for the figure '1954' the figure '1955' be substituted."

3. "That at page 1, line 6, after the words 'Government may' the words 'by notification in the Official Gazette,' be inserted."

MR. DEPUTY CHAIRMAN: The question is:

2. "That at page 1, line 4, for the figure '1954' the figure '1955' be substituted."

The motion was adopted.

MR. DEPUTY CHAIRMAN: The (question is:

3. "That at page 1, line 6, after the words 'Government' may' the words 'by notification in the Official Gazette,' be inserted."

The motion was adopted.

MR. DEPUTY CHAIRMAN: The ■question is:

"That Clause 1, as amended, stand part of the Bill."

The motion was adopted.

Clause 1, as amended, was added jo the Bill.

MR. DEPUTY CHAIRMAN: The Enacting Formula. There is one amendment.

SHRI B. N. DATAR: Sir, I beg to ifliove:

1. "That at page 1, line 1, for the words 'Fifth Year' the words 'Sixth Year' be substituted."

MR. DEPUTY CHAIRMAN: The question is:

1. "That at page 1, line 1, for the words 'Fifth Year' the words 'Sixth Year' be substituted."

The motion was adopted.

MR. DEPUTY CHAIRMAN: The question is:

"That the Enacting Formula, as amended, stand part of the Bill."

The motion was adopted.

The Enacting Formula, as amended, was added to the Bill.

The Title was added to the Bill.

SHRI B. N. DATAR: Sir, I move:

"That the Bill, as amended, be passed."

MR. DEPUTY CHAIRMAN: Motion moved:

"That the Bill, as amended, be passed."

SHRI J. S. BISHT: Mr. Deputy Chairman, I wholeheartedly support the passage of this Bill. And before I do so, I must congratulate the ex-Home Minister, Dr. Kailas Nath Katju, for the great interest that he took in it and the labour that he bestowed on it. And I must also congratulate the Deputy Home Minister, Mr. Datar, who has been connected with it from the very beginning, and who has given so much time to it, and who was mainly responsible for piloting the Bill safely through this House. Sir', I must also attention—although it is invidious to mention names—one particular Draftsman, Mr. Sarkar, who has rendered very great service in the drafting of this Bill.

Sir, now coming to the Bill itself, I must emphasise that it is a measure which will ensure expeditious trial, and which will, we hope, go a long way in clearing all these arrears and ihe long-drawn trials which are a

[Shri J. S. Bisht.] slur on the administration of criminal justice today. And here, Sir, I must emphasise certain things and remove the misunderstanding which has been created on account of a few controversial clauses. There are certain clauses, which are very beneficial to the accused. I must emphasise that the position of the accused, under the revised Code of Criminal Procedure, will be much better than it is today. I may mention only a few of these provisions.

For instance, the accused, under clause 110, as passed just now, will be entitled to be absent from the court and be represented by a pleader. This is a very welcome facility which was denied to him up till now. Then, Sir, if the accused is a young man, up to, or below the age of 15 years, he will not be called to a thana or a police station. And a woman will never be called or summoned to a thana or a police station. This is a great improvement because under the present circumstances, it was thought that women and these young boys were more susceptible to, what are called, third-degree methods. So, that has been completely removed now.

Then, Sir, another benefit that has been granted is this that at present the trials go on for months together. One witness is called on some day and the case is postponed for 15 days. Then another witness is called, and so on and so forth. Now, a provision has been made that the trial must proceed from day to day until all the witnesses have been examined, and the case must end as early as possible.

Then, Sir, another thing that has been done is that if, within 60 days, the trial is not completed, and if the case is triable by a Magistrate and the offence is non-bailable, the accused will be granted bail at once by the court. So, this is an extra pressure put on the police, and they will see to it that the case is concluded within .* period of two months from the date on which the trial begins.

Then, Sir, there is yet another benefit that has been granted by this law, and that is that at present, if a Magistrate is transferred in the midst of the trial of a case, as is always happening, when a new Magistrate takes over, the trial begins *de novo,* and all the witnesses have to come back to the court. This will be only in very rare cases where the cause of justice demands it. Otherwise the previous evidence will be taken as if it was evidence tendered before the Magistrate himself.

Another advantages that has been granted by this law is that in certain cases in the Sessions Court it so happens that it becomes necessary for the Sessions Judge to take evidence on the spot, to make an inspection of the spot and probably examine some very important witnesses who are old or infirm and cannot be moved. I have personal experience of this and even in very important cases like murder cases very often the accused says, "Please come and see the spot so that you will be able to see whether the prosecution witnesses are correct. They say for instance that a particular offence was committed in a particular way and the offender came there in a particular way. But If you come to the spot, you will find that that way does not exist on the spot at all." So, they wanted the Sessions Judge to come to the spot. In such cases, provision has now been made in the law that a Sessions Judge can hold the trial there on the spot.

Now, there was another difficulty up till now in committal proceedings. There was long-drawn cut cross-examination in the trial Magistrates' courts because all the witnesses, formal and informal, were produced and then sometimes they were defended by incompetent counsel who wanted to cross-examine the witnesses, and[1] the whole thing had to be repeated in the Sessions Court again. Of

course, the defence counsels who were experienced In thes$_e$ matters never indulged in this sort of practice. They either reserved the cross-examination or cross-examined only in very rare eases. Now, all these laborious proceedings have been cut out and the committing Magistrate has only to examine the more important witnesses, *i.e.* witnesses who have seen the actual crime. Apart from the right of the accused to cross-examine, he will have the whole record of the case both in warrant cases and sessions cases, a facility which was not granted to him up till now. The whole record will be there in his hands or in the hands of his counsel before the trial begins.

Another thing that has been done is that the trial in the Sessions Court has been made expeditious. Previously witnesses were not willing to come before a court in criminal cases, even though they had seen the actual crime committed not because they wanted to help the criminal but because they did not want themselves to be punished. The present provision will greatly help the witnesses also because when they are lequired to come before the court, they will be cross-examined at length and then thereafter they will be discharged. So, now 95 per cent, of the witnesses will be willing to help the cause of justice. Now, they will be only too willing to do it. They do not want to be repeatedly called in courts. We have all experience in courts of law. The witness comes at 10 o'clock, gets his summons and he waits till 4 o'clock, and then he is told that the case is postponed to some other day. He comes again and then probably cross-examination is reserved. He comes again for the cross-examination. Therefore this present provision will greatly help him.

Provision has also been made to stop perjury, which is very rampant in this country, and the facility has been granted to the trial conrt to make a complaint so that trial can begin at once. Everybody should know that in whatever statement he makes, he must be prepared to tell the truth and not try to mislead anybody, not even the Police Officer during the course of the investigation.

Lastly, I come to the amendment to section 488 under which maintenance to women has been increased to Rs. 500. So far, the maintenance has been restricted to Rs. 100 although the husband may be drawing a salary of Rs. 4,000 or may have property which may yield an income of that order.

Sir, from an impartial review of the provisions of this Bill, I have no doubt that it will greatly help the parties, help the witnesses and also help the cause of justice. With these words, I commend the Bill for speedy passage.

SHRI S. MAHANTY (Orissa): Mr. Deputy Chairman, this Code of Criminal Procedure (Amendment) Bill loads the dice against the accused. Its. dubious merits time alone will prove. Time alone will prove whether the-various provisions of this enactment will serve the purpose for which it has been enacted. I will not hazard any summary opinion on this Bill. Only time will prove whether it will result in the advantages which the hon. the Deputy Home Minister has. claimed for it. But I would like to. take this occasion to make my plea that the judiciary should be immediately separated from the executive. During the debate on this Bill, it has. been emphasised, that the Ministers and the public servants are innocent, that they have been discharging then-duties according to their lights, but the devils of th$_e$ peace are the critics or the "yellow journalists" who attempt to sling mud at persons who are discharging their duties quite honestly and honourably. I do not doubt that proposition, but, Sir, in this context I would like to invite attention to an incident which will show to what extent and to what depths the executive and the Ministers can stoop to harass their

[Shri S. Mahaniy.] critics. I will quote from a judgment *at* the Chief Justice of a High Court. The learned Chief Justice, in the ,course of his Judgment observed:

> "This Court has had occasions in recent months to point out how innocent people were deliberately implicated in serious crimes to serve sinister ends and how the power and resources of the State are used to drag or force opponents and critic^ into costly court proceedings for no apparent reason except to harass them to silence and submission."

i will quote only this much from the judgment. I need not repeat here the whole of it. I quote this just to show to what extent Ministers in certain States have gone to silence their cri:ics. The learned Chief Justice further observed in the course .of his judgment:

> "It is needless to point out that such below the belt attempts and low-down methods augur ill for a good and proper administration of justice in the State unless effectively checked in time."

I have no personal axe to grind, nor have I any personal vendetta to satisfy. I live thousands of miles away from the place where this inci dent occurred. Sir, I am quoting this before the House without any malice, for a bona *fide* purpose, to show how in a particular case records have been tampered with the collu sion of the District Magistrate, the trying Magistrate, and high police officers. Now under this Bill .....

MR. DEPUTY CHAIRMAN: The whole thing is *sub judice.* That very judgment you quote is *sub judice.*

SHRI S. MAHANTY: The facts are not *sub judice.* Since you have raised this I may reply that the case is not ,wb *judice,* and it is perfectly open to me to quote the whole case if I like, but I would not like to embarrass you or any of the other hon. Members.

MR. DEPUTY CHAIRMAN: No embarrassment to anybody. In fact in that very judgment the learned Justice says that the lower court should go into all these questions. So, the matter is sub jwdice and they are only *obiter dicta.*

SHRI S. MAHANTY: This aspect is not *sub judice.*

MR. DEPUTY CHAIRMAN: They have themselves directed in that judgment while transferring the case that the trying magistrate should go into these questions without fear or favour. So the matter is still *sub judice.*

SHRI S. MAHANTY: They will go into the prosecution case—they will not go into .....

MR. DEPUTY CHAIRMAN: Into this question also—they have said that I have also read it.

SHRI S. MAHANTY: So the trying magistrate will go into allegations against the Home Minister?

MlR. DEPUTY CHAIRMAN: Yes-it may be against anybody, we are not concerned. The very fact of the substitution of the F.I.R. was questioned and he has remarked that this matter should be gone into by the trying magistrate. The entire matter is *sub judice.*

SHRI H. C. MATHUR: The High Court has passed the remarks .....

MR. DEPUTY CHAIRMAN: I know the judgment.

SHRI V. K. DHAGE: He is merely reproducing a part of the judgment.

SHRI S. MAHANTY: I am not referring to the particular aspect of the case which is *sub judice.*

MR. DEPUTY CHAIRMAN: What I say is that the very learned Judges of the High Court who passed this judgment say that this matter should be enquired into by the trial magistrate and the case is still *sub judice.*

SHRI S. MAHANTY: But not these : remarks. I am simply quoting the remarks of the Chief Justice.

MB. DEPUTY CHAIRMAN: People in a protected position can make remarks.

SHRI S. MAHANTY: I am not taking that kind of "low down" advantage. I have not named the Home Minister of any State, I have not named the High Court, I have not .given any indication of the case which is *sub judice.* I am simply quoting.

MR. DEPUTY CHAIRMAN: You have quoted it.

SHRI S. MAHANTY: What I am saying is that here are the persons, the Ministers who want to silence-their critics, for which they deploy the whole executive machinery at their disposal. Therefore I am making a simple and humble plea that the Judiciary should be immediately separated from the Executive. It is a thousand pities that the Party which ame to power with the slogan and the battle-cry of separation of judiciary from executive should now fight shy of implementing their programme -which is long overdue. Sir, as the elections are drawing nearer, it will be perfectly open to the opponents of the Party today in power, to bring out various allegations against the Ministers, and it does not behove the Ministers to take shelter under the provision which has been made here j and ask the State to defend their own acts of omission and commission. I think the public officers are going to be mere cat's paws, for pulling out the chestnuts of Ministerial prestige from the fire of burning public controversies. This it not very fair. After all Ministers are politicians. As I said at an earlier stage of the debate on this Bill, if you maintain that the Ministers mean the State, in a democratic s°t up the leaders of the Opposition are also a part of the State. Therefore the benefits which are being extended to Ministers should also have been, in the fitness •of things, extended to the Leaders of Opposition. It is true that the Indian Parliament has no Leader of the Opposition today but there are various State Legislatures where there are recognized Leaders of the Opposition, who are entitled to all the privileges to which the Ministers are entitled. It is an aspect which is clearly repugnant to any democratic sense or to any sense of democratic values.

Then the last point that I am trying to make is that the whole basis of this Bill has been planned to load the dice against the accused; but when the citizen comes into coflict with the State, these provisions are bound to cause deep concern. It is certainly a matter of grave concern to us when we take into account the typical background where we find a group of people who have no scruples to sacrifice all canons of justice and jurisprudence for their own ends. I need not cite cases. Another case is *sub judice,* pending in the Supreme Court. I don't wish to quote the various documents which have been produced before the Supreme Court in that connection which would have shown to this House how the Ministers send D. O. letters to the magistrates and the magistrates, on their part, send instructions to the Superintendents of Police to keep a particular watch against a set of persons and to bring them to book by hook or crook. Is this fair? Now it is no question of making a broadside against the Government or the Government trying to defend itself. That attitude should not prevail. Speaking for myself—in my case it cuts across party barriers— I am not viewing it from any partisan point of view and I would also beg the hon. Deputy Minister and Members of the Government side not to view it from a partisan point of view. Now the issue has to be examined and has to be analysed and has to be viewed from the point of view of whether the State should be armed with that power and whether the citizens should have to be sacrificed as the hon. Home Minister of Mysore said— "Individuals should not matter much. The Departmental pre«-

[Shri S. Mahanty.] tige should be upheld and the cases in the Court should he successfully pushed through." Sir, this attitude symbolizes the typical attitude of the Party in power which is an attitude which I may call, in the classical language, as a Fascist attitude. What have the citizens in their possession to defend themselves with? It is very good for Mr. Bisht to dilate on the various beneficial aspects of the Bill but this has to be viewed from another point of view and the only remedy that now lies is that the hon. Deputy Minister should at least see that injustice is not done and where such gross abuse of power has taken place, to see that such persons are effectively brought to book. Sir, we are living in a democracy. We cannot now equate the State with the old 'Ma-bap' concept of a State. We want it to be a welfare State of socialistic pattern. Therefore all your legislations will also have to bear that stamp on it. With these remarks and with my appeal to the hon. Deputy *Home* Minister for the immediate separation of the Judiciary from the Executive. I oppose this Bill.

DR. W. S. BARLINGAY (Madhya Pradesh): Mr. Deputy Chairman, now that we are about to pass this Bill which in many ways is a controversial Bill, it will be useful to make a few observations of a general nature. The first observation that I wish to make is that simplicity of procedure need not be confused with the thinness of the volume of the Criminal Procedure Code. The Criminal Procedure Code can be a very elaborate affair. As a matter of fact it ought to contain rules and regulations and laws which will meet all imaginable types of cases. Now that is bound to make the Code a very elaborate one. But it would not follow that criminal procedure has become complicated on that account. Members of this Housft and Members of the other House have, I believe, not been very clear on this point when they criticised the provisions of this Bill. On the other hand I do not suggest that the procedure that will be followed in the criminal courts hereafter will necessarily be made simpler by virtue of this amending Bill. I am not suggesting anything of that kind. On the contrary, what I feel is that in respect of some of the provisions at any rate, it is going to become a little more complicated, as for instance on account of clause 25 of this Bill. The point we have to bear in mind is that simplicity or complexity of procedure is a very different thing from elaborateness or thinness of the various provisions of the Criminal Procedure Code. When you keep this in mind, the question is whether this particular Bill has simplified the criminal procedure or not. That is a very important point. Sir, in this connection I would remind the House of a very important and very fundamental dictum of Sir Henry Maine. In one of his classic books, he says, "Justice is secreted in the interstices of judicial procedure." That is a very important thing to remember. Now I have no illusions in the matter. So far as this amending Bill is concerned, it is undoubtedly a very bold step and I think the sponsors of this Bill, including the hon. Deputy Minister,. Mr. Datar, have to be congratulated on taking that very bold step. They have taken courage in both hands and have tried to amend the original Act which is as old as 1898.

SHRI S. N. DWIVEDY: To make it clumsy.

DR. W. S. BARLINGAY: Well, my hon. friend may think so, but people have a right *to* differ. What I say is that at this stage, all that we can rightfully say is not that the original Act has been made more clumsy or simpler. We really cannot say this at this stage. Time alone will show that. After all, the wisdom of these various provisions has got to be tested in the crucible of administrative experience and just as we have waited for such a long time, as long as about 57 years—to be able to bring forward all these various amending provisions, in the same manner, after

we have gained experience in the criminal courts, we will be able to find out whether, after all, the various provisions that have been made in this Bill have stood the test of experience. But that will take, as I said, some time. In the meanwhile, there is not the slightest doubt that something had to be done in regard to criminal procedure and Dr. Katju and Mr. Datar have got to be congratulated on whatever they have tried to do.

Sir, there is one thing which I wish to refer to. Dr. Katju, if I mistake not, before this Bill was even conceived of, had promised to this House and to the other House—i suppose I am right in that—that not merely the criminal procedure but the whole legal procedure, would be made simpler and that justice would be made cheaper. He meant not only this Code, but several other things with regard to legal matters and legal procedure. I respectfully and very humbly suggest that if he and Mr. Datar imagine that merely by having a Bill of this sort, he has fulfilled that promise, then, he would be greatly mistaken. Sir, Criminal procedure or legal procedure generally, is neither made simpler nor cheaper by amending Bills of this sort. The entire legal system has got to be overhauled, The present legal system has been based and is a part of the feudal system or structure of society. Now our society is fast assuming a democratic structure. It is important to remember that corresponding to the change in our sociai structure, there has got to be corresponding changes, suitable changes, in our legal system as well. I am one of those who feel that justice has got to be made cheaper in this country, and has at the same time got to retain the character of justice. Otherwise there is now-a-days a very loose talk about justice. People say that according to the present legal system, the accused has so many advantages that he can escape from the clutches of the law and all the rest of it, and therefore, ^they say that the opportunities of the accused person to get out of the clutches of the law should be curtailed. Even the old dictum that it is better that a hundred guilty persons go unpunished than that one innocent person should be punished, even that dictum is being questioned today. I do not really think that that is a proper attitude. What I really feel is that if you want really to make justice cheaper and in consonance with democratic structure of our society, and if I may say so, in consonance with socialistic principles, then one of the first things to do is to nationalise our legal service. Sir, I belong to the profession of lawyers and I can say from experience that all is not well with this profession.

SHRI J. S. BISHT: All is not well with the whole world.

DR. W. S. BARLINGAY: Anyhow, I am speaking of that profession. It does not matter what it is with the whole world. Of course, it is true that all is not well with the world; if that had not been the case, we would not have all this talk about socialism and communism and all the rest of it. So my hon. friend is correct in saying all is not well with the world. What I say is that present day society is still a type of society where you do not honour character and honesty so much as wealth. As a matter of fact, you definitely associate and not dissociate these two concepts, namely, wealth and dignity. This you really ought not to do; and therefore, if my friend Mr. Bisht says that all is not well with the world—although probably he does not mean it seriously—I think what he says is quite right: All is really not well with the world but let us now come back to the subject under discussion. I was talking only about the legal profession.

(Interruption.)

SHRI JASPAT ROY KAPOOR: Very philosophic.

DR. W. S. BARLINGAY: As I said, I do not want to elaborate this point.

LDr. W. S. Barlingay.] 1 do not want to take the time of the Touse very much but you will agree, Sir, that something radical has got to be done. What I was saying was that two things have got to be done before you will be in a position to make justice cheap end simple in our society. One thing to do is to nationalise the legal services. That is one thing. The second thing to do is to effect radical changes in the police administration in this country. I happen to oe a lawyer of some standing and I can say with experience tha* if many cases fail in criminal courts today, it is not because the accused is not found out— the police do lay their- hands on the proper person usually—but because some fictitious element, some wrong facts are introduced into the case for the prosecution for the sake of legal proof. Now, when you direct your cross-examination on those weak and fictitious points, the witness will break down with the result that the prosecution fails. That has been my experience and I believe that has been the experience of most of the experi. enced lawyers who have had anything to do with criminal law. I was not going into the realms of the administration of criminal law but what I wanted to say was with regard to the social problems involved. I wanted to say that if Government are really serious' about their view that justice has got to be made cheap and simple and has to be brought within the ken of the poor people in this country, then something much more radical than this will have to be done. I do hope, Sir, that Dr. Katju and Mr. Datar, who really do deserve congratulations on having brought such a measure as this, will not fail to fulfil the promise which they have solemnly made to this House and to the other House some time ago.

श्री अब्दुर रज्जाक खान : डिप्टी चेयरमैन, इस आखिरी वक्त में जब कि यह बिल इस हाउस में पास होने जा रहा है, मैं ज्यादा वक्त लेना नहीं चाहता। हमारी मुखालिफत के बावजूद, हमारी सख्त मुखालिफत के बावजूद, यह बिल इस वक्त पास होने जा रहा है। इस बिल की मुखालिफत करते हुये हमने जितनी बातें कही हैं, उनको मैं इस वक्त तफसील के साथ दोहराना नहीं चाहता, लेकिन मुझे चन्द जरूरी बातें पेश करनी हैं।

इस क्रिमिनल प्रोसीजर अमेंडमेंट बिल के सिलसिले में जो सब से ज्यादा नाउम्मीदी और मायूसी हमें हुई है वह यह है कि जहां जरूरत इस बात की थी कि एक ला कमीशन मुकर्रर किया जाता और पूरे कानूनी सिस्टम को बदलने की तरफ ध्यान दिया जाता, वहां ऐसा न करके एक पीसमील लेजिस्लेशन लाया गया है। हमारी इस मांग को मंजूर तो नहीं किया गया है, गोकि बहुत से मेम्बरों ने इस पर अपनी राय दी है, फिर भी मैं यह राय हाउस के सामने दोबारा पेश करता हूं कि हमारे मुल्क की कानूनी शक्ल और कानूनी सिस्टम को बदलने के लिये एक कमीशन का मुकर्रर करना अब भी जरूरी है क्योंकि बगैर इसके काम नहीं चल सकेगा। हमारे मुल्क की सियासी सूरत बदल रही है, तमाम सूरतें बदल रही हैं, लेकिन कानूनी शक्ल को उसी तरह रखा जा रहा है। इससे काम नहीं चलेगा।

दूसरी बात, जिससे हमें बहुत नाउम्मीदी हुई है और जिसके मुताल्लिक ५० साल से ज्यादा वक्त से हर ओपिनियन के लोग अपनी राय देते रहे हैं, वह यह है कि जुडिशियरी को एक्जिक्यूटिव से अलग कर दिया जाय। लेकिन इसके मुताल्लिक जो कौमी तहरीक की सब से बड़ी आवाज थी उसको पूरी तरह छुआ भी नहीं गया है। खैर, हमने फिर इसकी मुखालिफत की और उस मुखालिफत की सब से बड़ी बात यह थी कि फ्रीडम आफ प्रेस पर कोई हमला न हो, कोई दस्तन्दाजी न हो।

श्री जे० एस० बिष्ट : फ्रीडम आफ प्रेस पर कोई हमला नहीं है।

श्री अब्दुर रज्जाक खान : जी, हमने इसी को बचाने की कोशिश की। हमारी सरकार की तरफ

से और आनरेबिल डिप्टी मिनिस्टर की तरफ से बार बार यही कहा गया है और वादा किया गया है कि कोई हमला नहीं होगा। लेकिन मैं समझता हूं कि इस बिल के जरिये एक तलवार प्रेस के सिर पर उठा कर रख दी गई है। वह तलवार चलायें या न चलायें लेकिन इसमें कोई शक नहीं है कि उन्होंने अपने हाथ में तलवार ले ली है। अब वह उस तलवार को चलायें या न चलायें यह उनकी मर्जी पर है। खैर, मैं यह उम्मीद करता हूं कि उन्होंने तलवार तो अपने हाथ में उठा ली है, लेकिन वह उसे प्रेस पर नहीं चलायेंगे। आज डेमोक्रेटिक प्रेस बनाने की जरूरत है और प्रेस को आजादी देने की जरूरत है। अगर आप यू० एन० ओ० की तरफ नजर करें तो वहां से यही आवाज उठाई गई है, उसका चार्टर मौजूद है उसमें यही है कि पूरी तरह फ्रीडम आफ प्रेस होनी चाहिये। प्रेस पर कब्जा करने के लिये, प्रेस को काबू में रखने के लिये आपको दूसरे जरायें अख्तियार करने चाहियें। यह नहीं होना चाहिये कि कानूनी तौर पर आप उसका मुंह बन्द कर दें।

मैं इस वक्त कोई बड़ी तकरीर करना नहीं चाहता। मैं आनरेबिल डिप्टी मिनिस्टर से सिर्फ यही अर्ज करूंगा और उम्मीद करूंगा कि वह इस बात को देखें कि इसके मुताल्लिक जो उन्होंने वादे किये हैं कि प्रेस पर कोई हमला नहीं किया जायगा, वह उन वादों के मुताबिक काम करें।

श्री एस० एन० द्विवेदी : वादा कभी नहीं मानते।

श्री अब्दुर रज्जाक खान : हां, यही तो हम डरते हैं। इसके अलावा इस बिल के सिलसिले में अपने अमेंडमेंट्स के जरिये हमने जिस बात की कोशिश की उसको अंग्रेजी में कहते हैं, "right of individual to defend himself." हम समझते हैं कि डेमोक्रेसी की यह एक सबसे बड़ी बात है कि अपने को डिफेंड करने का किसी शख्स को पूरा पूरा राइट दिया जाय। चुनांचे अपने तमाम अमेंडमेंट्स के जरिये हमने यह राइट बचाने की कोशिश की। यह कहा गया है कि किसी राइट पर हमला नहीं होगा। डिप्टी मिनिस्टर की तरफ से बार बार इस बात का वादा किया गया है। मैं उम्मीद करूंगा कि वह अपने वादे के मुताबिक चलेंगे। वरना कानून हमें बदलना है। यह मुल्क की आवाज है कि पूरे कानून की शक्ल बदल दी जाय। अगर यह ठीक नहीं होता है, तो लोग मानेंगे नहीं। हम इसको बदलने की कोशिश करेंगे, आवाज उठायेंगे और आपको बदलना पड़ेगा।

4 P.M.

तीसरी बात यह है कि स्पीडी ट्रायल के नाम से क्रिमिटल प्रोसीजर को खत्म कर देने की, उठा देने की जो कोशिश है वह हम समझते हैं कि हमारे मुल्क के अवाम में अब तक पापुलर नहीं है। लोग उसे पसंद नहीं करेंगे। कोई भी कानून आप चलाइये, लेकिन पहले यह देख लीजिए कि लोग उसे कबूल भी करते हैं। यहां ऐसा नहीं किया गया। अचानक अगर आप यह सब कर देंगे तो नतीजा क्या होगा या नहीं होगा, यह तो हमें मालूम नहीं है लेकिन स्पीडी ट्रायल कहां तक हो सकेगा, इसमें शक है क्योंकि गड़बड़ बहुत पैदा होगी और उससे लोग बहुत ज्यादा नाखुश हो जायेंगे। मगर हम इसके लिए इंतजार करेंगे कि क्या होता है और क्या रूप लेता है, क्या नतीजा निकलता है उसे देखेंगे।

आखिर में मैं फिर अपनी जो मांग है कि जुडिशियरी को एग्जीक्यूटिव से अलग कर देना और ला कमीशन मुकर्रर करना, इन दोनों मांगों को दोबारा पेश करते हुए अपनी तकरीर खत्म करता हूं।

SHRI R. P. TAMTA: Sir, I welcome this piece of legislation and I think in preparing it Dr. Katju and our Deputy Minister have taken great pains for which they rightly deserve congratulations and gratitude from all sections of the House.

Sir, it is true that this enactment seeks to make the administration of

[Shri R. P. Tamta.] justice speedy and cheap and to provide facilities for the accused for defending himself. But I feel that the changes which have been made do not *go* far enough and might not be able to achieve the objects which were in view when amendment of the Criminal Procedure Code were aimed at. Personally I felt that the whole Criminal Procedure Code required a radical change. It is true that the Code which was enacted some 50 years back did serve its purpose well and that object for which the Code was enacted by a foreign Government which was a police State was to maintain law and order. Now, we have got a welfare State in place of a police State. Thus taking into consideration the changed circumstances and the past experience of the working of this Code, I feel that the Criminal Law requires a radical change. I feel, Sir, the whole legal system in our country, especially the way in which criminal justice is administered requires a thorough change and this Bill does not go far enough. Of course it seeks to make some changes, hut it will not help the accused very much. It is true that something has been done to help the accused by way of providing him with copies of documents, statements of prosecution witnesses and other papers with a view to enabling him to know what is the case which he is to be called upon to face in the court, I mean the facility provided in the new section 173A. Up to now he used to remain completely in the dark, before he was produced in the court, and did not know what was the case against him. So this new provision will go a long way in helping the accused to build his defence and meet the charge. There are other provisions also which aim at speeding up the trial, but the whole procedure, on account of the several other amendments which have been accepted, will not make the working of the Code much simpler than is the case at present. In some respects the procedure has been made complicated. Up to this time private complaints and the complaints made by the police were treated in the same way. But now you will have two systems of trial for the same offence—one for the prosecution by the police and one on private complaint. Then I come to the procedure in warrant cases. The right of the accused of cross-examination after the charge which was a very wholesome right and had a salutary effect, has been taken away. So these are some of the drawbacks which strike me after the changes that have been incorporated in the Code. I personally feel, as Dr. Barlingay has also suggested, that the whole legal system requires a change. I also feel that the chief aim of both the defence and the prosecution should be to help in administering justice and to see thai justice is done in all cases. I feel that out of the, say, hundred persons who are brought to the court, not a single guilty man should escape; at the same time not a single innocent man should be convicted. That should be the aim and that should be achieved. What happens at present? The prosecution counsel thinks that it is his duty to get the man convicted whether he is really guilty or whether he is innocent. He thinks that his duty lies in getting the man convicted. On the other hand the defence counsel feels that his purpose will be served and he will be fulfilling his duty if he gets the man acquitted anyhow.

So, Sir, I feel that the whole legal system should be nationalised in such a way that in every district and in other places also where there are courts, there should be a panel of counsels and the court should have the power to engage counsels out of the panel which is there both for the accused and for the prosecution by rotation or something like that and the aim of the counsels, both for prosecution and defence, should be one and the same, that is, only to help the court in arriving at the true state of facts and doing justice. Sir, this is a thing which I think should be tried.

Then, it has been said that an attempt has been made to provide

facilities to the accused but nothing has been done to provide free legal aid to the poor persons. There are lots of poor persons who are sometimes falsely implicated by the police or by soma of their enemies and who have to face criminal trials of a serious nature. Because of their poverty they are not able to engage counsels and they are unable to get any legal help. I know in some States counsels are engaged for defending the accused especially in murder cases. I feel at least in all sessions trials also such people who are not able to engage lawyers should be given facilities to defend themselves and the court or the State should provide free legal aid to those persons.

Sir, fair justice depends on the impartial investigation and for that the whole investigation system has to be improved. The method of investigation that is followed at present by the police requires a radical change. The police follow their old methods, tome-times even third degree methods, though not so frequently as they used to do in the past. But still the investigation is not done impartially with the result that sometimes innocent persons arc implicated. In this res-peel I Eeel that there should have been some provision to curtail the power of the police especially with regard to section 54 and 151 by which they can arrest any person without warrant and keep him in police custody for 24 hours. This power of arrest is some-limes used by the police at the instigation of certain persons and sometimes by themselves to harass innocent persons or to extort money from them. In a free democratic country there should be enough safeguards so that no innocent person is impli-cated. This could be ensured in another way also. Under section 250 there is a provision for giving compensa-tion to the accused when it te found that the case against the accused was frivolous, false or vexatious. If that principle could be extended to the cases of prosecution by the police or the State also that would be a proper safeguard. If a person is prosecuted and if it was found that the case against him was incorrect and that he was falsely implicated and had to face all the worry of the trial because of machination by the police, in that case also the principle of paying compensation should be applied.

Mi!. DEPUTY CHAIRMAN: It if time for you to close now.

SHRI R. P. TAMTA: Yes, Sir. I feel that there are other sections also which require radical change and I hope the feelings of the House as expressed by various hon. Members will b_e taken into consideration by the Government. For instance, whipping punishment which is a barbarous punishment and a slur should not find a place in the code of a free democratic country and law should not claim any provisions which interfere with the freedom and rights of the people and place them at the mercy of the police-.

SHRI KISHEN CHAND: Mr. Deputy Chairman, this Bill is after all going to be passed in spite of the number of amendments sent by the Congress Members. But I am surprised that it is becoming a practice in this House after every Bill is passed to offer bouquets and congratulations to the hon. Minister piloting the Bill and now 1 find they have the additional idea of offering congratulations to the Draftsman, and I suppose in the case of the next Bill that will be passed, probably hon. Members of the Congress Benches will offer congratulations to the chaprassis who bring such big books into the House and carry the load.

MR. DEPUTY CHAIRMAN: Order, order.

SHRI H. P. SAKSENA: Where is the harm?

Simi KISHEN CHAND: There is no harm. You can praise the whole world. But after all everybody is doing Ins duty and we should not make a distinction.

SHRI H. P. SAKSENA: If they feel they deserve it. one can pass such rein arks.

(Interruptions.)

MR. DEPUTY CHAIRMAN: Order, order.

SHRI J. S. BISHT: Sir, I want to ask whether it is in keeping with the dignity of the House to make such remarks and equate them with chap-
rassis.

SHRI KISHEN CHAND: You have introduced the Draftsman now and probably next time you will bring in chaprassis also

SHRI JASPAT ROY KAPOOR: If the hon. Member so likes, he can congratulate himself on the contribution he has made.

SHRI KISHEN CHAND: Sir, the governing party sends in 150 amend ments and then almost all of them are withdrawn. Is it a proper practice in a democracy? Is it followed any where in the world? Can hon. Mem bers point out a single case where the majority party, the ruling party sends in about 150 amendments and.....

MR. DEPUTY CHAIRMAN: You know the rules. It is open to any Member to send any number of amendments and to withdraw them and so you are not justified in passing those remarks.

SHRI KISHEN CHAND: I am humbly submitting that there are certain rules and regulations but there are also certain conventions.

MR. DEPUTY CHAIRMAN: If you have got to say anything on the Bill, please say that.

SHRI KISHEN CHAND: I am going to say something. But I want to say that the large number of amendments sent in show that hon. Members were not satisfied with so many clauses of the Bill and that at the last moment under pressure they have withdrawn their amendments.

MR. DEPUTY CHAIRMAN: You are making an insinuation.

Sum KISHEN CHAND: Sir, I come to the main amendments that were sent in by hon. Members but which were not accepted by the hon. Minister and my contention is that this Bill is not simplifying the criminal pro-ceedings in our law courts. That cannot be done until and unless our police and our legal profession are improved. Until such time, this type of tinkering with our Criminal Procedure Code and the Penal Code is going to be a sheer waste of time. I submit that until and unless the Law Commission carefully examines all these points there is no need really to hurry through this type of legislation or to try to expedite criminal justice.

Before I close I must once more refer to that clause about defamation. I submit that if hon. Ministers and executive officials have got to appear as witnesses in such cases of defamation and if they are submitted to cross-examination, you will see that after two or tbree days of cross-examination the hon. Ministers will really feel that they had to say things which they did not want to say and it was most unfortunate to have ever thought of launching the prosecution. Therefore I submit that the hon. the Deputy Home Minister should very carefully examine (his. It is a double edged sword. It is not going to be hard only on the writer of the defamatory article to prove his innocence, but it will be equally hard for the Minister or the public servant to prove his innocence. If the defamed person does not appear as a witness it is all right and his position is safe But if he is to appear in the court and is to be cross-examined, his p'osition will become very bad. Therefore, I submit. Sir. that this whole Bill is ineffective and the House should not accept it.

SHRI K. S. HEGDE: Mr. Deputy Chairman, in a measure like this it is obvious that there would be more than one opinion. It will be idle to expect unanimity on any controversial

subject I am however unable to share -he ecstasy which my hon. friend, Mr. Bisht, was showing, nor ,!in l able to share the evil torebod tags that my hon. friend Mr. Mahanty was presenting to the House

SHRI J. S BISHT: It is Buddha'i wisdom.

SHRI K. S. HEGDE: Mr. Bisht merely preaches wisdom without practising it.

Coming to the serious charges made by Mr. Mahanty, it is not for us now to examine their correctness or other wise but I am prepared to presume for the purpose of argument that the facts placed by him before the House are correct. In this connection you will remember, Sir, that Miss Mayo wrote a very famous book, 'Mother India' and I am afraid that many facts mentioned therein are correct; though individually correct, they are collectively false. Mahatmaji called it as a "Scavenger's Notebook." I am merely reminding my friend, Mr. Mahanty, about it.....

SHRI B. N. DATAR: He said, "Drain Inspector's Report".

SHRI S. MAHANTY: About the order of the Chief Justice of the Mysore High Court?

SHRI K. S. HEGDE: I am saying that you make a universal statement from isolated facts.

SHRI H. C. MATHUR: You are reminding Mr. Mahanty of what he said but may I remind you of what you yourself said in this connection?

SHRI J. S. BISHT: On a point of order, Sir. I wish to have your ruling on this point. Is it open to a Member of this House to go to the gallery and watch the proceedings from that place?

MR. DEPUTY CHAIRMAN: There is no point of order there.

SHRI K. S. HEGDE: Mr. Mathur was telling me that I should remember my own speech that I made at the earlier stage. That is why I said in a measure like this there is room lor more than one opinion. *(Interruptions.)* I think Mr. Mathur either was not present when I spoke or has not cared to read the proceedings. I know what I said. So far as the defamation clause is concerned, I merely said that the Ministers must be excluded from the purview of the clause for reasons other than what was mentioned by Mr. Mahanty.

Leaving that alone, in spite of the protests of Mr. Kishen Chand, I still venture to pay my compliments to the authors of the Bill because at least some measure of relief and some measure of improvement has been brought about in the Criminal Procedure Code. It has been a cry in the past that criminal litigation has been very slow and costly but I do hope that criminal proceedings hereafter will not take as much time as they were taking in the past. One other thing that I appreciate during the passage of this Bill is that there is at least some kind of response on the part of the Ministers. Many a time we have seen that measures are placed before us. Whenever we suggested any improvement, absolutely deaf ears were turned and the Bill was pushed through willy-nilly. I am extremely glad that my hon. friend, Mr. Datar, tried to understand every point of view; tried to convince us if he did not agree with us; and if he differed from us it was only after a good deal of argument in the matter. This is a spirit which is highly appreciated in the House and I am sura other Ministers will do well if they adopt this spirit in piloting major measures of this character.

Now, one other aspect I would emphasise and that is, by passing this measure alone we have not dealt with the whole aspect of criminal law and the relief that the country is likely to get is very limited in character. It is true no effective improvement in criminal law can be expected unless simultaneously with the Criminal Procedure Code you also amend in material respects the Evidence Act and.

[Shri K. S. Hcgde.J the Indian Penal Code. And I am sure the Government is considering the matter and that the Government will come forward with the necessary measures at the earliest possible opportunity. Well, everybody has been overworked and the Legislature has has also been overworked. Yet, if we should expect any substantial improvement in our criminal law, the needed reform has become absolutely necessary.

Now, I would not like to take the time of the House by recounting what advantages or what disadvantages have accrued. To my mind, there have been many advantages. Undoubtedly there are certain clauses which I did not like and which I continue not to like. But I am •ure if, in the working of this mea-[1]«u-e, Government are convinced that those clauses have not been for the good of the country and if they so feel, they will come before the House with the necessary amendment of the Criminal Procedure Code.

Before I close I would like to remind the hon. Minister of one thing. No amount of amendment of criminal law by itself is going to get the desired justice. A drastic change in the police administration has become absolutely necessary. In order to hav* a drastic change in the police administration and investigation, better material must be placed or better persons must be placed for the purpose of the investigation. And today there is a common police force. It deals with traffic control; it deals with law and order; it deals with investigation. There is no specialised agency for investigation. So long as you do not have a specialised agency for investigation, if you entrust investigation to all and sundry in the police department, it is futile to expect any effective investigation or any useful investigation. In many countries there are different sections of the police which deal with the different aspects of crime, each section is specialised. And if we have got to do it, one thin;; more is necessary; you will have to pay your police officer much better than what you are paying him today. The police officer today has got a good deal of responsibility and has got to maintain a reasonably high status in life. But bis pay Is much less than what other people in similar status are being paid. And that is exactly the reason why there is a lot of temptation for corruption and it is only closing your eyes if you say that there is no corruption in the police department. It is quite rampant and we have to root it out—root and branch. If we have got to do that, we will have to select probably better men and pay them better and without doing that I do not think that there will be any substantial improvement in criminal justice. I am quite sure the hon. Minister will give his best attention to this aspect as weli and try to do what he can either administratively or by bringing the necessary legislative enactment.

SHRI JASPAT ROY KAPOOR: Mr. Deputy Chairman, this long drawn out Bill is now going to have a happy end; and on this occasion in spite of the fact that my hon. friend, Mr. Kishen Chand, is jealous of the congratulations that are being offered to the hon. Minister, I would like to offer him my sincere congratulations for the very good work that he has done.

SHRI KISHEN CHAND: I am not jealous.

SHRI JASPAT ROY KAPOOR: He and his erstwhile colleague, Dr. Katju, have kept an open mind on the subject. And the history of this legislation in Parliament has been a history of acceptance of amendments from place to place. Sir, not only that. They have created a very healthy precedent in this respect by accepting many an amendment and they have adopted a very democratic and responsive attitude. I hope and trust this healthy precedent that they have created will be followed hereafter not only by the Ministers who have pllot-

ed this Bill but by other Ministers also.

Sir, this Bill I may call as a Bill ..huh is a charter of rights for the used and for ladies. For ladies I say because it places them in a very discriminating position; it gives them a discriminatory treatment to their advantage of which I am happy inasmuch as they will not be called to a police station at all, but the police officers will now have to dance attendance at their door, at their residence, if they want to have any information from them or any evidence of theirs. They will now have a maintenance allowance to the extent of Rs. 500. And, Sir, I am sorry there are not many lady Members here, but I hope the hon. lady Member who is present here (Dr. Shrimati Seeta Parmanand) will convey this to the other lady Members of the House, how much advantageous this Bill will be to them. They will now have the right to serve as jurors, a right which was denied to them before. I say, this is a Bill which is equivalent to a charter of rights for the accused because many rights have been conferred on them. A number of them were enumerated by my hon. friend, Mr. Bisht, who sits to my right. But there are other rights also which have been conferred on them and I might mention two or three more important of them. One of them is that an accused, convicted by a Second or Third Class Magistrate, will now have a right of appeal to a Sessions Judge in place of District Magistrate as it has been till now. This virtually amounts to the separation of the judiciary from the executive in such cases, because the final order in such cases will now be made by the Sessions Judge who is not a part of the executive.

Then, again, I would submit and would remind hon. Members that the accused..... *(interruption.)*.....can sub mit transfer-applications to two courts, Sessions Court and High Court and there are ether rights which have been conferred on the accused which J need not repeat. In particular I would like to submit that clause 25 of the Bill relating to defamation cases is a clause which should be hailed with acclamation by everybody. This is the one clause which I consider to be more in the public interest; more in the interest of the accused; and more in the interest of the press, than any other clause whal soever. This has been seriously criticised and condemned; but I consider that this is the one clause which should be appreciated by everybody concerned, for hereafter any serious allegation which is made against any public servant will be enquired into by the judiciary, that is, by the Sessions Judge. I do not know what more the press would like. Immediately a serious allegation is made against a public servant, the Sovernment, I hope, will place lhat accusation in the hands of a Sessions Judge, requesting him to thoroughly investigate into its truth or falsity. That is just the thing it should be.

Then, Sir, there is one thing to which I would like to draw the attention of the hon. Minister and that is clause 74 in the Bill, according to which an order of fine made by a Magistrate in the State of Jammu and Kashmir can be executed in the rest of India. That is as it should be. I am happy over it. But I wish that there should also be a provision, not, of course, in this Bill, but elsewhere, with a reciprocal right to the rest of the State Governments in India, meaning thereby that if an order by a Magistrate in other parts ef India is made, imposing a fine on somebody who has property in the State of Jammu and Kashmir, that order also should be executable, *i.e.,* the fine may be realised from the property of the accused, if the property is situated in the territory of Jammu and Kashmir.

There is only one clause in the Bill, which is otherwise admirable, which is like a black spot on it. And that is clause 22. I wish it were possible for the hon. Minister to have deleted that clause, or to have amended that clause in the way in which it was

[ohri Ja^pat Roy Kapoor.] suggested by the hon. Members here. But then, he has not been able to see his way to accede to our request in thai behalf. It is very much like a loving mother, having a beautiful child, placing a black spot on the face of her child, so that evil eyes may not be cast or have any bad effect on that beautiful child. It is very much like that, Sir.

Sir, in the end, I will submit that though the Bill is good, so far as it goes, it will certainly not serve the object of the hon. Minister in its entirety. And some further steps must be adopted, if the object in view has got to be achieved. And one step should be to separate the judiciary from the executive. And secondly, steps should also be taken to improve in, methods of investigation. While making that suggestion, I would like to concede, that the police, after the achievement of independence, is behaving in a much better way than it used to behave formerly. It is certainly more courteous, or I will rather say that it is certainly courteous today and it has developed a sense of duty. But it certainly needs improvement considerably.

And then again, Sir, I am entirely in agreement with.....

MR. DEPUTY CHAIRMAN: You have to close now, Mr. Kapoor.

SHRI JASPAT ROY KAPOOR: Last sentence, Sir. I am also in agreement with my friend, Dr. Barlingay, that all is not well with the Bar, and although all may not be well with the whole world, as said by Mr. Bisht, it is worse with the legal profession, and certainly, they must rise equal to the occasion and raise their standard.

Sir, with these few remarks, I lend my wholehearted support to this Bill, in spite of the retention of clause 22, which I wish had been deleted or amended as suggested by me.

SHRI H. C. MATHUR: Mr. Deputy Chairman, I venture to submit that we, sitting here in the Opposition, have never grudged any increased power and authority to the Admini tration, to the Government, and to the Executive, when we have been assured that it is meant for the progress and prosperity of the country. The brilliant example of the Constitution (Foil ith Amendment) Bill is very recent before you, Sir, when every Member of the Opposition voted for every clause. And it was the privilege of this House to have passed that Constitution (Fourth Amendment) Bill with absolute unanimity, because we were convinced that we were voting for a Bill which was meant for the progress and prosperity of the country. But, Sir, when we find that the executive authority wants to arm itself, not in the interest of justice and good government, we sit here to stoutly oppose it. and it is in this spirit that I speak now.

Sir, during the last three years that this House has been in existence, we have been observing that the Government has come here on more than one occasion, seeking to get itself armed with more and more executive power, and it is really unfortunate that even when it has sought power only for certain exigencies, and as a temporary measure, it has always desired to cling to it. That definitely shows the mentality with which the Government is working. And that is the mentality unfortunately of the Home Ministry. I make a mention of it, Sir, because it gives me a background. Its mentality with respect to the Preventive Detention Act has run through the provisions of this Bill.

It would certainly be wrong, unfair and unjust to say that there are no provisions in this Bill which may be a definite improvement on the previous provisions. Certainly, there are very healthy changes that have been brought about, and we do appreciate • them. But I do submit, Sir, that all these healthy changes and healthy provisions have been more than overshadowed by this clause 22, which provides a very dangerous weapon in

the hands of the police administration to put not only the fear of God, but the fear of police in the minds of the witnesses, the witnesses not only relating to prosecution, but also to defence, in order to make them toe the line of the police prosecution. That will be the most unhealthy effect of this provision, Sir. It will, of course, also provide the investigating authority with a weapon to sabotage the defence itself. It is therefore that I again strongly oppose this provision in this Bill, and appeal to the hon. Deputy Home Minister to give his consideration to this matter in his saner and calmer moments. I am glad, Sir. that this has been voiced not only by the Members on the Opposition side, but with the exception of one or two Members from the Congress benches also, everyone who has spoken on this Bill has vehemently opposed the provision contained in this clause.

Mr. Deputy Chairman, I do not take exception to any Member of the Con gress or the Opposition tabling an amendment, and withdrawing it after discussion. But certainly, I do take objection to the practice that has been followed in this matter. My friend, Mr. Kishcn Chand, when he referred to this matter, was certainly right when he emphasised this issue, and fennitely I thought that the hon. Home Minister would not make the provi sions of this Bill a Party issue, or issue a whip. We did expect that he would permiI the Members to vote accord ing to their conviction, at least on a measure like this, when there was a preponderance of opinion, and when they spoke with a certain amount of experience. When the hon. Members speak with strong feelings, I see abso lutely no reason why they should not be permitted to vote according to their conviction .....

SHRI H. P. SAKSENA: Sir, may I convince him that there was no Party whip? There is absolutely no truth in his conjecture that there was any Party whip. Each Member of the Congress Party, the ruling Party as you call it, was free to vote m me manner he thought fit.

SHRI H. C. MATHUR: Sir, I do nol think that the hon. Members of the Congress Party should be so capricious as my hon. friend would ask me to presume, because even the hon Member who has just now repeatec his conviction—there were othei Members also who spoke so strongly—against the provisions of this clause has gone and voted that side Only a moment ago he has spoken against the provision contained in this clause, and he has called this provision a dark spot in this Bill. And still, my old friend has the check to say that every Member voted accord-ing to his conviction.

Mis. DEPUTY CHAIRMAN: You must accept Mr. Saksena's words.

SHRI H. C. MATHUR: I accept his words. But I simply cannot reconcile his words with.....

MR. DEPUTY CHAIRMAN: When an hon. Member says that there was no party whip, you must accept his statement.

SHRI H. C. MATHUR: If the hon. Member speaks on behalf of the Government.....

MR. DEPUTY CHAIRMAN: He speaks as a member of the party against which you have made some allegation.

SHRI H. C. MATHUR: But I cannot reconcile his words with the conduct of another hon. Member who, during the clause by clause consideration stage and even during the third reading condemned these clauses wholesale and yet voted for them. I do not know how to reconcile these two things. Something is wrong somewhere. May be there was no party whip, but it is difficult for anybody to understand this kind of attitude. As I submitted, every Member of the House spoke against this except for two or three, but their conduct at the time of the voting showed th5t there

[Shri H. C. Mathur.] was absolutely no freedom. At least I cannot understand this: A Member holds a very strong view about it but still he votes for it. Yet, it is said that there was no persuation or influence or party whip or direction. I at least cannot understand and reconcile these two things.

SHRI H. P. SAKSENA: Sir, with your permission, may I thank my hon. nd, Mr. Mathur, for his still doubting and suspecting the statement 1 have made?

SHRI H. C. MATHUR: Mr. Deputy Chairman, another provision to which there has been strong objection and to which I again wish to refer is the defamation clause. Regarding this clause, I would submit that at least the Ministers should not have been cketed with the public servants. I object to the whole thing. I think that the Ministers should be bracketed more with the Members of Parliament as politicians than with public servants. Now, my friend has hesitated to say what would be the result of this, but at least I have a clear vision about it. 1 do not for a moment suggest that this clause is going to be very helpful to the public servants. That is not my contention. I have never said that you are placing the public servants in a privileged My conviction is that this clause is going to have a very unhealthy effect. It is going to demoralise the press and the public servants, and this is going to lead to a bureaucratic mentality and outlook among the Ministers, if they are bracketed with Government servants, because I can see no other result from this provision.

Sir, before I end, I would like to submit that I have devoted a great bit of my speech to show that this Bill is not going to help matters at all. Let LIS not live under any hope that we are going to improve in any way the administration of criminal justice by making these amendments. I am entirely at one with my hon. friends of the Congress, Mr. Hegde and others, that a complete change has got to be brought into the administration of the country, and to that, Sir, I have got one word to add. At least we must change this system of police prosecutors. Instead of having police prosecutors, we must see that these prosecutors are placed under the courts. They should not feel that their job is to serve the police. Their job is to see that the administration of justice is carried on properly and that justice is dispensed. Instead of police prosecutors we must have public prosecutors or some other agency under the control of the courts. The earlier this is done the belter for us.

DR. SHRIMATI SEETA PARMA-NAND (Madhya Pradesh): Sir, I rise at this late stage in the debate to associate myself with this measiir«, particularly in view of the fact that it has been stated that ladies have been given special privileges under it. One is about the non-appearance in police stations. Sir, I would say that one must be thankful even for small mercies. When equal rights of citizenship have been conferred on women, it is difficult to understand people talking about this with any pride. When we talk about equality, we would not very much like to have these privileges, but this will be for a little while, I hope, until the standard of social behaviour has been raised t< a higher level by proper educat..... and until women are able to look after themselves after receiving education and gaining full economic Independence.

I have risen to speak at this late stage because it has been pointed out by people like Dr. Barlingay and somebody else that the entire legal system of this country will have to be gone into, and us we are going to have one common Civil Code, the Penal Code also will have to be revised. But in the meantime we will have to see that the adage 'Justice delayed is justice denied' is not borne out so that delays are avoided. I would like to point out that it would be necessary as far as possible to eliminate

the appearance of lawyers. What they are doing now is one of the causes of the delays in law courts. If, on the other hand, wherever people are able to understand their cases—when they are not of a very complicated nature—some sort of advice should be given to them througn government appointed lawyers, or through Legal Aid Societies, it will be a great help. This is being done to great advantage in foreign countries like China, where I have myself seen parties conducting their case without any legal aid, and the result is expeditious justice. I would like to mention here that, as we are going to have a good deal of social legislation, Government will have to make, after the appointment of this Law Commission, ample provision for free legal aid societies, so that people, particularly women who would not be conversant with legal procedures, will not find themselves handicapped by their ignorance of the law.

Finally I would like to congratulate the hon. the Home Minister and the hon. Deputy Home Minister for going through with this measure, even though there was no complete agreement among the party Members. Even though this is called a tinkering measure, yet some beginning will have to be made some time and somewr.ere by following the hit-and-miss method or the trial-and-error method. What is really necessary is a change in the system which has been there since 1898 in the changed circumstances of today, and this they have decided to have after inviting opinions, etc. by publishing the Bill in the papers. Now. it will be easier to find what further can be done.

Sir, I would like to say one word lastly that perhaps the passage of this Bill has been conspicuous by the absence of any women Members taking part either in the deliberations or in the speeches or in formulating amendments* also but that is quite natural. I think the reason is obvious to the people because with criminal procedure there can be intimate knowledge 33 RSD—fi in three or four ways—either Dy being Magistrates—there are not so many of them magistrates, also through contact with criminals—fortunately women have not that—also being criminals themselves and I am glad to have it on the authority of my lawyer friends that in the history of criminology only about one in twenty perhaps would be women connected with crimes and lastly being lawyers practising in courts. So it was natural for women who are not conversant with the Criminal Procedure not to have taken part. Had it been the Penal Code, the result would have been different and they would have been interested in making amendments; otherwise it could have amounted to non-medical men saying how a surgical operation should be carried on. Sir, I hope that this explains the reason for the absence of women Members in the House during the deliberations and for their thinking that this matter for the present is safe in the hands of their brothers. Thank you.

SHRI B. N. DATAR: Mr. Deputy Chairman, I am obliged to the Members of this House for the great support that they have given in spite of what I can call a certain measure of determined opposition from friends from whom we cannot expect anything better at all. Excepting for a few friends, on the whole this measure has received a very large amount of support except in respect of two or three matters to which I shall be making a very brief reference afterwards. Now I might point out to this House that it had never been the ambition of the Government nor their assertion that the passing of this Amendment Bill would itself improve all conditions overnight. In fact, on a number of occasions it has been pointed out from these Benches that this is a modest measure which Government have undertaken and this will be followed up by a series of other improvements which altogether taken, will have the cumulative effect cf changing for the better the administration of criminal justice m tbJs

[Shri B. N. Datar.] land. I am aware that this machinery has to be improved to the extent that it can be so done and I would assure this House that the Central Government as also the State Governments are fully aware of the deficiencies and therefore after the way has been cleared, to the extent that it can be by the Legislature, Government would try to improve the machinery in other ways as well. Government would introduce certain rules by executive or administrative instructions for having a better type of investigation. The methods of investigations are going to be improved and in fact the Central Government, as also some of the State Governments, are going to appoint certain training centres for the purpose of training those who are going to carry on the work of investigation especially at the lower ends. I am aware that there are a number of difficulties or rather there are a number of deficiencies or handicaps under which the system of investigation is now being carried on. So far as the police are concerned, Government are trying to improve the morale of the police but that morale can only be improved—the House will kindly understand—provided the House and the public in general are prepared to co-operate with the Police to the extent that they can legitimately do so. So far as the so-called acts of omission and commission on the part of the Police are concerned, Government are taking steps—very strong steps—to see that the police would carry on their work of investigation and detection as efficiently and as effectively as possible but we have also to understand that there are very good police officers and you cannot tar all the officers with the same brush.

(Interruptions.)

You will kindly allow me to speak. You have had your say. Now so far as the public are concerned, the public also have a duty—a moral duty—in this respect. Now we have to understand how the conditions have to be improved in this respect and therefore the public also have to consider the administration of justice as their own task. It is not merely an affair of either the accused or the complainant. It should not be a case of a false sympathy with an accused person. Therefore if public co-operation is available, to the extent that public co-operation is available in respect of investigation as also in respect of testimony, then this task would be lightened as far as possible. Therefore I am prepared to point out to this House that this is one of the numerous measures that Government desire to take in hand immediately for the purpose of improving the tone of administration, not merely the investigation but also the other stages also. Whatever is possible, is going to be done and therefore I am very happy that this House has been pleased to accept the main provisions of the Bill and on a number of occasions I have accpeted, on behalf of Government, the very salutary suggestions by way of amendments that were made by some other Members.

Then it was pointed out that among other steps that we have to take into account, there ought to be the separation of the judiciary from the executive. I would point out to this House that this is one of the Directive Principles of the Constitution arid I am happy to inform the House that in most of the Part A States either the separation has actually been effected or it is going to be effected almost immediately. So far as Part B States are concerned, in some States steps have already been taken and in others they are going to introduce the separation of the judiciary as early as possible. So far as Part C States are concerned, there are legislatures or popular Governments in some and in others there are no popular Governments but Government are considering and will consider what steps they can take towards the final introduction of the separation of the judiciary from the executive. Then so far as other questions are concerned, I would point out that the Law Commission

will be appointed in due course and it will do its own work but it is entirely wrong to suppose that there are.....

SHRI SATYAPRIYA BANERJEE (West Bengal): There should be no undue delay in this 'due course'.

SHRI B. N. DATAR: It is entirely wrong to suppose that we would delay the passing of the present Amending Bill or to say that it is a piece-meal legislation. After all even after the Law Commission has been appointed, even the Law Commission has to deal with individual pieces of legislations or enactments and according as they have received the consideration and scrutiny of the Law Commission, then Amending Bills or new independent Bills will have to be placed before the Parliament or before the State Legislatures as the case may be. Therefore so far as this Bill is concerned, it should not be considered as a piece-meal legislation at all. In fact criminal procedure is a subject by itself and therefore it is that in this respect we have got the Amending Bill which I am sure you will pass within a few moments. Then we shall also consider to what extent the Indian Evidence Act requires certain amendments and the Indian Penal Code also will be duly considered.

Then before the Joint Select Committee reference was made that in respect of those amendments or suggestions which were not found in the Government Bill, there should be some further attempt. In fact there has been a recommendation by the Joint Select Committee that the Government should consider these questions as to whether amendments are necessary in respect of those portions of the Criminal Procedure Code which have not been touched by this Bill and they have recommended that after consulting the State Governments and also eliciting public opinion Government should bring forward an Amending Bill as far as possible, within a year. Now Government are taking steps in that direction also but I would say that most of the important measures that were necessary according to the Government's view have already been incorporated. In fact, on a number of points, we have accepted the views of the two Houses in respect of certain important points.

Therefore I would point 5 P.M. out that this measure by itself is a fairly satisfactory measure and I am quite confident that this measure by itself will go a long way in at least attempting to improve the tone of the administration.

Then, lastly I will deal with two more points that were made. One was about the clause regarding defamation and the other about section 162. So far as the question of defamation is concerned, almost the same arguments were advanced as on previous occasions and the same ground was again covered. I am not going to traverse the same ground again. I would only point out that in this particular case, the Government have brought forward this measure, as I have already said for the purpose of maintaining the purity of the Administration. Some hon. friends suggested—and just now Mr. Mathur also said—that Government servants are not very enthusiastic about it. That is the very reason why Government are anxious that this Bill should be there and if Government find that there is defamation and if Government feel that in that particular case a prosecution has to be started, then that prosecution will be started with all the necessary consequences, even so far as that officer is concerned. So that is the very reason why Government have taken this power and Government have no other desire, no desire to place any restrictions on the power of the Press. So far as the Press is concerned, happily, the largest section of the Press is going on and carrying on its work in a very responsible manner. But sometimes there are certain writings which are not what they ought to have been and therefore, we have always to make a distinction between liberty

[Shri B. N. Datar.] on the one hand and licentiousness on the other, and if in the interest of avoiding or preventing licentiousness, we have to retain certain safeguards with a view to restraining them when they are doing certain things which they ought not to do, then it should not be considered as violation of the liberty of the Press or the liberty of speech or writing.

Then, so far as section 162 is concerned, a number of suggestions were made that Government should see that the Statements are recorded correctly. In fact, there were certain amendments, whose spirit was to this effect that if the former statement before the police of a witness is to be used for the purpose of contradiction either by the accused or by the prosecution, then in such a case, there should be some safeguard that the statement is what it purports to be. In other words, it should not be a summary, that some words should not be put into his mouth which the man has not actually stated. Therefore, Government are considering how to improve the manner in which these statements can be put down so as to make them really the previous statements of the persons wno nave made them. We have, however, to understand the whole position and we have to approach the problem from the realistic point of view. I would point out that just as there are occasions where the police might not make a proper record of the statement, there are also a number of cases where the witnesses at the first time they appear before the police officer, make a correct statement, bmt gradually the process of departure from the truth starts and at certain stages, on account of certain influences which are far from legitimate, they are anxious to go back completely upon the previous statements and retract them. Therefore we have to approach those statements for what they are worth, neither more nor less. If for example, we have this restraining clause, then it wili have a salutary effect also on the witnesses who have made statements. After all, we have to care for truth in the first instance and generally Indians were known in ancient times for their truthfulness and we desire that we should also be known now for our truthfulness. Now for example, you allow opportunities for a man to make one statement and then if you give him full, unrestricted freedom to make any statement that he likes, regardless of what he has said on the previous occasion, then, Sir, it would amount, in my humble opinion, to an invitation to falsehood. That should be avoided. The way in which this provision has been amended, has been solely in the interest of justice, with a view to seeing that if a witness has stated a particular thing, then ordinarily, h< ought to stick to it. If, for example, he does not stick to it, then there ought to be methods by which the truth or otherwise of that statement could be checked up or scrutinised. These are the objects for which these two very controversial amendments or changes have been made. And Government would see that these provisions are used, as far as possible, only for the purpose of understanding what the correct position is and in the interest of truth, so far as section 162 is concerned. And so far as the defamation clause is concerned, care would be taken to see that no person is harassed. That is the reason why we introduced the clause about payment of compensation, for the purpose of relieving immediately the person, by summary method, against harassment, by giving him some compensation. I need not go over the whole ground again.

SHRI H. C. DASAPPA: To be paid by a person who is least responsible for it.

SHRI B. N. DATAR: That may be the view of my hon. friend, but my view is that the person is most responsible and he must be punished and the other aggrieved man has to be paid compensation forthwith.

It is not necessary to go over the whole ground again. I thank the House again for the great measure of support that they have given to this measure.

I am particularly thankful for those appreciative references to Dr. Katju's help and also my humble efforts in this direction. Dr. Katju, I may also say here, has spent two or three years over this Bill and daily we were meeting, not only in the Select Committee, but even before that, and we had also the co-operation of the Law Ministry and all the law officers and for months together we were making changes and considering the matter. Therefore, I would submit that this Bill has no other strings at all, no party strings, and it has not been brought forward for the purpose of getting any advantages at the general elections, and these are entirely unworthy accusations against us. I would submit that we proceeded with this Bill on a non-party basis, in the Select Committee and also in the two Houses. Therefore in requesting both Houses of Parliament to make these changes we were actuated only by the desire to improve the administration of criminal justice and nothing else. Once again, I thank the whole House.

Ma. DEPUTY CHAIRMAN; The question is:

"That the Bill, as amended, be passed."

The motion was adopted.

MEMBERS' RIGHT TO VISIT GALLERIES

MR, DEPUTY CHAIRMAN: Earlier in the day a point of order was raised about an hon. Member sitting in the Gallery. I shall draw attention to this rule on the matter:

> "Although it is the custom for Members of the Council of States to visit the various galleries, the Watch and Ward Assistants on duty should, if necessary, inform any Member of the Council of States that it is not in order for him to retain a seat in the Gallery to the exclusion of, or on behalf of, a holder of a card for that Gallery."

So I hope hon. Members will not give any occasion for such a thing.

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

The House then adjourned at ten minutes past five of the clock, till eleven of the clock on Thursday the 28th April 1955.