DURE (AMENDMENT) BILL, 1954— *continued.*

MR. CHAIRMAN: Yes, Dr. Katju 4o resume his speech.

THE MINISTER FOR HOME AFFAIRS AND STATES (DR. K. N. KATJU) : Mr. Chairman, when the House rose yesterday, I was dealing with the amendment which is proposed in this Bill making the off-•ence of defamation in relation to public servants, of charges relating to the exercise of their public functions, cognizable. A good deal of criticism has been launched against this amendment. I should like to assure the House that there is no sinister design behind it, and the motive which has actuated this amendment is a very plain and simple one. The Sta'.e, the Government of the day, this Parliament, is deeply interested in its public servants discharging their duties properly, efficiently, impartially and with integrity. And when charges are made publicly attributing corruption, attributing dishonesty, to these public servants, 1 suggest that it is our duty to have those charges properly investigated, and if those charges are proved to be right, the public servants concerned should be brought to trial either by a departmental enquiry or by a criminal court, and whatever punishment may be considered appropriate should be awarded to them.

On other hand, if the charges are baseless, are untrue, not only the interest of that particular official requires but I suggest that public interest requires that there should be no demoralisation, no suspicion spread in the public mind, and that the man who is gui"y of spreading that lie should be brought to book. What is happening today? It is a matter of common knowledge that in certain sections of the press, grossly defamatory charges are made,—all sorts of charges,—attributing misconduct of various kiuds. When we think of the press, we should not think of the three or four leading papers, or the ten or twelve leading papers, in the country. There are news sheets, ;?mall periodicals, published in almost every district headquarters. There are enormous numbers of them, hundreds of them, almost running into thousands. By merely saying that they are yellow or green journals. I suggest that we should not ignore any such charge, because in India with our illiterate masses the printed words go very far. If you simply contradict a lie, I do no£ know how far you will be able to contradict the lie. You may print or publish your contradiction in the next number or the third number, but the people who may have read the original lie, may not read your contradiction. Therefore, ic becomes a matter of immense importance from the public point of view that there should be proper investigation and proper procedure afterwards. Now, when a charge of this kind is made and you request the public servant concerned to go to the law court, either he has got a clear conscience or he has got a guilty conscience.

SHRI S. MAHANTY (Orissa): On a point of information, are Ministers also included in the term 'public servants'?

DR. K. N. KATJU: Either he has got a clear conscience .....

SHRI S. MAHANTY: Sir, I want an answer.

DR. K. N. KATJU: I have made up my mind not to answer any questions.

MR. CHAIRMAN: I will put your question to him later on myself.

DR. K. N. KATJU: Either he has got a guilty conscience or he has a clear conscience. Supposing he has got a guilty conscience or he finds some substratum of truth in it, he says, "Why bother me, Sir, this is a yellow journal. Nobody takes it seriously. If I go to court, I shall have to engage a lawyer; I shall have to undertake all the trouble." Therefore he does not go to court, and such journals flourish, and people's minds are poisoned. In this House and also

in the other House, I tell you, it is almost the order of the day to declaim—I deliberately use the word 'declaim'—in the best possible style of Burke or Chatham, or Sheridan's style or the style of Pericles, that the services are corrupt, the public administration is corrupt, the Ministers are corrupt, that every single individual is corrupt; but when we insert a provision in the Code, there is opposition. Provision for what? Whenever there is a charge against a public servant in relation to the discharge of his public duties, the police should intervene, look into the charge and submit a report. Either the charge is found to be well-founded or there is a substratum of truth in it in which case we *will* start a departmental enquiry at once into the conduct of the public servant and take appropriate proceedings; or the charge is false; then the police takes control of the situation and launches a prosecution against the man concerned, just as they launch in other cases of offences, and summons the public servant as a witness to examine or cross-examine or to be examined or cross-examined. The newspaper owner or whoever has published the thing, gets the amplest opportunity to give his defence. Please remember that this making the matter cognizable is only foi the purpose of initiating the case; it does not interfere in the slightest degree with the subsequent procedure in the case. Every accused, whether the offence is cognizable or non-cognizable, is guaranteed to him under the Code sufficient and proper opportunities for defending himself. These are not taken away. It was said, "Oh, if you make it cognizable do you know what would happen? The police officer in his own discretion or arbitrariness will just walk into the office of the newspaper man and say to the editor, 'Come along to the thana. You are under arrest.'" That is all a figment of imagination That is not at all the idea. The idea is to enable the police to start investigation. There will be ample safeguard that no investigation should be completed or no proceedings started without a report either to the Government or to some high responsible officer designated by the Government. I do not want to let this matter alone as it is at present. I have seen the mischief that is being done, and I want to stop that mischief. I know that there is a section of opinion in Parliament and outside Parliament which j says, "Say nothing to the press. The press is some sort of demi-god. The moment you say anything to the press, i you are interfering with freedom of J expression, freedom of opinion." Does | this freedom of opinion consist in ut-i tering lies or in broadcasting charges | of all sorts, defamatory charges, j against others?

SHRI S. N. MAZUMDAR (West Bengal): Sir, is it the contention of the hon. the Home Minister that the i press utters lies? He has made a round condemnation of it.

DR. K. N. KATJU: This interruption is only to disturb my line of argument. I was saying, Sir, you | have this bogey of freedom of expres-I sion and freedom of opinion; the free press should be free; nobody should touch it. We have the Press (Objectionable Matter) Act and I have become accustomed—I have become im-i mune—to what was said against it. i Columns after columns are written, i speeches after speeches are made by ' people who would not tolerate any ' freedom of expression if they came to power.

SHRI P. SUNDARAYYA (Andhra): We will guarantee you as much freedom of expression as you want. You [1] are not only interfering with the freedom of the press, but you are taking away freedom from the people themselves. That is our objection.

DR. K. N. KATJU: You will kill everybody, everything including the free press. I was only trying to give i the genesis of this amendment. ' There is nothing sinister behind it. It is really an attempt to purify the administration. I want that every journalist, every man i who publishes anything, should

[Dr. K. N. Katju.] do it with a sense of responsibility, [f he is convinced that there is some truth in what he says, let him go ahead, and I shall start departmental enquiries at once, but publishing all sorts of things, all sorts of defamatory things—I have seen them every day— in the complete hope that nothing would be done but only the sales will increase, is completely wrong; but here are hon. Members trying to advocate this sort of cause and strengthen it by their advocacy that nothing should be done. I am only trying to give the House the genesis of this amendment.

Now, I don't want to go any further. There is a very long and elaborate Statement of Objects and Reasons. Mr. Chairman, you were not presiding yesterday when I spoke for forty minutes. I dealt with some salient points and I am not going into the various amendments as they are all explained in the Statement of Objects and Reasons. They are manifold; and let me assure the House that my past life testifies that if there is anyone in the country who is anxious that every accused person brought before a criminal court should have ample opportunity to defend himself, should have an absolutely free and fair trial, that is myself. But at the same time, I am becoming conscious more and more every day that we must stop the rot, and the rot is a complete loss of respect for law and order not only for the police but for the judicial courts. When I read out the figures yesterday I did not pick out any oner particular district as a sort of black spot. It was quite a casual thing. I visited that district, the district magistrate came and I just asked him in casual conversation, "Do you know about these figures? Will you please send them to me?" and he sent them. They are typical figures. It may be that it may probably vary—it may be 10 per cent, here and 12 per cent. *there. I went* to Bhopal. The lawyers invited me to a function in the afternoon. I casually asked them. There was the Judicial Commissioner sittiag, there was the Sessions Judge sitting. I asked, "How many sessions cases have you?" He gave the figures exactly on the lines that you have there. Therefore, we in this Pa: 1 lament, so far as we can, by legislative process, see to it that no innocent man suffers. No one suffers today,—take it from me because I am speaking with experience—no one suffers but hundreds of guilty men and thousands of guilty men get away either because the procedure is faulty or because the procedure is cumbersome

SHRI S. MAHANTY: Innocent men get out, the guilty men also get out Then who suffers?

DR. K. N. KATJU: The procedure is cumbersome. It may be because of the assistance of my hon. friend— I don't know whether he is a lawver, I don't know what he is, but he does give them moral encouragement to commit crimes and get away. They got away in Telengana, they got away in Pepsu, and goodness knows in how many other places. Now I respectfully suggest that you don't treat it as a party question, I am not speaking in a party manner.

SHRI B. GUPTA (West Bengal): It is a police question. *(Interruption.)*

DR. K. N. KATJU: The court is a common inheritance.

SHRI S. P. DAVE (Bombay): We don't want a running commentary. We want to hear the hon. Minister.

DR. K. N. KATJU: We are deeply interested in the administration of law. We are directly interested that while public opinion should assert itself, should extend co-operation with the administration, the courts should not allow encouragement to perjurers and liers. Sir, I move.

MR. CHAIRMAN: Motion moved:

> "That this Council concurs in the recommendation of the House of the People that the Council do join in the Joint Committee of the Houses on the Bill further to amend the Code of Criminal Procedure, 1898,

and resolves that the following members of the Council of States be nominated to serve on the said Joint Committee: —

1. Shri K. Madhava Menon.
2. Shri T. S. Pattabiraman.
3. Shri Barkatulla Khan.
4. Shri Biswanath Das.
5. Shri Sumat Prasad.
6. Shri J. S. Bisht.
7. Shri Gopikrishna Vijaivargiya.
8. Diwan Chaman Lall.
9. Shri P. T. Leuva.
10. Shri K. B. Lall.
11. Shri S. D. Misra.
12. Shri M. P. N. Sinha.
13. Shri S. N. Dwivedy.
14. Shri Bhaskara Rao.
15. Shri P. Sundarayya.
16. Shri M. Roufique.

SHRI K. S. HEGDE (Madras): Mr. Chairman, the Bill before the House is an extremely important Bill and it is but our duty to give it our most sincere and earnest consideration. So far as I am able to examine the objectives behind the Bill, there seem to be four-fold objectives behind the Bill. The first and the main objective is to reduce the delay in legal proceedings. Delays in legal proceedings have been proverbial but today it has reached such a position that even the best exponents of the present system are trying to examine and see whether we cannot reduce the considerable delay that is occurring. In fact, delayed justice is denied justice and as such it is but proper that steps should be taken to reduce the quantum of the delays. Now in this matter, efforts have been made in the last 50 years to examine and find out how this delay could be reduced. Everyone of the concerned Ministers, though quite anxious to do the needful in the matter, was unable to do so because of the several complexities in the situation itself. It is really creditable to the fton. Home Minister that he has come up with certain proposals to obviate these delays. Whether that is the right approach is a matter for our consideration but there can be hardly any gainsaying the fact that we must tackle this question of the inordinate delay in the disposal of the criminal cases as well as civil cases and we must adopt means by which we can reduce it to the minimum. The second and more important objective behind this Bill so far as I can see is this. The majesty of the law is lost. The law is unable to punish the offender. The law is helpless law. The accused are brought before the courts, they snap their fingers at the court and say T have committed the crime, do your worst.' The law is so cumbersome and as the hon. Home Minister gave us the figures yesterday the accused go out and snap their fingers both at the public and at the judges rather than get convicted for the offences that they have committed.

SHRI H. N. KUNZRU (Uttar Pradesh): Have they committed those offences? Is that certain?

SHRI K. S. HEGDE: I shall certain ly come to that aspect of the case. If my experience is of any value *to* Dr. Kunzru, I have spent my whole life as a fairly active practitioner for the last 19 or 20 years; I have appeared in hundreds of cases on de fence side. I have appeared and ar gued both for the prosecution as well as for the defence in a large num ber of cases and I can assure Dr. Kunzru that if 95 per cent, of the accused have esoaped punishment and the verdict of the law, it is be cause of the defect in law or In Inves tigation. Though I don't subscribe to the figure given by the hon. Minis ter yesterday for an exceptional dis trict like Mathura.....

DR. K N. KATJU: What is the exception?

SHRI K. S. HEGDE:.....to some ex tent I do. It may be in some other

rShri K. S. Hegde.] districts that 75 per cent, of the offenders get out of the clutches of the law. I shall dilate on this aspect a little later.

The third and the other important objective behind the Bill is that the innocent accused must be given the fullest possible protection and, in fact in the words c-f an eminent jurist: "I would rather acquit several guilty than convict one innocent man". The moment you convict an innocent man the law of sanctity are lost. The objective is there, but how far the hon. Home Minister will be able to achieve it is a matter for examination and I shall certainly come to that aspect later. The main principle that he had in mind is, you put responsible men for discharging public functions. You call upon them to do their best but at the same time they are being harassed by a section of irresponsible press ever and anon rightly or wrongly and what the hon. Home Minister wants is wherever you do it rightly, you book the man however highly placed an official he may be, direct the enquiry into it; let there be an enquiry into the matter and let the police go into matter if the person concerned is really guilty and you put the case before a court of law or take necessary administrative action. If he is innocent he deserves the protection, the country must protect him in their own interest. It is no exaggeration at all. 1 know of cases—people who are only reading the English papers may not know of them but in the vernacular press, a type of press has been developed and they are encouraged by a section of our friends belonging to several political parties wherein daily accusations are made against Ministers. If they say truly, let it be investigated. If they say falsely, let it also be investigated and probed into. I shall come back to this aspect of the matter a little later.

Unfortunately though the objectives of the Bill have been exceedingly important ones and such as should receive our support, there is a good deal of misconception about this Bill. In fact, Sir, I myself had this Bill printed, got copies of the draft Bill circulated to a number of bar associations and others and they have sent in their opinions direct to the hon. Home Minister. But practically most of them; have opposed many of the provisions of this Bill. When that is the case, you should pause and consider why they have opposed them. After all bar associations are responsible bodies and they do not ordinarily oppose a measure which they think, is in the interest of the nation. But in this case it is so I think, because a few misconceptions have crept in, I dare say they are misconceptions, about the measure.

Firstly there is a widespread feeling in a section of the people that this measure has been brought forward by the Home Minister not as a measure of law reform but as a measure of law and order. That is one misconception that has crept into the public mind, and to some extent my hon. friend, the Home Minister himself is responsible for that misconception. Rightly several people have argued, "If this is a law reform,, why could not the Law Minister have brought it? The Home Minister has brought it forward and this shows that it is a measure of law and order and not one of law reform." That is how they argue. That is a wrong argument. I agree. But several times our minds travel in different channels and our minds evaluate things in different ways. They miss the fact that this is merely a question of division of labour between the Law Minister and the Home Minister. The Home Minister, himself a big jurist, might have • thought he would take it on his own shoulders. But the fact that he is also responsible for law and order has given rise to the misconception that this is something like the Preventive Detention Act, that it is a matter connected with law and order and not really one connected with law reform.

The second and third reasons for this misconception are some of the

utterances of the Home Minister himself. I have no doubt that he never meant them to be so. But every practitioner knows that for these enormous acquittals not merely the cumbersome law is responsible, but also the defective investigation. As a prosecutor I can say, and as a defence counsel also I can testify that a large number of cases are acquitted because of the inefficiency of the police, because cf the want of the correct approach on their part or the required honesty. That I am sure, cannot be denied. But somehow or other, my hon. friend's language has given the impression that he is fighting shy of criticism of the police. That does not go well, for immediately you try to defend the guilty party the reaction comes and they feel: no, it is not a matter of law reform; it is not in the interest of law reform, it is only in the interest of putting or having more and more fetters on them. That impression should not be allowed to gain ground. Sir, I was pained when the hon. the Home Minister expressed displeasure at the idea of separation of the judiciary from the executive. I do not think he has done it consciously; but the words that he used conveyed the impression that he is not for it. So, Sir, these things, small as they are, have created this cumulative impression.

AN HON. MEMBER: It goes against the provision in the Constitution.

SHRI K. S. HEGDE: I have discussed this with a number of bar associations and others and they have felt that several expressions of the hon. Home Minister have given room for such a criticism. I have discussed it with the hon. Home Minister himself and I know these are absolutely unconnected matters, that he was only throwing out a few ideas, probably disjointedly, without meaning to oppose the idea—probably for getting the reaction of the other side on the matter. But leaving that aspect of the matter for the time being, I would request the hon. Home Minister to see if he could not serve his purpose, attain his objective better if he did not try to protect these many matters which are incapable of being protected, which need not be protected, because some criticisms against the police are certainly legitimate. He must go into this aspect of the matter. I will develop this point a little later.

I am one with the Home Minister, with his objective, as I said at the very beginning. But does this Bill serve our purpose? That is the main question. How far does it serve our purpose? To my mind, this Bill has a number of defects. The main defect is that though the hon. Minister thinks that this Bill is exhaustive, to my mind, it is not so. Very important aspects which have baffled prosecutors have been lost sight of. May I mention one such aspect? The hon. Minister is a very eminent lawyer, a big jurist himself and he must have taken advantage of these provisions.

SHRI GULSHER AHMED (Vindhya Pradesh); He has never appeared as a prosecutor probably.

SHRI K. S. HEGDE: My hon. friend there says that the hon. Minister has not worked as a prosecutor and probably that is the reason.

SHRI GOVINDA REDDY (Mysore): Not in the original court either.

SHRI K. S. HEGDE: The main defect in the Criminal Procedure Code is the Chapter on Charges. Anybody who has practised in a court of law knows that in a great number of cases, it is impossible to get them into the limits of the law, within the technical wording of the sections relating to charges. Sir, a great deal of difficulty has been created ever since the decision in the Subramania Iyer Case, reported in 25 Madras, where they made a distinction between irregularity and illegality and they say any breach of the mandatory provisions of sections 235, 236 and 237 of the Criminal Procedure Code would be considered as illegal and not irregular. Of course, later decisions have watered down the effect of that decision. But even today we have no definite pronouncement on this ques-

[Shri K. S. Hegde.] tion. Two cases went before the Supreme Court wherein this very question was agitated. But the Supreme Court did not answer this question. They said that they could decide the cases in question on other grounds rather than go into this very question. That matter must have been brought to the notice of the hon. the Home Minister. To every prosecutor the main problem is the question of the charges. These sections are so worded in such a cumbersome manner, that they are incapable of being put only one meaning or interpretation. I know many times it is extremely difficult to frame a charge of cheating or of breach of trust. You cannot definitely decide whether it is a case of breach of trust or a case of cheating. If the prosecutor frames the charges as in the case of cheating, the defence counsel tries to get it under the breach of trust provision. If the prosecutor frames his charges that it is a breach of trust, the defence counsel tries to prove it as a case of cheating.

SHRI RAJAGOPAL NAIDU (Madras) : Misappropriation also.

SHRI K. S. HEGDE: Charges in certain cases cannot be framed *(Interruption).* I can show a number of cases—including one from Hyderabad —where they said the charge is defective because the accused did not know what you are prosecuting him for. The hon. Minister must have given attention to this aspect of the matter, for this is one of the most important aspects of the question.

Sir, there are a number of other and minor matters but it will take up the time of the House entirely if I go through them now. I would only say here that if the hon. Home Minister thinks that he can cure all the defects by bringing in some small changes in the Criminal Procedure Code I am afraid he is not approaching the problem in the manner in which it should be approached. To my mind, today many of the acquittals are due to some of the defective provisions in the substantive Acts. Take for instance *the* Evidence Act. Everybody admits that this Act is a cumbersome one and many of its provisions have been given several meanings and several interpretations; for example sections 25, 27 and 32 and several other sections also. These create difficulties in the course of the prosecution. Very good cases have ended in acquittals because the Evidence Act has put the law in such a manner that it is most difficult, almost impossible today to bring borne the guilt, unless through perjured evidence. What happens today is this. Unfortunately, you are not a lawyer, Sir, otherwise I would have described the whole gamut of the laws. But as an instance, let us take section 133 of the Evidence Act which says that conviction can be obtained on the evidence of the accomplice. But illustration (b) of section 114 puts an entirely different aspect to the law If the hon. Minister wants to tackle the real problem—and I doubt not that he wants to tackle the problem —then along with the Criminal Procedure Code, he must pay his attention to some of the provisions in the Evidence Act and also to a few provisions of the Indian Penal Code.

AN HON. MEMBER: He will do that also.

SHRI K. S. HEGDE: I have no doubt that his next job will be that. But apart from these matters, I would like to submit that it is my experience as a lawyer that most of the cases end bi acquittal because of defective prosecution. I do not know whether the hon. Home Minister is aware of it, but 50 per cent, of the acquittals can be directly attributed to bad investigation of the cases.

I will give here a few illustrations. Just recently five accused were charged with murder and seven eye witnesses came and spoke against

them and I thought that the rope was tight against the accused and I was preparing for the accused. What happened? When we found out the unexhibited papers, I found out a remand order. After examining all these witnesses, the Inspector of Police had submitted the report to the court that any one from A-l to A-4 might have committed this offence. It was submitted that it was done at the instigation of A-5, but when it came to court, the entire set of papers had been changed and it was said that A-l to A-5 were the actual perpetrators of the crime. What do you expect the Judge to do? Witness after witness had told the Investigating Officer that A-l to A-4 had murdered the man but before a court of law, they swear that A-l to A-5 did the murder. Which Judge is going to accept that evidence? Which Judge is going to convict an accused? Well, whether we accept the doctrine of *falsus in uno, falsus in omnibus,* or not, every Judge is a human being. He would not accept the evidence of a witness who has purged himself on very important particulars. It is true, Sir, in Indian courts we try to fish truth out of falsehood on several occasions. The Englishman in his contempt said that the doctrine of 'once a liar always a liar' is not applicable to Indian conditions because every Indian must be taken to be a liar. That is the background. Even with that broad interpretation that interpretation was given in a political case, otherwise it would not have happened but even with that broader interpretation judges often find it very difficult. Now, what is it that is required? More than the reform of law, I would suggest to my hon. friend, the appointment of a Director of Prosecutions for every district. This is an absolute necessity. Now, why is it that I am suggesting it? I say, Sir, with my experience. Immediately I became the Public Prosecutor. I had a good District Magistrate and a good District Superintendent of Police. We sat down and discussed and then sent out a circular to all the officers that no important investigation should be done except in consultation with the Public Prosecutor. I am not saying that every investigating officer is corrupt or inefficient but what really happens is that when he is investigating, he goes on an one-track mind. He goes on and if he finds any obstacles (he thinks that he will put in some false link. It is true that the accused is the real man and so, why not put one false link in the case? I will give you one illustration. There was a shooting case and a man was murdered. He was shot by a double barrel gun. We had very satisfactory evidence that in the house there was only one person and that person had a double barrel gun.. We had also proof that he had a good motive to murder the other man. The ballistic expert said that that gun had discharged two bullets and the bullets also fitted in with the gun. Now, the question was. from where was the shot fired? The gentleman who was killed was on a hill and one of the bullets had gone deep into the slope. If you draw a line according to the angle of the bullet, it goes straight to the window of the house from which he had been shot. There was absolutely no difficulty in identifying as to who killed the man. It was beautiful evidence from a lawyer's point of view but the investigating officer thought that nobody had seen the man shooting. It was true that the man apprehended was the accused but he felt that he must have a witness to testify and seventeen days after the occurrence, an enemy of the accused was picked out and he said "I was working on the hill and from the half open door I saw the man shooting". The entire attention of the court is diverted from this beautiful circumstantial evidence to the perjured evidence and it is no wonder. Sir. that ultimately the whole examination is of that perjured evidence rather than of this evidence. That is why I have said that you must have a Director of Prosecutions and an investigating officer; if he could do well he could certainly get much more convictions of the

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guilty. My hon. friend was in my district. He asked the District Magistrate and the District Judge for the number of convictions. I take some pardonable pride. Sir, but I could say that if the acquittals between the years 1947 and 1954 were less than 60 per cent., I take my hat off to him. I do not claim anything special but I am merely claiming that it was all to the credit of the investigating officer. I put myself at their service and I tried to persuade them not to put false witnesses. They think that no case can stand unless they put a false witness. One D.I.G. of Poh'ce was appearing before the Railway Corruption Enquiry Committee and he said rather shamefacedly, "well. Sir, everybody knows that unless we put some false links, we cannot get the man convicted" That is a wrong impression in the mind of the police and that is responsible for the acquittals rather than the cumbersome nature of the law. It is true that the law is cumbersome; there is no denying the fact. Now, therefore, if my hon. friend is really anxious to get the maximum conviction of the guilty persons, he must focus his attention more on the manner in which it is investigated than on the provisions of the law and he could never do it unless he has a Director of Investigation or Prosecutions. In fact. Sir, one of the cases, that came from the Madras State to the Supreme Court, was so badly managed, so badly investigated that the Supreme Court said, "we are very disgusted. We will not touch it with a pair of tongs" and they added that "a situation of this nature can be rectified by having Director of Prosecutions". There may be persons who may not discharge their duties very well, that is another aspect but my suggestion to *my hon.* friend is that if he wants the law to be implemented in the manner that he wants, he must think of the Directors of Prosecutions as the pivot of all prosecutions.

Leaving aside that aspect, let me come to the provisions of the Bill. It was conceived to some extent with a view to assisting the prosecution, in reducing the delay and in getting the maximum conviction of the guilty person—I put in that—but does it help you there? I am afraid that in several provisions it is miscon ceived. Let me first come tc the proposed amendment of sections 207 and 342 of the Criminal Procedure Code. One of the fundamental laws of this land is—as embodied in arti cle 23 of the Constitution—that you can.nct compel the accused to b:^ a Witness against himself. In fact. Sir. this article was borrowed from ihe American Constitution. In America it has been interpreted that compel ling a person to be a witness against himself does not mean that he should be there under oath or that he should be there under any legal process. Any type of compulsion, direct, or indirect, on a person to make any statement which might be incriminating against him which need not necessarily be on oath has been found to come within the mischief of a similar article in the American Constitution. This trouble has come before the Supreme Court in two cases and the Court has not yet given a decision on this particular aspect because they could not decide. Very recently I heart a very learned argument on this matter in one of the courts connected with a group of companies operating in Delhi.

Now. obviously, the draftsman and the person responsible for the drafting of the Bill have missed the implication of article 23. Today what is happening both under section 207 and section 342 of the Criminal Procedure Code is that the Judge is required to cross-examine the accused. Let. us not fight shy of it. Now the accused may not know and understand the exact implications of the wording. "The Judge may put certain questions to explain any circumstances bearing against the accused"— that is deleted and it is said. "The Judge may put questions as he thinks

proper". I would respectfully ask the hon. Home Minister as to whether this is in consonance with the .Constitution. That is one aspect. Even if it is in consonance with the Constitution, is it fair to have such a thing in a country like ours? I know many accused, and what really happens is that we are unable to comprehend the meaning. The Judge puts certain questions and they think that a particular answer may be. suit-i'or them, but then actually the reverse may be the case. Answers are given in such a haphazard manner and it would be dangerous to place any reliance on straight questions and answers that are elicited in the course of an enquiry in a case. I would like to ask the hon. Home Minister as to whether he has considered this aspect and whether he could not retain the wording as it is now. To me it looks to be a just wording as it prevails now.

Another aspect of the case, which comes to my mind and which is of very great importance is the abolition of section 162 of the Criminal Procedure Code. The wording in section 162 is "any person". At present the 'law is that if a police officer records the statement of a witness or of an accused, it need not be signed by the person making the statement. It cannot be used against him. It can be only used for the purpose of contradicting a prosecution witness under section 145 of the Indian Evidence Act. What is proposed to be done is to delete that section 162. That means that you are taking away the right of the person. Now what happens? Supposing an accused's plea is one of alibi but the police officer in his diary has said: "Yes. I was on the spot for a different purpose" and gives it a different interpretation, it is not seen by the accused. It has not been read by the accused. He does not know anything about it. He does not know that this was going to be used against him and was going to be corroborative evidence of the prosecution. This might contradict the alibi that he may be pleading. Is it not a fact that no statement made by any accused to any policeman is admissible for any purpose?

DB. K. N. KATJU: It is.

SHRI K. S. HEGDE: Under what law?

DR. K. N. KATJU: Under the general law. Under the Evidence Act.

SHRI K. S. HEGDE: It is confession. Under section 25 of the Evidence Act only a confession made by an accused person to the police officer is excluded. But if it is admission it is admissible in law. The manner in which you are going to amend the law is the most important. Both of us are agreed, I take it, that a statement of an accused to a police officer should not be made admissible. This is provided for in section 25 of the Indian Evidence Act and section 1G2 of the Criminal Procedure Code. In the Evidence Act the exclusion is one of 'confession' and not of 'admission'. May I request my hon. friend just to go through the provisions on the subject and see whether or not the law has made a distinction between 'confession' and 'admission'. I am always prepared to sit at the feet of my hon. friend and learn because his knowledge of law is much more than mine. But then nobody is perfect in law. If the object of the Home Minister and myself are identical. I would request bim to reexamine the matter and see whether the deletion of section 162 will not open the flood gates of false and perjure.d evidence which is placed by the police. Do not think that your police officers are angels. Far from it. There are good men and there are equally bad men. After all even the best among them, when put in that job, do sometimes change their character and do things which they should not do.

[Shri K. S. Hegde.]

In this connection I would invite the attention of the House to a recent report in the *Hindustan Times.* It is a typical case and the report appeared just yesterday. There was an eye witness in a batch of criminal cases. He was a Muhammadan gentleman. When the cases came up for trial, he was not available. They got hold of another Muhammadan gentleman and made him agree that he was Muhammad Ali, namely, that he was the gentleman in place of the real gentleman who was not available. So another person was impersonating the real man. He went to court and gave evidence in that batch of cases and those cases ended in conviction. But in one case it was found out that he was not the real person and this transpired when he was cross-examined by the magistrate. When this was detected the magistrate filed a complaint against that fellow and the police officer who arranged this. These are the facts. Of course I do not subscribe to the view that every policeman is a dishonest man; not all. It is the system that gives scope to take to such improper ways. I may say, Sir. what happens many times. Generally the sub-inspector is a very honest man and he wants to go on the right li:;es. But he fears that the superiors are not satisfied with the percentage of convictions obtained in the cases instituted. And so it is the inspectors and other superior officers—not all— who induce them to see that more cases end in convictions and in order to please them recourse to such methods is taken. I can multiply instances like this. I am only trying to draw the attention of the Home Minister to the necessity of re-examining the proposed deletion of section 162.

The rea.. problem in the prosecution to-day is defective prosecution along with certain imperfect provisions of law. I am not against all the provisions that are contained in the Bill. I want to strengthen the provisions in the Bill and I do not like that ,the problem should be solved to a small extent. They have been thinking that this will help matters. That is not so.

Now, I turn to another aspect of-the Bill and the provision that I And in the Bill is for the deletion of the preliminary enquiry in a criminal case where the case is to be committed to a court of sessions. I do agree that oftentimes these preliminary enquiries are a source of considerable delay and they serve no purpose. In fact. Sir, many Judges have remarked that the preliminary court is a mere post office and that it had no discretion. In the matter of completely remoVing the preliminary enquiry, I have not yet been able to make up my mind though I do see that a substantial portion of the enquiry that is done in the preliminary enquiry court could be safely done" in the sessions court itself. But at least so far as the eye witnesses are concerned. I do feel that they must be examined in the preliminary enquiry not merely in the interests of the accused but in the interests of the prosecution itself. In the case of the accused he will have the whole case before him and be in a better position to decide upon his line of defence. Now taking it even from the prosecution point of view, it is well-known. Sir, that a case is under investigation till it results in acquittal or in conviction. Many times, as the case goes on some defects are noticed. Oftentimes even in the middle of the enquiry we had to request them to further investigate into certain aspects. In a case against a railway inspector the question was whether a particular set of people existed. The investigating officer had contented himself with his own enquiry and did not produce any evidence about their non-existence. We found that the evidence produced was not sufficient to bring home the guilt against the accused. It won't convince the court either. Even when the preliminary enquiry was going on I had to direct a further investigation.

There is a good deal of difference between the prosecution and the defence. The prosecution will have to build a case and the defence will have to break it. So. in the interests of both, preliminary enquiry is necessary to a certain extent. If you completely remove the_ preliminary enquiry it will be doing a great harm to the prosecution. But, that is not the same thing as saying that you must go through the farce and examine the chemical examiner or the ballistic expert or the medical man. It is not my view at all. The Dre-liminary enquiry must be as brief as possible but at the same it is absolutely necessary to have some sort of preliminary enquiry before the case is committed to the sessions. I will try to examine this aspect with reference to other countries also. Even in countries like England and America and everywhere they do have some sort of preliminary enquiry. It is not a complete thing by itself. It is there, and I would request the hon. the Home Minister to consider whether he would not. consider the necessity of having some sort of preliminary enquiry before the cases are committed to the sessions.

Coming to another aspect, Sir, I was quite distressed when I came to the amendment proposed to section 145 and 147 of the Criminal Procedure Code. As the law stands now, if there is any dispute which is likely to end in a breach of peace, relating to property, water or boundary, the magistrate makes a preliminary enquiry, but the law as amended or as is proposed to be amended is if there is any breach of peace, the Magistrate shall take possession of the property and leave it to the parties to go to a civil court. Imagine the difficulty that would be created. Supposing I am not in possession of the property but I want to establish my rights. Oftentimes it so happens that there is a semblance of a right in the person who is not in possession of the property, but going to court of law is extremely difficult because the plain tiff will have to prove his title. The burden is a heavy one. Well, what will I do? I would create a particu lar circumstance and persuade the police to say that there is likely to be a breach of peace, have the proper ty put in possession of the court and compel my opponent to go to the court, and the moment he goes to the court of law he will have to es tablish the whole title to the proper ty and it may be that the genuine titles may be lost. So this provi sion requires reconsideration. I do say that the present procedure to have some preliminary enquiry where convincing evidence is available is an absolute necessity. Sir, I shall not take much time of the House; probably I think it would be much better if I submit a memorandum to the Select Committee .....

MB. CHAIRMAN: Agreed.

SHEI K. S. HEGDE: Because many of these things are of a more technical inature. All that I would do is to appeal to the House not to run away with false notions of an individual's right. This bogey of an individual's right is very much magnified. The framers of the law were undoubtedly under the influence of • Voltaire and Rousseau who thought that the State was the enemy of the individual. It is not at all so. Today an individual can be as much an enemy of the State as the State can be the enemy of the individual. We must strike a balance somewhere. In a democratic set-up the State is your State. You must not always be thinking of the individual and his rights to be protected against the State. Do not run away with the idea that Hobbes' "Leviathan of the State" will always oppress you. Make an attempt to strike a mean. In fact, several provisions of the Bill have been conceived in the best interests of the accused himself. It has been laid down that if you cannot finish a case within six months, the accused is entitled to bail even

[Shri K. S. Hegde.] in the case of grave offences. No greater protection could have been given to the accused in a case. And what is more, the accused is entitled (to have free conies of the records that have got to he produced. The accused is entitled to get statements I nf witnesses. UD till now many of • them had to be paid for and they were made available only when the witness got into the box. Ā,M' But today the accused is going to get copies in advance. It is a definite advance. There is a genuine attempt to protect the innocent and undoubtedly there is a genuine attempt to see that the guilty person victed. Now, whether the pn visions are sufficient or not is an entirely different matter. It is up .tc us to make the necessary changes.

Sir. just one word about this much talked of defamation. This feeling that every Minister is a corrupt man, every high official is a corrupt man .....

AN HON MEMBER: Question.

SHRI K. S. HEGDE: That is the Reeling in some section. I am not saying th; t.

MR. CHAIRMAN. It is only a hypothesis.

SHRI K. S. HEGDE: Yes. This is ' what a section of the people go about saying deliberately with a view to create political chaos, not with any genuine interest in the State. 'Bar. ring me everybody is corrupt'—that seems to be the slogan. Sir. what | is being done? I had an occasion to examine this matter. When the control was there, one paper came out with a story that a Minister and his wife sold rice in black-market to A. B and C. Definite allegations they were. Now in the eyes of the public, there is the allegation. Will the Minister go on contradicting this sort of thing every day? Either the Minister has done it or he has not done it. If he has done it, it must be enquired into and if proved, he is no more fit to hold any responsible office. Similarly so far as high officials are concerned, insinuations and allegations are made. Do you want the District Magistrate to be going and complaining to the court every day?

SHRI GULSHER AHMED: He can have the services of a lawyer.

SHRI K. S. HEGDE: My learned friend says, 'you stop discharging the functions of District Magistrate and be complaining in a court of law and engaging lawyers in the matter'. If you think that the District Magistrate is corrupt, you prove it. Why don't you prove it? Otherwise why do you make an allegation? *(Interruption.)* My friend's dictum is very queer. I do not want the burden to prove it but I want the privilege of attacking you.

SHRI GULSHER AHMED: The question of public opinion is there.

SHRI K. S. HEGDE: Public opinion is something different. *(Interruption.)* My hon. friend seems to think that everything said in a court is right. It is not the case. It is true many people have borrowed the doctrine of Dr. Goebbels, "tell a lie, repeat it *ad nauseam* and it will become a truth." Are we going to allow that? People whose object is to create chaos and discredit everybody go on telling all sorts of lies and making allegations to make the people feel that the whole thing is nasty. It is not with any object of promoting anything right that they do this. Anybody who has got the knowledge of countries governed dictatorially knows what is the type of individual liberty that is given there. What kind of freedom of speech is there? Sir, 'freedom' is a much-abused word. As Prof. Laski

said, 'your freedom ends where my nose begins'. You cannot have freedom at my cost. This provision should have been made earlier. Even today defamation is an offence and what the hon. Minister is trying to do is to make it a cognizable offence. . Nothing more than that. That is the objective behind the Bill. At the same t'me I do say that several of the provisions of the Bill require changes of a fairly drastic character

SHRI B. GUPTA: Supposing the provisions are not changed, then you.....

MR. CHAIRMAN: Order, order.

SHRI V. P. RAO (Hyderabad): Mr. Chairman, I am no legal pandit, nor am I privileged to be a Public Prosecutor as my predecessor is, nor a Defence Counsel of long standing as the hon. the Home Minister is, but I am a layman. So, my appraisal of the Bill is from the point of view of a layman who has got some experience in dealing with peasant movements and with the police and in that connection with the enforcement of this Criminal Procedure Code.

The hon. the Home Minister said that infinite labour went into the -drafting of this Bill. But, Sir, may I point out that after labouring in finitely he has brought forth a mons ter, a mis-shaped monster at that. What are his main contentions? He says that many of the accused are being acquitted. Of course, he point edly referred to Telengana, PEPSU and some other places. What is the actual truth? What is the other side of the picture? He has only referred to one side of the case. Now, •in Telengana in the name of law, the police are committing crimes and they are going unpunished. I went through the whole Bill where there is not a single provision when the police commit atrocities or excesses to punish them. On the other hand, every provision is there to protect them, give them as much latitude as possible and to use them also against the political movement.

SHRI RAJAGOPAL NAIDU: You may go to the Federal Court.

SHRI V. P. RAO: Sir, I have told you in the beginning itself, that I am going not into the legal intricacies of the Bill, but to narrate my own experience of the working of the Criminal Procedure Code. The hon. the Home Minister said that many of the cases after being dismissed are taken avenged by their relatives and so on. I am sure the hon. the Home Minister has a good memory. When the first twelve—the first Telengana twelve—were convicted, and awarded death sentence, the whole conscience of the Indian people rose against that and then the sentence had to be commuted. So also, today, in Telengana, what is happening? Actually, in the name of law, in the name of the very same Criminal Procedure Code, innocent people are being harassed and do not know where they have to seek protection.

Sir, I am not going to bore the House by giving very many instances but I quote one case. A case of murder was supposed to have taken place in the village of Buragudem in Palvancha taluk. The first information report of the police was that some five people were murdered and the names of all of them were not given—only two of them were given. The first information report does not contain any name of the accused. For four years, the police had been investigating the matter and no fresh information was recorded in
I the police diary, but one fine morning they caught hold of a com-
| munist and said that it was he who had murdered these people. There was no death inquest, there was no *post-mortem* report. In spite of it,
J the accused was kept in jail for five months without being allowed to

[Shri V. P. Rao.] go on bail. Sir. this is not a unique case, but this is a typical case and hundreds of such cases are there in Telengana. I don't think any civilized country will allow such crime to be committed in the name of law where the innocent are being harassed. ,

AN HON. MEMBER: The U.S.S.R.

SHRI V. P. RAO: We are not discussing here the Criminal Procedure Code of the U. S. S. R. When it comes up, we can talk about that.

To quote another instance, in Warangal district .....

MR. CHAIRMAN: One instance will do.

SHRI V. P. RAO: Prosecution cases were launched in 76 murder cases in Khammameth and Warangal districts after general elections. So far as my memory goes, not in a single rase were the police able to prove it. Hundreds of people are being harassed, they are not having bail and are rotting in jails. This is a sort of political vendetta that is being carried on both by the Government and the Police on the Communists. Is there any provision in the Criminal Procedure Code against this gross abuse of authority and to curb the overzealous executive? I do not find anything there.

Of course, the hon. Minister said that legal processes must be speeded up. Very good; they must be speeded up. But what he means by speeding up is to short-circuit the law. instead of speeding up the procedure. We have had experience of this in Telengana. In the name of speeding up they have set up special tribunals there where hundreds of people were sentenced to death and later on, actually, when they came up before the Appellate Court, almost all these cases were quashed and all the accused released In spite of their final acquittal, sc many people have to rot in jail; for four or five years.

I then come to perjury. The Home Minister says that actually no prosecution witnesses are being tampered with. Certainly there is perjury and witnesses are being tampered with. But who commits it? It is the police who commit the perjury and not the other people. Can the hon. the Home Minister with all his legal experience, deny, that usually the police tutor the prosecution witnesses? No, Sir. Today, under the provisions of this amending Bill what will actually happen is this. The witness will be forced, coerced, and then will be brought, before a magistrate to make a statement when he is still under the thumb of the police. If he wants to tell the truth afterwards, the very statement will be used against the witness and he will be penalised. That is how the hon. the Home Minister is putting a premium on truth and he is forcing the witness to stick to the same version of untruth which he had given under police pressure with the threat of punishment. The police are committing the perjury and not the other people.

[THE VICE-CHAIRMAN (SHRI B. C. GHOSE) in the Chair.]

Then, about defamation. Certainly, I do not hold any brief for the 'yellow' Press. If anybody justifiably criticises a Minister or a police official, tomorrow there is every possibility of his being booked by the police because he made a defamatory speech against the particular police official or the Minister. When there is the ordinary process of law, why can't the individual himself proceed with the suit for defamation in a court of law? Why not the individual officer himself proceed with the defamation case? Why should the official be given this preference over an ordinary citizen? Why should the police be brought into

the picture ? The Home Minister argued that the official cannot go through all the trouble of conducting a case and he says some of the officials are poor. In that case, I say, let the Stale finance the proceedings." If such cases are not taken to the law courts directly by the persons affected but are dealt by police who are too ready to sharp at the throats of people and press them, there is every possibility of genuine criticism being stifled.

There is another provision in the Bill. If the magistrate feels that certain documents in "public interest" should be withheld, they could be retained from the accused, he can withhold these documents from the accused. Sir, when the accused has no access to all the documents to which a magistrate has, I think, it is very difficult on his part to defend himself. I would like to draw the attention of the Chair; the Home Minister is not listening.

Sir, I do not want to dilate on the provisions of the Bill. These are the few general remarks I wanted to make, and I think the Joint Select Committee will take all these things into consideration and see that some of these obnoxious provisions are deleted and the whole Code of Criminal Procedure is gone into and suitable amendments made so that the accused may have his rights safeguarded until the case is actually proved against him and the right of public and the press to criticise the executive is not stifled.

DR. P. SUBBARAYAN (Madras): Mr. Vice-Chairman, the Home Minister while introducing the Bill said that his idea was to quicken the procedure.

DR. K. N. KATJU: Can he speak loudly? Will he come to the mike?

DR. P. SUBBARAYAN: I am talking as loudly as I can. If the hon. Members cannot hear me, I am sorry I cannot help it.

THE VICE-CHAIRMAN (SHRI B. C. GHOSE) : It is quite audible.

DR. P. SUBBARAYAN: The Home Minister while introducing this measure mentioned that he was introducing it with the idea of quickening the procedure. I entirely agree with him, because I think protracted trials do justice neither to the prosecution nor to the accused concerned. But in doing this we should also consider the position of the accused, and this is a matter which we have inherited from English jurisprudence. With the knowledge I possess of it I feel that this is a system which they have left behind for us, and which we must defend, as far as we can. The dictum of English jurisprudence—my hon. friend the Home Minister knows it as well as I do —is that it is better to" let off 99 accused than to convict a single innocent person. I do not mean by this that every guilty person ought to go unpunished, because it is the duty of the State to protect property, to protect the rights of individuals, and to see that social justice is done and nobody acts in any manner which is against the society at large. The hon. Minister mentioned that he had an estimate of what was being done in a neighbouring district. He said that out of nineteen cases of murder not one ended in conviction. It may be true. But he also said that the Sessions Judges seemed to care more for public opinion than for actual facts.

DR K. N. KATJU: Have I evei said that? Never at all.

DR. P. SUBBARAYAN: I am sorry if I misquote him. But what he meant was this that the Sessions Judges can only go on the evidence that is placed before them, and they cannot convict anybody unless the guilt has been brought home to the accused. And therefore, we cannot blame the judiciary as a whole. My experience of Sessions Judges is this. I have had a fairly long

[Dr. P. Subarayan.] experience, having been Home Minister on two occasions in a State. My experience is that they try to do their best. And as far as the judiciary is concerned, this question of corruption hardly arises, as my experience has been that our judiciary has been free from corruption, and we have recruited generally persons who have tried to do their best according to the light of their conscience. But, really speaking the difficulty lies in our police. They try to make out a better case than what they possess. Some gentleman talked of tutoring witnesses. This is quite true, and it does often happen. On the other hand, if a ss comes forward and tells the truth before the court, he will not break down in cross-examination, because you cannot shift him from the position he has taken, which he knows to be true. It is only when he is tutored to say various things in order to builcl up a case against the d, the trouble arises. It is really a matter of investigation rather than of final judgments of the Judges concerned. I would like to tell the hon. Home Minister that we must do something to make investigation more perfect than it is today. I have often found that in a case where there is a diary submitted, in the first information report one thing is said, and before the case is put up before the court, some other things are stated which are very different from what you find in the first information report. These are things which really require a drastic reform. The hon. Home Minister said that we want the reform of the police, the reform of the judiciary, the separation of executive from ju- I diciary and the reform of the Bar, before we have the reform in our criminal procedure. I entirely agree with him that it is not possible to , do all these things before we reform our criminal procedure. But I think ' we ought to do something to get reformation of the investigation branch in the matter of criminal in- ' vestigation.

I would like to recommend for his consideration that we should adopt the English system of having a Director of Public Prosecutions, which will in a way give a clear idea of what prosecutions can be launched. He will be the instrument, he will be the person, who would advise the Government on this matter.

Sir, with regard to reforming section 145, I think the method that has been adopted in the measure before us would be a disadvantage than an advantage. I think the present procedure, as it stands, will be much better than what has been tried in the amending Bill. The hon. Home Minister knows as well as I do the legal proverb that "Possession is nine points of the law". And therefore it is really hard to disturb that possession by merely stating that there will be a breach of the peace, and therefore, the Magistrate should come in and take over the property and force the owner of the property who is in possession of the property to go before the civil court and prove his right to such property, ft is really taking away a right which we possess today..... *(Interruption.)* Sir, I refuse to yield except on a point of order.

Then, Sir, I come to the new clause about making defamation against public servants a cognizable offence. It is a curious procedure according to me, and I think it is importing the system of administrative law into this country, and placing the official in a better position than the ordinary citizen. This is a matter which English jurists have stood against, for all time. In fact, Professor Dicey, before he died, pointed out that even in England administrative law was slowly creeping in and should be resisted. We do not want to place the official in a better Dosition than the ordinary citizen-is today.

SHRI K. S. HEGDE: Is it not there even now in our jurisprudence?

DR. P. SUBBARAYAN: I say, except on a point of order, I refuse to be interrupted.

SHRI K, S. HEGDE: That is all right.

DR. P. SUBBARAYAN: Well, I will answer my friend's question: Is it not there even now in our jurisprudence? I do not think so.

SHRI K. S. HEGDE: You cannot prosecute a police officer without a sanction: you cannot prosecute a magistrate.....

DR. P. SUBBARAYAN: That is a question of protection given by the law to the police officer. But now you are placing the official in a much better position than he is today. That is my point. It has nothing to do with the point raised by my hon. friend. All that I say is that you should not place the official in a better position than the ordinary citizen. Bui you can help him in other directions. You can let your law officers appear for him free so that ivs character is cleared. I agree with the Home Minister that we should as far as possible, try and clear the character of our public servant. This you can do by the help you can give, and not by making him a superior person.

DR. K. N. KATJU: I would like to know what an administrative law is in the opinion of my hon. friend, because I do not understand the meaning of administrative law.

DIVAN CHAMAN LALL (Punjab): *Droit* Administratis

DR. P. SUBBARAYAN: I know the French word which my friend and my old colleague, Mr. Chaman Lall. has used. I only used the English term because I am not acquainted with French as I am with English.

DR. K. N. KATJU: I thought the administrative law in France is administered by a different court than the ordinary court of law.

DR. P. SUBBARAYAN: I quite agree with the Home Minister that the administrative law in France really means a law administered by a different court than the ordinary court of law. By the procedure we are adopting in making the offence cognizable, we have imported a system of administrative law. That is what I said. I did not say that we were having administrative law. We are importing a system of administrative law. That is what Prof. Dicey complained against in England that by various Acts, the Education Act for instance, a system of administrative law had been introduced there.

SHRI K. S. HEGDE: Even in the Penal Code, if you assualt an ordinary individual, it is a non-cognizable offence, it is under sections 24 or 25, but if you assault an official, it is a cognizable offence.

DR. P. SUBBARAYAN: It is all wrong.

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

DR. P. SUBBARAYAN: If it is there, it is wrong. Even if it is there, we need not add to it. It is there already according to my friend, M:.r. Hegde, who has had long experience of prosecutions as Public Prosecutor. That he knows more than what I can claim. I do feel that whatever may be the intention of the Home Minister in introducing this, there are other methods of helping the officers concerned and making them prove their innocence, when defamatory charges are made against them, but we should not distinguish between a public servant and an ordinary citizen in the matter of such charges. If you want tew make it cognizable, make it cognizable for all. Of course that will be a tall matter, but I personally would

[Dr. P. Subbarayan.] not like it. We need not make any exception in the case of officials. That is all 1 say in regard to this matter.

There are many improvements which the hon. the Home Minister has introduced which I entirely agree with, for instance, leaving out the assessors which, I think, is a very good thing for making jury trial better than it is today, but at the same time I would like to mention for his consideration that there should be no discretion vested in the Magistrate in giving documents to the accused, wiho after all is on trial either for his life or for some other ee he has committed, and he should have the full facts about the charge against him in his possession so that his defence may be properly undertaken by anybody whom he wishes to engage.

There is of course a proposal by a private Member that the jury system should go altogether. I believe that is also to be considered by the Select Committee, but I would mention to the hon. the Home Minister that the jury system should continue as far as possible, provided we get the right kind of juries.

SHRI K. S, HEGDE: That 'if is a very big 'if.

DR. P. SUBBARAYAN: Mr. Hegde says that 'iff is a very big 'if'. He has had long experience, as I said, as Public Prosecutor of these juries and knows what he himself has per haps done to the juries. What I say is that it is good to retain the jury system because you get the common man to judge the facts. That has been the idea of English jurisprudence in having jury trials, and I think that, as far as possible, we should retain it if we *can.*

One word about clause 92 of this Bill with regard to summary procedure for punishment of false evidence. I really feel that the court which thinks that the man has perjured should put the case up before another court rather than deal with it itself. It will not be really fair to the accused that he should be tried by the same judge. Though I agree with the summary method of procedure, the case should be stated and another court should try him instead of the same court.

Another thing which I entirely approve of in this Bill is the raising of the power of imprisonment as well as of fine by Magistrates from two years to seven years and from Rs. 1,000 to Rs. 2,000. I think this will certainly help to quicken procedure

I think it is very good for Sessions Courts being held in the locality where the crime has been committed, because in that case it will be quicker and easier for evidence to be given and for the Judges to come to their conclusions if they are able to meet the witnesses in the locality itself.

Sir, I personally would commend this measure with the remarks that I have made for the attention of the Select Committee. The Home Minister has agreed that the whole Code may be under review by the Committee, and I do hope that what has not occurred to the Home Minister will occur to the Members of the Committee and that the Bill, as it would finally emerge from the Committee, will help to quicken procedure which is the main idea of the hon. the Home Minister. I would like to congratulate him on the trouble he has taken especially for the memorandum he had sent out to people and the method he has adopted in order to quicken procedure. He has done it in all good faith and I trust that the Bill as it would emerge from the Select Committee will help him to achieve the object which he has in mind.

SHRI H. N, KUNZRU: Mr. Vine-Chaidman, lawyers have obviously a

great advantage over laymen in dealing with the Bill before us, but as the Bill will affect all citizens, even igmrant laymen may be allowed to say how they view the Bill. In making my remarks I must not be supposed to throw any doubts on the good faith of the Home Minister. It should be taken for gianted that what we are concerned with are the steps taken by him to reduce law's delays. He pointed out to us very forcibly that the present procedure involved so much delay that it could truthfully be said that justice was

seldom available in our courts, but let us consider whether the remedies that he has provided will prove adequate. I shall not discuss this question from a theoretical point of view but refer to the concrete circumstances of the State to which I belong. The High Court of Allahabad has the misfortune of having

about 7,000 criminal and about 25.000 civil cases in arrears. I understand that this was the state of things on the 31st March, 1954. Again, Sir, in spite of the fact that the number of sessions courts has been increased,

the criminal cases cannot be disposed of quickly and civil cases have fallen into arrears. How will the Bill before us help us in dealing with state of things in the U.P.? I personally doubt whether it will have this result. When the Panchayat Act was passed in the U.P. it was thought that litigation would be reduced but I understand that plenty of writ applications are filed in the High Courts against the decisions of the Panchayats. Some cases of this kind have come to my notice but many more cases have come to the notice of the High Court advocates and I have been assured by them that the number of such writ applications is pretty large. It seems that crime is on the increase in the U.P. and it is not the fault of the judges that work has fallen into arrears. In fact the responsibility for this state of things must be borne to a certain extent by the U.P. Government or by the Government of India. ' Take the High Court. It is still, I think, short of the strength that it can have under the Constitution. If you find that the work of the High Court is increasing and that the arrears are piling up. is it not desirable when you are thinking of changing the law in ways not all of which are acceptable to the public, that you should think of reducing the arrears by appointing more judges? Similarly, if on account of the increase in crime the work of the sessions judges has greatly increased notwithstanding the increase in the number of sessions courts. is it not desirable to have more officers dealing with criminal cases? The Bill does partly deal with this matter as I shall presently point out. But I venture to think that on the whole the evil state of things that exists in the U.P. will continue even when the Home Minister's amending Bill is passed.

We have heard more than once probably from the Home Minister himself of the unsatisfactory disposal of cases by the High Courts but I doubt whether we have ever been told whether there has been such an increase of work as to justify the increase in the number of judges. From what I have been able to learn about the U.P., it seems to me that the fault for the present state of things is partly that of the Government and that even if the Bill before us is accepted as it is, this evil will continue to a large extent. Sir. one of the ways of reducing the work of the High Courts that this Bill suggests is a modification of section 30 of the Criminal Procedure Code. It is proposed to empower magistrates *to try* all offences not punishable with death or with imprisonment exceeding 7 years. Now it is true that this power has been given to magistrates in several States but I am again looking at this provision from the point of view of the U.P. Suppose this provision were accepted by Parliament, would it be favourably received by the people of the U.P.? I doubt seriously whether it would be. Judging from all

rshri H. N. Kunzru.] that I know of my province. I feel that this would create a sort of consternation there. There is complaint against the magistrates still notwithstanding the fact, as rightly pointed out by the Home Minister yesterday that the standard of thu magistracy had risen considerably during the last, say 20 years. But he knows as well as anybody else that the magistrates are not looked upon in the same light anywhere as judges are. Even when magistrates are discharging judicial duties, they are not trusted in the same way, as for instance. Sessions judges and judges of High Courts are. The amendment of section 30 that has been suggested will probably reduce the work of the High Courts.

DR. K. N. KATJU: No.

THE VICE-CHAIRMAN (SHRI B. C. GHOSE): He does not agree.

SHRI H. N. KUNZRU: I hope and I shall be glad to be told that I am in the wrong but I thought that only one appeal was allowed in such eases and if the cases decided by the magistrates were to go in appeal to sessions courts, there would be no appeals to the High Courts but if I am wrong in assuming this, I should be very glad indeed.

SHRI RAJAGOPAL NAIDU: Appeals against convictions.

SHRI H. N. KUNZRU: But even if what I have said is correct, the work of the sessions judges will not at all be reduced. We have to apply the appropriate remedy first at this point if we want to speed up the disposal of cases. Another remedy suggested for obtaining speedy justice in the Bill is the abolition of commitment proceedings. Now I have not had, fortunately, to take any part in these proceedings but I have friends whose misfortune it has been to be involved in them and I know that notwithstanding the defects in the law, they looked forward to proving that the evidence against them was absolutely worthless. They thus hoped to be saved the trouble of appearing in a Sessions Court. We are told by the Home Minister that acquittals take place only in two per cent, of the cases that are investigated by the magistrates. I understand, Sir, that the root of the trouble is that the magistrates have really no power to acquit anybody. Under this state of the law, will it not be desirable that the power of the magistrate should be enhanced in respect of this matter? If after knowing the entire case of the prosecution and after going through the evidence placed before them by defence, they come to the conclusion that the case is a very weak one, should they not be empowered to acquit or discharge the accused? I think acquittal would be better, because in the case of a discharge, the man who is discharged may be prosecuted again by the police.

Sir, there are other matters of the same kind to which I do not want to refer, because my knowledge of the law is almost nil. I have, therefore, dealt so far only with such matters as ordinary citizens may ex press their opinions on.

There is only one other matter on which I would like to speak before I resume my seat and that relates to the making of the offence of de famation against the President, Gov ernor or Rajpramukh of any State or a Minister or any other public servant in the discharge of his pub lic duties, cognizable. Sir. my hon. friend the Home Minister spoke very eloquently about the need for pro tecting the public servants from base less aspersions. But did he present the whole case from the point of view of the public? Or did ihe take a one sided view only ? Nobody denies that people who try to defame others, not merely the President or the Rajpramukh or public servants, but anybody, should be adequately punished. But is the method proposed in the

Bill the best way of achieving the purpose that we have in view? Sir, when the Press (Objectionable Matter) Act, was discussed in 1951, the last clause of section 3 of that Act was referred to, I believe, by more than one speaker. It was certainly referred to by the predecessor of the present Home Minister. This clause deals with matters that are grossly indecent or are scurrilous ur intended for blackmail. It was thought at that time that scurrilous matters and publications intended for blackmail would be dealt with under the Press (Objectionable Matter) Act. and a certain procedure was provided for dealing with the printing presses and newspapers, that were guilty of publishing such things. In case a Sessions Judge or the Assistant Sessions Judge before whom the matter was placed was of the opinion that action was required to be taken, he might demand security or where security was already taken, order the forfeiture of that security already deposited, and might even order the closing down. I think, of the press, and so on. I would like to know whether this provision on which stress was laid in 1951 has been used by the Government? This provision was enacted in order to provide the public servants with protection against, people who indulged in bringing baseless charges against them and tried to lower *them* in the public estimation. Sir, my hon. friend the Home Minister said nothing on this point. I think this gives the Government a powerful instrument for dealing with cases of defamation. When such a provision as that exists, is it necessary when the Criminal Procedure Code is being amended to make defamation, in the cases to which I have already referred, cognizable'

There is another objection which I have to this provision. There are other countries in which public servants are sometimes unjustly accused by violating the law. The highest dignitaries even are not immune from attacks by the press. I remember long ago a case in wlhich King George V was charged with having kept secret a morganatic marriage that he had entered into. That case was dealt with in the ordinary way and the person guilty of defamation was punished by the courts. But notwithstanding the presence of serious cases, it has never been asked in England that defamation should be made a cognizable offence. In fact, there I understand it is dealt with only by the civil courts.

There is one other point that I like to bring forward in this connection before I close my remarks. It is quite possible, Sir, that when a man is charged with defamation, he may ask that the person whom he is supposed to have defamed should be brought to the court. I am not certain whether a request of this kind will be always or generally acceded to by the courts. The public servant will, therefore, have a double advantage over the person who is prosecuted.

Action is taken not at their instance but at the instance of the police and therefore, presence in the court may not be regarded as necessary by the trying Magistrate.

Now, I think, Sir, for all these things it is not desirable that this kind of innovation should be made If Government wants to help these people, it should ask them to file complaints against those who bring foul charges needlessly against them and they should be asked to bear the expenses of the legal proceedings. Surely, in this way, they could help the public servants without changing the law in so undesirable a manner. Sir, I feel very strongly on this point. We have modelled our Constitution and law on the Constitution and law of the United Kingdom and I think, it is not without adequate cause that we adhered to the systems prevailing in that country. To do anything which even remotely suggests of imitating practices of other countries would be most unfortunate.

I.Shri H. N. Kunzru.] I hope, tiherefore,"~that this particular provision will be examined again with an open mind by the Home Minister and that it would receive full consideration of the Select Com-mittee.

SHRI GULSHER AHMED: Mr. Vice-Chairman, I do not think any person, in this House or outside, will disagree with the ob.iect of hon. the Home Minister. He has been motivated by the maxims of English jurisprudence that 'justice delayed is justice denied'; and that 'not only justice should be done but seem to have been done'. The only consideration is whether the means that the hon. Minister is applying to achieve this objective of speedy and cheap justice is going to be achieved or not. I will try, in my humble way, to show that the objects with which the hon. Minister had been motivated are not going to be achieved because there are various other aspects which ought to have been taken into consideration before this noble objective could be achieved. The police, the Magistracy and the legal profession in tjbis country are factors which are so connected with each other that unless and until something is done in every factor. I do not think, the objective can be achieved.

Before I speak about other aspects of the Bill, I would like to say a few words about the section relating to defamation whereby any person making any allegation which is of a defamatory character aga'nst any public servant, is going to bs prosecuted by the Police; that is, defamation is being made a cognizable offence. My hon. friend the Home Minister knows that under the term 'Public servant' even the village chowkidar or a oatwari comes. Does he mean to say that if a Member of Parliament goes to his constituency and the constituents tell him that the patwari is indulging in corrupt practices and the Member speaks against the Patwari, the patwari can J go to the police and have that Member arrested because he had made certain allegations against him who-is a public servant?

I think my learned friend is very much obsessed with yellow journalism in this country. He thinks that until and unless such a provision is made in the Criminal Procedure Code there is no safety for the honour ,of a public servant in this country. I cannot understand the argument of my learned friend. There are so many other laws in this country; for instance, my learned friend has just made a reference to the Press Law which has been passed and which could stop this kind of yellow journalism.

In every civilised country, the freedom of the press is guaranteed under the Constitution: we have actually copied those high ideals of the freedom of the press in this country. In every country, the press is free, subject to the ordinary law of Defamation. If any member of the Press or any other person makes any re-mark which is defamatory against the other person, it is open to the other person to go to a court of law and get a remedy. If my learned friend is so anxious to protect his civil service, and wants that nothing should be said against them, the only procedure is that he could make a provision in this amending Bill that if a defamation is made against any public servant, he will be free to go and make a complaint through the public prosecutor or through the Government pleader. In that case either the Government pleader or the Public Prosecutor who is appointed by the Government, can represent the public servant and attendance of the public servant in a court of law may not be necessary. The present law is that in a Criminal case both the parties should be present. Unless both these parties are present, the case cannot proceed. If he wants

to achieve the object without curtailing the freedom of speech, he can i achieve it without making defamation a cognizable offence. In that way, his objective can be achieved . •very easily and. at the same time. the public servants will not be given undue protection by making defamation a cognizable offence.

Leaving that aside, now I come to the next point. I will first try to point out some of the difficulties and the defects in the Bill and then 1 will try to show the good provisions that have been incorporated in it. 1 will first deal with the defects and the difficulties. The first is about committal proceedings. The object of this Bill is to make the administration of Justice speedy. Well, if that is the object, the committal proceedings can be made similar to the proceedings of a Sessions Court, What happens in a Sessions Court is that four or five days are fixed and no other case is taken when there is a session trial. In the same way. m regard to committal proceedings, some eye witnesses should be examined before the case is committed to the Sessions and when those witnesses arc ban;; examined by the Magistrate no other case should be taken. If that is done, there will be speedy disposal of cases. The police should be made to finish the investigation within a specified time. Provision can be made for giving further time to the police.

SHRI RAJAGOPAL NAIDU: That is what is being done now.

SHRI GULSHER AHMED: At times it so happens that one witness is examined and then the police says that the other witnesses have not j turned up. the case should be adjourned and it is adjourned and in this way the case goes o'n for three or four months and sometimes for a year or two

Then I come to the other point. The provision that if a Magistrate, who has examined certain witnesses, is transferred to another place and another Magistrate takes charge, there should be no *de novo* trial; that is, those who have been examined before should not be examined again. Most of the Members who belong to the profession know very well tiwt one of the fundamental principles or maxims of jurisprudence is that the Magistrate who is recording the evidence must see, with his eyes, the demeanour, the facial expression and other movements of the body of the person who is standing in the witness box so that if a man says, "Yes" with a particular gesture or movement in his or her face, the presiding officer may naturally and very easily find out how much of that stale ment is correct and how much is untrue. The *de novo* trial is all the more important when this Bill is going to restrict the appellate power of the High Courts.

SHRI K. S. HEGDE: I am sorry for interrupting *my* hon friend. Even now the law is that the accused has the right. Now this choice is left to the Magistrate.

SHRI GULSHER AHMED: Why do you take away that right? Why not give the right in every case? If you are anxious to avoid delay make this a rule that a Magistrate will not be transferred from one place to another unless he has finished all the pending cases before him. Nothing prevents you from achieving your object in this way. Your main point is that there is a lot of delay because there is a retrial, that is to say the whole thing has to be done again and there is a lot of time being spent. If that be the object you can lay down a procedure by means of law or by direction of the Government that *no* transfer of *P* magistrate will take place till he has completed all the cases that he wat trying. This way it can be achieved very easily and 1 think it is not a difficult thing to achieve.

Then I come to section 145. The position under the present law is that if there is any proceeding under section 145; that is any dispute about the possession of any property exists arid

[Shri Gulsher Ahmed.] the magistrate or a sub-divisional magistrate thinks that there is a likeli hood of the breach of the peace, he can attach the property and can decide as to who is entitled to have possession of the property.

What is being attempted in this amending Bill is that the magistrate will only attach the property and will not decide the dispute, but he will leave the litigants or the parties to go to the civil court to have their title or possession decided by it. Even to-day, under the present Act, it is open to any party to go to a civil court and say: "I am entitled to the property and this is my title deed to the property and I am entirely to have its possession." And as soon as he files a civil suit all the proceedings in the Criminal court are stopped. So I do not think there is any necessity for any change in the present law because what will happen is this, namely, that the main object of this Bill to make litigation cheap will be frustrated. What will happen, for example, under the present Bill is that if the property is attached and the property is worth a lakh of rupees the man who will go to the civil court will have to pay court fee of some Rs. 7.(100 or Rs. 8,000, which he cannot afford. It will mean a lot of other expenses also because the party may go to appeal to High Court and the Supreme Court. But this can be avoided if the matter is decided then and there by the Magis- trate or the sub-divisional magistrate who knows everything, who has pat-tooris and tehsildars under him who keep the records. Thus he will be in a position to know exactly who is entitled to have possession. So I do not think the object of making the administration of criminal justice cheap, is going to be achieved by amending this section 145 which is sought to be done under the present Bill. Under the present Bill every dispute of possession will be decided by Civil Court, which mean more delay and expense.

Then 1 come to the appointment of honorary magistrates. Well, I do not say that they should not be appointed. It is our past experience that such appointments were made by the executive government on political considerations and other considerations and not on tha consideration that he is a capable man, that he is legally qualified and competent man to decide cases. There is no point why Government should be reluctant to specify ip the Act what persons with what qualifications will be appointed as such. That will make the position clear. If the Government is hesitant to do it in the Act they can *an* well do it in the rules, namely, the prescription of qualifications for the-Honorary magistrates. The matter of riopointment of such magistrates should be left to the High Courts although the rules may prescribe the qlgifications. namely, persons who have been judicial officers and have retired as such. They are generally available in the towns, and they can easily be appointed. So> if this question is going to be revived I would submit to the hon. the Home' Minister that he should take into-account the fact that he should specifically mention in the Act what are the qualifications for a person to be appointed as an honorary magistrate-and the appointing authority will be the High Court of the State and not. the executive Government.

Then I come to section 162 of the" Criminal Procedure Code, the provision-there is that a statement made before a police officer is not admissible in any court of law. Now that section is. going to be abolished and it is now proposed to give more powers to the police. Under the present Bill if a-statement was made to the police, the-police will be entitled to produce that statement as corroborative evidence against the accused. Omission of section 162 may some time cause serious; injustice in view of the low standard of our police investigation. We have not yet reached the stage that we can try to copy everything from the English law. Probably my hon. friend does not remember that in England an ordinary police constable has to undergo a-tra'ning of four to five years before he is assigned any responsible job. But what happens in our country? A man?

who can hardly read and write even Hindi or Urdu is appointed a police constable. Therefore it is not advisable to leave such important things to such police constables. I do not say that in big towns it is so. But I am having in view the small towns where the head constable happens to be incharge. Suppose there is a murder. He has to make the report, to write the F.I.R.; and F.I.R. Sir, is the most important document in criminal cases, and the whole case stands or falls on the basis of the F.I.R. and the statement recorded by the police. Now if you are really going to abolish this section 162 of the Criminal Procedure Code, you can make a provision in this amending Bill that all the statements made to the police either in their favour or against their favour and everything that is recorded in the police diaries should be given to the accused free of charge, not only the statements of those persons who are going to be produced by the police and of whom they think will probably speak in their favour but also all the things that they have recorded in their police diaries whether favourable or unfavourable to the accused person.

In this connection I may say that the reform of the police in this country is very essential. Well, I am just giving you an example. I had, a few days ago, the privilege of talking to a retired High Court Judge. He told me that the mentality of the Police Department chat had developed under the British regime has not yet changed. He told me a case of young graduate who on return from the police training college, was posted as incharge of the police station. He went on very well for about a month and after a month he received a communication from his boss asking as to how it was that during that one month there had not been any case under section 109 Cr.P.C. which means that if a person having no ostensible means of livelihood is found moving about he should be reported on and bound down for trial. Well, this man was absolutely puzzled. He replied that he did not see any such* peison

I in his area who should be sent up under section 109. Then another chap who was under him and who was a head constable told him that he should show some such cases, that such cases were being shown in other places, and that they were routine things of the police and should be done, also that he should not get worried about it and that he would manage the whole thing. Then after three days the head constable picked two or three people and dhallaned them under section 109. Well, if you really examine the provisions of 109. I think according to that provision nearly one-fourth of the people of this country, especially those who are under the joint family system and who are unemployed, can be subjected to this section 109. I do not think there is any necessity of retaining a section like this. What I mean to say is that unless and until you improve the police organisation, as my learned friend, Mr. Hegde, and my other hon. friends have said, we cannot rely on all the police officers to exercise their power judiciously. It is also because of the faults in the investigation of crimes that most of the cases in this country do *not* succeed. In England they have got well trained and well equipped investigation officers and there is hardly any crime which goes unpunished. They have got similar procedure as we want to make but where are the precautions and the ideal police of England. If you read English cases you will wonder that there was not a single offence that was committed that did not end in conviction and how they have been functioning and how honestly and ably they build the cases in contrast with what happens in our country. I shall give you one example from my own experience of conducting a dacoity case. Some clergymen went to a village and they picked up a row with the village residents. These clergymen had gone there with guns with them for purpose of shooting. The villagers, some 20 or 25 of them, caught hold of them, and took them to the thana and made th<? report stating that these people were attempting to commit the dacoity, that

fShri Gulsher Ahmed.I they were found inside the House with firearms making attempts to commit dacoity and that they were caught in that process. The man who was in the *thana* at that time was a head constable and he wrote the F.I.R. believing the case to be true. I can tell you that he was such a hopeless man that when he came in the witness box, he was giving all sort of replies without even knowing what h" was saying. It was really a sorry sight to see him in the witness box that such a man who did not have the least common sense was put in charge of the *thana.* Whatever these villagers told him, he put it in the F.I.R. *e.g.* that they had come with the intention of committing dacoity, that they had deadly weapons and that they actually fired two shots inside the house. Sir, if the shots were fired inside the house and persons were arrested inside the house, they ought to have brought to the police *thana* empty cartridges. Ordinary commonsense would tell us that the empty cartridges ought to have been there somewhere inside the house. But the police officer never thought of that. He simply wrote that report. And what happened when the case came before the Court? They were challaned for the heinous offence of committing dacoity armed with guns which was completely false. The accused persons were acquitted. If the police officer had applied his commonsense, those innocent persons would not have suffered trial and its agony. I would therefore submit to the hon. Home Minister that we should start something like what they have got in England. Whenever you want to recruit police constable, the police constables must have at least middle class qualification, or if that is not possible, they musi be able to read and write well. You must give them 'raining for at least two years. In England it is four years but here if you cannot keep them under training for four years, please have some kind of arrangement so that these constables after recruitment could be adequately trained and could gain knowledge about the Criminal Procedure Code.

j Now regarding magistracy, I do not know what the position is in other States, but I come from a Part C State where we have got separation of judiciary from the executive. The Sessions Judges and th_e Magistrates are all separate. The District Magistrate has got no judicial power in my State. But what I find in the present Bill is that an attempt is going to be made, even in those States where Deputy Commissioners have got no judicial powers, that they should be given judicial powers. Sir, the hon. Minister wants to amend section 30 of the Criminal Procedure Code in such a way as to give judicial powers to Deputy Commissioners who have now no judicial powers at all. I do not think anybody would like that especially when we are making a high and noble experiment of separating the judiciary from the executive. I do not think they should be encouraged to do a thing like that, because what will happen is this. In small States like ours people are known to each other and there may be some Ministers who have got some prejudice against some persons, and those persons never can have fair trial in those offences which are triable by the District Magistrates.

SHRI K. S. HEGDE: 'District Magistrate' as defined in the Criminal Procedure Code. There is a definition of District Magistrate in the Code.

SHRI GULSHER AHMED: We in our states are making an experiment of separating the judiciary from the executive. These Magistrates and ;the Sessions Judges are completely under the control of the Judicial Commissioner and are completely separate.

SHRI K. S. HEGDE: In the State of Madras there are two types of Dis trict Magistrates; one is the ordinary collector who is the administrative District Magistrate .....

! SHRI B. K. P. SINHA (Bihar): I That section has to be read along

with other sections that are not being amended. Leave it.

SHRI GULSHER AHMED: All right. Now, I come to some of the good provisions that have been made in this Bill. I will mention only a few of them because 1 do not want to take up much time of the House. I would congratulate the hon. the Home Minister for making the provision that under-trials should be released on bail if the trial cannot be concluded within six weeks. That is something very good that has been done under this Bill. After all, it is the common experience of all of us who go before the court of law that we see before our very eyes and hear that a man who has made one statement 10 minutes ago makes an entirely different statement after 10 minutes. Everybody knows and feels that he has told a lie but nothing -could be done against him. It is a well known fact. I do not say that only the police tutor the witnesses; I know the Counsel also tutors the witnesses. That is the general practice. This provision which is now proposed is going to create a sort of respect among the people for the courts. Nowadays the common impression is that in courts of law, people generally tell lies and never tell the truth. That misapprehension would now be removed by making perjury an offence of summary trial.

Another provision made in this Bill is about the disobedience of the summons, that is, if a person deliberately fails to appear before a court when summoned, he can be summarily punished. I think it is a very good provision and it would go a long way in achieving the objective of making the administration of justice speedy and quick. What happens in most cases is that if the witness happens to be a person of influence, he does not take the summons seriously. 'If I can go, I will go; otherwise I will give some excuse or other'—this is how they feel after the receict of the summons. The hon. the Home Minister has really done a great service and has taken a great step forward in achieving the objective of making the administration of justice speedy by making noncompliance of summons punishable The cases are adjourned mostly simply because the witnesses fail to turn up.

Now, Sir, if I have tried to place before the House some of the defects, I have also tried to make certain suggestions to remove those defects. The object that the hon. Minister has in mind can be achieved by different means and not only by those means that he has suggested in his amendments. But at the same time I must say there are certain good provisions in the Bill which would go to a great extent towards achieving those objects which he has in his mind.

THE VICE-CHAIRMAN (SHRI B. C. GHOSE) : Belore I call upon the next speaker, I should say that the general discussion should finish today. Therefore unless hon. Members exercise some voluntary control over time many Members would be debarred from taking part.

SHRI T. BODRA (Bihar): Mr. Vice-Chairman, I heartily welcome this proposed Code of Criminal Procedure (Amendment) Bill. Some of the clauses, especially clauses 26. 28, 31, 32, 37, 39 and 53 are very good amendments. Like my predecessors, I also do not approve of the amendments introduced to section 145 of the Criminal Procedure Code. Here a Sub-Divisional Magistrate. Is being vested with the powers of attaching the property on a police report or on any other information. The Sub-Divisional Magistrate or the Magistrate exercising first class powers is being divested of "Sft the powers of passing final orders after making a formal enquiry. Now he has not got any power but to attach the property and to direct the parties to seek redress in the civil court. The object of the

[Shri T. Bodra.J hon. the Home Minister in bringing forward this Bill is to secure a speedy disposal and to bring justice to the door of the common man. But how does this clause serve, in giving justice to the poor man, when one finds that a neighbour of his having an avaricious eye on his garden or plot or some other land can easily persuade a police officer to lodge an F.I.R. and bring him into trouble. The neighbour can give some bribe to the *thana* officer who will go and report to the Sub-Divisional Magistrate that there is likelihood of a breach of peace. The Sub-Divisional Magistrate has got no authority to hear witnesses either of the first party or of the second party. He can issue an order, "after receiving the report oi the thana officer, I am satisfied that there is likelihood of a breach of peace" and then attach the property concerned. He has got no other power but to ask the parties to go to the civil court. That means curbing the powers which were being wielded by the Sub-Divisional Magistrates up till now. Now, the parties, rightly or wrongly, will be compelled to go to the civil court and to incur heavy expenses in the shape of court fees to get justice after say, one or two years.

Before, the procedure of the civil courts was much more long. That we all know. The very purpose for which this amendment under clause 145 is being brought will be frustrated.

Secondly, Sir, about the delay of cases in the court, we, in India, are following most of the principles of democratic countries like England. After hundreds of trials and errors, England has thought it fit still to retain the procedure of committal; that is after the enquiry in the lower court it is referred to the sessions court. I don't think we should put an end to this procedure of committal under the amending Bill. What will happen is, as the efficiency of the police department is not very high, that any innocent man who is suspected by the police officer will be put in the dock as an accused and committed to the court of sessions. Many innocent persons will have to undergo many of the troubles and travails and mental anxieties of going all the way to defend themselves. We have some experience of the courts and we know that after the trial is over people will be acquitted; but then, a common man has no chance here of getting a clean acquittal in the lower court.

Then, Sir, about the defamation of public servants. Public servants, according to your definition, will mean right from the chowkldars or patwa-ris, the clerks, the Nazirs, the Amlas, Magistrates, Deputy Magistrates, Judges and others. Now, Sir, when the people are convinced about certain allegations against certain public servants can those complaints be made to the authorities? It is a matter of common knowledge that any peshkar of any sub-divisional court is earning more than Rs. 15 a day. Even for filing a 'hazar' of the case, the people must pay one or two rupees to the peshkar. Now, Sir, when the public or the people would like to bring these things to the notice of the Sub-Divisional Officer or the District Magistrate, or to the notice of the authorities at present, such allegations, if they can be proved, are welcomed by the officers. But when this section is introduced and put into operation, many of the lawyers, the mukhtiars and the litigant public, out of fear will restrain from putting in any application whatsoever of illegal gratifications against the Government department or the Nazir or the English Office or the peshkars or the trying Magistrates and so on and so forth. Simply out of fear, lest they are not able to prove the allegation they will be hauled up and convicted. So, instead of helping the general public towards the betterment of our administration, in respect el the courts, in respect of the court

clerks and 'amlas', we are trying to Infuse In them a feeling of terror and a feeling of fear. Thereby, I do not think the purpose for which this amending Bill is being introduced will be usefully served.

I am grateful to the hon. the Home Minister for making many of the offences triable as summons cases by Magistrates. It will certainly help in the speedy disposal of the cases. Therefore, Sir, I beg to submit that this Code of Criminal Procedure (Amendment) Bill may be examined very thoroughly by the Select Committee before it is enacted and put into operation.

SHRI B. K. P. SINHA: Mr. Vice-Chairman, after this long debate when everything possible has been profitably said, I will just address myself to the most controversial clause of the Bill—the clause making defamation of public servants, Governors, President, etc. an offence, cognizable under the law. A certain interpretation has been sought to be put on this provision. It is as if this provision will operate only as a shield in favour of dishonest and corrupt officials. Nothing like that. It will operate as a shield in certain cases, but at the same time, it will operate as a sword against really dishonest and corrupt officials. What happens now? What is the tendency, the tendency that is growing every day in this country? Officials are people who are in a position to oblige others if they so de. sire. I have found in many cases, they are approached by many people for favours big or small. When they do not oblige those persons, I have very often found that they begin to publish all sorts of defamatory statements just to blackmail that officer. In the circumstances, I feel that there should be some protection afforded to officials. They are not as free as the ordinary people of this country. When I, as a private individual, am attached or maligned, I can with equal vehemence re-attack. I can pay back the defamer in the same coin. But the official, because of the position he occupies, is put at a certain disadvantage in this respect. He has not the same freedom as any ordinary citizen. I therefore feel that in view of the growing tendency to defame and bring into contempt all officers, we must give them some protection. When a public servant is defamed and defamed wrongly, it is not *only* he that suffers, but the whole system of administration, the whole machinery and maybe the whole system of the State that stands to suffer. There are some who defame rightly, but in their case it shall not be called defamation. In many cases, defamation is done with a purpose,, to malign everybody connected with the Government and bring the whole machinery into disrepute. Sir, today,. I have found in many cases that corrupt officials by sleeping over the defamations against them can avoid punishments. Sir, I have come across cases where an official is really corrupt and charges are levelled against him. And Government also have their suspicions against that officer. But the Government cannot act on mere suspicion. The official by sleeping over the whole matter can avoid punishment. But after this amendment, when a corrupt official Is defamed, prosecution is launched against the defamer; so many defences are open to the defamer. He can plead truth; he can plead public necessity; he can plead good faith; and if he can get an honourable release from the court; in that case Government's hands in taking action against that corrupt official will be strengthened. I therefore feel that after this amendment corrupt officials will be at a disadvantage and Government shall be better-armed to deal with them. It will really operate as a sword against corrupt officials.

Sir, as regards higher functionaries, the President and the Governors, people malign them with impunity. They are safe because they feel that those big people will never take action' against them. I know of a most scurrilous and defamatory book which was-

[Shri B. K. P. Sinha.] published in my State. A man who is considered in my State as *ajat shatru* (above all reproach) was deliberately maligned in the most filthy language in that publication. The author and publisher was known to me. I approached him and told him "Why have you defamed this man? He is harmless. If you have a grievance against a certain set of people, why don't you defame the people really concerned?" His reply was "I have done it on good advice. If I had defamed the people lower down, I would have been faced with immediate prosecution. I have defamed this big man in the conviction that he will never take any steps against me."

SHRI B. GUPTA: May we know the name of the book?

SHRI B. K. P. SINHA: No, no, I will not tell, because that will be giving out the whole thing. The man is very big.

SHRI B. GUPTA: Sir, the hon. Member has referred to a book in support of his case. He should mention the name of the book.

THE VICE-CHAIRMAN (SHRI B. C. GHOSE): YOU have referred to the book. You should mention the name •of the book, if it has been published.

SHRI B. K. P. SINHA: I am telling you the contents.

THE VICE-CHAIRMAN (SHRI B. C. GHOSE) : The contents refer to defamation of a person. If you do not give the name of the book, you do not refer to it.

SHRI B. K. P. SINHA: I therefore feel, Sir, that this amendment will not operate to the advantage of corrupt officials. It will operate to their disadvantage and to the advantage of honest officials.

Then, Sir, something has been done about the unnecessary delay in the disposal of cases by eliminating commitment proceedings. As things stand +oday, in very serious cases I have found that Magistrates are reluctant to discharge the accused. I know of a murder case. Though the police submitted a charge sheet, their confidential report was that the charge against the accused was false. That was the confidential report of the District Magistrate also. The evidence before the trying Magistrate was not very satisfactory. As a matter of fact, he wrote in his order that the evidence was contradictory in material respects. But all the same, he wrote "Since it involves a case of murder, I will not take the responsibility of discharging the accused." I know of so many cases. In no serious case has the Magistrate the courage to discharge the accused. He is never prepared to take that responsibility. Therefore, it means unnecessary harassment to the accused, unnecessary expenditure and unneces-/jary waste of time and delay in the disposal of the case. This stage therefore has been properly eliminated.

Then, Sir, something has been said about section 145. What has been our experience? It is not as if after this amendment every land dispute will automatically lead to the attachment of the property. Section 144 is there. If a frivolous and vexatious claim is advanced as regards land, the Magistrate shall be free to deal with it under section 144. It is only when it is a dispute in the real sense of the term, and when the Magistrate cannot come to any definite conclusion on the evidence available to him, that this section will be resorted to. In such cases, what is the practice today? As soon as the Magistrate holds that it is not clear to him as to who is in possession of a particular property, he at once attaches the property. A Receiver is then appointed and a semi-civil trial proceeds. It is a criminal trial no doubt, but it is a semi-civil trial in its nature. Documents are then put forth and witnesses are put forth, and after a long and laborious trial a judgment is delivered. The matter does not rest there. On certain well-defined grounds the High Court intervenes. The matter then comes up before the High Court which

takes a long time. And when the dispute is so hotly contested, it has not been my experience that the parties rest satisfied after the verdict of the High Court, one way or the other. The unsuccessful party, in 80 per cent, of the cases, has a recourse to the civil courts. The civil courts come but they come after a long, protracted and ruinous litigation in the criminal courts. It is in the interests of expeditious justice, and it is in view of the general poverty of the people of this country that that stage is sought to be eliminated by this amendment, and I think we should all welcome rather than criticise the amendment of section 145.

I have also something to say about the summary trial for perjury. Perjury should be punished, but I think that the provisions, as introduced in this Bill, may have to be modified suitably. Suppose a witness appears and the court disbelieves his evidence and comes to the conclusion that he has given false evidence. Then under the amendment which is sought to be introduced, the court will at once try him and punish him. But what will happen if the appellate court takes a different view of the evidence of that man? The man will have been punished though the appellate court thinks that his evidence was truthful evidence. The sections, as they stood before, provided that prosecution could be launched only after a certain stage, and even after it was launched, if an appeal was pending against the proceedings out of which the prosecution for perjury arose, the court which was trying the perjury charge would stay its hands till the judgment of the appellate court was available. Some such protection, I feel, is necessary- Otherwise, we may be faced with a very anomalous situation.

Then I come to trial by jury. There is much to be said in favour of trial by jury, but my experience at least of the system in my State is that it has been *p* complete failure. No respectable man comes forth to act as a juror. I have known of several cases where people had gone to the peshkar and paid him something so that their names might be struck off the jury list. I have known also of much greater number of cases where people have gone and paid something to the pesh-kar for the inclusion of their names in the list. Generally the latter is done only by people who want to have the privilege of being listed as jurors. Their motives being what they are and their having paid something in advance, we can very well anticipate what shall guide their judgment. I have known of even highly educated people sometimes behaving in a queer way when put on the jury. I know of a very eminent Professor of English of the Patna College who was the head of the English Department in his time, a man of irreproachable character, who, when put on the jury, never gave a verdict of guilty. Somebody questioned him, "Why do you never give a verdict of guilty?" He quoted the Biblical saying, "Vengeance is mine. I will repay." and said, "It is not for us to mete out punishment." I know of another respectable man, a Nawab of Patna. Whenever he was on the jury, he would always give a verdict of guilty. His reasoning was, "The Sircar Bahadur is the prosecutor. The Sircar Bahadur has put me on the jury. Therefore it is my duty to pass in favour of Sircar Bahadur."

SHRI B. GUPTA: Was he getting any daily allowance?

SHRI B. K. P. SINHA: I therefore feel that this system must go, and it should not be left to the option of the States to retain it.

Then I come to the question of the accused being a witness in his own case. The accused under the present law cannot be a witness in his own case. Now, it is sought to be provided that at his own option the accused can be a witness in his own case. I know there is precedence for this in the British law, but this precedent was not followed because of the conditions in India. Some British jurist who came to India on a passing visit asked a very eminent British Chief Justice of a High Court here, "How is it that you have not got this provision under

[Shri B. K. P. Sinha.] the Indian law?" The reply of the Chief Justice was, "If that provision were here, all the accused would hang themselves." I feel therefore that we should not follow blindly what they have in Britain. The conditions in the two countries are different. The level of intelligence of the people is different. Even in Britain this has not worked well. I was recently reading a book on Edward Marshall Hall, one of the most famous original criminal court lawyers in England. He once decided to put an accused in the dock in his own defence. His juniors were objecting, and their ground was that so far no accused who had appeared as a witness in his own case before the court had escaped the guillotine or the rope of the executioner, or whatever it is. This has been the experience in England also. There, though the law is that no inference should be drawn against the accused if he does not appear as a witness, that no mention should be made of this fact by the prosecuting counsel in his arguments, the fact is that whenever the accused does not appear, a sort of prejudice is created in the minds of the judge and the jury against that accused. This is the experience of those who have knowledge of how the British courts work. I feel that our experience here will be no better. I would therefore urge the deletion of this new amendment. Anart from this amendment I am surprised to find that clause 31 dealing with section 209 and clause 63 dealing with section 342 are sought to be modified in such a way that the Judge or the Magistrate shall become the cross-examiner of the accused and this independently of the provision making the accused specifically a witness, by virtue of the amendments sought to be introduced to sections 209 -and 342. What was the nractice or procedure before? The accused could .only be questioned by the Magistrate .or the court to clear himself, to remove doubts about his innocence created by the evidence against him.

Now that is sought to be amended. It is not only to clear the accused] that questions can be put to him now. : The court is free to put questions to him for any purpose, and any purpose includes even to fasten the guilt on him. I think this provision is rather retrograde and I ho[1]' the Select Committee will see to it that they are eliminated. Then I would very shortly mention one more thing. I am very happy to find the amendment in clause 69. So far there was this clause in the Code that whenever an offence involves a sentence of death, then in that case if the sentence of death is not passed, the court should record its reasons. This clause was interpreted in such a way by certain High Courts that it was made obligatory on courts to pass sentence of death in the case of crimes like murder or mutiny or waging war, etc. I don't think that was ever the purpose of that clause. But all the same the mischief had been done. The highest court had interpreted that clause in that way. I feel that after the deletion of that clause even in a murder case, when the charg* is brought fully home to the accused, the courts would be free to impose on him a penalty lesser than the maximum penalty prescribed by law i.e., death sentence. So far so good. That change is salutary and healthy but I would urge on the Home Minister to go further and consider whether it would not be proper to abolish the death penalty altogether. Sir. this death penalty is rather archaic-tooth for a tooth, and eye for an eye. Today the whole concept of punishment has changed. Punishment is no more punitive, it is reformative. Moreover the law as it stands today is imperfect in certain respects. There are 3 or 4 offences only for which the death penalty is given—like waging war, exciting disaffection, mutiny in the troops, murder, etc. Generally death sentences are awarded for murder. The section on murder is based on MacNaughton rules. MacNaughton rules make an exception in favour of accused only when they are incapable of realising the nature of their act *i.e.,* when they suffer as it were from a i paralysis of reason, but in the modern I age so many other kinds of incapa-

cities have been discovered. There are many people- who suffered from shell shocks in the last two Great Wars. Their capacity to realize the nature of their act is intact, their reasoning is intact but then their will is in a state of complete paralysis. Would it be

porper to impose death penalty in such a case? In view of the law as it stands today, death penalty should be imposed on him simply because he can realize his act. But the other view is that the man is helpless and is completely paralysed. When he acts, he acts as if it were under the compulsion of some external forces over which he has no control. This can be met in two ways by providing in favour of such people also but I think the better way is by eliminating death sentence altogether. Judges, after all, are not infallible. Kecently, you know, there was the case of Christie— the man who was convicted for the murder of 6 or 7 women whom he had buried under the floor in his house. A year or two before, one Mr. Evans was convicted on the evidence of this man. The defence of Evans was that it was really Christie who had murdered and he was falsely implicated. That defence was disbelieved and that man was hanged. After two years, these things were discovered against Christie and there was a great sensation in the whole country. The general view and even the view of people who are supposed to evaluate evidence properly was that Evans was wrongly hanged. So judges being fallible people also, is it not proper that we should do away with death penatly? If the hon. Minister cannot see his way to abolish it altogether may I urge upon him to see that at least for 10 years no death sentence is executed? He can do that. He can wait and see and watch the reactions of that step and in light of experience if he feels that the practice should be con tinued, death sentence should be altogether eliminated. Otherwise, if conditions deteriorate, it may be reimpos-ed. As a matter of fact no question of re-imposition arises because they will be doing it by an executive order or reprieve in individual cases.

i THE VICE-CHAIRMAN (SHRI B. C. I GHOSE) : It is time. Mr. Sinha.

SHRI B. K. P. SINHA: I have said all that could be said. I have something to say about the approach to this whole problem of the hon. Minister. He says there are two principles on w.iich the law of procedure is to be based. The first is to ensure a fair trial to the accused and the second is to ensure a speedy justice. My own view is that there is only one principle of criminal procedure, *viz.*, ensuring fair trial, and the other principle, *viz.*, speedy justice, is a mere corollary of the first principle, because the maxim of law is that justice delayed is justice denied. We should not separate these two principles. The principle is only one and even if we take them as two independent principles, I would urge that if the first principle is in conflict with the second principle the first should prevail—by first principle I mean the principle that fair trial should be assured to the accused. 1 think the Select Committee should analyse the whole Bill in the light of this principle. I need not then refer to sections 161 and 162. Mr. Hegde has dealt with them in detail. I share the views of Mr. Hegde. I would urge on the Select Committee to reconsider that part of the amending Bill with great consideration. Sir, I support this Bill.

SHRI K. B. LALL (Bihar) : Sir, before you call upon any other hon. Member, I want to know if any non-lawyerfr friend olso is going to enlighten us on the point because we have heard so many things from the lawyer's point of view.

THE VICE-CHAIRMAN (SHRI B. C. GHOSE) : Non-lawyers have also spoken.

SHRI K. B. LALL: There should be some distinction between legislators and lawyers. Those who are not lawyers should also have their say.

SHRI B. GUPTA: Mr. Vice-Chairman, I wish in accordance with your wishes, I could economise on the time but it

[Shri B. Gupta.] seems if I do economise my time, I would be subsidising somebody in support of this measure.

SHRI H. C. MATHUR (Rajasthan): Don't think so.

SHRI B. GUPTA: That would be subsidising injustice because the measure is an unjust one. Sir, one of the toughest jobs that we have been facing in this Parliament is to convince Dr. Katju, our Home Minister. Nothing seems to penetrate his way of thinking and he has by now become almost impregnable. Therefore, I would not care much to address my words in that direction but I would like to deal with some issues that he has raised. If you look at the Bill, you will see that the whole reason or rather the expressed reason for bringing up this measure is that the proverbial law's delay has to be abolished or done away with. That is to say, the Government is desirous now of ensuring speedy justice. But if you had carefully listened to Dr. Katju's speech, you would find that some other reason is lurking in his mind, that this is not the only reason that has motivated the Government to introduce this amending measure. Yesterday he seemed to draw a horrifying picture on the basis of certain data supplied to him by an un-named District Magistrate whom he had happened to meet when on a tour. On the strength of certain figures of acquittals he wanted to say or rather to suggest, to be exact, that unless this measure could be passed, every murderer, every dacoit, every criminal in the country would get away. In other words, he wanted to justify this Bill also on the ground that it is necessary to do justice, to administer justice, not only speedily, but also properly, in the interest of the public. We contest that claim of his and this thesis of his is unacceptable to us. I say this because the measure, if you examine it, will be found to deny justice and democratic jurisprudence. It will be seen that this measure is one which will arm the police with still greater powers, not only to deny justice to the people, but also to run amuck amongst them. That is why I say, that we should not permit ourselves to be misled by false claims.

Sir, Dr. Katju is not only an indomitable person but he is an inveterate lawyer, in the sense that he can make any case out of anything.

SHRI GOVINDA REDDY: So are you.

SHRI B. GUPTA: He is impervious to reason, impervious to other views, impervious to commonsense. Just see what he has been doing. Always he reminds you of the great 25 years' experience that he possesses in law and in the courts of law. Sir, as I have said before, when he emerged from the courts of law, he forgot the abuses and the malpractices and the injustices that happen there and he has now become the apostle of the same set of or the same type of justice—corrupt, vitiated, undemocratic that the British once contrived. One would have thought that in introducing this measure, this gentleman, with so much I legal experience, would direct his | mind to improving the existing Criminal Procedure Code. But instead, we | find him suggesting amendments which go to make it worse. In a way he is [out-doing the British in this field. Now, I do not know how he can claim that i he is trying to set things right. You will have noticed in his speech I that he referred to the 25 years of thought and wisdom that had gone behind the making of this monumental absurdity, this obnoxious thing. But he never referred to the pledges that | the Congress had made, to the sentiments that had been expressed from Congress platforms, the criticisms that Congressmen have made against the British legal system in India. He never mentioned the sacrifices that his friends and countrymen made in order to get out of the meshes of the rigo-j rous laws. He never mentioned them. i Today, having found a place some-where in Delhi, he has forgotten the | nature of that past heritage and he is I now hugging that heritage, that legacy that the British have left and this measure before us is the product of

that unholy collusion between him and the British system.

Sir, 1 am not an advocate of the British system of justice, because that is a class justice. Yet the British system of justice had developed in the course of struggle against autocratic powers, against feudal elements, partly by parliamentary measures but mostly by judicial precedents. This type of justice, the bourgeois type of democracy now exists in England. I do not expect Dr. Katju to go along with me to some other and greater democracy. But he should have seen, having been educated in that democracy—in the bourgeois democracy—that he does not depart from that at least. But he has now put the machine on the reverse gear and he is proceeding on the reverse gear at a speed which is undoubtedly very alarming to us. In the course of one year or so, he has produced a number of amending measures. The Preventive Detention Act, of course, stands to his eternal discredit. Then of course, there is the Press (Objectionable Matter) Act which brought him so much of public opprobrium, and that again stands to his discredit. And he has again come before the year is out, even before the Budget session is over, with another Bill, to amend the Criminal Procedure Code, not to enlarge the rights and liberties of the people, not to enlarge the freedom of the community, not to ensure justice, not to ensure democratic justice, but to curtail the rights and liberties of men, to impinge upon the fundamental rights which the Constitution gives, to restrict, in practice, the constitutional provisions of article 21 and thereby set the stage yet more free for the depredations of the police rule. That is what he is doing here. Well, I do not know how to argue with this gentleman. He said that he has consulted the States and that he has obtained 207 opinions on the subject. He does not care to apprise us of the comments that he has got though it is necessary for us to go into them before we can participate in this debate. I suppose that some day at his convenience, at his sweet will, he will supply us with these opinions. 32 C. S. D.

SHRI S. N. MAZUMDAR: They were distributed, only the other day, a voluminous document.

SHRI B. GUPTA: But I do not .....

SHRI K. S. HEGDE: He probably has not seen it, it does not mean that it was not distributed.

SHRI B. GUPTA: Anyway, I do not have it. I take it that it was circulated in the nick of time only to be an excuse against some other misdeed. But, Sir, that is not the point. The point that we want to know from him is how the public has reacted to it. There is the Press, Sir, and editorials have been written on this subject. But our hon. Home Minister is mightily angry with the Press. Whenever he gets a chance he has a fling at the Press and for reasons best known to himself, he makes a little exception in favour of one or two or perhaps three big newspapers. I do not know why he makes that exception when the entire Press of India comes under the fire of our hon. Home Minister. Therefore, I say that we should not be misled by Dr. Katju. He has introduced this measure under the false pretence, under the excuse that he is trying to ensure speedy justice. But, as I have said, he has at heart something else. He wants to curtail the rights and liberties of the people. Sir, some hon. Member referred to the administrative law. Dr. Katju also said something about that. *(Seeing the Minister for Home Affairs and States entering the Chamber)* I am glad the great hero is entering the hall.

Dr. Katju is not merely introducing an administrative law into our legal system but he is introducing the police law into our legal system. The champions of the *droit administratis* would have blushed before our hon. Dr. Katju had they been here. Therefore, it is not merely a question of *droit administratis* or the administrative law but it is a question of the police law that we are up against today.

Now, Sir, I shall come to the Bill itself. I will point out, Sir, that the

[Shri B. Gupta.] right of defence has been curtailed, the democratic judicial proceedings that partially exist in the country are being curtailed, assessors are being abolished not to be replaced by jurors but in order to invest the Judges with the sole powers and the law of defamation is being amended in order to shield the public servants and, of course, the Ministers.

SHRI H. P. SAKSENA (Uttar Pradesh): May I know if the preamble is ove<r?

SHRI B. GUPTA: The fame of Ministers is so great that it is necessary to protect it and it requires nothing short of the amendment of the British made law to protect that great fame, to prevent it from being diminished or dimmed by developments in the country. We can understand that feeling. I cannot believe that Dr. Katju is so disloyal to his friends that he will let down his co-Ministers or smaller Ministers in the States. It is understandable.

Then I come to the question of right of defence. Now, what is the most important thing in a criminal proceeding is investigation. Dr. Katju sees something wrong in the acquittals; he is very very horrified, scandalised and annoyed when somebody gets acquitted but he does not see that his policemen are not carrying on the investigation in a manner that they should. I am glad that the hon. Dr. Subbarayan who had been twice Home Minister of a big State has/*aid something to the effect that the police investigation is not always satisfactory. . He has not got very complimentary things to say, but it may be, that the super-Home Minister of India, Dr. Katju, will not see eye to eye with him and accept his contention. Anyway, I leave it to him but, Sir, it is known to the public at large, to everyone who knows anything about India, that the Indian police is not above board, that the big police bosses have not become Caeser's wives. That is all known to the country. Dr. Katju would have wished the people to think that the things have changed since 1947 but, Sir, I would like to know how many of the old officials had been replaced by new ones? How many of those officials against whom at one time before the Mountbatten cross-over took place, you demanded investigations and enquiries, have been replaced by men of your choice? I see none. I see them adored and maintained in high positions and they are, in fact, promoted. They are the same people who came down on the people of our country in the days of 1942. Now, in Calcutta, there are many of them and we have got a bunch of policemen—I am not talking about all but about a bunch of them—who go out in the streets to beat up the Pressmen in the public *maidan* and thus get fun out of it. Such are the people in whose hands has been left the task of investigation by you. Sir, as you know, in our country, the Darogha Babus, as they are called in Calcutta, are often very rich. Some Sub-Inspectors of Police and the Inspectors of Police are also very rich, even richer than the many unhappy Deputy Ministers or would-be Deputy Ministers because they carry on investigation in such a way that brings them lots of money, lots of money which becomes a subject matter of envy even for those who are fortunate enough to be promoted to higher posts—that of Deputy Ministers or Ministers. We know how that money is made and so it is no use trying to kid about the matter. We know how the Police make money. I know, Sir, from our own experiences in the past as to how they behave. Dr. Katju gets frightened when there are acquittals, when he sees people being let out by the courts but what he does not realise is that the police is habituated to arresting people indiscriminately, without investigation, without reason and without even exerting the elementary com-monsense. That is a fact which is undeniable if one would only care for facts.

We find that the police usually gets statements. Previously, the position was, or rather the present position is that these statements made to the police cannot be used exceptjior contradicting the prosecution witnesses. There is

also provision that such statements need not be signed and, of course, there is this provision also that copies of such statements should be supplied to the accused. Now, this portion of the law is sought to be amended so that the statements obtained by policemen by false pretences, by exerting undue influences could be utilised to the prejudice of the accused and also for corroboration and all that sort of thing. Now, you can imagine what would happen in saeh a contingency. If we were to take the position that the police in our country was perfect. I would not have bothered at all about this thing but as we have different and opposite experiences of the police,—the experience Dr. Katju at one time shared with us but has forgotten now—we cannot feel anything but concern when we see that such powers are being given by this amending measure for utilising the statements against the accused for corroboration and for framing him up. Under the existing law, the Magistrates have powers to take down the statement but they must be specially empowered for doing so. That provision is sought to be done away with and any Magistrate up to the rank of a Second Class Magistrate can take down the statement whether he be empowered or not.

A. witness can make any statement, if he likes, and he can have his statement recorded and the police has no right to compel him. Under the proposed law, the police will have that right and the prosecution will have that right to compel him. What will happen is that they will try to put words into the mouth of the party that suit the frame-up, that suit the case and thus would creep in all types of corruption. That is something to which I would like to draw the attention of the House. Now when the police is empowered to compel the witness to record his statement in cognizable cases, as has been proposed in this amending measure, and v/hen it becomes obligatory on the police to have such statements recorded in Sessions cases, we are up against very serious dangers because we know that (hj3e police will try to use this provision to get statements from witnesses, by hook or crook, and then ensure that the witnesses cannot resile from the statement so that they could have a free sailing in the matter of prosecution. This is yet another danger.

Dr.' Katju says that perjury cases will have to be dealt with summarily and I believe, Sir, that under the veneer of this measure, lots of perjury will go on and go *on* undetected and will be never known, until and unless somebody institutes an enquiry into the operations of this would be measure and finds out the mischief that would be done by it. Sir, then we find that the range of summons cases has been extended and more cases have been brought under summons proceedings. This means that in relatively serious cases the accused person will have certain disadvantages that go with summons cases whereas we know that summons cases are meant to deal with only minor ofiences.

Now about the warrant cases, again, there are very severe proposals here in this amending Bill. Certain things have been eliminated here though the right of cross-examination before the charge is rarely exercised, that is to say, this right is not always exercised. But this has been eliminated here altogether. There will be one cross-examination and that again on the spot immediately following the examination-in-chief of the witnesses. Now what will happen? The whole thing will proceed on the basis of certain statements made to the police or to the magistrate and the witness will be put under examination-in-chief and then immediately the defence would be called upon to cross-examine. The accused person will net have enough time and opportunity for having a good picture of the case he has to meet. The prosecution will have all the advantages and the defence will have all the disadvantages at the time of cross-examination. That is not fair.

At present, after the examination-in-chief the case is adjourned and then the defence gets a chance to study the case and thus get acquainted with

[Shri B. Gupta.] the case so that it can well direct its cross-examination. Nothing of the sort will be possible if the amending measure is passed. Dr. Katju will perhaps say that this will save time, save trouble and what not. When you are playing fast and loose with the liberties of a person it is hardly any consolation to suggest that some money will have been saved and that he would have been spared frequently going to the courts, etc. This would console none. No money will have been saved because, as you know, Sir, criminal cases are taken more or less on a contract basis. Now just because there is scope for perhaps only one cross-examination, it does not mean that the defence counsel in our country, as they are, would take much less than they used to take. Therefore the concern for the accused is more or less a kind of mockery which irritates rather than convinces one. There is not the slightest indication in this measure that it is conceived with the object of showing any concern to the accused person. It is conceived with the clear-cut object of strengthening the hands of the prosecution and restricting the scope of meeting the prosecution on the part of the defence.

Now, in sessions cases the committal proceedings have been altogether dropped. The cases will go straight to the sessions. Here again it will perhaps be argued by Dr. Katju that time will be saved and that there is no necessity for it. When we find that the investigation, by the police, before the case comes to any court at all, is extremely faulty and is not often carried on in a proper manner, it is necessary perhaps to have some sort of investigation before the case is committed to the sessions. It is not a question of duplication so to say. It is a question of dealing with the matter keeping in view that a *prima facie* case has to be established even before the case is sent up before a court of sessions. That is sought to be done away with now.

Then it has been suggested that in the committal proceedings, usually, there is no discharge. I contest that statement. There have been many cases, specially when the number of accused is large, that some people are discharged even at the committal stage. I know of many such cases. Dr. Katju may also remember a number of cases. Even under the Congress regime many people were brought up but many people got off even at the committal stage. Now if this is abolished these people without any exception will have to be sent up to the higher court and they will have to stand their trial in the sessions court and all that it means. This again is not just. In any case the statement that there is no discharge in the committal stage is not a fact and so the step that is sought to be taken now is not justified. I think there should be greater reasons for such an alteration in the existing law, than what has been given either in his speech or in the Statement of Objects and Reasons appended to this Bill. This is again unsatisfactory.

Then, Sir, the magistrate, as you know, can cross-examine the accused under the existing law, under section 342 of the Criminal Procedure Code but that is only to enable the accused to explain the circumstances appearing against him. The object of section 342 is to see that the accused person is not prejudiced and the bias of this particular section is in favour of all the accused. Now, this amending Bill proposes to do away with this safeguard and to enable the magistrate to put questions to the accused not only at any time he likes but at the suggestion of the prosecution also. The effect is this. What is meant in the existing law to be a protection of the accused would be transformed under the amending Bill into a trap for the accused and that is what we fear and that fear is absolutely real. I do not know why this thing has been brought up here when the existing provision is all

right. J. He portion 'any circumstances appearing against the accused" has been rightaway deleted. It is no longer a question of giving protection to the accused or enabling the accused to explain his conduct if certain doubts arise as to his innocence. Now it will be a question of putting him under examination and cross-examination in order to fix or fasten certain guilt on him, as has been rightly pointed out by another Member from that side of the House.

THE VICE-CHAIRMAN (SHRI B. C. GHOSE) : Shri Gupta, you are taking a long time, I am afraid.

SHRI B. GUPTA: I have not taken much time, Sir. These are all legal points. I am not a lawyer but I am developing some important points. I am a half-way man between law and a layman. Therefore, Sir, this is not fair. This is the very criticism that has been made by many lawyers and I think Dr. Katju will see that this section is not so amended. The amendment is not in the least called for.

Then, I come to the assessor business. It has been rightly pointed out that assessors function under certain limitations and not much good is to be expected from them. But I do not share the view when it is said that the assessors should be straightaway abolished and not replaced by jury trial. I feel that if you do away with the assessors, you should put jurors in their place and have jury trial. Now assessors have also their value in our system. If the assessors give a unanimous opinion in some legal matter, it has two advantages. Firstly it ensures that the judge will consult some people who though not within the official structure but outside, as reasonable men, can give some opinion. That may have some healthy influence on the judicial system even if the opinion of the assessors may not be so binding. Secondly, Sir, assessors may help to attract the attention of the court to certain problems which may not be so evident and transparent before the judge. Therefore if you do away with this thing, some substitute must be found with a view to improving the position, not for deteriorating it.

Now these are some of the observations with regard to some of the provisions.

Then, I come to the law of defamation. This law of defamation is sought to be amended in respect of public servants in relation to their official assignments or public functions. It has been pointed out by Dr. Subbarayan that it is not fair that public servants should be placed on a different footing from that of the ordinary citizen. I think that argument is a very valid argument. There is great force in it, but nothing that Dr. Katju has said has yet met that argument. We are told that this is necessary to protect the officials from defamation and libel and all that sort of thing. At the same time, clever as the hon. the Home Minister is, he has suggested that it is also meant to enable them to go into the allegations and punish the officials if they are found guilty as if the proceedings would be on an equal footing between the citizens on the one hand and the officials on the other while the Government would play a sort of neutral part, keeping its mind open to find out who is guilty and who is not. Nothing of that sort. This is meant to shield corruption, to stifle public criticism; that is the main thing; that is the real inspiration, behind this. Sir, does our Press go on defaming our officials day in and day out? Dr. Katju always says some papers are good. Sir, there are hundreds and thousands of papers coming out. Who is defaming and libelling the officials? I would ask him to produce some of the papers. Our Press, whether it is big Press or small Press, does not generally take to irresponsible writings, publishing.

[Shri B. Gupta.] at random, defamatory and libellous statements against officials. It criticises the public servants only when it becomes essential in public interests to do so. Now, after this amendment is passed I have no doubt in my mind that almost all the newspapers will be terrorised so that they will not criticise the public servants. What will happen is this. If I, as a Member of Parliament, go and make any statement against Dr. Katju or any other Minister, the prosecution machinery would at once be set in motion against me. It will not be a complaint case, that is to say, it will not be a private matter between me and Dr. Katju to be settled in the ordinary way, but immediately it would be recognised as a cognizable offence and the police will come into the picture. I would be liable to be immediately arrested; my house would be liable to immediate search; I will be presented before a court and I will be locked up in a *hazat* and have to face a prolonged trial. Of course, I will have to face the sessions trial. This would be my position. But what would happen if Dr. Katju as one of the leaders of the Congress Party goes and says something against me? I cannot get the same advantage against him. That is to say, he is a public servant, and the police will not operate against him as it will operate against me.

SHRI H. P. SAKSENA: You get that advantage here in this Parliament.

SHRI B. GUPTA: I also give him that advantage here. Now, that will be the position. These are serious matters. The public servants will enjoy a superior position compared to the citizens whereas the Constitution says that all citizens should be placed on an equal footing. No civilised law places the public servants in so high and superior a position. On the contrary, the public servants open themselves to public criticism, open themselves to be criticised by the public. What do we find here? Exactly the opposite is being done. As you know, there are several reasons for public criticism. Certain things happen in the country and it is necessary in public, interest to i criticism. Now that will be barred; that will be stifled. The Press will be terrorised and it will live in a state of terror. No paper will raise its voice lest the police should go in action against it. Not only that. I cannot even write a letter to Dr. Katju against, shall we say, the District Magistrate of my district because that letter may constitute defamation. It is not a question of publishing in the Press only or a public speech. If I write a letter to Dr. Katju making certain allegations it would, under this law, constitute publication to a third party and as such would be brought within the province of law and the Government police machine would be set against me. That means even private criticism communicated from any person to the officials would be barred or at least would be discouraged because people will feel that some of the letters they might be sending would be used against them for bringing such action. These are very serious matters. That is why I have said, and I again say that this measure is an outrage on democratic jurisprudence. This measure in the name of removing law's delay, would make the law much more rigorous than it has ever been before. This measure instead of trying to improve our judicial system will invest further that system with police powers to the utter detriment and jeopardy of the citizens. This measure which is claimed to be an improvement takes us back into the days of the police rule and that is why, Sir, I object to this measure, and every right-thinking man in the country would, I am certain, object to this measure because this will not improve matters but will make over our legal system to the minions of the police regime

and that would spell undoubtedly disaster, disaster, disaster for all, whether we belong to this side of the House or that.

SHRI K. C. KARUMBAYA (Ajmer and Coorg): Mr. Vice-Chairman, I stand to speak not on the legal aspects of this amending Bill, but I speak as a layman, more as a villager because I have lived in the village for the last 30 years. I am standing here today as a representative of the villagers to speak about their feelings about law and order and about justice. Every day there are murders robberies, dacoities and thefts and, as the hon. the Home Minister said in many of these cases all over the country—50, 60 or 70, of course the number varies from place to place— the accused get discharged or acquitted. Well, I, as a villager, and the majority of the villagers lay the blame either on the police, or on the magistrate or on the Bar or on the public. They say that the investigating officer or the police officer is not doing justice. Some say that the magistrate is corrupt and that he is not doing justice, while others say that the lawyers who are learned in law abuse the law and spoil the ease. The police officers turn round and say that the public are not co-operating. Now, where is the blame? I will tell you one story. During the independence movement our villagers, our agriculturists were telling that if the Government servants were to resign for 24 hours we will have our independence and the Government servants were telling that if our villagers or agriculturists or tax-payers do not pay their taxes for one year or one day even, the Government would come to an end. So we are always trying to shift the blame on this body or that, on this individual or that. Where is the blame to be put? Though I am a villager, I was a police officer for about 12 years— an Investigating officer, that is, police Sub-Inspector. I will tell you some of my experiences. I know there is notning to say about our judiciary and I have not got any complaint against the Bar. There might be some exception here and there. I have not got any complaint against the public but I have got complaints against the Police. Their investigation is very antiquated and unscientific, and the police officer is the man who is responsible for the whole show. It is he who builds up the case from the beginning.

The training that is given to the police officer or the investigating officer is not enough. He does not know scientific investigation. Having been a police officer for some time, I will give you one example.

Suppose I am beaten in a street and there are no eye witnesses. The accused is running away. Somebody sees him on the way. The police officer trusts him. I am a respectable man and the witness also is a respectable man. A fair presumption is made that he is the real accused but the connecting link is broken. That link is, who actually beat me. The case is brought before the investigating officer, and he is tempted to put in that connecting link. He tells somebody: "Here is a respectable man; here is a respectable witness; it is a true case, so you please say that I saw the accused beat him."

The case comes before the magistrate. It is proved that this connecting link is fabricated. Well, the whole case goes. Who is responsible for this? The police officer can do nothing unless he finds out the connecting link by scientific investigation through footprints, fingerprints and so on. There are so many other improvements in other countries regarding investigation. The standard of investigation there has considerably increased; in our place, investigation has not improved. Instead of trying to remedy, instead of finding out methods of improving the state of affairs, we

[Shri K. C. Karumbaya.J are trying to throw the blame on either this person or the other.

It is said that better-educated people should be appointed, people with some more educational qualifications. The poor investigating officer, the graduate police officer, who is drawn from the college, what can he do? I heard from my friends on the other side that more efficient men must be appointed. Efficiency comes from where, may I ask? Is it from books, from the colleges? With regard to investigation, with regard to detection, that efficiency does not come from books or college; it is a matter of experience. The whole method has to be changed. So, the pivot of the whole thing must be on the investigating branch. The investigation must be improved. It must be more scientific and it must be more up-to-date -and the whole show must be changed.

There is then the other question, *i.e.,* the present way of judging things. We see that the efficiency of an investigating officer or his ability is judged by the number of convictions he gets for his cases. If an investigating officer gets convicted 80 or 90 per cent, of the cases that he sends before a magistrate, he is considered to be an able officer. I am telling you what the practical side of the whole show is. Whenever it is possible the investigating officer just does not register the cases. Whenever he sees that the case will not be detected he does not register it. In many cases where he has registered them, he does not go to the scene at once and try to collect the local evidence that is available on the spot. Sir, I have discussed these things with a very highly-placed police official, and I may tell you that he has concurred with me. Our hon. the Home Minister may tell me: "You served under foreign rule, but things have changed considerably and so these amendments are necessary". Well, I have been consulting, been talking to, various mgniy-piacea ponce omciais. They say: "Unless we fabricate in this way and collect evidence to connect the link, almost all cases will end in discharge or acquittal". So, the whole pivot of the law and justice depends on the investigating officer. I do understand that there are very many honest police officers; I do not say that their morale has gone down; on the other hand, it has risen. But, placed as they are, however intelligent and honest they may be, they cannot but, in every case of crime, fabricate or manufacture evidence or tutor witnesses of material evidence. Whenever he feels that there is a fair presumption he should try to connect the evidence and then place the case before the trying judge. So, my request is that the investigating officer must be trained not as we are doing now for one year, but it must be for 2, 3, 4 or even five years and see that they are made capable of investigating the cases and making themselves more useful.

But, as things stand today, section 162 of the Criminal Procedure Code is very helpful; in the amending Bill, this is one of the sections that is proposed to be deleted. Indian society as it stands today needs to retain this section. With all the zeal of a villager, a public worker, I say that in the conditions of the Indian society today, at least for a period of five years to come, that section has to be retained—section 162—as it is, or if it is to be omitted it should be superseded by some other alternative.

This was all the point I wanted to place before you and I have spoken a few words. I wish to congratulate the hon. the Home Minister for the wise amendments that have been brought forward with regard to the treatment given to the undertrial accused, and perjury cases; and there are various other useful amendments, except for this one particular thing that this section 162 must be retained as it is. I do not like to add anything more.

SHRI H. C. MATHUR: Mr. Vice-Chairman, it is impossible to deal with a vast subject like the Criminal Procedure Code within the time that has been allotted to me, according to the undertaking I have given you. I share in full the sentiments and feelings and views expressed by the hon. the Home Minister. I share the sentiments so ably expressed by him and I could see that he was speaking with a depth of feeling. As regards the particular view that he has expressed here, particularly the point that today in the country, respect for law and order and respect for administration is at its lowest, there is not the least doubt about it. Today, anybody who is in touch with the popular feeling will endorse the view expressed by the hon. the Home Minister that respect for the administration of law and justice is at its lowest ebb. And anything that we possibly could do to improve matters must be given the fullest support. It is with that feeling, Sir, that I congratulate the hon. Home Minister for bringing forward this amending Bill in an honest attempt to improve the state of affairs. I congratulate him also for leaving it open for the Joint Select Committee to traverse the whole ground and suggest any amendments which have not already been considered by him. But, Sir, at the same time, I cannot but give expression to my feeling that this Bill reflects in full that mentality of the hon. Home Minister which gives this country the Preventive Detention Act. It reflects in full the obsession of the Home Minister which makes him scared at the acquittals and the figures which he gave. And it also reflects in full the tendency of a bad workman who quarrels with his tools. There is the least doubt, as I submitted, that some of the amendments are very good and they tend to improve the present procedure and give a speedy disposal of cases. But, they do greater harm than good. I feel that they will do really great harm,

and instead of winning greater and greater respect for the administration of law and justice, we will find that the people will lose more and more confidence and we will find ourselves in a still worse state of affairs.

Sir, he was talking about so many acquittals. I think if he had only made an analytical study of the position, he would have found that it was not the criminal procedure which helped matters. Acquittals have, Sir, very little to do with the procedure as it stands. Of course in five to ten per cent, cases the procedure does obstruct and makes it difficult for the dispensation of real justice. But it very much depends upon the efficiency of the police as well as the magistracy. If he were to take into consideration the file of a particular magistrate, he will find that there are about 60 per cent, convictions, As my hon. friend Mr. Hegde was pointing out, in his district he will find that there were 60 per cent, convictions. As against this he pointed out another example of a district where there were more than 75 to 80 per cent, acquittals. The criminal procedure is the same in operation in that as well as in the other district. So, it is obvious from these very figures that it is not the criminal procedure which very much matters.

Another point which he very strongly made out was that at least after independence the judiciary has very much improved and there is absolutely no reason for us to fear that there is any interference in the administration of justice. I throw an open challenge and I say, if anything, matters have very much deteriorated since independence, particularly in this matter. There has been a lot of interference. And when I say 'Interference', I wish the hon. Home Minister to understand that it is not always interference by a particular Minister. Of course I wish to invite the attention of the hon. Home Minister to the various complaints made to the Chief Justice *of*

[Shri H. C. Mathur.]

India when he went out on tour to the South of this country. There were many complaints made to him about the interference of executive in the judicial matters. A reference was made even in the Assembly of a particular State and concrete cases were quoted where a Minister had gone all the distance from his headquarters and interfered with the administration of justice and wanted to influence a particular case. But I am 1"PM n0t referrinS t0 those cases. .1 must in all fairness and honesty say that it is not always the Ministers who go and interfere. But what happens is that these officers who share both the executive as well as the judicial responsibilities are placed in a very -anomalous and difficult position, because they have got to listen to so many things on the executive side. They are approached not by the Ministers, but by what we generally jiill tlhe *Jcaryakarta* and they incur their displeasure not on the judicial side but on the *othCX* side. And I :know of any number of case's where tue S"Ju-Pivisional Magistrate had to be transferred almost overnight. And Sir, this state of affairs is very much worse in those States where many other States have been integrated. There is a reason for it. Let him understand the position, Sir. What has happened is that the services in those States are in a very fluid state. The position is quite different in Part A States where magistracy is fully established and stabilised. Everyone knows where he stands. Nobody can touch the District Magistrate very easily. But in these Part B States, where the services are in a very fluid state, nobody knows where he stands. An S.D.O. can be sent away to a much smaller and more insignificant job; he can be transferred any moment. He does not know where he stands. His position has not been stabilised. So there is immense interference with his work. It is therefore very necessary, Sir, that the judiciary and the executive should be separated. Even if we were to go through the opinions which the hon. Home Minister has invited, we will find that at very many places many of the present officers— the District Judges and the High Court Judges—have made a reference to it and have said that before these amendments are carried out, it is very necessary that the judiciary should be separated from the executive. Let him refer to those opinions. He will find them very clearly stated. The judiciary must be separated from the executive. He made a great point of it by saying "Well, at the High Court level, at the District Court level it is separate." But, Sir it is very important to note that all cases are initiated not at that level. If a case is initiated at the lowest level, the District Judge or the High Court Judge cannot do anything. They cannot help in the matter. So it *is* very necessary that it is at the lower level that the executive and the judiciary should be separated. The Tehsildar, the Sub-Divisional Magistrate and the District Magistrate, these are the only three persons who are dealing with these cases. And even the First Class Magistrates who are dealing exclusively with the criminal work are transferable as Sub-Divisional Officers. They are not under the jurisdiction of the High Court. So the entire magistracy is intermixed with the executive. And that is one reason why we can never inspire confidence in the magistracy and in the judiciary, until and unless we separate the executive from the judiciary.

There is another thing, Sir. It is not that we are not anxious that there should be speedy disposal of cases. But there can be no speedy disposal of cases so long as the judiciary and the executive are not separated. There is reason for it. This gentleman who is also entrusted with the executive job has got to give prefer-1 ence to the executive job. For

example, if there is something happening, if there is a famine, he must attend to it first, and all the cases have got to be adjourned and the witnesses who have come have got to go. And there is more and more delay simply because of this reason. I am asking him to go to the Part B States and see things for himself. Eut if he does not want even to look beyond his nose, and if he wants to examine the position here in Delhi—I have been in touch with most of the people here—he will find that there are hardly three or four out of the 37 officers employed in the judicial administration here who inspire any confidence. So, Sir, it is very necessary, and I wish to repeat it, that we must separate the judiciary from the executive and we must see that our selection of these officers is above board. Thank you, Sir.

SHRI D. NARAYAN (Bombay):

श्री डी० नारायण (बम्बई) : उपसभापति महोदय, मैं न तो वकील हूं और न वकालत की कोई परीक्षा ही पास किये हुये हूं । एक साधारण नागरिक की निगाह से, जो रात दिन खुली आंखों से देहातों में घूमता हैं, इस प्रश्न की ओर देखने की कोशिश कर रहा हूं । अभी तक हमारे बहुत से वकील विद्वान महाशय चर्चा में हिस्सा लेते रहे और बहुत कुछ अच्छी बातें कहीं, उन्होंने कुछ इस बिल के पक्ष में कहा और कुछ विपक्ष में कहा, बिल के कुछ दोष बतालाये, पुलिस के दोष दिखलाए और जनता के भी कुछ दोष बतलाये; परन्तु मैं इस बात के लिये आतुर था कि मेरे दोस्त यह भी कुछ बतलाते कि यह जो विलम्ब और खराबियां हैं उनके लिये वे मेरे मित्र स्वयं भी कुछ जिम्मेदार हैं । यदि वे थोड़ा बहुत अंतर्मुख हो कर इस बात को सोचते कि आज की न्यायपद्धति में ये जो खराबियां पैदा हो गई हैं उनके लिये वे खुद कितने जिम्मेदार हैं तो सब को खुशी होती और दुनिया भी सोचती कि हां पार्लियामेंट में अंतर्मुख हो कर भी कुछ बातें हुआ करती हैं। इस बिल को पेश करने से पहले माननीय मंत्री जी ने हिन्दुस्तान के न्यायालयों की रायें इकट्ठी कीं ! हाई कोर्ट के जजों से पूछा गया, बार एसोसियेशंस से इस बिल के बारे में पूछा गया । अच्छा होता कि इसके साथ-साथ जनता से भी पूछा जाता ।

DR. K. N. KATJU:

डा० के० एन० काटजू : पूछा तो गया । बिल छापा गया । चार महीने जनता को दिये गये ।

SHRI D. NARAYAN:

श्री डी० नारायण : यह तो आपका तांत्रिक जवाब हैं ।

DR. K. N. KATJU:

डा० के० एन० काटजू: कैसा जवाब हैं ?

SHRI D. NARAYAN:

श्री डी० नारायण : तांत्रिक जवाब हैं । टंक-निकली आपकी बात सही हो सकती हैं ।

DR. K. N. KATJU:

डा० के० एन० काटजू : तो किसके घर जाऊं ?

SHRI D. NARAYAN:

श्री डी० नारायण : घर जाने की आवश्यकता नहीं थी । ठहरिये, जो कुछ मुझे कहना हैं कह लेने दीजिये ।

जिस तरह से आपने हाई कोर्टस और बार एसोसियेशंस की राय मांगी उसी तरह से पब्लिक की रेप्रेजेंटेटिव बॉडीज की भी राय मंगा सकते थे ।

DR. K. N. KATJU:

डा० के० एन० काटजू : किसे लिखता साहब? कि आपको लिखता । आपने राय क्यों नहीं भेजी ?

SHRI D. NARAYAN:

श्री डी० नारायण : मैं व्यक्ति के बारे में नहीं कह रहा हूं। मैं तो रेप्रेजेंटेटिव बॉडीज की बात कह रहा हूं। अच्छा तो यह होता कि जहां पर कील चुभ रही हैं वहां पर पूछा जाता। शिकारी के हित में, शिकारी से ही सलाह लेने की आपने कोशिश की। शिकारी किस तरह से न्याय के पक्ष में मत दे सकता है। इसलिए मेरा यह कहना था कि यदि जनता और जनता की जो अच्छी प्रतिनिधि संस्थाएं हैं, उनसे भी राय ली जाती तो बहुत ही अच्छा होता।

न्याय दान के जो उद्देश्य बतलाए गए हैं उनमें से एक उद्देश्य यह है कि न्याय दान में विलम्ब नहीं होना चाहिए। आज तो डिलेइंग टैक्टिक्स चलाई जाती हैं और डिलेइंग टैक्टिक्स में पुलिस का काफी हाथ होता है। माफ कीजिए, मेरे बहुत से अच्छे वकील मित्र हैं, विद्वान हैं और त्यागी हैं। परन्तु साथ ही साथ मैं यह भी कहना चाहता हूं कि जो कुछ मैं तहसीलों में, जिलों में और गांवों में देखता हूं उसके आधार पर मैं आपसे नम्रतापूर्वक कहना चाहता हूं कि इन डिलेइंग टैक्टिक्स में वकीलों का कुछ कम हाथ नहीं होता।

DR. K. N. KATJU:

डा० के० एन० काटजू : सब से ज्यादा होता है।

SHRI D. NARAYAN:

श्री डी० नारायण : मैं भी यही कह रहा हूं। सब से ज्यादा हाथ वकीलों का इन डिलेइंग टैक्टिक्स में होता है। किन्तु उनकी निस्बत, उनसे बचने के बारे में कोई भी उपाय इस बिल में नहीं बतलाया गया है। जिन लोगों का मुकदमों से सम्बन्ध होता है वे सब डिलेइंग टैक्टिक्स का उपयोग करते हैं। पुलिस डिलेइंग टैक्टिक्स का उपयोग करती है, वकील भी इसी नीति का उपयोग करते हैं। इसका परिणाम यह हो गया है कि न्याय हमारे यहां बाजार की एक चीज बन गई है Justice has become a commodity, and courts of justice have become a market. आज न्याय व्यवस्था में यह हालत है कि आप ऊपर से लेकर नीचे तक चले जाइये, सिपाही से लेकर ऊपर तक चले जाइये, बगैर कलदार दिये आपका कार्य नहीं हो सकता है। यदि आपको जल्दी काम करवाना है तो आप हरा नोट सरका दीजिये, आपका काम बहुत जल्दी हो जायेगा। न्याय को अगर सच्ची निगाहों से देखा जाय तो उसके लिए कोई खर्च ही नहीं होना चाहिये। वही समाज आदर्श है, वही समाज प्रगति पर है, जिस समाज में न्याय प्राप्त करने में कोई कीमत नहीं देनी पड़ती है। जहां न्याय प्राप्त करने में कीमत देनी पड़ती हो, वहां आप समझ लीजिये कि उस समाज में बहुत कुछ खराबी है। मुझे अभी बैठे बैठे एक बात याद आ गई। एक दफा पूज्य विनोबा जी जंगल में घूम रहे थे तो उनको दूध की जरूरत पड़ गई। जब वे एक गांव में पहुंचे तो वहां पर एक किसान अपने घर के बाहर बैठा हुआ था। उन्होंने किसान से पूछा "क्यों भाई दूध दोगे और क्या भाव दोगे" ? उस किसान ने एक दम छः आना, आठ आना और दस आना सेर का भाव बतलाया और साथ ही यह भी कहा कि जिस परिमाण में दूध में पानी मिलाया गया है, उसी परिमाण पर भाव भी है। यही हालत आज हमारे न्याय के विषय में भी हो गई है। जो बड़े २ वकील हैं, जिनकी बड़ी २ फीस हैं, अगर किसी ने उनको अपने केस के लिए रख लिया तो वह आसानी से छूट जाता है। जो गरीब हैं, जो पैसा व्यय नहीं कर सकता है, उसको उचित प्रकार से न्याय नहीं मिल सकता है। कहने का मतलब यह है कि न्याय आज इतना महंगा हो गया है कि लोगों को न्याय के पीछे अदालतों में अपना घर भी बरबाद कर देना पड़ा है। शराब से हिन्दुस्तान के उतने घर बरबाद नहीं हुए हैं जितने अदालतों के कारण बरबाद हो चुके हैं। इसलिए मेरी माननीय मंत्री जी से प्रार्थना है कि जहां आप अविलम्ब न्याय की व्यवस्था करने जा रहे हैं, वहां पर आप इस बात को भी सोचें कि न्यायदान सस्ता (less expensive) किस तरह से किया

जा सकता हैं, उसको सस्ता किस तरह से बनाया जा सकता हैं, उसको बिना खर्चे गरीबों को कैसे दिया जा सकता हैं ।

DR. K. N. KATJU:

डा० के० एन० काटजू : वकीलों को मुकर्रर मत करिये ।

SHRI D. NARAYAN:

श्री डी० नारायण : जो बात आप मुझ से कह रहे हैं उसके मैं तो पक्ष में हूं ।

DR. K. N. KATJU:

डा० के० एन० काटजू : या पन्द्रह रुपये वाला वकील रखिये ।

SHRI D. NARAYAN:

श्री डी० नारायण : अगर पन्द्रह रुपये वाला वकील रखते हैं तो जनता को उचित न्याय नहीं मिलता हैं ।

DR. K. N. KATJU:

डा० के० एन० काटजू : मजिस्ट्रेट तो अच्छे हैं ।

SHRI D. NARAYAN:

श्री डी० नारायण : मैंने कभी नहीं कहा कि वे खास अच्छे हैं । मजिस्ट्रेट भी एक ही पुर्जे के हिस्से हैं । मैं किसी को दोष नहीं देना चाहता हूं । मेरे कहने का मतलब यह हैं कि न्यायदान सस्ता होना चाहिये और आसानी से मिलना चाहिये । मैं अपने वकील मित्रों से भी प्रार्थना करूंगा कि वे भी न्याय को सुलभ और सस्ता बनाने में मदद करें ।

PANDIT S. S. N. TANKHA (Uttar Pradesh):

पंडित एस० एस० एन० तनखा (उत्तर प्रदेश) : अगर जल्दी फैसला होगा तो पैसा भी बच जायेगा ।

SHRI D. NARAYAN:

श्री डी० नारायण : इसका तो तजुर्बा लेना होगा । मुझे शक हैं कि न्यायदान पद्धति जो आजकल हैं, उससे जल्दी कोई आशा की जा सकती हैं ।

[For English translation, *see* Appendix VII, Annexure No. 317.]

THE VICE-CHAIRMAN (SHRI B. C. GHOSE): Will you take more time?

SHRI D. NARAYAN: Yes, Sir.

THE VICE-CHAIRMAN (SHRI B. C. GHOSE) : The hon. Member can continue tomorrow. Secretary has got a message. Before he reads his message. I want to say that we shall meet tomorrow.

MESSAGE FROM THE HOUSE OF THE PEOPLE

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

"I am directed to inform the Council of States that the House of the People at its sitting held on Thursday, the 13th May 1954, has passed the enclosed motion concurring in the recommendation of the Council of States that the House do join in the Joint Committee of the Houses on the Hindu Marriage and Divorce Bill, 1952. The names of the members nominated by the House to serve on the said Joint Committee are set out in the motion."

MOTION

"That this House concurs in the recommendation of the Council of States that the House do join in the Joint Committee of the Houses on the Bill to amend and codify the law relating to marriage and divorce among Hindus and resolves that the following members of the House of the People be nominated to serve on the said Joint Committee, namely: —

1. Shri N. Keshavaiengar.
2. Shri Gurmukh Singh Musafir-