[Shri P. Sundarayya.]

Shri Chatterjee that he is labouring under the British Constitution of a revising Chamber and all that. Our House is not a revising Chamber as per our own Constitution. If some common procedure is not evolved before we adjourn, we request that this question be taken up again on Tuesday or Wednesday to be referred to the Privileges Committee.

MR. CHAIRMAN: All that I say is, at the moment I am anxious that the two Committees should meet and evolve a formula by agreement and consent to apply in such cases.

So far as the other matter is concerned, that will be kept pending.

DEFECT IN THE SOUND SYSTEM

SHRI R. P. N. SINHA (Bihar): May I draw your attention to the fact that the sound system operating in this House has been working very badly and that we cannot hear even a single word at all?

MR. CHAIRMAN: I am very sorry for the inconvenience caused but we are in touch with the All India Radio and the Telephone Directorate to set this matter right and we shall still pursue this matter.

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

SHRI D. NARAYAN (Bombay):

श्री डी० नारायण (बम्बई) आदरणीय सभापति जी, मैं कल यह कह रहा था कि हमारी आजकल जो न्याय देने की पद्धति है वह बहुत खर्च की है । थोड़े में यह कहा जा सकता है कि हालत यह है कि "जो बचेगा दाम सिंग जी उसकी ज़ीत रहेगी ।" आज हमारी अदालतों की हालत यह है कि अदालतों के झगड़ों में जो खर्चा होता है वह ज्यादातर वकीलों के ही ऊपर होता है । इसके लिये मेरा सुझाव यह है कि अच्छा तो यह है थर्ड क्लास मैजिस्ट्रेट कोर्ट्स (3rd Class Magistrate Courts). सेकेंड क्लास मैजिस्ट्रेट कोर्टस (2nd Class Magistrate Courts) और फस्ट क्लास मैजिस्ट्रेट कोर्टस (1st Class Magistrate Courts) के मुकदमों में वकीलों को दाखिल होने की मुमानियत कर दी जाय और कोर्ट आफ सेशन (Court of Session) के आगे ही वकील दाखिल हों । या यह कर दिया जाय कि कुछ मुकदमें इस तरह के समझे जांय जिनमें कि वकीलों को पेश होने से मुमानियत कर दी जाय और न्यायधीश खुद ही यह देख लें कि सच्चाई क्या है और क्या नहीं है और जो फैसला देना हो वह दे दें। क्योंकि बहुत से ऐसे सेक्शंस (sections) हैं जहा पर कि वकीलों की विद्वता की या कानून की खास अक्ल की कोई खास जरूरत नहीं होती है । मैंने सुना है कि कुछ प्रगतिशील देश ऐसे है जहां पर कि वकील सिर्फ आर्गूमेंट्स (arguments) के लिये ही खड़े होते है । और शुरु से नहीं खड़े होते । कुछ ऐसी भी जगहें हैं जहां पर कि वकील रिटिन स्टेटमैंट (written statement) दाखिल करते है और ऐसा नही होता कि शुरू से ही एक्जामिनेशन (examination) क्रास एक्जामिनेशन (cross examination) और रिएक्जामिनेशन (re-examination) सब के लिये ही वकीलों से काम लिया जाता हो । मैंने सुना है कि ऐसे भी देश है जहां दोनों तरफ के वकीलों को सरकार ही तनख्वाह देती है या मुआविजा देती है । परन्तु, हमारे यहां तो नीचे से ऊपर तक जिस तरह से वकीलों का एक झमेला होता

ह उससे प्रजा को बहुत नुकसान पहुंच रहा है। आप देहातों में जाइये तो आप देखेंगे कि वहा के वकीलों के टाउट्स (touts) होते हैं और वकीलो के बने बनाये गवाह होते है और लोगों को यह बतला दिया जाता है कि आप इनके पास चले जाइये, आपको गवाह पांच, दस या बीस रुपये मे मिल सकता है। इस तरह से हमारी अदालतों की न्याय पद्धति में इतना जबर्दस्त डिमारेलाइजेशन (demoralization) है कि मुझे डर है कि इस विधेयक में जो सुझाव आप सुझा रहे हैं उनसे कोई विशेष फायदा होने वाला नहीं है।

आपने कल कहा कि आज सैकड़ा पीछे ७५ केसेज (cases) में लोग गुनहगार होते हुये भी छूट जाते हैं और आगे यह भी कहा कि हमारी दृष्टि यह है कि भले ही ९० गुनहगार छूट जाय परन्तु एक निर्दोष को सजा न हो। आप सोचिये तो सही कि यदि ९० गुनहगार छूट जायें या ७५ गुनहगार छूट जाते हों तो यह समाज के लिये कितनी खतरनाक बात है। प्लेग के चहे पकड़े जायें लेकिन फिर निर्दोष कह कर समाज में छोड़ दिये जायें, इससे जो नुकसान पहुंचेगा वही नुकसान उन गुनहगारों के छूट जाने से भी पहुंचता है, तो इसके लिये कुछ संशोधन होना चाहिये और कुछ तजवीज होनी चाहिये।

आपने यह सुझाया कि सेशन्स जज (Sessions Judge) को यह अख्तियार होगा कि वह अपने डिवीज़न (division) में दोनों फरीकों की सुविधा के लिये कहीं भी अदालत कर सकता है। बड़ी अच्छी बात है क्योंकि इससे कुछ सुभीता तो होगा ही परन्तु मुझे डर होता है कि कहीं इससे लाभ होने के बजाय नुकसान न हो। आप जानते है कि देहातों में जब कलेक्टर (Collector), डिस्ट्रिक्ट मैजिस्ट्रेट (District Magistrate) या डी० एस० पी० (D. S. P.) का कैंप (camp) जाता है तो क्या हुआ करता है। इसी तरह से यदि डिस्ट्रक्ट जज (District Judge) उनका सारा पैराफर्नेलिया (paraphernalia), दोनों तरफ के वकील और बीसों गवाह गांव में, एक छोटे से कस्बे में या तहसील में पहुंचेंगे तो वहां क्या हालत होगी, कितना खर्चा होगा, लोग खुशामद कैसे करेंगे आदि बातों को यदि आप सोचेंगे तो जो डर मुझे पैदा हो रहा है वही डर आपको भी हुये बिना नही रहेगा क्योंकि हम देख रहे है कि आजकल हमारे अधिकारियों के कैम्प्स किस तरह से चलते हैं और चलाये जाते है। इसलिये इस सुविधा को आप ज़रूर रखें परन्तु उसके साथ-साथ कुछ ऐसा नियम भी बनावें जिससे कि किसी तरह से भी इन अदालतों का बोझ डाइरेक्टली (directly) या इनडाइरेक्टली, (indirectly), प्रत्यक्षम् या अप्रत्यक्षम् देहातों के ऊपर, कस्बों के ऊपर या उन अदालतों से सम्बध रखने वाले फरीकों के ऊपर न पड़े।

आनरेरी मैजिस्ट्रेट्स (Honorary Magistrates) की नियुक्ति की बात इसमें कही गई है। जहां तक मुझे ज्ञात है बहुत से राज्यों ने इस प्रथा को बन्द कर दिया है। कम से कम बम्बई राज्य ने तो, बहुत दिन हुये, इस प्रथा को बन्द कर दिया है क्योंकि आनरेरी मैजिस्ट्रेट्स की नियुक्ति में बहुत सी गड़बड़ हो जाती है और आपस में झगड़े पैदा होते हैं और कोई फायदा भी नहीं निकलता है। दोनों तरफ से फ़ेवरिटिज्म (favouritism) के और दूसरी तरह के इलजाम लगाये जाते है और उससे कोई लाभ तो होता नही। आपने यह भी

[Shri D. Narayan.]

कहा कि क्वालीफाइड (qualified) आनरेरी मैजिस्ट्रेट्स रखे जांय । दुर्भाग्य से इस मुल्क में क्वालीफिकेशन (qualification) का अर्थ केवल दो चार परीक्षाओं को पास करने से लिया जाता है। वे कहां तक ईमानदार हैं, कहां तक सच्चाई से चलने वाले हैं और कहां तक त्यागपूर्वक इस काम को चलायेंगे, ये बातें बहुत कम देखी जाती हैं और इनको देखना भी आजकल एक मुसीबत की बात हो जाती है। इसलिये आनरेरी मैजिस्ट्रेट्स में जिस चारित्र्य की आवश्यकता होती है उस ओर आप ध्यान कम देंगे, यदि क्वालीफ़िकेशंस की रोक लगा देते हैं। हालांकि हमारे बहुत से राज्यों ने इस प्रथा को खत्म कर दिया है फिर भी यदि आप इसको रखना ही चाहते हों तो क्वालीफ़िकेशंस के साथ-साथ आप यह भी देखें कि उसमें चारित्र्य हो, ईमानदारी हो, दयानत हो और सच्चाई हो। हमारे राज्य में पहले आनरेरी मैजिस्ट्रेट्स बेंच (Honorary Magistrates Bench) थे; एक आनरेरी मैजिस्ट्रेट नहीं होता था, पांच सात आदमियों का एक बेंच मुकर्रर किया जाता था। मैं सोचता हूं कि किसी शहर में या किसी तहसील में एक आनरेरी मैजिस्ट्रेट मुकर्रर करने के बजाय एक बेंच रखने की पद्धति अच्छी होगी क्योंकि वे आपस में एक दूसरे से समझ बूझ कर काम कर सकेंगे ।

डिफेमेशन (defamation) का एक खास क्लाज़ (clause) इस बिल (Bill) में रखा गया है। मैं उसका स्वागत करता हूं क्योंकि मुझे पता है कि जिसे फ्रीडम आफ एक्सप्रेशन (freedom of expression) कहते हैं वह आजकल इतना बढ़ गया है कि न तो छोटे-बड़े का ख्याल होता है और न सच-झूठ का ख्याल होता है, जो चाहे वह कहते चले जाते हैं और उसकी सच्चाई को सोचने और जानने की परवाह नहीं करते। बच्चों से ले कर बूढ़ों तक और जिम्मेदार से लेकर गैर जिम्मेदार तक, सब चाहें जैसी भी बात हो हिस्सा लिया करते हैं। आप मेलों में जाइये बसों में चढ़िये, अखबारों को देखिये, सब जगह बेलगाम बातें कही जाती हैं, तो इसके ऊपर लगाम लगाना आवश्यक है क्योंकि हमें इस देश को एक जिम्मेदार देश बनाना है, जहां के नागरिक जिम्मेदारी से बात करें और बेजिम्मेदारी से कोई काम न करें। परन्तु साथ में मैं यह बात भी माननीय मंत्री जी से कहना चाहता हूं कि आप कुछ ऐसी भी तजवीज़ करें जिससे कि जनता में से जो लोग अपनी कुछ बातों को अधिकारियों के खिलाफ चुपचाप कहना चाहते हों उनको सुन सकें और उसकी तहकीकात करें और तहकीकात करने के बाद अपनी ओर से अदालत में मुकदमा पेश करें, क्योंकि मैं समझता हूं कि जब जनता को और जनता के पंचों को यह हक हो जायेगा, या सुविधा पैदा हो जायेगी कि वे किसी खास आदमी के पास किसी अफसर के खिलाफ अपनी शिकायत ले जा सकते हैं और किसी मामले के खिलाफ बातें कर सकते हैं और उसकी तहकीकात होने की आशा भी रख सकते हैं तो इस तरह से इधर-उधर जो बकवास करने की आदत पड़ी हुई है वह बहुत कुछ कम हो जायेगी । तो जनता को भी इसमें कुछ अधिकार मिलना चाहिये ताकि वे लोग अपनी बातों को, अपनी शिकायतों को ऊपर तक पहुंचा सकें ।

क्रास एक्जामिनेशन और रिएक्जामिनेशन, ये जो कुछ अदालतों में हैं वे एक बड़ी जबर्दस्त बला हैं क्योंकि वकीलों की सारी अक्ल और सारी होशियारी इसी में खत्म होती है। तहसील में और

जिलों में देखा है कि यह जानने के लिये कि कौन वकील कानून का कितना विद्वान है, फरीकों की ओर से कोशिश नहीं होती बल्कि फरीकों की ओर से यह देखा जाता है, कि कौन वकील सच्चे गवाह को क्रास एक्जामिनेशन में झूठा बना सकेगा और जो वकील ऐसा कर सकता है उसी को, पसंद किया जाता है । यानी सच्चे गवाह को, बेचारे गरीब गवाह को घबड़वाने की और इस तरह से उल्टा-सुल्टा क्रास एक्जामिनेशन करने की कोशिश होती है कि जो सच्चाई है, जो चीज़ एक दम साफ मुंह से बाहर निकल सकती है उसको दबाया जाय, पेच से पेच लड़ाये जायें और जो कुछ वह कहना चाहते है उसको न कहने दिया जाय। बजाय इसके कि उसको बोलने दिया जाय उसको घबड़वा कर ऐसा किया जाता है कि जो सच्चाई बाहर आती भी होती है उसको भी क्रासएक्जामिनेशन में रोक दिया जाता है दबा दिया जाता है ।

THE MINISTER FOR HOME AFFAIRS AND STATES (DR. K. N. KATJU):

गृहकार्य और राज्य मंत्री (डाक्टर के० एन० काटजू) : तजुर्बा यह कहता है कि सच्चे गवाह कभी-कभी ही आते है।

SHRI D. NARAYAN:

श्री डी० नारायण : आप जिसे सच्चा कहते है वैसे सच्चे तो शायद ही कहीं दिखाई देते है परन्तु आम तजुर्बा और अनभव यह है जो मै आपके सामने रख रहा हूं और जिसको आप भी जानते हैं ।

DR. K. N. KATJU:

डाक्टर के० एन० काटजू : तजर्बा तो यह है कि सारे गवाह सच्चे नहीं आते। आधे झूठे आते हैं और आधे सच्चे आते हैं।

SHRI D. NARAYAN:

श्री डी० नारायण : मै आप से कहना चाहता हूं कि गवाह तो सच्चे आते है किन्तु उनको झूठा बनाया जाता है ।

DR. K. N. KATJU:

डाक्टर के० एन० काटजू : नैवर (never), नैवर ।

SHRI D. NARAYAN:

श्री डी० नारायण : सच्चा गवाह भी जब वह किसी बड़े वकील, तजर्बेकार वकील के सामने गवाही देता है तो अनजान होने की वजह से वह घबड़ा जाता है। वहां पर जिस तरह से उसके साथ बहस होती है उससे वह देहाती अनजान आदमी बिलकुल ही घबड़ा जाता है । जिस तरह से किसी महा विद्वान् आदमी के सामने किसी बच्चे को इम्तहान के लिये खड़ा कर दीजिये तो वह बिलकुल ही घबरा जायेगा ।

एक बात के लिये मै खास तौर से मंत्री महोदय को बधाई देना चाहता हूं कि जूरी (jury) की जो आपने व्यवस्था रखी है और उसमें आपने जो यह तजवीज की है कि आगे जूरी मे बहिनें भी रह सकेंगी, यह बहुत ही अच्छा किया । क्या ही अच्छा होता कि कोई बहिन आपको इसके लिये बधाई देती, किन्तु आज यहा पर बहिनें नही है, इसलिये मै ही इस विषय मे आपको बधाई देना चाहता हूं और साथ ही साथ बहिनों को भी बधाई देता हूं ।

MR. CHAIRMAN: Hurry up, hurry up.

SHRI D. NARAYAN: Only three or four minutes, Sir.

डी नोवो (*de novo*) ट्रायल्स (trials) की वजह से एक केस (case) कई महीनों तक चलता रहता है और

[Shri D. Narayan.]

तब्दीलियां होती रहती हैं। अभी मुझे एक मित्र ने एक किस्सा बताया कि चार वर्ष से केस खत्म ही नहीं होता है क्योंकि हर छः महीने के बाद मैजिस्ट्रेट का ट्रांसफर (transfer) हो जाता और फिर डी० नोवो ट्रायल चलता है। मैजिस्ट्रेट के पास जितनी संख्या में ट्रायल करने के लिये केसेज हों, उसका ट्रांसफर होने के एक महीने पहले उससे यह कह दिया जाय कि तुमको इतने केसेज का फैसला करना होगा तब तुम यहां से जाओगे अगर इस तरह की व्यवस्था कर दी जायेगी तो डी नोवो ट्रायल्स के झगड़ों से लोग बच जायेंगे ।

आप झूठी गवाही देने के लिये सजा रक्खें और उसके लिये समरी ट्रायल (summary trial) करें। मैं यह नहीं कहता कि झूठी गवाही देने वालों को सजा न मिले परन्तु मसीबत यह है कि गवाहों को झूठा बनाया जाता है, सिखलाया जाता है । जिस तरह से मास्टर बच्चे को पढ़ाता है उसी तरह से गवाह को वकील और पुलिस सुबह, शाम और रात के वक्त घंटों तक पढ़ाया करते हैं, सिखलाया करते हैं। नो चार्ज ऑफ एबेटमेन्ट ऑन एनी बाडी (no charge of abetment on any body)। कई वक्त गवाह बेचारा पैसे की वजह से, गरीबी की वजह से झूठ बोलने को तैयार हो जाता है । उसको आप सजा करेंगे और उसका समरी ट्रायल करेंगे। मेरा कहना यह है .....

MR. CHAIRMAN: Mr. Narayan, address the Chair, not Dr. Katju.

SHRI D. NARAYAN: No, Sir. I am not addressing him.

मेरे कहने का मतलब यह है कि यह जो मसीबत है उसमे बचन के लिये आप कोई रास्ता निकालें जिससे गवाहों को सिखलाना बन्द किया जा सके। पुलिस के जरिये और वकीलों के जरिये जो सच्चे गवाह होने हैं उनको झूठा बनाया जाता है, इस मुसीबत को दूर करने के लिये आपको कोई न कोई व्यवस्था करनी होगी । किन्तु जो झूठ बोलता है उसको आप अवश्य सजा दीजिये, परन्तु सिखलाने वालों को भी सजा हो ।

हमने चुनाव के समय जनता और दुनिया के सामने यह वायदा किया था कि जब हमें अधिकार मिल जायेगा तो न्याय-पद्धति में ऐसी तबदीली करेंगे जिससे न्यायदान सत्वर हो, कम खर्च में हो, परिणाम कारक हो, स्पीडी, लैस एक्सपेंसिव एण्ड इफेक्टिव (speedy, less expensive and effective) हो ।

अन्त में मेरी यही प्रार्थना है कि आप यह बिल इस इरादे से पेश कर रहे हैं कि न्याय व्यवस्था में जो आजकल विलम्ब होता है वह कुछ कम हो जाय परन्तु इस से बहुत फायदा नहीं होगा । जनता को फायदा तब होगा जब उसको भ्रष्टाचार और खच से बचाने के लिये कोई व्यवस्था की जाय ।

Justice delayed is justice denied,
Justice expensive is justice denied, and

Justice corrupted is justice denied.

[For English translation, *see* Appendix VII, Annexure No. 318.]

SHRI MAHESH SARAN (Bihar): Mr. Chairman, we have to look at this Bill from the point of view of the aims and objects as mentioned in the Statement of Objects and Reasons and see whether they will be fulfilled. These are provisions for adequate facilities for the defence of the accused and speedy

disposal of cases. My submission is that this Bill is in certain respects a good Bill but it is a halting Bill. It is a Bill which slightly changes here and there the procedure already followed and makes no radical changes. We have, at this particular moment, to consider that we have also to dispense justice to all those people who were before in the native States which are now ex-Indian States. Those people are simple people. I had the occasion of moving about in the villages of these backward areas, and I found that the people were absolutely bewildered at these laws. They do not know what is all this about. They were used to a very simple form of justice and they used to get that very cheaply and very quickly. Now, they have to run from place to place and when they go from one place to another they do not know what they have to do. Therefore my submission is that now those backward people also have come under the Union, the Criminal Procedure Code and the Civil Procedure Code must be made much simpler and capable of being easily understood by the people and they should be such that people should not feel bewildered at.

Then, the other point which is of importance is that it must be a cheap form of justice. There is no mention in the objects that justice should be cheap. It is very essential because people here are very poor. I know of many criminal cases and civil cases going undefended because people have no money to pay to the lawyers. If the case in a complicated one, the lawyer wants a lot of money before he takes up the case. The Select Committee should take this state of affairs into consideration and I would request the Select Committee to make radical changes so far as these points are concerned.

Now, I do find that there are certain improvements. The proposed amendments are good in certain respects, but in certain other respects I do not agree that it is a step forward but I feel that it is a step backward. We find that up till now the proceedings in criminal trials are very lengthy. The accused have to come in person to the court; then another date is given for the witnesses to come and depose, and so on. A change is proposed now and it is said that the defence witnesses will be present on the very day when the accused is summoned and they will be examined on the same day. This means that at least the poor client will be saved one day's fee of the lawyer.

And then, time taken also becomes shorter because another date cannot be before fifteen to twenty days after the date on which the accused presents himself in the court for the first time. So, this is a good method, but I would submit that the copies of the statements of the witnesses and other documents must be given to the accused much before the witnesses are summoned. I do not know how that is possible because the accused is supposed to come on the very day when the witnesses are to be examined. Therefore, I would invite the attention of the Select Committee to this aspect of the question for their ~~kind~~ consideration.

Now, so far as the change in the procedure of Sessions cases is concerned, no commitment proceedings would take place now. This, I think, is an improvement because the same sort of evidence used to be repeated in the Court of Session which was recorded in the Magistrate's court. The client used to be harassed, he had to pay a lot to the lawyers in the Lower Court and then again the Court of Session. This change in the procedure of course, will make the defence cheaper than before.

Now, there is another procedure in the Code of Criminal Procedure and that is with regard to cross-examination of the witnesses before charge and after charge in warrant cases. That again meant that the witnesses had to come twice for cross-examination. It is really a good measure that in the amendment proposed cross-examination after charge has been restricted. As I have said before, all the docu-

[Shri Mahesh Saran.]

ments, statements and other things must be with the accused before he is able to cross-examine the prosecution witnesses and attention should be directed towards this question.

Now, the other difficulty was that the prosecution had always the upper hand, because it was mostly the Government which was the prosecutor. One or two witnesses out of those who came were examined, and a date was fixed for the examination of the rest of the witnesses either because the Magistrate had something else to do or because the Sub-Inspector wanted time, which the Magistrate always granted. All the witnesses were not examined on the same day and it was harassment so far as the accused were concerned.

Now, according to the new provision, no adjournment is to be given to the prosecution without examining all the witnesses present except for special reasons to be recorded in writing by the Magistrate. This is a measure which does take us a little forward towards improvement.

There are certain other matters which require careful consideration and one of them is that the jury system which very many hon. friends have liked, is not a system, which is a good one. So far as assessors were concerned, they were useless because their voice had no weight. But I know of cases where the assessors even were paid by the accused because their saying 'not guilty' might in some way soften the heart of the Magistrate or Sessions Judge and he might let them off. So far as jury is concerned, their verdict is very important, and so they are heavily paid. I know of cases where this has happened. So money plays a very important part so far as the jury system is concerned. So far as a poor person is concerned, to get justice this becomes very difficult. There are some rich clients; they are able to pay and they go scot-free but a poor client who has no money to pay, bemoans his fate. He can do nothing. He can only pray to God that justice may be done to him which he never gets. So, I think this jury system is an obnoxious system and the sooner it goes away the better it would be for the country.

9 A.M.

SHRI P. SUNDARAYYA: If you bribe the Magistrates themselves?

SHRI MAHESH SARAN: If you bribe everyone, that is a different matter. I know of cases where if you bribe a Magistrate he takes proceedings against you. Leave the Magistrates alone. For God's sake do not put temptation in the way of people by making them jurors. Do not add one mistake to another; two wrongs do not make a right. This system of having the Sessions trial at a place which is near the place of occurrence is a very good measure but I would humbly suggest that it should only be done if the accused wants it. You are having it for the convenience of the accused. The prosecutor is the Government; it does not either lose or gain by having the trial anywhere because all facilities are given to it. Therefore, my submission would be that in cases where you want the cases to be tried at a place close to the place of occurrence, the wishes of the accused must prevail.

About Honorary Magistrates, I feel that this is not a good system. The Honorary Magistrates during the British regime had a feeling that they were appointed by the Government and they thought that they had to carry out the mandate of the Government. They did not know what that mandate was. They had an inward feeling that conviction was the mandate. So they were always keen to convict people unless, of course, they were interested in any particular person. The Honorary Magistrate of olden days was an unlettered person. When you asked your client where the case was to be heard, he replied in *anari* Magistrate's court. *Anari* means uneducated. That was the real state

of things. In those days, anybody could become an honorary Magistrate. I am very pleased that an amendment is proposed which says that a person who has held any judicial position or possesses such other qualification as may be specified in this behalf by the Government can alone become an honorary Magistrate. This is an important change. You can have some retired persons doing this work, but as I said before, very careful scrutiny should be made in selecting people. You have to make the choice very cautiously so that you have only honest and good people, not people who are anxious to increase their prestige or get other benefits which I need not mention here.

There is another amendment. In order that the case may be finished within six weeks, section 497 has been amended.

MR. CHAIRMAN: Hurry up, Mr. Saran.

SHRI MAHESH SARAN: The provision is as follows:

> "If the trial of any person accused of a non-bailable offence cannot be concluded by a Magistrate within six weeks from the date on which he appears or is brought before the Magistrate, he shall be released on bail to the satisfaction of the Magistrate, if he is in custody, unless the Magistrate, for reasons to be recorded in writing, otherwise directs."

The Magistrate will always otherwise direct. He does not want that a person should be released on bail, because he would say that it would not be in the interest of justice, that he would tamper with the witnesses, that he would create all sorts of difficulties, if he is left free. Therefore, although in this sub-clause it is said that the case should be finished within six weeks, yet the powers given to the Magistrate are such that it shall never be finished within six weeks. I therefore, do request the Members who would be sitting on the Committee to see that a better provision is made so that speedy justice may be possible.

Lastly, I would only mention that this amendment is just cutting out a few sections here and adding a few there. The whole basis remains the same. I do really feel that for the people, who are ignorant, some sort of new addition for cheap and speedy justice should be made. Thank you, Sir.

MR. CHAIRMAN: 9:35 is the time when we are expected to end, but I see here about six or seven speakers. So I am extending it by an hour and a half, *i.e.*, 11-5. You must give about 30 to 40 minutes to the Minister. So I hope those who will now speak will limit their remarks to about ten minutes. Mr. Kaushal.

SHRI J. N. KAUSHAL (PEPSU): Mr. Chairman, the Criminal Procedure Code, as was said by the hon. the Home Minister, is a major Code, and its revision has been taken in hand. I think the effort made by the Home Minister is very laudable. Certain changes have been made which are welcome, but there are other changes which, I feel, are very retrograde. They will put great difficulties in the way of the accused in defending themselves. I would, therefore, try to deal with those changes first, which I feel are not at all desirable.

The one change which has been made by this Bill is that in all cases the police would get the statements of the witnesses recorded under section 164 of the Criminal Procedure Code. I feel that this measure is going to work great hardship on the accused. As we know, the police generally, in order to prove their case, gets some false witnesses, and if they are pinned down to their statements before a Magistrate it is very difficult for the accused to get justice. We have considerable judicial authority which says that the practice of getting the statements of witnesses recorded under section 164 is to be deprecated. And the reason is very obvious. If a witness has been made

[Shri J. N. Kaushal.]

to state a falsehood at one stage, then for the fear of prosecution he will never try to revert to truth, and there will be a very great effort on his part to stick to the falsehood which he has once stated. I, therefore, feel that this is going to be an engine of oppression with the police.

The other measure which this Bill seeks to introduce is the deletion of section 162 of the Criminal Procedure Code where it is laid down that those statements which were recorded during the investigation by the investigator could not be used for any purpose except for the purpose of contradicting the witnesses who were called by the prosecution. Now the Bill seeks to omit that provision which will naturally mean that all statements which are recorded by the police can be used for the purpose of corroborating their statements which are made at the time of the trial. Well, this is changing the very basis of our administration of criminal justice. Are we quite prepared to give those powers to the police so that the statements which are recorded by them at their sweet will, which are not signed by the witnesses, and which are recorded in a haphazard manner, are rendered of a great corroborative value in respect of the statements which are given at the trial? The experience of the judicial courts shows that the investigators do not investigate their cases honestly. They are, as a matter of fact, the masters of their own will when they want to record certain statements in favour of the accused and they want to let him off. And when they want to the accused to be tied down, they record statements in that direction. My submission to the hon. the Home Minister and the Members of the Select Committee is that this drastic change in the very basis of the administration of justice is not at all needed. We cannot in the present state of affairs give those powers to the police. Our police unfortunately does not inspire that confidence which it ought to, and unless the police is improved, the statements recorded by it must be held to be inadmissible, as was done under section 162 of the Criminal Procedure Code when they could only be used for the purpose of contradicting a witness when he made a statement contrary to the one which he had made during the investigation.

Then, the other provision to which I take strong objection is that the powers of revision given to the High Courts have been tried to be whittled down by this Bill. Under the existing law a High Court has the power to look to the legality, propriety or correctness of any decision which may be brought before it in its revisionary jurisdiction. But now the Bill says that the High Courts will have nothing to do with facts. On that matter again I would submit that this is a very valuable right given to the parties to approach the High Courts against capricious and arbitrary decisions given by the subordinate courts. And knowing as we do the subordinate judiciary, this was a great check on them that their decisions were open to revision by the High Courts. Now, if facts are not open, I am afraid in a criminal case there are very few law-points which can be taken to the High Court, and, as a matter of fact, that is the basic distinction between the revisionary powers of the High Court exercised on the civil side as well as on the criminal side. On the civil side the powers have been limited only to questions of jurisdiction or legality of the judgment given. And in criminal cases since justice has to be given not between the parties but between the State and the subjects, the High Courts had been given the widest powers to look to any decision given by the subordinate courts. We also know that the High Courts do not exercise those powers frequently. But that check should be there. If that check is abolished, I am afraid a very free hand will be given to the subordinate judiciary to pass any judgment they like, and they can take any view of the facts which suits their convenience. So, this change is not at all conducive to the better administration of justice.

Then, the other fundamental change which has been introduced in this Bill

is that the accused can be put questions by the Magistrate under section 342 of the Code. This would mean the right of cross-examination given to the court. The other connected change is that the accused has been given the right to appear as a witness in his own case. This is a very serious matter and since our Constitution has adopted one view, *i.e.*, that the accused cannot be compelled to be a witness against himself, I feel that the proposed change is going to be inconsistent with the provision in the Constitution. Either the accused should be given the right to appear as a witness or he should not be given the right to appear as a witness. Merely giving him the option is not going to be for the benefit of the accused because, although we have laid down that no inference should be drawn, there will be a psychological bias in the mind of the court that the accused has shirked to speak in the witness-box, and that psychological bias is going to affect the accused greatly, and instead of working to his benefit, it is going to work for his detriment.

One suggestion which I would like to place before the House is that, since we are very much worried about the large number of acquittals which take place in the courts, I feel that one remedy is that we should give the right of appeal, may be by special leave, even for the private complainants, because in State cases, it is very seldom that the State files an appeal—the procedure prescribed for appeal is so lengthy—but where a private complainant wants to vindicate his honour in the High Court, then I think it will be desirable to give him the right of appeal. This will only meet the ends of justice.

SHRI H. C. DASAPPA (Mysore): Mr. Chairman, I believe that the fact that this wholesome and desirable measure has been sponsored by the Home Minister and not by the Law Minister has provided a lot of ammunition for friends opposite to criticise the Bill as a whole and make very severe comments on the police, law and order, security in the land and so on. If only the hon. Dr. Katju had been the Law Minister and introduced this same Bill, I am certain that much of the edge of the criticism would have been knocked down.

SIR, I was thinking that, when the idea of minimising law's delays was in the air, the idea referred more to civil litigation than to criminal litigation. The very term 'law's delays' is more applied to civil litigation than to criminal litigation. When all is said and done I think that our Magistracy has been doing fairly well to expedite disposal of cases, and the High Courts also are taking sufficient interest in the matter and seeing to it that there is speedy disposal of cases. I do not mean, however, that there is no room for simplifying criminal procedure and bringing in some improvements. As regards the necessity for a Bill of this kind, my own view is that there need not be any more justification for it than the mere fact that it purports to simplify the Code to make it more expeditious and also to make it possibly cheaper. There was hardly any need for trying to apportion blame for the delays in the disposal of criminal cases. I believe that reflections on the part played by the members of the Bar in this matter as also on the character of witnesses that appeared in the courts either for the prosecution or defence are hardly necessary to justify a measure like this.

So far as the question of defective investigations goes as a factor contributing to the failure of prosecutions, I think there has been a fairly universal complaint that there is room for improvement in that respect. From my own experience I can quote a number of instances of how defective investigation led to acquittal in the cases. I may give a recent case. Merely because the murder took place about a mile from the village and the police were unable to find witnesses at that rather out of the way place they located the scene of the occurrence in the village itself, when all the blood spots and other pieces of evidence went to

[Shri H. C. Dasappa.]

show that the murder could only have taken place at the spot away from the village. The culprits went free and the court could not do anything in the matter. This obviously shows defective investigation. Nor can I say that all the police people are fair-minded and some of them are not capable of resorting to methods which are not fair. Some of us have been victims of such an attitude on the part of the police. Thirteen of us including an hon. Minister of Cabinet rank here were all accused of certain police offences when we committed no offences of the kind. All of us were sent to jail. Furthermore, we were de-barred. This was no doubt in the pre-freedom days. Therefore, what I want to say is that you cannot say that everything was all right without these amendments and the moment you introduce these amendments things are going to be very bad. It is all a question of the personnel concerned, and I wish to emphasise that every care must be taken to see that we have got the right type of men in the police force especially in the ranks of those people who are charged with the duty of investigation. I have also had instances where merely because they were honest and efficient some police officers have come to grief. Now, I say that there are these things which have got to be very closely watched and corrected before we can get the best results out of this Code.

The other thing that I wish to strongly emphasise is that there should be separation between the judiciary and the executive. I think the time has now come when our professions in this regard should be made good. I do not need to give any reasons for it here at this stage.

I will now come to some of the clauses in the Bill but not deal with those that have already been referred to by others. There are very many good points in this Bill. I have absolutely no doubt that this Bill by and large has got to be warmly welcomed; *e. g.*, the provision for increasing the powers of the Magistrates, extending the scope of summary trial, doing away with *de novo* trials, etc.—a whole host of them—I must say, are really very helpful and desirable.

But there are certain things where I might just sound a note of caution. Take section 145—it is clause 17. That relates to the question of breaches of peace with reference to property and land. Now the old provision saw to it that there was an enquiry and the interests of the person found to be in possession of the land were safeguarded and his possession was not disturbed. The other man was asked to go to the civil court but now as things stand, the only reason on which he may act is when there is likelihood of breach of the peace and that would be enough for him to attach the land and drive the parties including the rightful party to a civil court. That would certainly work as a hardship. I have also gone through the various opinions expressed on this clause. I ask, whether this amendment would not give room for a lot of mischievous elements to prevent lawful owners from peaceful enjoyment and possession of their land. I find here that under subsection (3) of section 145 as amended apart from saying that the parties may be heard and on hearing the parties the attachment may be continued or may be done away with, there is no reference whatever to the question of rightful owner being put in possession of the land and the other man being asked to go to a court to establish his rights. This is at variance very extraordinarily with the Statement of Objects and Reasons given in the very Bill. On page 29 it is stated and very correctly, that "It has, however, been provided that the parties affected thereby should be given adequate opportunity of being heard in the matter either before or after the attachment to enable the Magistrate, where necessary, to withdraw his orders of attachment and restore possession to the party rightfully entitled to it."

(Time bell rings.)

I don't find anywhere in the amendment, now made, the words 'and restore possession to the party rightfully entitled to it' for securing this very good and wholesome objective. I, therefore, say that it is very necessary to incorporate a provision to that effect in clause 18. In clause 18, in the proposed sub-section (1A) of section 147 something of that nature is to be found. Even, that I am not very much satisfied with and I think it would be very desirable if this further amendment is made so as to secure that the lawful owner is not going to be disturbed.

Then another matter I wish to say is with reference to clause 20. There in all cases of investigation the police officer is expected to take the witnesses to the Magistrates and have the evidence recorded in cognizable cases. In all cases of sessions, that is a mandatory provision. That would mean that it would not only be duplication of work but my own view is that it will hamper and hinder the very objective that we have in view *viz.*, of further successful investigation. While the work of Magistrates will be greatly increased on the one hand an opportunity will be given to the accused on the other hand of knowing the nature of the evidence that will be against him well before hand during the investigation itself.

There is only one more point, *viz.*, with regard to the making of defamation cognizable in the case of President, Rajpramukh, Governors, Ministers and public servants. It is stated by some friends that this is going to be a hardship on the accused. My own view is that in defamation cases the man really in the dock is not the accused but it is the complainant and I doubt very much if legal recourse is to be had to that particular provision, it would not be to the disadvantage of the public servants because there will be such a lot of exposure. I would, therefore, like these cases to be few and far between and there must be provision for obtaining sanction from Government and it is only in exceptional cases that recourse may be had to this clause. I therefore, generally welcome this Bill.

SHRI BODH RAM DUBE (Orissa): Mr. Chairman, I welcome this Bill on the ground that the Civil Procedure Code was passed long ago in 1898. After that a small amendment was made in 1923 and a third amendment was made in 1941. Now this Act is going to be overhauled practically, but the clauses that are enumerated in the Amending Bill are not adequate to overhaul the Criminal Procedure Code in all its aspects. Some sections still remain which require to be overhauled and that is the reason I appeal to the members of the Select Committee to take up this question in order to have an all-round good Code. There should be amendments in all connected provisions of the Criminal Procedure Code which are inter-related to the provisions which are going to be amended.

Now the objective of the Bill is very laudable. The object of the Bill is to give all facilities to the accused to defend himself properly. The other objective is to make a speedy disposal so that the real culprit is convicted and punished very speedily and an impression is created in the mind of the public that there is speedy disposal of cases and that if they commit offences, they would also be punished. The third objective is that the accused person is to be given all facilities for defending himself. Another objective is that perjury is to be put down. These are laudable objectives, and there can be no doubt about it but the question is whether the amendments that are being proposed clause by clause, will achieve that objective. We are to look into it. If they are not to achieve the objective, then the Select Committee should take into mature consideration and arrive at such decisions that these objectives are achieved.

The first point that I wish to raise in this House is in regard to provision 145. So far as the present provision goes, it contemplates that a notice is issued. When the police report is

[Shri Bodh Ram Dube.]

submitted to the Magistrates that there is apprehension of breach of peace with respect to any land or property or water, then a notice is issued to the accused, to have the written statement filed, to give evidence if necessary and then after considering the evidence produced, an order is passed. If there is an emergency for attachment of the property, it is attached, but if there is no emergency, then the whole evidence is gone into and after that if the court comes to the conclusion that the person who was in possession within two months prior to the initiation of the proceedings of that property has been dispossessed, he is placed in possession of it. So far as the present amendment is concerned, it contemplates that a notice will be issued to the party at the instance of one party and the property is attached and both the parties are sent to the civil court to fight out their case as to who will be entitled to the possession of the property. That is a procedure that would take years and years. It may be that the person whose main source of living was that property will be deprived of that for years together. It may be for 10 or 15 years. Such a procedure, I submit, is not welcome. Here the provision should be that the person who is in possession should not be disturbed and should be allowed to be in possession of that property and the other party should be asked to go to the civil court and establish his rights. This provision that goes against the principle I have stated, should be dropped. You should not deprive the original owner of the property. That is the objection I have so far as this clause is concerned.

The second thing which I object to is the deletion of section 162. This section is used for the purpose of contradiction.

SHRI RAJAGOPAL NAIDU (Madras): For the purpose of corroboration by the accused

SHRI BODH RAM DUBE: Yes. But so far as the amended provision is concerned, it is not clear whether it will be used for corroboration or contradiction. If section 162 is deleted, then a real right of the accused will be taken away.

So far as the amendment to section 164 is concerned, in ordinary criminal cases, all witnesses considered material in the opinion of the investigating officer will be sent by the investigating officer to the Magistrate and in the sessions cases this is mandatory and the statements of witnesses will be recorded under section 164. And it is an undesirable thing which pins down the witness to the evidence given. But it will in fact be a duplication of the evidence. The number of magistrates will be increased. Evidence will be taken thereafter and then they will proceed with the case. But I think this is not a healthy procedure. Under section 164, all the material witnesses have to be sent to the Magistrate and so far as sessions cases are concerned, it is mandatory on the part of the investigating officer to send all the witnesses to a Magistrate for recording evidence under section 164. So the suggested amendment will only mean duplication of work without attainment of objectives.

So far as sections 252, 256 and 257 are concerned, the changes proposed in them will not, I submit, be helpful. Under the amended section 173 all the papers will be supplied to the accused. That is to say before the evidence stage the statement of the witnesses and all the papers will be supplied to the accused when he is brought before the court. Then the Magistrate will decide whether the case should be referred to the Sessions Judge or not. But it is not clear whether all the papers, that is to say, the reports of the chemical examiner, the report after the *post mortem* examination the statements made under section 27 of the Evidence Act, whether these also will be supplied or not. In these circumstances, it is not clear whether these provisions will serve the purpose for which the amendments are now proposed to be made. There are other

provisions also which require to be overhauled. Of course, there are certain good provisions in the Bill and those salutary provisions should be adopted. The number of criminal courts should be increased, and judiciary should be separated from the executive. There is also provision for copies of judgments to be given without delay. There are also provisions that decisions by Magistrates, 2nd Class and 3rd Class Magistrates, will be appealable in the Court of Session. There is also the provision for insertion of a new section 555A. Rules are to be framed for getting less costly remedies so that the public may be free to approach the Magistrates for justice. All these good provisions, I welcome. But those provisions which are not salutary, should be thrown out. On the whole the objectives of proposals for the amendment of the Criminal Procedure Code are good, and I hope the members of the Joint Select Committee will take into consideration all aspects of the question and bring in necessary modifications.

The hon. Home Minister referred to the number of acquittals. I submit that the main reason why acquittals are very large is that the investigation is not efficient. If the investigating officers, the police officers, the supervisors of investigation, namely circle police inspectors, the superintendents of police, the assistant superintendents, if they happen to be efficient, there will not be so many acquittals. If there are no defects in the investigation then there will be no difficulty in the case being properly tried and right conclusions arrived at. In order to do that, I submit the system of recruitment to the police should be overhauled. These police officers are junior officers and they are placed in charge of the police stations and the work of investigation being in their hands, they do not investigate the case properly. And from my own experience, I may say that quite often the defence gets all the necessary points from these defective investigations. If defence goes through the statements of the prosecution witness supplied from the police diary, it gets the points for the defence. If the police officer investigating the case has experience and does the.....

MR. CHAIRMAN: That will do.

SHRI BODH RAM DUBE: If the investigation is done properly, then I submit, the number of acquittals will not be many.

With these words, I support and welcome this measure and I appeal to the members of the Joint Select Committee to take into consideration the objectives of the Bill and modify it wherever necessary.

KAZI KARIMUDDIN (Madhya Pradesh): Mr. Chairman, I am sorry that though I attempted to catch the eye of the Deputy Chairman yesterday, I could not succeed and so I lost all enthusiasm, but since you have called me, I will speak a few words.

I sincerely congratulate the hon. Minister in charge of the Bill for bringing forward this piece of legislation. There is not the least doubt that the hon. Minister is actuated by the highest ideals and wants to introduce reforms in the Criminal Procedure Code so as to prevent costly litigation, dilatory ways of cases and to avoid delay in justice being meted out, for justice delayed is justice denied. These three things are coming in the way of the administration of justice There is also no doubt that looking to the eminence of the hon. Minister in charge of the Bill, and his wide experience, it is very difficult to make suggestions here. But since I have been practising on the criminal side for the past 28 years and since I have been a prosecutor as Mr. Hegde here I have some suggestions to make.

SHRI RAJAGOPAL NAIDU: Not prosecution, I suppose.

KAZI KARIMUDDIN: Freedom of speech and freedom of the Press are the very life and essence of democracy and I find that they are sought to be curtailed and restricted in regard to

[Kazi Karimuddin.]

the offence of defamation. Defamation is being made cognizable under the proposed amendment and in my opinion the provisions of arrest, seizure and the several things connected with the investigation of the case will be a source of harassment and at times will be a mechanism of oppression. Let us study the law of defamation in England. In England, in regard to prosecutions for defamation to be launched by the public servants, there are two ways; one is by indictment and the other is by information. In both these cases it is not the public servant and the police who launch the prosecution but the District Courts or the Judges in Chambers do it and a notice is issued to the other side. After that is heard, it is within the discretion of the Judge in Chambers to launch a prosecution. Why should there be this deviation in India to make it cognizable, passed my imagination. The intention of launching prosecutions and taking cognizance.....

SHRI B. GUPTA (West Bengal): Minister incognito.

KAZI KARIMUDDIN:.....is bound to affect the independence of the Press and is bound to affect freedom of speech of the public. I will, therefore, make an earnest appeal to the Minister in charge, who is also guided by the highest motives and ideals, to copy or study the law of defamation in England. In England, as I have said, an affidavit has to be filed on information or on indictment and after hearing the party, the Judge passes the order. In the present case, what will happen is that the District Magistrate and the District Superintendent of Police who happen to be generally one and if a local Press is writing against him, immediately the Sub-Inspector of Police will arrest the editor, seize his document and as a result of it it may be that the paper may be stopped. Therefore, it is not an ordinary matter of procedure whether to make it cognizable or not but it is a matter which indirectly stifles the freedom of speech and the freedom of the Press which is the very life of democracy.

Another point which I want to suggest to the Minister in charge is about section 145. That is a very important section in the Criminal Procedure Code and, according to the English law, possession, as has been stated by some Member, is the right to title, and in Criminal Jurisprudence it has been laid down, (i) it aids the criminal law by preserving the peace, (ii) interference with possession inevitably leads to violence, (iii) order is best secured by prosecuting a possessor, and (iv) possession is protected as a part of law courts. Let us see what has been done by the substitution of the new section for the old one. A court enquiring into the police report will only see, whether there is any dispute about possession and if there is dispute, irrespective of the merits, the property will be attached. Suppose a *goonda* without having any title or right to possession of that property commits trespass and there is a likelihood of breach of peace and dispute about possession, irrespective of the claim, the property will be attached. This is going to be the position which cannot be tolerated in law. In times when proof of title is difficult and transfer of property requires intricate formalities, it would be unjust to cast on every man whose possession is disturbed the burden of proving the title. Now again section 53A of the Transfer of Property Act will be hit. According to that section, if there is a contract and in pursuance of that contract the property is transferred..... (*Time bell rings*) . .and if he is arrested as a plaintiff he cannot use that but as a defendant he can raise that. Therefore, my submission is that it comes in the way of peaceful possession of the property.

[THE VICE-CHAIRMAN (SHRI K. S. HEGDE) in the Chair.]

The other thing that I want to impress on the Minister in charge is the system of jury. In England and in America people have begun to realise

that except in political offences, the system of jury is a failure; not only that but they are introducing the clause of waiver. The parties at times have a right to waive the right of being heard by a jury. In India it is as clear as day-light that people in the villages and people at the district places who form the jury are not highly educated.

DR. K. N. KATJU: Jury system is waivable in criminal cases.

KAZI KARIMUDDIN: I am talking of civil cases. In India very few educated people come forward to act as jurymen. I can say, as Mr. Hegde has narrated his experience as a Public Prosecutor—it is very unfortunate that I have to make that statement but I have to disclose it—that in several communal cases the Public Prosecutor knows the decision of the jury, as to what it is going to be, two or three days before judgment. It is very unfortunate but that is so. Therefore, in our country where you cannot get educated people as jurymen, in our country where there is so much of caste systems and communities, it is very unsafe to try cases by jury. My suggestion is that the Minister in charge of this Bill should insert a clause to give an opportunity to the accused to waive trial by jury and have trial by the Judge alone. There is no doubt that in England and in America once this system of jury was regarded as a safeguard for the freedom of the people in political offences; especially in subject countries that was a guarantee for justice. In India also when there were English Judges, in political offences it was thought essential that the accused should be tried by jury in order that they may understand the sentiments of the people properly, in order that they may understand the ideas and the prevailing customs of the country properly. When we are independent I think that trial by jury even for political offences has become meaningless.

Another thing that I want to bring to the notice of the Minister in charge .....(*Time bell rings.*).....is this point about the compounding of offences like theft, cheating and breach of trust which is made permissible. In my opinion, these are the most serious offences which can be said to be anti-social or against the society and if people are allowed to compound these offences there is no doubt that it will tell on the society.

Now there are very many good provisions in the Criminal Procedure Code and section 164 regarding recording of statements is a good one.

THE VICE-CHAIRMAN (SHRI K. S. HEGDE): Just a minute more. There are a number of other speakers.

KAZI KARIMUDDIN: Section 164 is the most important section that has been enacted. There have been many cases where witnesses have been tampered with. That is my experience of criminal law. Therefore, if you have that provision under section 164, I am sure the witnesses will be afraid of being prosecuted for perjury. Whether those statements are recorded for purposes of corroboration on contradiction is not the point, but there would be the danger that if they go against the statements they have made, they may be prosecuted for perjury.

There are many other provisions in the Bill which are revolutionary and which will help in avoiding delays in the trial.

I submit, Sir, that I commend this Bill with the suggestions that I have made.

SHRI KANHAIYALAL D. VAIDYA (Madhya Bharat):

श्री कन्हैयालाल डी० वैद्य (मध्य भारत) : उपसभापति महोदय, मैं इस विधेयक का स्वागत करता हूं और माननीय गृह मंत्री जी को बधाई देता हूं कि उन्होंने देश की जनता की पुकार पर ध्यान देकर

[Shri Kanhaiyalal D Vaidya.]

इस कानून मे सुधार करने के लिये यहा इस सदन के सामने इसे प्रवर समिति को सौपने का प्रस्ताव रखा है । उन्होने इस विषय मे कहा है कि आज इस देश की जनता मे अदालतो के बारे मे यह भावना हो गई है कि वहा न्याय नही मिलता और न्याय न मिलने के कारण लोगो को कानून अपने हाथ मे लेना पड़ता है । यदि हत्या का अपराधी अदालत से छूट जाता है तो उसके बाद लोग उसको मार डालते है । यह एक बडी भयंकर चीज है । अब हम स्वतत्र हो चुके है । स्वतत्रता के बाद हमारे विधान मे न्याय विभाग को, सुप्रीम कोर्ट (Supreme Court) को, सर्वोच्च अधिकार दिये गये है; पार्लियामेंट (Parliament) के ऊपर सुप्रीम कोर्ट के अधिकार है । माननीय कानून मत्री ने सेशन्स (Sessions) कोर्टों और दूसरी कोर्टों के फैसलों की कुछ जानकारी कराते हुये बताया था कि किस तरह से लोग छूट जाते है । वे माने हुये वकील रहे है । वे इस बात को अच्छी तरह जानते है कि पुलिस विभाग किस तरह से कार्यवाहिया करता है कि जिससे मुकदमो मे कामयाबी नही होती । मै भी वकालत कर चुका हू और बहुत सी कोर्टों का मुझे अनुभव है । सार्वजनिक जीवन मे भाग लेने के कारण भी मै पुलिस की कार्यवाहियो का जानता हू । पुलिस अधिकाश मामलो मे अपराधियो को नही पकडती । वह ऐसे लोगो को पकडती है जो छूट जाते है और पुलिस का काम भी दूसरी तरफ बन जाता है ।

यह विधेयक प्रवर समिति के सामने जा रहा है । इसलिये इसकी बहुत सी धाराओ के बारे मे मै यहा चर्चा नही करूगा । मै ऐसी धाराओ की चर्चा करना चाहता हू जिनको हमें विधान को सामने रखते हुये ध्यान मे रखना चाहिये । हम अपने देश में एक वैलफेयर (welfare) राज्य कायम करना चाहते है । हमने एक विधान बनाया है जिसमे हम कानून के मुताबिले सब को ईकुअल (equal) स्टेटस (status) देना चाहते है । इस कानून मे कुछ धारायें ऐसी है जो एक प्रकार के वेस्टेड (vested) इटरेस्ट (interest) या एक सेपरेट (separate) क्लास (class) के लिये इस तरह का डिस्टिंक्शन (distinction) क्रिएट (create) करेगी, जिस मे हम कुछ विशेष सुविधाये विशेष वर्ग को देगे । हम जहा इस कानून मे इस बात की व्यवस्था करने जा रहे है वहा हमे यह भी देखना है कि इस देश के अन्दर जब हम एक वैलफेयर राज्य कायम करना चाहते है, तो हमारी जुडिशियरी (judiciary), हमारी शासन व्यवस्था और सरकारी नौकर जिन को कि हम प्रोटेक्शन (protection) देने जा रहे है, वे इस लायक होने चाहिये कि हम वैलफेयर राज्य को कायम करने के लिये जो कार्य करे उसको पूरा करने लायक उनमे क्षमता भी हो । एक वैलफेयर राज्य को कायम करने के लिये, एक वैलफेयर राज्य की व्यवस्था को चलाने के लिये जो-जो सोशल (social) सुधार हमारी सरकार करना चाहती है, उसके लिये हमारी शासन की मशीनरी ऐसी सुधरी हुई होनी चाहिये कि उसमे सोशल सुधार करने की क्षमता हो । हमने पच-वर्षीय योजना के अन्दर ऐसी बाते रखी है कि हम इस बात की व्यवस्था करेगे कि जिससे अधिकारियो की सम्पत्ति की जाच हो सके । माननीय होम मिनिस्टर (Home Minister) को इस सम्बन्ध मे बहुत कुछ तजुर्बा है । मै उनसे इस विषय मे कुछ अधिक कहू, यह मै नही चाहता । मै केवल यह बताना चाहता हू कि पुलिस विभाग मे पुलिस की नौकरी पाने के लिये आज

क्या नहीं होता । एक पुलिस का अफसर नौकरी करने के बाद कितना मालामाल हो जाता है और अपने सम्बन्धियों और रिश्तेदारों को कितना निहाल नहीं कर देता । आप आज तक इस सदन में कोई ऐसा कानून नहीं लाये जिसके अन्तर्गत उस भ्रष्टाचार की जांच के लिये, जिन सरकारी कर्मचारियों ने इस तरह से रुपया इकट्ठा किया उसकी जांच के लिये कोई कार्यवाही की जा सके । जब तक आप भ्रष्टाचार को रोकने के लिये कानून द्वारा व्यवस्था नहीं करते तब तक मैं नहीं समझता हूं कि आप के जो प्रयत्न है या उद्देश्य है कि लोगों को न्याय शुद्ध मिले और शीघ्र मिले, वह कहां तक सफलीभूत हो सकते हैं । अगर कहीं खून हो जाय और उसके केस (case) में अगर लोगों को अदालत में जाने में किसी प्रकार की दिक्कत हो तो आपको उन्हें पूरी सहूलियतें देनी चाहिये ताकि वे अपना बयान वहीं गांव में अदालत के सामने दे सकें और न्याय जल्दी हो सके । इस देश में एक वैलफेयर राज्य स्थापित करने के लिये यह बहुत जरूरी है कि आप एडमिनिस्ट्रेशन में सुधार लाने के नाते से इन चीजों पर भी ध्यान दें । डिमोक्रेसी (Democracy) के सिद्धान्तों पर आधारित एडमिनिस्ट्रेशन में सरकारी नौकरों को डिफेमेशन (defamation) के कानून में जिस तरह विशेष रक्षण देने की व्यवस्था को आप शुरू करने जा रहे है, वह उस डिमोक्रेसी को कहां तक मजबूत बनाने वाली होगी, इसको भी आपको देखना होगा । हमारे डिमोक्रेटिक इंस्टीट्यूशंस (institutions)

10 A.M. पार्लियामेंट में या धारा सभा में बैठे जो लोग है, उनको भी आप इस कानून के अन्दर रक्षण नहीं देते कि अगर वे अपने सदन के बाहर कोई काम करें तो उनको कानून से ऐसा कोई रक्षण प्राप्त होगा । मैं नहीं समझता कि आप एक विशेष प्रकार का प्रोटेक्शन (protection) सरकारी मशीनरी को ही क्यों देते है । मैं स्वयं इस बात को जानता हूं—आप भी जानते होंगे और देश में बहुत से लोग जानते है—कि हमारी डिमोक्रेसी व्यवस्था के अन्दर बहुत से ऐसे समाज विरोधी तत्व है जो इस देश में गड़बड़ पैदा करते हैं और डिमोक्रेसी को फेल (fail) करना चाहते है । बहुत से हमारे अधिकारी भी आज ऐसा काम करते है कि जिसके कारण हमको आलोचनायें सुननी पड़ती हैं । आप जो व्यवस्था कर रहे है उसमें डिमोक्रेसी को सफल और मजबूत बनाने वाले जो व्यक्ति है, डिफेमेशन के ला (law) के अन्दर किसी भी वक्त सरकारी मशीनरी के लोग जेल में भेज देंगे और उनका कुछ पता भी न चलेगा ।

हाईकोर्ट (High Court) के विषय में मैं आप से दो एक बातें करना चाहता हूं । उसके बारे में मेरा जजेज (Judges) के सम्बन्ध में यह तजुर्बा है कि बहुत से लोग जो सेशन्स-कोर्टस (Sessions Courts) से छूट जाते हैं उनको हाई कोर्ट अभियुक्त करार देती है । मैं आपको बताऊं कि कुछ लोग ऐसे हैं, जिनको जीवन भर बारह-बारह, पंद्रह-पंद्रह वर्ष मुकदमा लड़ते हो गये और सेशन्स कोर्ट द्वारा जिनको अभियुक्त करार दिया गया था वे हाईकोर्ट से छूट गये । न्याय प्राप्त करने के लिये लोग राज्य की व्यवस्था के सामने गये परन्तु वहां भी उनको न्याय नहीं मिला और वर्षों तक व्यर्थ की प्रतीक्षा करनी पड़ी, बर्बादी उठानी पड़ी । ऐसी दशा में अब वे न्याय प्राप्त करने कहां जावें ? आप कहें तो मैं ऐसे लोगों को आपके पास भेजूं । ऐसा भी उदाहरण है जिसमें हाई-कोर्ट के जज ने, जिसमें वह स्वयं प्रार्थी था,

[Shri Kanhaiyalal D. Vaidya.]

कंटेम्प्ट आफ कोर्ट(Contempt of Court) के अपराध में इसी हाउस (House) के एक माननीय सदस्य को, जो एक अखबार के एडीटर (editor) थे, सफाई का मौका दिये बिना मुकदमा चला कर सज़ा कर दी, और जब उन्होंने सुप्रीम कोर्ट में अपील (appeal) करने की इज़ाजत चाही, तो वह भी नहीं दी गई । मैं आपका ध्यान सुप्रीम कोर्ट के एक फैसले की तरफ दिलाना चाहता हूं जो कि विन्ध्य प्रदेश के एक मिनिस्टर (Minister) के बारे में है । (*Time bell rings.*) इस मामले में उस मिनिस्टर के विरुद्ध २५ हज़ार रुपये रिश्वत लेने के आरोप में कार्यवाही हुई थी । इसमें कई प्रश्न, कई मुद्दे खड़े हुये, जिन से प्रकट होता है कि किस तरह डिमोक्रेसी को असफल करने के लिये आपके मजिस्ट्रेट (Magistrate), आपकी पुलिस, किस हद तक चले जाते हैं । जैसा कि इसके विषय में सुप्रीम कोर्ट ने एक स्ट्रिक्चर (structure) पास किया है उससे मालूम होता है कि पुलिस ने खुद पच्चीस हज़ार रुपये देकर उस मिनिस्टर को लालच दिया, और जब वह रुपया मिनिस्टर के पास निकला है तो उसने हिचक के साथ यह कहने की धृष्टता की कि ४०,००० रुपये मैं घर से लाया था जिसमें से मैंने १५ हजार की तो मोटर खरीदी और २५,००० मेरे पास बच गये है । सुप्रीम कोर्ट ने मिनिस्टर की उस बात पर विश्वास नहीं किया और उसे सज़ा हुई है । मैं आपसे कहता हूं कि इस तरह के कई फैसले, इस तरह के स्ट्रिक्चर निकलते रहते हैं । जिस केस का मैंने अभी बयान किया, उसमें जिस पुलिस अफसर या मजिस्ट्रेट के खिलाफ स्ट्रिक्चर पास हुआ, उन्होंने २५,००० रु० देकर एक व्यक्ति को फंसाने की साजिश की । सुप्रीम कोर्ट ने उसकी सख्त निंदा की है । आपकी गवर्नमेंट (Government) ने उस पुलिस अधिकारी और मजिस्ट्रेट के खिलाफ क्या आज तक कोई ऐक्शन (action) लिया ? मैं आपसे निवेदन करूंगा कि इस तरह से कानून में आप जब डिफ़ेमेशन को सरकारी नौकरों आदि के लिये दस्तंदाजी की व्यवस्था बना रहे हैं तब उसमें इन चीजों की रोक भी होनी चाहिये । मैं उस केस की प्रोसीडिंग्स (proceedings) को जैसा कि वह अखबार में छपी है टेबुल (Table) पर रखता हूं जिससे कि यह जो चीज़ हुई है उसको रिकार्ड (record) में रखा जाय । मैं नहीं समझता कि राष्ट्रपति के सिवाय किसी अन्य व्यक्ति को ऐसे मानहानि आदि की धाराओं में किसी प्रकार से रक्षण प्राप्त करने का अधिकार होता है ।

मैं अन्त में यह कहना चाहूंगा कि आप इस कानून में ऐसी व्यवस्था करिये कि जिससे जो नया समाज हम इस देश के अन्दर बना रहे हैं, वह ऐसा मजबूत बने जो सब प्रकार के क्रिटिसिज्म (criticism) से छुट्टी पा जाय और देश के अन्दर हम डिमोक्रेसी को जिस मजबूत बुनियाद पर कायम करना चाहते है उसमें कोई दिक्कत न आये ।

[For English translation, *see* Appendix VII, Annexure No. 319.]

SHRI S. C. KARAYALAR (Travancore-Cochin): Mr. Vice-Chairman, I rise to support the motion that has been moved by the hon. the Home Minister.

Sir, this is a very important piece of legislation which has come up before Parliament. The object of this amending Bill is to simplify the procedure so that all delays in criminal proceedings may be minimised. In so

far as this object is concerned, it is very much to be commended.

I am not a lawyer by profession, but having had something to do with law, I shall make some general observations.

It was contended by some hon. Members that this Bill now before the House is not exhaustive. It was pointed out that in order to make this Bill really exhaustive an amendment of the Penal Code and of the Evidence Act in certain particulars should also be attempted. The point was that unless the Penal Code and the Evidence Act were also amended there could not be a complete scheme for criminal proceedings and as such this ought not to be attempted without amending them. I cannot really agree with this point of view. In so far as this Bill proceeds to simplify the procedure, I support the provisions of the Bill.

Coming to the provisions of the Bill, I shall refer briefly only to one or two clauses. As regards the clause relating to commitment proceedings, it has been aptly pointed out that the preliminary enquiry does not really serve any purpose. It has been pointed out that in 98 out of 100 cases, the cases are actually committed to the Sessions. The object of commitment proceedings being only to find out whether there is a *prima facie* case to go before the Sessions, that object is defeated by having protracted proceedings first before the Committing Magistrate and then having a duplication of the same proceedings during the Sessions trial. If we attach any meaning to the statistics, namely, that in 98 out of 100 cases the Committing Magistrate commits the cases to the Sessions, there is no advantage in having a preliminary enquiry and I support this provision in the Bill for doing away with this preliminary enquiry. It was suggested by some hon. Members that there should be some kind of a preliminary enquiry. I could not understand what was meant by some kind of a preliminary enquiry. The scope of that kind of preliminary enquiry ought to have been defined so that suitable provision might be made in this Bill itself.

Coming to another provision, it is proposed to do away with the trial with the aid of assessors. It is a very wholesome provision. It has been almost unanimously condemned by practising lawyers on the ground that trial with the aid of assessors serves no useful purpose. So it may be very conveniently buried.

Then I shall say something about the proceedings under section 145. The object of the old section 145 is really to start proceedings when there is an apprehended breach of peace. Very often, of course, the proceedings are started on the report of the police but actually the person behind such proceedings is the party to the dispute. He often sets the machinery of section 145 in motion for the purpose of achieving some fraudulent motive. It was pointed out by one hon. Member that very often it occurs that some *goonda* trespasses upon some other's property and he wants to set the machinery of section 145 in motion. It ought to be made impossible for such proceedings to be started and as a matter of fact proceedings ought to be started against the *goonda* by resorting to section 107. There is, of course, provision for it. What I would suggest is that in such cases there ought to be a provision in the proposed Bill for the Magistrate to find out the correct position by having some sort of summary enquiry instead of giving room for the *goondas* to take advantage of the provision. That will to a great extent avoid delay. Some sort of machinery ought to be found by which this kind of speculation in the matter of possession may be done away with.

As was pointed out by some Hon. Members, the real object of this section is only to prevent a breach of peace. Under the proposed amendment protracted proceedings are to be done away with but there is no provision for dropping the proceedings altogether

[Shri S. C. Karayalar.]

under section 145. When really there is no apprehension of a breach of peace, it should be possible for the proceedings to be dropped. Long after it ceases to be a position in which there is an apprehension of breach of peace, the proceedings are continued. There ought to be some provision made to drop the proceedings when there is no apprehension of a breach of peace. That is my suggestion.

I do not propose to go into other clauses. These are some of the suggestions I wanted to make. With these words I support the Bill.

SHRI AKBAR ALI KHAN (Hyderabad): Mr. Vice-Chairman, as regards the Bill that is being entrusted to the Select Committee, I think, after hearing the opening speech of the hon. Minister that it should be considered as a national measure and not as a party measure and all the arguments, I have come to the conclusion that in substance and in its major portions I am inclined to oppose this measure. I thank the hon. Minister for the little mercies that he has shown—in the matter of curtailment of the period regarding bail or furnishing of the copies of the reports and statements and I do attach importance to the fact as he has correctly laid emphasis that the enquiry should, as far as possible, be held at the place where the crime has been committed. We are obliged for all these things but taking into consideration the other fundamental things, for instance, the abolition of the commitment proceedings, the modification of the section relating to dispute concerning land which is likely to cause breach of peace and thirdly the matter relating to the protection of the Ministers and the Government servants and lastly, the attempt to further re duce the powers of the High Court in relation to revision, I do not agree with the hon. Member. I will confine my remarks to these four points.

It is evident that this double procedure of committal and then further trial has been confined to only very serious offences. It is necessary that we should have speedy justice, but in that attempt and in that anxiety to have speedy justice let it not be that there is no justice. In such serious cases double testing, double vetting in two places, I think, is in the greater interest of justice and in view of the conditions in the country—the lack of education and the admittedly low standard of the police—it is necessary that there should be committal proceedings as well as further trial. I think, that there are other methods to curtail the procedure. For instance, a direction to the magistracy to continue the proceedings without break will certainly achieve that aim to a certain extent. In this connection, I may point out to my learned friends that in the year 1926 when Sir Ali Imam was the Prime Minister of Hyderabad, in consultation with Sir Tej Bahadur Sapru, we enforced in our State the separation of the judiciary from the executive throughout the State, from the bottom to the top, with the result that the delay that used to occur on account of the administrative responsibilities of the Revenue officers has been very much curtailed. May I, therefore, request the hon. Minister to concentrate on this and to see that the pledges given by the Congress—several resolutions have been passed by the All India Congress Committee in this connection—that there will be a separation of the judiciary from the executive are fulfilled? It is high time that the pledge should be implemented and implemented without further delay.

That is one of the important measures which would achieve the object which is so dear—and which is certainly a laudable object of the hon. the Home Minister—to avoid delay in dispensation of justice. So, I think this procedure in the case of these serious offences of having two trials—committal and further trial—should not be lightly treated. And, I am sure, the Select Committee will give due thought to this measure.

Now, the second thing that I referred to was regarding the provision re-

lating to the breach of peace and action taken by attachment of land. Here again, I feel that in order to achieve the curtailment of the length of proceedings, this provision has gone a step backward which would cause grave and serious injustice The mere fact that there would be a breach of peace should not lead to attachment of land. This would be giving a premium to the undesirable and putting persons in possession under a serious disability and disadvantage We want, of course, the proceedings to be summary, but let there be an enquiry, let there be evidence to the satisfaction of the Magistrate, let him satisfy himself that it is a case where the attachment is necessary. To do away with that, I think, really amounts to tampering with justice

The third thing, that I referred to, was the further protection given to Government servants I need not go in detail into this, but when an offence is made cognizable what more does the police want? The consequences of search and arrest automatically follow in the course of investigation It would be positively interfering with the rights of the citizens

You have got recently the Press Act. I entirely agree that there is 'yellow' Press and that 'yellow' journalism has to be stopped and stopped effectively. There you have the measure; it is in addition to the ordinary law. Why do you want further protection to the servants of Government or the Ministers? I must say this is bound to do more injustice to the citizens than the advantage you contemplate There may be a thing which is hard; but we have to see whether by introducing this provision we are introducing a thing which is harder to the public So, in view of these reasons, I think that it is not called for, and the Select Committee will, I hope, certainly remove that provision that there should be further protection regarding defamation. I entirely disagree with this provision.

Lastly, we believe that the High Courts will be the altars and sacred places where justice will be done. I am sure the hon the Home Minister is fully aware that the High Courts are very strict in using the powers of revision, they are very reluctant to go into the matter of question of fact, but whatever the power, they have got to see that justice is done If you reduce its powers by saying that they would be confined only to points of law in criminal matters, where it is mostly the question of fact, it is not at all desirable in the present context of things. I am sure, as this Bill is being sent to the Select Committee, these and many other points—I do not want to cover the ground that has already been covered by my learned friends—will be given very serious consideration by the Select Committee This is a very important Bill and I know, that the hon the Home Minister had been at it for the last three years. Whenever he went anywhere, he used to discuss this matter. These are the matters which, I think, should be given further consideration

THE VICE-CHAIRMAN (SHRI K. S. HEGDE): The hon. the Home Minister

DR K. N. KATJU: Mr. Vice-Chairman, we have had a very valuable discussion in spite of the fact that some charming words were used by my hon friend who is accustomed to using them with reference to me. He called the Bill an 'obnoxious' measure, 'a monstrosity' and all sorts of things. I do not propose to enter into a discussion of language only. All the speeches which have been delivered here and in the other House will, I imagine, if the House approves of this Bill, be going to the Select Committee to be considered by the members there very carefully, and every suggestion made will receive the fullest consideration. I have said times out of number that I am not wedded to a single proposition in this particular Bill It is a matter for the consideration of the whole House. I may hold an opinion formed on such consideration as I am capable of. But it may be wrong Other people may be wrong. It is a matter on which the

[Dr. K. N. Katju.]

majority opinion, the substantial opinion in the country, should prevail.

Now, with these introductory observations, I shall take up a short time in dealing with some of the important points which have emerged. It so happens that everything else is overlooked, and there are only just three points. Sections 162, 164 and defamation. And something has been said about prosecution for perjury and section 145. Let me take section 145 first.

With all due respect, it sometimes occurs to me that insufficient attention is paid to the wording of the present statute and what the amendment intends to do. Now, as I understand the law, section 145 becomes applicable when there is a dispute regarding possession—that is number one—and that dispute either has raised or is likely to raise a danger to the peace, or is likely to raise a breach of the peace. You know, the police may make a report; the party may make a report; and if the Magistrate, after reading and hearing the parties, finds there is no dispute as to possession, he does not interfere. When the land is definitely in one's possession, well, if anybody disturbs the peace of the land, he will send him to jail. If the Magistrate is satisfied that I am actually in possession, he will not allow anybody to dislodge me from my possession whatever the threat may be. The Magistrate acts when he comes to the conclusion on two points—possession is doubtful, he cannot make up his mind which party is in possession, and secondly, when this doubt is coupled with another doubt in his mind that if he allows the situation to continue, there may be a disturbance to peace. Today, under the Code, it is open to him to attach the property. He may or may not do it. Secondly, what he does is that he calls upon the parties to present before him evidence as to their possession. When we sat down to discuss these amendments, we received complaints from many many quarters that these enquiries into possession used to be protracted. I was told that in some cases it had taken up to 18 months. Secondly, there are rather difficult questions for a magisterial mind and what was said to us was that this inquiry into possession should go before a civil court and—they said—here the possession is doubtful, disturbance of the peace is likely, and therefore instead of permitting the Magistrate to enter upon this question of possession and adjudicate upon it, to ask him to attach the property—which he can do even today—and leave the question of possession which is of a civil nature, to be decided by a civil court. Now that is at the back of their mind. I do not know whether my hon. friends here who have taken part in this discussion have had this picture before them. Now we have got the amendment. Someone said to me "a reasonable thing". Well, if you leave it to the civil courts, then the man may have to go there and may have to pay something towards court fee and summons, and so on and so forth. We like to simplify the procedure. In the U.P. we have got Rent and Revenue Acts. There it is said that if a question of title arises, then it is open to the court to frame an issue and to remit it or to send it to the nearest civil court of competent jurisdiction and ask that civil court to give its finding upon it, to remit it to the revenue court and the revenue court will decide upon it. One alternative may be that where the Magistrate is unable to come to a clear conclusion on the material available—the police report and the other party reports—as to who is in possession, well, he may attach the property, and then and there frame an issue, and send it to the nearest Munsiff's court and say, "Well, here is this dispute before me. Will you kindly within two months or six weeks let me know after recording evidence as to which party is in possession according to you?" The matter goes before the Civil Judge, the man

who is accustomed to try these cases, and he sends his findings to the Magistrate after six weeks, and the matter is finished So, the whole of my point is this that it is not the way in which you decide it I was trying to explain to the House the reason why this measure has been introduced There was nothing sinister about it, and there was not the least possibility of a Magistrate disturbing me Supposing I am there in possession of a house I pay the water tax, I pay the house tax And somebody goes and gives a false report that so and so is not in possession, and, therefore, there is likelihood of a breach of peace I go before the Magistrate and I say "Here am I in possession of the house" The Magistrate will at once reject the whole thing That is at the bottom I am trying to explain this because I think that there is some misapprehension about this section 145

SHRI H C DASAPPA May I request the hon Minister to point out the provision in this clause relating to the question of restoring the possession to the rightful owner?

THE VICE-CHAIRMAN (SHRI K S HEGDE): He is only suggesting what could be done

DR K N KATJU Mr Vice-Chairman, the criticism that was made very vigorously is that this amendment is likely to be misused because a person who is in possession may be disallowed and may be compelled to go to the civil court and there prove his title, he may have to incur enormous expenditure court fees fees for lawyers and witnesses, and all the rest of it And there may be great injustice done to him I will tell you, Mr Vice-Chairman, as to what was at the back of our minds We were told by lawyers at different places—it did not occur to me—that the Magistrates were not sufficiently competent to adjudicate even upon questions of possession Therefore, this matter should go to the civil court I have been thinking over this matter, and I do not know what the Select Committee will decide But it may be that you ask the Magistrate himself to frame an issue and send it to the Munsiff and have his decision If the Select Committee Members say, "No, no The magisterial decision is quite all right, that decision generally takes only two weeks", I have absolutely no objection Let section 145 stand, I am not wedded to anything Now that is one thing

The second thing was raised by Dr Kunzru He first put some matter about *panchayats* Now the House knows from the Statement of Objects and Reasons that the *panchayats* are not within the four corners of this amending Bill We thought over it, but then we said that in every State of India they had a *Panchayat* Act of their own These judicial *panchayats*, generally called *nyaya-panchayats*, are provided for in different Acts, and they have got different procedures and everything different My hon friend quite rightly said, "Well, that is no good, because in the newspapers we read reports of writs" Now sometimes this reporting conveys to you a very imperfect picture of what is actually happening For instance, take Uttar Pradesh As a matter of fact, these days the Uttar Pradesh Legislative Assembly is engaged in overhauling the whole Act They have introduced an amending Bill and I am not exactly familiar with the provisions therein But I asked for information and I was informed that 2,40,000 cases had been filed before these judicial *panchayats*, both civil and criminal Out of these, one lakh cases were amicably compromised You will be astonished to hear Mr Vice-Chairman that only in 2 000 cases was there interference by the revisional court not the High Court The Act permits applications in revision on the general ground of miscarriage of justice and not observing the natural processes of justice The revision is allowed and an eight-anna stamp is affixed on the application About 6,000 applications were filed, 4,000 were rejected and 2,000 were allowed Please now remember that 2,40,000

[Dr. K. N. Katju.]

cases were decided on the spot without *vakils*, without paying a single penny of court fee, without coming to the district headquarters or the subdivisional headquarters There was absolutely no expense to the parties concerned And the provision there is that the Munsiff or the Sub-Divisional Magistrate cannot substitute his own judgment. He must send back the case to another Bench for a decision Some ingenious lawyers—I might have done it myself—found that under the Constitution some writs may also be applied for Now, applications were made I haven't got the statistics with me as to how many applications were made and how many were allowed; probably 13 or 14, or let us say 15, in a year. But the learned Judges—I am always very respectful to them—gave two-column judgments, as if they were judgments by a Constitution Bench of the Supreme Court. They say that the *sar-panch* was not properly called, or that something was done. And if you read those judgments in the U P. newspapers, you are inclined to get an impression that the whole thing is bad and it is doing the gravest injustice and the people are not being really served. All these facts which I have now given to you, the newspapers do not carry Someone probably reminded me that the very best way of amending the criminal procedure would be, in every case, not to allow an appeal, not to allow any witnesses to be examined, not to allow any *vakils* to appear And he said that there would be unadulterated justice I think there is some sense in that Not the witnesses, not the arguments It reminded me of the agitation carried on strongly against the Rowlatt Bill of 1917, and the slogan then was "No appeal, no *vakil* and no *daleel*" And I say, the more we have of the *panchayat* system, the better for us Today the jurisdiction of the *panchayats* is very limited—Rs. 200 on the civil side and very very minor offences on the criminal side. Sometimes I was thinking .

SHRI H. N. KUNZRU (Uttar Pradesh): May I remove what seems to me to be a misapprehension on the part of the Home Minister? I did not criticise the formation of *panchayats*. What I pointed out was that the writs filed for revision of the decisions of the *panchayats* had added to the work of the High Courts, and that the Government had done nothing in spite of the greatly increased work of the High Courts to increase the number of Judges.

DR. K. N. KATJU: That is a different matter altogether We are not concerned here with the work in the High Courts.

(Shri H N. Kunzru rose to speak.)

I am coming to it. The greatest cause which has added to the work of the High Courts is the Constitution itself. I think that, after the Constitution came into operation, with all the *zamindari* litigations and all that, in the Allahabad High Court alone 8,000 applications were filed under the Constitution So far as the question of the arrears is concerned, that is a different matter altogether. I am in entire agreement with my hon friend that the arrears should be reduced, but it raises a different question. It has nothing to do with the Criminal Procedure Code Here we are primarily concerned with the decisions of the cases in the lower courts If you are unlucky enough today to get convicted by a Sessions Judge, you go to the High Court, but you are not so unlucky. You are lucky to be acquitted by the High Court On the figures I gave about a particular district, there was no question of appeal to the High Court. There was nobody convicted. We are now discussing under this measure the cases tried in the lower courts. On the general point, I entirely agree that, if there is a High Court in which there are large arrears, there should be a sufficient number of Judges If you ask me in a proper manner and on the proper occasion as to why Judges have not been appointed in a particular High Court, then I will give you the reasons why

it has not been done. But I do not want to enter into that question here.

Then, I think you mentioned, Mr Vice-Chairman, and I think some other hon Members also referred to it, the question of the appointment of a Director of Public Prosecution or a Director of Prosecutions It is a very attractive phrase. I shall make enquiries about how a Director will work, because, I think, all hon. Members know that in every district it all depends upon the cases. In ordinary cases, it is the Sub-Inspector or whom we call, the Station Officer, who submits a charge-sheet If it is a case of any gravity or of any importance, then, while the investigation is proceeding, the Circle Inspector comes along for a day and supervises the investigation. If a case is a complicated one, even the Superintendent of Police comes into it, because the Superintendent of Police in the district is supposed to have complete knowledge of the investigation from day to day. I think the rule is that a copy of the police diary should be sent to the Superintendent of Police every evening So, he keeps an eye on all the important cases, and not occasionally but frequently, if it is a case of some magnitude, the Superintendent of Police himself goes to the spot and checks the investigation, checks the evidence and all that. Sometimes even the D I G's go there. The point that I am labouring is that in every district there is adequate machinery to supervise the investigation You may say that the whole stream of investigation is polluted right from Gangotri to the Bay of Bengal It is unfair, it is not proper to say that the Sub-Inspector produces or manufactures evidence, that the Circle Inspector sees the idea and keeps quiet, the senior Superintendent of Police also says, 'It cannot be helped' and so on I have given you the present procedure Now, I do not know what exactly will be the function of the Director of Public Prosecution and how he will be appointed. I shall have to consult the State Governments about it, and the Select Committee also will go into this matter Take, for instance, U P or Bengal or Madras There are three crores of people or four crores of people and numerous districts. If you have just one Director of Public Prosecution sitting in his headquarters at Madras or Calcutta, then I don't know how many Assistant Directors will have to be there, what sort of staff they must have, how much expenditure it will be You have to work it out. You cannot have just one Director of Public Prosecution sitting, let us say, in Lucknow and doing the whole job in the State He just cannot do it He will have to have his Assistant Directors in every district According to you, he must control the proceedings, control the investigation The idea is very good, and I shall see what can be done about it By the time the Bill goes to the Select Committee, we shall have some further information on how this system works in England and how it will work here

Next, the point which was emphasised, of course, was the police The police is the villain of the piece, but the cases are true. You were pleased to say that 95 per cent. of the cases were true cases, that 95 per cent. of the charge-sheeted people were really guilty people But it was said that the evidence was generally false. You were pleased to say that sufficient attention was not paid to detection Now, this matter has been under consideration and in every State we have got a police school. We are taking steps to strengthen the courses in detection, in observation; research laboratories have been established in every State, where fingerprints, footprints, hand-writings, all these adventitious, external aids for determining and helping investigation—are being studied and encouraged, and a very fine course is being given to every police officer who starts service, not only a fine course to begin with but even refresher courses Last month we sanctioned—rather approved of—a proposal to establish a Central School of Research in Investigation Methods

[Dr. K. N. Katju.]

We are doing all these. The difficulty in Indian conditions is this: Most of the crimes are committed in rural areas. They are not crimes of a scientific nature which you find in England or France or the United States. They are primitive in character and the information reaches the police after some passage of time, five hours, seven hours, ten hours. Now, I have been a reader of Sherlock Holmes myself and I know what investigation is. By the time the Sub-Inspector reaches the spot thereabouts or even the day after, there must have been multitude of men passing over the place obliterating all footprints, etc. I have seen many times myself that there is no investigation in a scientific sense, but we are trying to do our best.

The question of integrity is a different matter; it is a matter of public opinion; it is a matter of social opinion. Most of us here have got our sons or sons-in-law or nephews as police officers. I should like to know from hon. Members and also from people outside, if a police officer makes Rs. 10,000 or Rs. 5,000 in any particular case and brings home the money, how many fathers are there who would say. "You have brought disgrace to the family. Well, you get out or I get out and commit suicide."? But the family will be jolly glad. We may talk about it on the public platform, but the family will be very happy that Rs. 5,000 have come to the family. There will be some feeding with *poories* and *kachories*. If there is a daughter to marry, she can be married with the money, or they can have some ornaments for her. Social conscience, I tell you, is dead. We talk about it here. We don't put it into practice. That is about the integrity of the police and the legacy is bad. My only hope is—my living hope is—when I go to Abu where we have got a Police Training School, where there are I.P.S. officers, fine people, lads of good standing, some come from the Dehra Dun School, some from the Scindia School and various others from the Universities, —we shall do our best. We put before them these ideas. Well, we are hoping that they will continue to build up traditions. The tradition has been bad, I quite realise it. Why it has been bad is an unnecessary thing. This social opinion should be built up; public opinion should condemn it: not public opinion here only in this hall, but public opinion in railway trains, public opinion in *mohallas*, public opinion in the way of social boycott; if you find that any police officer is a corrupt police officer, then I say he should never be invited to any dinner party, he should not be invited to any social function, he should not be invited to attend any marriage, and if possible don't take his daughter in marriage. If you do that.....

SHRI H. C. DASAPPA: And Government take no action. (*Interruptions.*)

SHRI B. GUPTA: The trouble is in our country the police officers' daughters are getting Ministers' sons for marriage.....

DR. K. N. KATJU: So far as this police business is concerned, I have told you. The other thing is—you know it yourself—that there are two reasons why cases are false cases. One is a case in which the police is, what you may call, an encouraging party in ordinary cases of murder and the policeman as you said, wrongly thinks, "I must produce two eye witnesses or something—embroidery" and thinks foolishly "If I were to tell a plain story, the case would fail." He does it. I remember myself a case. A man was murdered. He suspected —he was rather afraid that he might be killed because there was an enemy. So he had employed two guards. He used to sleep in one *charpoy* in the middle, one guard this side and another guard on the other side. The man was murdered. Now it so happened that a day before, one of the guards had gone on leave. So there was only one guard left. If the police had left that case with that one

guard—produced the one guard—the case would have been proved. Foolishly they said that both the guards were present and that man who had gone on leave came forward, he impressed the Sessions Judge and the Sessions Judge sentenced the man to death. The case came to the High Court. I was able to establish up to the hilt from that record that one man was not there. I could get him acquitted. He said "What is to be done? How can we believe? The case is a false case." That is the way it happens sometimes. The other way is this, which is the more common one. There are village factions, 10 people on this side and 10 people on that side. A fight takes place over a piece of land or crop and the usual *lathis* and spears are used and 2 people of one party are killed. Everybody knows who are the assailants. Let us see what happens. When you go and lodge your report, what do you do? You name the three who have actually killed and you name other five. You are familiar with that class of cases. They are sons, nephews, close friends and you say eight people came and two people were killed. The poor Police Inspector says—I know—"What are we going to to do ? For God's sake tell the true story." They say "No. all these eight people came." The police is not to blame. It is the village faction which is to be blamed. Very familiar story. And the man says, he did not do it and sometimes you produce a perfect *alibi*, either false or true, and if the judge gets suspicious that two innocent men are being involved in this, they say that the whole case may be false and all the eight get away.

SHRI H. N. KUNZRU: Does money pass hands in these cases or not?

DR. K. N. KATJU: Not much. Money passes in other ways. My submission is that the way in which it works is rather complicated but we are concerned here in this Code of Criminal Procedure with dealing with what you call, the legal procedure. I cannot put a section that no one should take a bribe. What is the use? There is a section in the Indian Penal Code which says that no one should take bribe and if he does, sentence him.

Then my hon. friend said he was thinking of the arrears in the High Courts. We have a section here which authorised Magistrates to deal with a large number of cases—what you call section 30 Magistrates. Now I shall look into it and I am obliged to him for raising this point because I don't want the right of appeal to a High Court in a severe case to be done away with. Whatever may happen in the revision cases, to which my hon. friend referred—a revision is a very unsatisfactory method. It depends from judge to judge. I think the present rule is that if a case is decided in the Sessions by an Assistant Sessions Judge and if he inflicts a sentence below 4 years or 4 years, then the appeal is heard by the Sessions Judge. If he imposes a sentence exceeding 4 years, then the case goes in appeal to the High Court. I shall look into this matter. We may entrust a trial to a Magistrate under section 30 empowering the imposition of a sentence of 7 years or to an Assistant Sessions Judge whom we propose to give the power up to 10 years but so far as appeal is concerned, whether an appeal should lie to the Sessions Judge or the High Court, it might be looked at from the point of view of the sentence but as I said, I am grateful for this point having been raised.

Sections 162 and 164 have been the two things at which everybody has had a shot. Now, so far as section 164 is concerned, I don't want to enter into any elaborate or lengthy argument but it really surprises me that the argument is that a witness is prepared to tell a lie under the pressure of the police. He is truthful but he cannot withstand police pressure. The moment he comes indeed before a Judge, he becomes a truthful man, an absolute embodiment of truth. He contradicts what all he had said and

[Dr. K. N. Katju.]

he is telling the truth and rulings have been quoted before me. I have not seen them because I disliked sometimes reported decisions of any High Court or Privy Council in the latter days of my practice. The Privy Council had said if a statement of the witness had been recorded under section 164, he became a tainted witness. The police is tainted, the witness is tainted, the witness is under the pressure of the police and the police is trying to bind him down by taking him before the Magistrate and getting his statement, and, therefore, he is not entitled to much weight. Only that man or witness is entitled to weight who is examined during the course of the investigation in the first 2 or 3 days and then left alone and he may then come before the committing Magistrate after five months or 7 months and there he will tell the truth. During the investigation he was under the pressure of the police and he was telling lies. When he comes before the committing Magistrate, he begins telling the truth. Now this is a picture I tell you of your imagination—a figment of your imagination. There is no presumption either way. The man may have been telling the truth during the course of the investigation and by the time the case comes before the committing Magistrate, under pressures of various kinds, from relations, neighbours, castes, creeds, political pressure, money pressure, he is prepared to tell anything he likes and he does it. Please remember I am not delivering what may be called a party speech at all. I am trying to place my own experience before the House. The offence has been committed. If it is a murder, the dead body is there. There is sensation. Conscience is roused and everybody is shocked. And people come and tell the truth. I have seen wives giving most damaging evidence against their husbands, sons against fathers. The thing comes out. They simply blurt it out. But if you allow time, what happens? One month, two months, many months pass. The sensation goes away. The shock disappears. The man who had been killed, well, he had been buried or cremated. No one then listens to the moanings of his widow or the cries of his children and all sympathy goes to the accused. "The poor man," they say, "defend him. Say this way or that," and the witnesses change. This is a fact which will be borne out by every experienced lawyer. I am just following the experience in these matters. You look at a police diary. I tell you in 99 cases out of a hundred, you will be struck by the absolute truth of the statements in the diary. Well, it is but natural. But you allow witnesses and then you will see the difference. Let me ask you, Mr. Vice-Chairman, in how many cases in your experience has it happened that the accused stuck to his innocence, stated his innocence from the very start? When the accused states his innocence from the very start, then the chances are a hundred to one that he will be acquitted, because the Sessions Judge will say, "This man asserted his innocence right from the very beginning." But then of course, we lawyers are there and we start examining. There is the confession recorded by the Magistrate. Hon. Members know section 164. The Magistrate takes the greatest possible care to record the confession, after giving him every warning and so forth, telling him, "Do you know who I am? Tell God's truth, otherwise it may go against you." Then he makes a confession in three days. But the moment he comes before the court he retracts from the confession, the classical plea being, "I was beaten by the police." But if you see the police diary, you will see the thing clear. Murder will be out, for that is human nature. If a man kills another, for the first two or three days, he tells the truth. He blurts it out. He probably passes sleepless nights. He admits, "Yes, this is the knife, or this is the dagger. There is the blood-stained shirt or *kurta* which I have buried at such and such place." And you find them all there. Of course, the police being very poor, or having a bad reputation or bad repute,

lawyers and witnesses and everybody helps him and the man gets off. But if you were to read the police diary, if I put it before this House as before a *panchayat,* then you may be certain that 95 per cent, he will be convicted. It is after all human experience. I heard hon. Members, one after another refer to sections 164, 162 and other sections—I am not blaming anybody. Four things were picked out, Mr. Vice-Chairman. Sections 162, 164, defamation and summary trial for perjury, and listening to remarks in this House and in the other, one would think they want to encourage perjury. It looks like that.

11 A.M.

SHRI B. GUPTA: No, we want to stop it.

DR. K. N. KATJU: Very well. Let me go to the next point, I have to finish somewhere. Let me come to this question of defamation. When I heard the remarks made on this point, I was amazed. I was asked by hon. Members—I think you, Mr. Vice-Chairman, asked it—everybody asked, if the Bill had come from the Law Minister things would have been all right, the Law Minister is the embodiment of justice, impartiality and so forth. But the Home Minister, poor fellow, he is concerned with law and order and he wants that everybody should be convicted, right or wrong.

THE VICE-CHAIRMAN (SHRI K. S. HEGDE): I did not say so.

DR. K. N. KATJU: Very well, if you were to read it, you will find somebody said it, something, about the Law Minister and the Home Minister.

SHRI H. C. DASAPPA: I only said that you were providing ammunition for the opposition.

DR. K. N. KATJU: There is no question of provision of any ammunition. Do you think that in the closing days of my life I am going to send innocent men to jail? I want a peaceful life afterwards. Indeed, I have never been pained so much as by this charge, that I am here trying to put a noose round the necks of innocent men. If the Communists say it I would not mind, for they are perfectly at liberty to say what they like. Now take this question of defamation. My hon. friend there for whom I have great reverence, and others also, referred to administrative law. A very fine phrase; it captivates us. But what is administrative law? A different procedure, different substantive law, different series of codes for the favoured people? What is in the Bill? The amendment, if it passes the Select Committee and if Parliament approves of it, says that in the same court a case may be instituted by any other party. The procedure is the same. The witnesses are the same. The evidence is the same. It is just a question of who starts it, who opens the door so that the proceedings may begin. I am rather surprised when they talk about Ministers and their exercising pressure. If a Minister is defamed today, as a citizen he can start. Suppose you defame me. I go before a First Class Magistrate in Delhi and lodge my complaint and the procedure starts. We considered over this and we said this. If a Minister becomes the complainant, or if the police starts the case in which the first witness will be the person defamed, then you say, "Here is the Magistrate, poor fellow. He has just started life—only 10 years over, under police pressure, probably No free trial." We have therefore, provided in the Bill that the case should start before a Sessions Judge, right from the very beginning in order that there may be a free trial before a superior officer, because against the Sessions Judge, no one can say a word that he is under the influence of the executive. No hon. Member referred to that. And another thing we say is that if a Magistrate tries it, then the case goes before the Sessions Judge on appeal. The Sessions Judge may hear it or refer it to the Assistant Sessions Judge, a junior officer. The case must be fully heard. Therefore, try it by a

[Dr. K. N. Katju.]

Sessions Judge in a regular manner. The result will be, there will be an appeal before the High Court and the accused shall have a complete chance of putting forward everything that he can say before two independent judges.

I have been rather pained that no one has referred to this. My hon. friend said, "What about the Press (Objectionable Matter) Act" and he read it. He said that we could do it under that. I do not and I do not want to go into that legal matter as to whether one defamatory article can form the basis of proceedings under that Act because opinions are divergent. In order to bring that Act into operation, you must say that there has been a series of articles and first of all, a security should be demanded. I ask you, "What is this amount of Rs. 3,000?" You may absolutely destroy the character of one man, one Minister or anybody. There is a phrase you read in the newspapers, these days, 'character assassination'.

SHRI B. GUPTA: 'Character suicide'!

DR. K. N. KATJU: I have not heard one word here in condemnation of this practice. What I am anxious is—I said it so and I say it over and over again—that I want to investigate the case.

SHRI AKBAR ALI KHAN: You may do it without making it a cognizable offence.

DR. K. N. KATJU: Wait a second. The Ministers do not do it, I am not now talking in favour of it. When the question is put, "Why don't you file a case?", the explanation is, "Well, Sir, what is the good? It is a paper of known repute and who would believe me?" I want to have every charge investigated so that either the Minister concerned or whoever it may be, may be brought to book. If you allow these things to be published, to be broadcast, and leave it to them, the private individuals, either to start proceedings or not to start proceedings, I tell you with all respect, that you are not deliberately but by implication assisting in this blackmailing campaign. I think my hon. friend said it—he started from the *patwari*. Of course, if I start from the *patwari*, there are about ten lakhs of such people and he said that Dr. Katju was going to spread his net of affection over these ten lakhs of people. But, have you ever read of anybody defaming a *patwari* ? You defame them as a class, the *thanadars* as a class: you defame them as a class "the whole class of police is wrong;" the Irrigation Department is hopeless, the Public Works Department is a bundle of corruption. But where you pick out individuals, they are always the directors of industries or the heads of departments or the poor and unfortunate Ministers. You pick them out and that I want to be investigated.

SHRI B. GUPTA: Why not appoint a Standing Public Enquiry Committee for that?

DR. K. N. KATJU: My hon. friend is irrepressible. Whatever he says has little sense in it but then he says it.

Then there is the other bogey, I think my hon. friend started it. He said that the police will come, do this, that and the other. I said from the very beginning that the police would only investigate and that it would not start any proceedings until and unless it had the necessary permission either from the Government or from the designated officers.

SHRI S. N. DWIVEDY (Orissa): That is very easy.

DR. K. N. KATJU: I am prepared to say that every case which the police puts in the court may be transferred to another State but I want that it should be done. I am rather very serious about it. If you don't pass the Act then we will do it somehow or other. We will not stop it here. This is a growing evil. Either the Ministers or high officers are not behaving well in which case they ought to be eliminated and the system

of administration should be purified or those people who bring such unfounded charges should be told that it is not a jolly matter. Someone said that the freedom of expression and the constitutional liberties and all the rest of it would be affected. What does it mean? Is there a guaranteed liberty to tell lies, to spread malicious lies and reports and all sorts of calumnies against anyone? Someone said, "Why not add the M. P's also?" I have no objection whatsoever but please remember—I am putting it right from the start—that it is "in the exercise of their public functions". We are interested only in public functions. If a charge were made against a Member of Parliament that he was abusing his authority, his position as a Member of Parliament, by trying to influence the Home Minister, or the Railway Minister, well that is a gross defamatory charge and it ought to be investigated. If you want it, I shall get the police to investigate it. If you have done it, you ought to be exposed and if you have not, then the man who said that should be punished, sent to jail for three years. So far as the private charges are concerned, charges of blackmail against private individuals, I am not much concerned The law is there and I am concerned in the other thing because I want to have pure administration. That is what I will put before the Select Committee and leave it to them. As I said, I am not wedded either to this or that but it is not fair—my hon. friend will pardon me—starting the hare of the administrative law, starting the hare of the Press (Objectionable Matter) Act and all that. Here is a direct issue, and what do you want or what is it that you do not want. I can understand that stringent care should be taken either by the legislative process or by executive order to see that there is no harassment, that the police does not go and arrest an editor or anybody else. I can understand that the case should go to the highest level or even take it to another State, as I have said, so that there may be the fairest trial free from all local influences but there must be something.

Then we come to another bogey about the perjury business. I again rubbed my eyes with wonder. My hon. friend said a rather curious thing, rather good, and he said, "Why do you punish the lying witness? There is a section about abetment; the man who asked him and who instigated him to tell lies ought to be punished". I entirely agree with him if you catch hold of him. You would not get at him. On the one hand everybody condemns perjury but when it comes to brass tacks and how to do it, everybody says, "let the poor accused produce lying witnesses; let him produce tampered witnesses and let the police produce lying witnesses". I have seen with my own eyes what happens; you Mr. Vice-Chairman, must have had the same experience in the South. A witness comes, perfectly false witness, clever and cunning. Let us say there is a not very clever cross-examiner. The witness defeats him by his ingenuity. He steps out and receives congratulations on all hands. I would not wonder if somebody garlands him and says, "You have outwitted Pandit Motilal Nehru; you have outwitted Dr. Hriday Nath Kunzru". I think everybody would say so. Now for such witnesses, the section says that it is not on a point in issue. Of course, one must hear all the evidence; let us see what the appellate judgment says relating to his veracity where the fact that he has told lies is as patent as the sun is shining, something absolutely clear. Let us assume that he says that he was in Delhi on such and such a date whereas by his own letters, by his own statement or by his own deposition in a particular case it is shown that he was on that very day in Monghyr in Bihar. What is to be done? The proper thing to do is to call upon him to say whatever he has got to say on this or send him to jail for fifteen days. You have alternative suggestions; you say, "Very well, that Judge should not himself try but he must send him to a neighbouring Magistrate". Very well, let us say

[Dr. K. N. Katju.]

that, but I want to create a psychological impression so that they will know that lying is not now profitable or something which one can indulge in with complete impunity. Today, in every law court, civil or criminal you may go and tell as many lies as you like and no one will hurt you. The only thing that will hurt you is when after three months or six months or a year the judgment is written if the learned Judge says "A. B. came before me and I regret to say that I find him absolutely untrustworthy". It is finished. Nobody cares. He remains a member of the society. He remains a member of all clubs and he may remain a Member of Parliament also.

SHRI B. GUPTA: And he may become a Minister also.

DR. K. N. KATJU: Yes, it all depends. Now this is the present situation and we inserted this provision from that point of view. If the House does not like it, very well, let it go. Today what happens, Mr. Vice-Chairman, you know. There is the process of starting a perjury case. I ask you, Mr. Vice-Chairman, in how many cases have you seen in your 19 years of practice a Sessions Judge or Magistrate starting a perjury case? None. It is all so to say in the existing procedure. Why take the trouble? You draw up the judgment and finish. I want something to be done. Even if it becomes known in a district that here is this law and there is the possibility that if you are going to tell lies then you may not be able to return home, to your wife and children you may go elsewhere but not to your home and to your wife and children—I think it will have a checking effect.

Now the last thing is this, which my hon. friend referred to. He started with my view and I thought I was going to get his support but then he had come to the conclusion that he must strongly oppose or disagree with it. He had not been convicted. Therefore, he does not know the mind of a convicted man. But I sometimes think that it is not only the accused, the convicted individual, but his wife and children who have got to be saved. I would ask my hon. friend to go to the Supreme Court and find out in how many cases today applications for leave to appeal against the death sentence are filed—from all over India. And each application must be costing the wife and the children and the father of the accused anything from Rs. 300 to Rs. 500 and 98 per cent. of those applications—take it from me—are dismissed in two minutes. In one day 20 applications may be dismissed. I do not know whether you are aware of it or not. It is a question of life and death; you try. When the appeals used to go to the Judicial Committee in the U.P. I had the statistics of mercy petitions, and if I remember aright, we had 147 cases and 147 petitions filed, and in each case you had to send to the solicitors Rs. 700 in order to get a stay of execution. The poor wife would sell all her ornaments and send it. The result? I got 144 dismissed and 3 dismissed later.

Similarly, it happens on the revision side. It is a little bit more of a gamble. The Judges are there. You get that revision, and, as my hon. friend said himself, there is a convention that the High Court will not interfere on a finding of fact. I have seen some Judges who would not even listen to me, who would not open the record. I say: "Will you kindly look at the evidence of Shyam Narain who seems to be a liar? He says: "Why should I? The Sessions Judge has believed him. I am not going to open the record. Why should I open?" He won't listen to me. Then there are Judges and Judges. Please go and find out this process, as to how many people with revision applications come to the High Court headquarters, how many of them after spending lots of money come back disappointed because no *vakil* will touch their petition, how many are filed, how many are summarily re-

jected, how many are rejected after hearing and how many are ultimately heard on facts. Take it from me—I have been there in the High Court for very many years—not even 3 per cent. The suffering and sorrow behind each petition moves my heart. It is not a joke. You may add to the language. 'Illegality' you may add, 'impropriety', 'irregularity' or something like that. But you have the word 'correctness'. Of course, you can read the entire evidence if you can persuade the Judge. Sensible Judges don't do it, but there again is another story and the result comes to the same thing. Now it was from that point of view that this power of revision was restricted. If my hon. friend says "No, no", then start it. Have a third appeal. I have no objection. Begin with the Second Class Magistrate, appeal to the Sessions Judge, a second appeal to the High Court where one Judge tries it, then have a third appeal before two Judges or five Judges and if you provide for this series of appeals and revisions, you can take it from me that the people will go on fighting the case till the end.

SHRI AKBAR ALI KHAN: We had discussion about revisional power and you are referring to appeal cases.

DR. K. N. KATJU: I am talking about revisional power. I am talking about revision from one to another. Why should you? Please remember I am left in doubt, when I read the judgments of the Sessions Judge and I read the judgment of the High Court on appeal, as to which one was correct, whether the man who acquitted it was correct or whether the Sessions Judge who heard the witnesses was correct. What I want to say is: If you take it, somehow in civil cases the chances are that the judgment of the civil judge which was reversed by the High Court is in turn restored by the Supreme Court or the Privy Council on the ground that the subordinate Judge was more sensible, that he had occasion to see the witnesses. I tell you it is all a gamble Don't blame the poor *vakils*. They do their jobs. I once went before two Judges and argued a point. The Judges decided in my favour, namely, accepted my point of view. Six months later, in another appeal from another district it so happened, unfortunately, that I was appearing for a client who was absolutely contrary. It was regarding Hindu law; an important point. I had to do it. I stood up. I began to argue. My learned friend on the opposite side said—he could not restrain himself—"My Lord, what is Dr. Katju doing? Six months ago he argued the opposite way. Now he is arguing quite contrary to that." I said: "My Lord, I am not competent to decide the case in favour of this party or that party. I am only putting before you the different aspects of this question. You accept whatever you like. Either accept this or accept that." They accepted the reverse. They differed from the first two Judges. A third case again came. Again I was there. So I was successful in two. What is the poor *vakil* to do? Somebody—I do not know; I think my hon. friend from Bombay—blamed the *vakils*. Why not blame the Judge? He gets Rs. 2,200 or Rs. 4,000. If I am there to befool him why is he befooled? He is supposed to be most eminent, most learned, most experienced. So let us not put it on the lawyers. I think it is very unfair. Supposing somebody is convicted, if I were convicted, I tell you, I have made up my mind that I will not engage any *vakil* at all. I will just go before the Judge and say: "Hear this case. You are a very experienced man. You are highly paid and employed by the State. Please look into this matter and do what you like." He will have to study my case.

I won't take any more time. I am very grateful to the House for hearing me for such a long time without any interruption for the first time even by my communist friends who have been indulgent to me this time.

[Dr. K. N. Katju.]

Now the last thing that I want to say is this. I take it that the House will approve of the remission of this case to a Joint Select Committee, I mean this Bill seeking to amend the Code, which has been working for 95 years now. I think it will be a notable achievement of this sovereign Parliament in its first session—first session in the sense after the general election—that before our career comes to an end, so far as the Lok Sabha is concerned, we carry this out so that we may go to the people and say, "Here it is; we have done something for your benefit and for your welfare. It is not a party measure. We have done our best and we do hope that we will now be able to get speedy justice and efficient justice." Every innocent man may be able to go before the court of law, so that if he establishes his innocence he will be acquitted and so far as guilty men are concerned, I repeat again, in spite of all slogans, that they ought to be punished.

THE VICE-CHAIRMAN (SHRI K. S. HEGDE): The question is:

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.

The motion was adopted.

THE SHILLONG (RIFLE RANGE AND UMLONG) CANTONMENTS ASSIMILATION OF LAWS BILL, 1954.

THE MINISTER FOR HOME AFFAIRS AND STATES (DR. K. N. KATJU): Sir, I beg to move:

"That the following amendment made by the House of the People in the Bill to assimilate certain laws in force in the scheduled areas to the laws in force in the Khasi and Jaintia Hills District be taken into consideration, namely:—

That at page 1, for line 1, substitute—

'Be it enacted by Parliament in the Fifth Year of the Republic of India as follows:—'."

THE VICE-CHAIRMAN (SHRI K. S. HEGDE): The question is

"That the following amendment made by the House of the People in the Bill to assimilate certain laws in force in the scheduled areas to the laws in force in the Khasi and Jaintia Hills District be taken into consideration, namely:—

That at page 1, for line 1, substitute—

'Be it enacted by Parliament in the Fifth Year of the Republic of India as follows:—'."

The motion was adopted.