

PROF. G. RANGA (Madras) : Sir, I take it that we have to accept this Motion for concurrence, subject to the remarks made yesterday by various Members of the House on this side and also the assurance that you were good enough to give that this would not be treated as a precedent. This matter is before the Rules Committee and also before yourself, Sir, and subject to whatever agreement you may reach with the hon. the Speaker on the other side, I have no objection to agree to this.

Mr. CHAIRMAN : 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 to provide for the constitution and regulation of certain Air Force Reserves and also an Auxiliary Air Force and for matters connected therewith, and resolves that the following Members of the Council of States be nominated to serve on the said Joint Committee :

- (i) Shri Jaspat Roy Kapoor,
- (2) Shri Jagannath Das,
- (3) Shri Kailash Bihari Lall,
- (4) Shri M. Govinda Reddy, (j)
- Shri Pir Mohammed Khan,
- (6) Shrimati Mona Hensman,
- (7) Shri H. D. Rajah,
- (8) Shri K. C. George,
- (9) Shri C. G. K. Reddy, and
- (io) Shri N. Gopaldaswami.

The motion was adopted.

THE CRIMINAL LAW AMENDMENT BILL, 1952—(Continued)

MR. CHAIRMAN : We now proceed with the further discussion on the motion moved by Shri C. C. Biswas on the 23rd July :

That the Bill further to amend the Indian Penal Code and the Code of Criminal Procedure, 1898, and to provide for a more speedy trial of certain offences, as passed by the House of the People,*be taken into consideration.

The Law Minister was in the middle of his speech and he will now continue his reply.

PROF. G. RANGA (Madras) : Sir, before we proceed further, I

would like, with your permission, to refer to a matter of privilege. In the news published today of yesterday's proceedings by the press services, you will find that only the Law Minister has been mentioned by name, while giving the summary of his speech. With regard to the other speakers who preceded him during the whole of yesterday's debate it has only been reported that such and such points were mentioned. They did not even take the trouble of naming the speakers. Sir, the purpose of our speeches in this House—and my hon. friends on the Treasury Benches also will come to realise the import of what I say, if their speeches are also blacked out in the manner in which our speeches have been blacked out—will be lost if this practice is followed. I say this because all of us speak not only to the galleries here but also to the whole of India. The Ministers seek to reach the public by their speeches here. So do we. If the Ministers fail to achieve this, then they know the cost of it. If we cannot reach the public, if our message does not reach the people, then not only we ourselves but also the Ministers will have to pay the price for it, because then it will mean that there is only one governmental party and there is no opposition. It is a Parliament in name then and the parliamentary opposition is a show and only a show without any substance. Therefore, I say, it is as much in the interest of our hon. friends on the Treasury Benches not to chuckle as they seem to do now, but to take the thing as seriously as we do and see to it that a better account is provided for the benefit of the public and also for the Members of Parliament by the press services.

KHWAJA INAIT ULLAH (Bihar) : Sir, we have some responsibilities to the public at large and our constituencies must know that their views are expressed by us here and that we voice their demands, and grievances before the Government. Therefore the proceedings in the House here must be properly reported. '

MR. CHAIRMAN : We are aware that it is not right for us to interfere with the discretion of the press in any manner, but I have no doubt the press will continue to give adequate accounts of Parliamentary proceedings.

THE MINISTER FOR LAW (SHRI C. C. BISWAS) : Mr. Chairman, when the House rose yesterday I was dealing with specific objections that had been raised in respect of specific provisions of the Bill. I dealt with some of them and only a few remain and they are of comparatively minor importance. For instance, take the suggestion made with regard to the Special Judges who are to be appointed for the purpose of trying offences referred to in this Bill. It was suggested that they should be recruited not merely from amongst Sessions Judges, Additional Sessions Judges and Assistant Sessions Judges, but that members of the Bar should also be eligible for such appointments. Let me clear up one misunderstanding which, I believe, accounts for this suggestion. As the Tek Chand Committee has pointed out, it is anticipated that owing to the provision made for the grant of pardon, there will be a large number of witnesses coming forward to give evidence in such cases of bribery and corruption. Therefore it was suggested by that Committee that the ordinary courts should be relieved of this part of the work, which would otherwise devolve on them.

If the matter lay in their hands, that might produce delay in the disposal of these cases. For the sake of securing expedition, it is suggested that certain Judges should be set apart for this particular kind of work and they are to be called Special Judges. And they are to be recruited only from amongst those who were already working as Judges.

SHRI RAJAGOPAL NAIDU (Madras) : Sir, with your permission, if I may correct the hon. Minister, in his speech yesterday he stated that Special Judges would be recruited for the purpose of trying these

cases but now he says that Sessions Judges/Additional Sessions Judges/ -Assistant Sessions Judges would be given special work. I presume that Special Judges are not going to be recruited for the purpose of trying these cases.

SHRI C. C. BISWAS : Possibly I had used the word 'recruitment' which has given rise to this misunderstanding. There is no idea of making new appointments for this purpose. It is not that such new appointments would be absolutely excluded. Suppose there are not available a sufficient number of Judges from among those who are already in service, it may be necessary then to recruit persons from outside. What is contemplated is that the existing service would yield the requisite number of Judges for trying these cases. In other words, it means certain Judges would be earmarked for this special job. That is about all. Sir, even if you recruit—if I may use that word—Special Judges only from among those who are in service already, you should not forget that appointments to the Judicial Service itself are made from the Bar. There is no reason to suppose that the Special Judges who will try these cases will not be members of the Bar.

So, I say, this is a minor objection. After all officers with the necessary qualifications will have to be obtained and the matter may be left to Government.

There is another amendment of which notice has been given. Probably I should deal with it when it is taken up. It refers to the provision which was accepted by the other House at the instance of a private Member relating to cases of bribery and corruption which are pending at the date this Act will come into force. There was no reason, it was said, why these pending cases should not also be made triable by Special Judges. Trial by Special Judges does not really give any special privileges so far as the accused are concerned. It only means that the trial will be by Judges who will be

[Shri C.C. Biswas.] concerned primarily, if not exclusively, with this kind of work, because it is only when their hands are free, they can take up other work. They must give priority to this class of cases. That is about all. All the rules of evidence, rules of procedure, etc, which apply to ordinary cases will also be applicable to the trial of these offences. No special privilege can be obtained from the mere fact that the trial takes place before a Special Judge and not before an ordinary Judge.

SHRI K. S. HEGDE (Madras) : On a point of explanation, Sir. Is the hon. Minister aware that procedural law is not retrospective in character ? Even when the amendments are proposed changing the procedure, it has been held by competent men to be retrospective in character.

SHRI C. C. BISWAS : I need not express any opinion on that abstract question of law. This specific provision was made a part of the Bill at the suggestion of an hon. Member of the other House which Government accepted. It is not necessary to go into the question as to at what stage the new proceedings should begin ; whether there should be a *de novo* trial scrapping all that has taken place before the transfer of the case or the cases will be taken up at the stage at which it was left by the court originally trying it. We need not go into these points, Sir.

That finishes, Sir, all the objections. If I have left out anything and if hon. Members will refer to it, I will answer it. So far as I remember and so far as I could see from the notes that I took, I have disposed of all the points raised in respect of specific provisions of the Bill.

SHRI GOVINDA REDDY (Mysore) : I want clarification on two points, Sir. One is whether the special courts will be created for particular cases of prosecution with regard to corruption or whether they will be a permanent feature in respect of all cases. That is one point. The se-

cond point is whether in view of the fact that abetting has been made a culpable offence, Government are confident of detecting cases.

SHRI C. C. BISWAS : The first point depends upon the number of cases we get. After this becomes law, if the number of cases increases requiring a permanent court, that would be set up. If the work is not sufficient, you cannot earmark an officer solely for this purpose.

As regards the second point, I do not quite understand how the question of detecting an offence comes in...'

SHRI C. G. K. REDDY (Mysore) : It never comes in.

SHRI C. C. BISWAS :All that is anticipated is that persons who are made co-accused in a case of bribery and corruption would, if they are granted pardon, give evidence against the other party. Now, whether this will actually mean that a larger number of cases will come to light in which prosecution will be possible, remains to be seen. As I said yesterday, Sir, it is an experiment which will be tried out for a period of two years at the end of which the whole position will be reviewed. But, it cannot be the function of the Judges to find out whether or not more cases should or could have been detected. I take it that all cases of bribery and corruption will be detected and investigated by the department concerned.

PROF. N. R. MALKANI (Nominated) : Sir, some members of the public offer bribes while in many other cases bribes are extracted from them. Is Government going to make a legal distinction between them or going to put them in one class ?

SHRI C. C. BISWAS : This question has already been dealt with at very great length on both sides of the House. I also tried to answer it. Well, it will be a matter for the courts to decide whether a person can be

roped in under the provisions of Section 165A or not. The question whether the part he takes in the transaction should be regarded as abetment or attempt will now be a hypothetical question.

SHRI J. R. KAPOOR (Uttar Pradesh) : May I know, Sir, whether, in view of clause 10 of the Bill according to which it will be obligatory hereafter to transfer all pending cases to Special Judges, Government have any idea as to the number of such cases ?

SHRI C. C. BISWAS : No, Sir.

SHRI H. N. KUNZRU (Uttar Pradesh) : Some hon. Members asked the Law Minister to inform the House how far the Government of India had taken the administrative action proposed by them on the Tek Chand Committee or the administrative action recommended by the Committee. So far as I could hear my hon. friend, he was silent on this subject. It is very important and I hope he will still be able to throw some light on it.

SHRI TAJAMUL HUSAIN (Bihar) : On a point of information, Sir. Will the hon. Minister enlighten the House whether, when a case is transferred from a Magistrate to the Special Judge, Additional or Assistant Judge, the trial will be *de novo* or not.

SHRI C. C. BISWAS : I have answered that. As regards the other point which Mr. Kunzru has raised, I have kept silent for the reason that we have not before us a Resolution dealing either with the Report of the Tek Chand Committee or with the general question of corruption and bribery in the country.

Sir, I have not got the materials with me. All that I can say is that it would appear from the Report that action was taken before the Report was finally completed. The Report was submitted in instalments and action was taken on interim reports as they came. Depart-

mental proceedings have been taken' numerous cases but I am not ready with the figures. So I cannot give him the actual number of cases which were brought to the notice of Government, or say what action was taken or what was the ultimate result in particular cases. If my hon. friend will just put down a question, I shall be ready to submit full information on all points. But I am not ready with the facts now and I am sorry I have not been able to give the information he has asked for.

SHRI H. N. KUNZRU : Sir, it is customary in a debate of this kind where points extending beyond the scope of the Bill are raised, because they relate to the subject-matter of the Bill, for the Minister in Charge to say something on those points. It is not enough that my hon. friend should have spoken as a lawyer and tried eloquently to demolish the arguments of opponents. He should have taken a wider view of his responsibilities and should have collected the information that we had asked for, and he had ample time to ask for this information. Perhaps he is new to Parliamentary work, but I hope that as time passes he will realise that the duties of a Minister are not simply those of a lawyer or a judge.

MR. CHAIRMAN : *DR.* Kunzru, he has agreed to collect the information and supply it to you if a specific question is put. That is what he has said and therefore let us leave it at that for the present.

PROF. G. RANGA : It is perfectly right. If a question is put, he is bound to answer it.

MR. CHAIRMAN : Not all.

PROF. G. RANGA : If the question is not ruled out by the Chair, the Minister must answer it. Here he had at least two days to collect the information and he has failed to do so.

SHRI C. C. BISWAS : I am very grateful to my hon. friend for reminding

[Shri C. C. Biswas.] me of my responsibilities as a Minister. I shall certainly try to follow his advice, but may I, in all humility, remind hon. Members of this House of their responsibility as well? The Tek Chand Committee Report has been in their hands for a long time now, but I have not seen notice of any single Resolution that this matter should be discussed on the floor of this House. I accept my responsibility as pointed out by my hon. friend, but I would also suggest that there should be some co-operation from the other side.

SHRI H. N. KUNZRU : My hon. friend is quite wrong in saying that we had the Report of this Committee a long time ago. I got the Report of the Committee only when I asked the Home Secretary for it. There was no copy of the Report even in the library of Parliament.

PROF. N. R. MALKANI : Sir, I went to the Library for a copy of the Report. There was no copy available.

SHRI H. N. KUNZRU : The Notice Office was asked whether it had copies of the Report and it said it had none. My hon. friend is therefore quite wrong in assuming that we had copies of the Report long ago.

MR. CHAIRMAN : The Report was circulated on the 9th July to the Members, (*Some hon. Members* : " No, no, Sir.") and then there has been a misapprehension about it because the title as given there is "Report of the Special Police Establishment Enquiry Committee". It does not come under the proper title of what is called the Tek Chand Committee Report or anything like that.

SHRI C. C. BISWAS : If the position is that the Report was not in their hands, then I wish to withdraw what I said.

SHRI H. N. KUNZRU : I should like to say that we have some knowledge about Parliamentary work and we can understand it. Had we received

this Report, we could have found out for ourselves what it contained. A summary of this Report was published in the papers and actually we were hoping that we would receive copies of this Report. As I have told you, I actually got a copy of the Report only when I asked the Home Secretary for it and the Home Secretary was good enough to send it to me promptly.

PROF. G. RANGA : I can understand the difficulty of my hon. friend, because he does not happen to be the Minister concerned with this. Generally, such Bills are introduced by the Ministers concerned, but perhaps the Home Minister is engaged there, therefore my hon. friend has taken this responsibility on himself. But the point is, on an issue like this where so many speeches had been made and were being made in this House in the course of these two days, it was up to the Home Minister to have found time to come over here and make a speech in response to so many very useful, I am sure, and very valuable constructive suggestions made by various Members of this House in regard to the manner in which this Bill when it becomes an Act should be enforced and also how the administration of Government should be carried on in such a way that there would be less corruption, less bribery and so on. This is an extraordinary thing. I have never come across a thing like this during all these 18 years during which I have had the privilege of being in the Central Legislature. The House does not have the benefit of the view of the Government as to how and to what extent they are prepared to consider any of the suggestions made, in what manner they are going to improve the morale of their Administration and raise the general sense of honesty within their Administration. How they are going to put down this terrible social evil of corruption, we have not had the benefit of knowing at all. Not even the Leader of the House has thought it fit to make any response to this House and I do deprecate this attitude of Government towards this House and the debate that goes on in this House.

THE LEADER OF THE COUNCIL (SHRI N. GOPALASWAMI) : May I know, Sir, in what way I have not made any response. Can the hon. Member tell me where I have failed in my duty in regard to this matter as Leader of the House ?

PROF. G. RANGA : One suggestion I can make straightaway. It was within the power and privilege of the Leader of the House to have sent for the Home Minister and insist that he should give a reply here.

MR. CHAIRMAN : These things will be noted. The question is :

That the Bill further to amend the Indian Penal Code and the Code of Criminal Procedure, 1898, and to provide for a more speedy trial of certain offences, as passed by the House of the People, be tak into consideration.

The motion was adopted.

MR. CHAIRMAN : We shall no*v take up the clause by clause consideration of the Bill. Clause 2.

SHRI J. R. KAPOOR : I do not propose to move the amendments that stand in my name.

SHRI TAJAMUL HUSAIN : I believe there is an amendment in my name. I do not propose to move it.

MR. CHAIRMAN : No amendment is being moved to clause 2.

Clause 2 was added to the Bill.

MR. CHAIRMAN : Clause 3.

SHRI TAJAMUL HUSAIN : I do not wish to move my amendment to clause 3.

Clause 3 was added to the Bill.

Clause 4 was added to the Bill.

MR. CHAIRMAN : Clause 5. Shri Tajamul Husain. There is an amendment by the hon. Member.

SHRI TAJAMUL HUSAIN : I do not propose to move that either.

Now all my amendments are finished.

Clause 5 was added to the Bill.

MR. CHAIRMAN : Clause 6. Shri Rajagopal Naidu. I want to know whether the hon. Member is moving amendments Nos. (i) and (it), or whether he is moving No. (tit), which incorporates both (t) and (ji).

SHRI RAJAGOPAL NAIDU : In fact, Sir, when I gave notice of the amendments, I intended them only as alternative amendments. If (i) and (ii) are not accepted, I propose to move (in).

MR. CHAIRMAN : The whole trouble is that if the hon. Member moves (t) and (it) and they ai>e not accepted, automatically (in) will collapse.

SHRI RAJAGOPAL NAIDU : I agree. I move amendments Nos. (i) and (ii) :

(t) That, in sub-clause (2) of clause 6 of the Bill the words ' or has been ' be deleted.

(ii) That at the end of sub-clause (2) of clause 6 of the Bill the following words be added :

or a Member of the Bar of not less than seven years' standing.

PROF. G. RANGA : Would it not be better if all the three amendments, are placed before the House ?

MR. CHAIRMAN : Nos. (i) and (tt) have been moved. Let the hon. Member explain the amendments.

SHRI RAJAGOPAL NAIDU : Mr. Chairman, when I rose to speak the day before yesterday, I said in my brief speech that no retired official should be thought of for holding this responsible position as Special Judge. In fact I was expecting the hon. Minister to say something about this, but somehow or other it escaped his notice, and he has not said anything on this amendment of which I had given notice. If the hon. Minister is prepared to say anything, I shall certainly say a few words afterwards.

MR. CHAIRMAN :, The hon. Member may make his statement now.

SHRI RAJAGOPAL NAIDU : Under the amending Bill, retired Assistant Sessions Judges, retired Additional Sessions Judges and retired Sessions Judges may be thought of, if my amendment is not accepted. Well, Sir, we know what these retired officials are. I do not want to say anything against them. If a retired High Court Judge is there, I will certainly have no objection. But if a retired Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge is there, we know how the administration of justice would be carried on. It is only for this reason that I have moved this amendment, that no retired Sessions Judge, Additional Sessions Judge or Assistant Sessions Judge should be thought of for appointment.

With regard to the other amendment which I have suggested, a member of the Bar of not less than seven years' standing should also be thought of. The hon. Minister has stated that no Special Judges would be recruited but only the existing members of the criminal judiciary will be thought of for appointment as Special Judges. I may say, as one who is a little acquainted with law courts, that Sessions Judges not only try criminal cases but also civil cases—appellate civil cases and original civil cases. We know how justice is delayed even in this highest court in the district, namely, the Sessions Court. Civil appeals are pending for nearly one year, and criminal appeals are pending for nearly six months or more. These Judges are already overworked. They have got a lot of work to do. The very object of this Bill is speedy disposal of these cases. In these circumstances, I suggest that Special Judges should be separately recruited, and while they are separately recruited, members of the Bar of not less than seven years' standing should also be thought of. The reason why I have mentioned the figure " seven " is this. Members of the Bar of not less than seven years' standing are eligible for appointment as Sessions Judges.

It is only that which made me introduce this figure " seven ". If for every other appointment members of the Bar with seven years' standing are thought of, why not for appointment as Special Judges ? The hon. Minister stated that Sessions Judges are recruited from the Bar, and so those Judges may be considered for appointment as Special Judges. But because this amendment has been moved, unless the hon. Minister wants to stand on technicalities, I do not find there will be any difficulty at all in this amendment being accepted, that members of the Bar also may be thought of for appointment as Special Judges.

SHRIMATI LILAVATI MUNSHI (Bombay) : Sir, I really am surprised. The hon. Member is very hard on retired men. In many cases a man at 55 is hale and hearty. Most of our elders who are guiding our national affairs are almost all past 55 and we are the better for it.

SHRI C. G. K. REDDY : That is the complaint.

SHRIMATI LILAVATI MUNSHI: It may be. On the contrary I find that our affairs are properly guided by our elders.

MR. CHAIRMAN : The Opposition is younger.

SHRIMATI LILAVATI .MUNSHI : I do not know whether the House will agree to this amendment. I can understand that he wants to give a chance to younger men.

SHRI C. G. K. REDDY : Give them a chance to make the Administration better.

SHRIMATI LILAVATI MUNSHI : Anyway, young men can wait for their turn. If this amendment is introduced and if suitable men from the Bar with more than seven years' standing are not forthcoming, then you are debarred from appointing retired people. There is nothing in this amendment. I oppose it.

SHRI C. G. K. REDDY : On a point of clarification. Would a retired Judge mean also a dismissed Judge ?

SHRI B. K. MUKERJEE (Uttar Pradesh) : Sir, I agree with the content of the first amendment, because we have got too many unemployed in our country, and we should not go in for recruitment of retired persons to fill posts which can normally be filled by the people who are eligible for appointment in the States or in the Centre. Secondly, we have enough experience of retired Judges. I am referring to an Act passed by Parliament relating to the Labour Appellate Tribunal. That is the highest tribunal for the settlement of disputes between the employer and the employee in this country. The members of the Tribunal are recruited from retired High Court Judges. They are public servants, about whom so much discussion has taken place in this House in the past two days. They also are not immune from any temptation, because there can be no dearth of their sons or sons-in-law hankering for employment after getting the highest degrees from universities. And they are not immune from that sort of temptation. We were insisting the Government to institute a court like that but the Indian National Trade Union Congress has again taken a decision and passed a Resolution and requested the Government of India to abolish that court. I support the amendment because I have got experience of these retired people. They must not be given this charge of expeditiously disposing of these cases or settling them in a just way in which they failed.

SHRI T. S. PATTABIRAMAN (Madras) : Mr. Chairman, I am very much surprised that the mover of this amendment has rather political arguments than legal arguments for supporting this amendment. The first amendment says that persons who have been District Judges, Sessions Judges or Assistant Sessions Judges should not be included.....

SHRI RAJAGOPAL NAIDU : No. That is not my amendment.

SHRI T. S. PATTABIRAMAN : I do not know what objection he can have for the entering of this class. Sir, a Sessions Judge will be in the office and will be having administrative experience for a number of years and the very purpose of this Act is to bring the offenders to book and certainly the persons who are in charge of the administration of justice and are above petty jealousies can administer this law better than anybody else. Therefore I am sure that the mover of the amendment will not press this amendment.

Secondly, Sir, regarding a member of the Bar of not less than seven years' standing, this also seems to be not necessary because the Sessions Judges are themselves selected by the Government only when they have 20 years of service in the Bar and they are very much experienced. And if my friend means that a number of lawyers who are unemployed be given preference, then he can move the High Court for more direct representation for the lawyers. So in both the amendments I find nothing and they are unnecessary and therefore they need not be pressed.

SHRI K. S. HEGDE : Mr. Chairman, I am afraid there has been a good deal of generalisation. It will be admitted on all hands that so far as our judiciary is concerned, it has maintained the highest amount of honesty and integrity by and large. My friend Mr. Ranga laughs at it. Obviously he has no experience in this line. Of course exceptions there are always. But I have been one of the members of the Bar, who has been practising for 15 years. I can say with confidence that there have been very few cases where the Judges have been dishonest and it will be a blot on the Government and the judiciary to say that any large percentage of our Judges has been anything but honest. Now my friend said they have got sons and sons-in-law. I may just ask him : Who has not got sons and sons-in-law ? They are human beings. Everyone has got either a son or a son-in-law. Obviously we are more interested in sons or sons-in-law of the lawyers rather than in the sons

[Shri K. S. Hegde.] and sons-in-law of the Judges. Well that apart, there can be no question of recruiting a member of the Bar of seven years' standing. I am a member of the Bar. I am very anxious to protect the interests of the Bar naturally. But my friend has not analysed the position properly. If the Special Court is of a temporary character, then there is no point of recruiting a member of the Bar. You cannot recruit a member of the Bar for two or three years. It has been found a very pernicious practice to recruit a Judge for a temporary period. The question of Special Court is more or less experimental in its character.

9 a.m.

SHRI H. D. RAJAH (Madras) : On a point of order, Sir. The Special Court which is contemplated under this Act is not a temporary affair. It is a permanent measure and the Judges that are to be appointed will not be for two or three years but will be permanently appointed.

SHRI K. S. HEGDE : Obviously he is not following my presentation of the case. Special Courts may be there only so long as there are a number of cases which will justify the existence of the Special Court. If the ordinary court can deal with those cases, then certainly the hon. the Law Member will not go on constituting Special Courts. The object of the Special Court is to expeditiously dispose of cases which the ordinary courts cannot do. Such being the case, if the members of the Bar are to be recruited, they must be recruited first to the ordinary judiciary and then only they would come to the Special Court. They cannot and should not go direct to the Special Court. That will certainly not be desirable. I do not think there is very much in the amendment that has been proposed and the clause as it stands deserves our support.

SHRI M. S. RANA WAT (Rajasthan) : Sir, I am neither a lawyer nor a judicial officer who belongs to the profession of

talking too much. In any way, Sir, I have had administrative experience and I have been a Minister in various States and in that my experience had been that we have no fault to find with the judicial officers or retired officers. A large number of them are very good and they are very very capable and honest. But most of them do not seek jobs after their retirement. It is only a few people who have the habit of trying to seek jobs up to the end of their life. I know a very senior Judge who retired at the age of 55. He managed after his retirement to get a job in U. P. He is probably still carrying on there. I have no objection if you say " We do not want to have anybody from the Bar." That is quite a different matter. If the Government wants a man, they should advertise the post. I remember we used to write to the U. P. Government that we were in need of the Judges. They then usually circulated this demand among all those who have retired. Usually they would send a third-rate man who does not know much. So in order that this kind of contingency is avoided, I would request that the amendment should be accepted or in the alternative Government should have a large number of senior officers. Let them be tried. Let the younger officers be given a chance of doing this job. This would be quite an easy matter. That is all I wanted to say.

SHRI P. V. NARAYANA (Madras) : Mr. Chairman, I oppose the first amendment but I support the second amendment, because there will be absolutely no danger if the Government appoint retired judges, if they so feel, to these posts.

Then as regards the second amendment that members of the Bar of not less than seven years' standing may also be appointed, I think it is necessary to allow the Government a wider field for the recruitment of these Special Judges. Shortly there will be so many fights against this Government that all the existing Judges will be busy trying ponucal

cases and so it will not be possible for the Government to secure these Judges as Special Judges and invest them with powers to try corruption and bribery cases. So, they may have to recruit new people from the Bar. Sir, this Government is not better than the foreign Government. It is a reactionary one, and so it is always better not to fetter the hands of the Government and to give them a wider field for recruiting these Special Judges. That is why I support the second amendment.

SHRI S. V. KRISHNA MOORTHY RAO (Mysore) : Mr. Chairman, it is unfair to generalise that all retired judges are not fair in trying cases. I too have had some experience of cases tried by retired High Court Judges and they have been found to be exceptionally fair, exceptionally painstaking and exceptionally sympathetic towards the parties. I do not see why their services should be lost to the State. I think that their services, whenever it is necessary and whenever other judges are not available, should be forthcoming. Sir, I oppose this amendment.

SHRI TAJAMUL HUSAIN : Mr. Chairman, two amendments have been moved by my hon. friend, Mr. Rajagopal Naidu. The first amendment is that retired judges should not be reappointed as Special Judges to try cases of corruption and bribery. The other amendment is that lawyers of over seven years' standing—by lawyers I hope he means advocates—may be appointed as Special Judges. I have to support both these amendments.

As regards the first amendment, Sir, that retired judges should not be appointed, I think that it is wrong in principle to appoint retired judges. This will make them think that a time will come, when they retire, when they would be getting new jobs. Judges should be absolutely impartial, they should think they are impartial and also think that after they retire,

they have no future whatsoever except the pension. If you give them this temptation that when they retire you might give them new jobs, it would mean bribery. Are we not guilty of attempting to bribe all the judges in India by making this provision, by saying, " You behave well ; you decide for us and we will look after you". Is this not an attempt to bribe the judges ? Therefore I think it is wrong in principle to reappoint judicial officers after retirement.

SHRI T. S. PATTABIRAMAN : On a point of clarification, Sir.

SHRI TAJAMUL HUSAIN : I am not going to give in. I am not moving any amendment. I am only supporting an amendment. Now Sir, I hope the Law Minister will appreciate this and accept the amendment. I think—I am not sure about it—that in Europe and England this cannot happen. In England the judges can serve as long as they are fit to serve. There is no age of retirement. Therefore, there the question of Judges being reappointed after retirement does not arise. I think there was some discussion in the Constituent Assembly of India also on this matter. I will leave it at that that no retired judge should be reappointed on principle ; they should not be tempted like this. As regards taking bribes, I told you, Sir, when I was discussing this matter, that the giving of a bribe is more heinous than to take a bribe, because it depends on the amount. A person may take a bribe of a thousand rupees or a lakh of rupees. It all depends on the man. It is the giver who must be prevented from giving the bribe. The taker of the bribe is helpless. He is absolutely helpless. Every man has got a price; one may not know what it is.

MR. CHAIRMAN : Please limit yourself to the amendments.

SHRI TAJAMUL HUSAIN : I support the amendments. My only point is that if you reappoint a retired judge, it amounts to bribery. I was

[Shri Tajamul Husain.] saying that every man has a price. There was a Law Member, I am told, who at one time took Rs. 10 lakhs from a munitions firm in Calcutta.

AN HON. MEMBER : What is your price ?

SHRI TAJAMUL HUSAIN : You give me and see whether I accept or not. I may tell the hon. the Law Minister that I am a lawyer of 32 years' standing or more.

KHWAJA INAIT ULLAH : Without any brief.

SHRI TAJAMUL HUSAIN : The second amendment is that lawyers of over seven years' standing can be appointed as Special Judges. A lawyer is appointed as a High Court Judge, if he is of over ten years' standing. Why should not the Government appoint a lawyer as a Special Judge also, if it thinks that he is sufficiently qualified and is sufficiently independent ? I think these two amendments are very important amendments and must be accepted by the House.

PROF. G. RANGA : Mr. Chairman, I agree with my hon. friend, Mr. Hegde in his remarks about the Judges in general. In regard to these two amendments, I wish to suggest that it would be well for Government to accept the second amendment, because in most of the legislations that had been passed in the previous legislatures and which are there on the Statute Book, you will find that where-ever Special Courts or tribunals have to be appointed in regard to labour or other matters, it has always been stipulated that Government should have the power to appoint judges who are already there or those who have been judges or those who are lawyers of a particular number of years' standing.

SHRI K. S. HEGDE : The Government has power without this amendment.

PROF. G. RANGA : I am afraid not.

SHRI S. V. KRISHNA MOORTHY RAO : It is already there.

MR. CHAIRMAN : Recruitment to the judiciary is already there.

PROF. G. RANGA : Whether the Government has the power of appointing lawyers as District Judges or not, you will have the right of appointing them for this specific purpose for a period of three, four or five years and thereafter not have any special obligation towards them.

SHRI S. V. KRISHNA MOORTHY RAO : It may be only one case.

PROF. G. -RANGA : I am sure there will be good enough lawyers to accept even such individual commissions from the courts....

AN HON. MEMBER : In election cases.

PROF. G. RANGA : In election cases too. There would be many lawyers who would be willing to accept such special commissions and it is for that reason that in so many legislations that are already on the Statute Book in regard to labour, elections and various other matters, this provision has already been accepted by Government and this has become the practice.

Supposing the Government is of the opinion that there is not even one lawyer who is good enough, then we need not do so. It only seeks to give power, to Government, an additional alternative. There are three categories—those who are already judges, those who have been judges and those who have such a standing at the Court as will be considered to be entitled to be appointed as Sessions Judges or High Court Judges. That is why it is given as ten years. It is only an additional matter of convenience which we are incorporating. Therefore I would like the Law Minister and the Leader of the House to give consideration to this matter and if possible, accept it, so that it will be in conformity with the other practice that is followed.

MR. CHAIRMAN : I think there has been very full discussion on the different implications of this point as to why retired judges should not be appointed and why it should be open to the Government, even "a reactionary Government" like this according to some Members, to be endowed with these special powers to recruit Special Judges from the leading members of the Bar of not less than seven years' standing. I don't know if the Members would like to make any new suggestions on that. If so, I hope, they would be very brief.

SHRI GOVINDA REDDY : Sir, the practice with regard to recruiting members from the Bar, however old they are at the Bar, to try special cases is quite new. In fact it is true that there is a practice of appointing members of the Bar to Arbitration Tribunals and to Enquiry Committees but wherever cases involve punishments to be imposed particularly imprisonment and fine, it is not the practice to recruit members from the Bar to try special cases for the very good reason that one who is empowered to impose punishment or fine must have a judicial frame of mind and if he is recruited to the Bench and he is a member of the judiciary, then he will have got into that judicial frame of mind and he can be expected to discharge his duties with efficiency. But when there is no guarantee of continuing in the judiciary, to appoint members of the Bar to try special cases is not a wise policy.

KHWAJA IN AIT ULLAH :

خواجہ عنایت اللہ : شریمان چیرمین صاحب ! مجھے اس دامنڈمنٹ (amendment) کے متعلق کچھ زیادہ نہیں کہنا ہے۔ میں اس دامنڈمنٹ کو داپوزے (oppose) کرتا ہوں۔ ایسے آنریبل درست تجویز حسنین صاحب کی یہ بات سنا کر کہ ایسی ایسی چیزوں کے لئے دتا ہوا ہے جو کہ یہ لالچ دینا کہ آپکا اچھا کام ہونے پر

آپ کو پھر بھی کام دیا جائے گا گورنمنٹ کی طرف سے ایک رشوت کی بات ہے۔ مجھے سخت تعجب ہوا اور افسوس بھی ہوا۔ اس کے تو یہ معنی ہوتے کہ جو بھی جج یا اور کوئی کرمچاری اچھا کام کرے تو اس کو حکومت اپریشیٹ (appreciate) نہ کرے کیونکہ جہاں اپریشیٹ کہا جائے گا وہاں کہا جائے گا کہ یہ حکومت کی طرف سے رشوت دی جا رہی ہے۔ انہوں نے یہ بھی زور دیا کہ وکیلوں کو بھی ایسا موقع دیا جائے کہ وہ جج بنائے جائیں۔ مدرے خیال میں ان کو معام ہی ہے کہ آگے ہی ایسا قانون موجود ہے کہ اچھے وکیلوں کو سیشن جج تک بنایا جاتا ہے۔ اس لئے ڈسپیشل کورٹ کے لئے کہا ضرورت پڑی ہے کہ ہم ایسا موقع وکیلوں کو نہیں۔ ان کو شاید معام نہیں کہ ان کی طرح کے بہت سے وکیل ہوں جو وکالت تو پاس کر لیتے ہیں لیکن ۱۰-۱۵ برس گذر جاتے ہیں اور کام دہندا کچھ نہیں ہوتا۔

SHRI TAJAMUL HUSAIN: Sir, on a point of personal explanation. He has said that there are lawyers who have been briefless and who have been for a number of years at the Bar. As regards myself, I may say that I was practising at the Bar and had a very good practice. I was public prosecutor for a number of years and I gave up practice for certain reasons and then got into politics.

KHWATA INAIT ULLAH:

خواجہ عنایت اللہ : اسی لئے میں کہہ رہا تھا کہ پریکٹس، چھوڑنے کے باوجود بھی آپ اس کٹیگری (category) میں آ سکتے ہیں کہ ہم اتنے سال کے پریکٹیشنر (practioner) ہیں۔ حالانکہ 'پریکٹس'

[Khwaja Inait Ullah.]
آپ چھوڑ چکے ہیں اور آپ کو نہیں معلوم ہے کہ کیا کیا نئے نئے قانون بنے ہیں اور بن رہے ہیں اور کس طرح سے کام چل رہا ہے -

مہرے کہنے کا مطالبہ یہ ہے کہ وکیلوں کی ہندوستان میں اتنی بھرمار ہو گئی ہے کہ اگر ہم نے حکومت کو اجازت دیدی کہ ڈائریکشنل جج، وکیلوں میں سے بنائے جائیں تو میں سمجھتا ہوں کہ یہی مسٹر جو آج کہ رہے ہیں کہ وکیلوں کو اس کا موقع دیا جائے وہی مسٹرس بعد میں کورنٹس کی شکایت کریں گے کہ حکومت نے فوریٹیزم (favouritism) کر کے اچھے لوگوں کو اسپیشل جج نہیں بنایا بلکہ ایسے خراب آدمیوں کو جن کے پاس سفارشات تھیں یا جو ان کے رشتہ دار وغیرہ تھے ان کو بنا دیا - اس لئے میں سمجھتا ہوں کہ آئندہ ایسی شکایتوں کو روکنے کے لئے یہ سخت ضروری ہے کہ دلکسپیریئرسڈ (experienced Sessions Judge) یا اور دوسرے لوگ جو اس کلاس میں دئے گئے ہیں انہیں کو رکھا جائے - وکیلوں کو ایسا موقع نہ دیا جائے - شاید لوگوں کو معلوم نہیں ہے کہ آجکل وکیل کچھ تھوڑے سے اچھے وکیلوں کو چھوڑ کر رشوت کو کتنا بڑھا رہے ہیں -

[For English translation see Appendix II, Annexure No. 39.]

SHRI R. P. TAMTA (Uttar Pradesh): Sir, I rise to oppose the amendments that have been moved. In the first

amendment it is said that those judges who have retired should not be recruited for the post of Special Judge. I think there is no harm if we appoint Special Judges from among the retired judges, because Special Judges are appointed to try special kinds of offences and for the speedy trial of the cases. The retired persons have got the experience and the persons who have been judges throughout their lives will be more useful than a raw hand for trying the special kinds of cases and for the specific purpose of putting an end to bribery and corruption.

The next point is, I am rather surprised to hear that giving appointment to retired persons would mean giving them a temptation. I have got a high opinion of the judiciary of the country and I think the Judicial Department is the only Department in our country which is known for honesty. If even the judiciary is suspected, then it is not becoming for anyone. It has been said that recruitment should also be made from members of the Bar who have got over seven years' standing. Personally I think this suggestion is not also sound because Special Judges are appointed to try special kinds of cases and the new advocates, if they are appointed, will be new to the job and I don't think they will be able to do full justice to the duties which are expected of them. Moreover the Special Judges are being appointed as an experimental measure and as explained by the hon. the Law Minister after two years we have to see if there is justification for making Special Judges a permanent feature. So, I don't think it will serve any useful purpose if you recruit from the members of the Bar. Therefore I opposed both these amendments.

SHRI J. R. KAPOOR : Mr. Chairman, I am opposed to these two amendments that have been moved by my learned friend to my right and am particularly opposed to the second amendment. I may say that

I myself have had the privilege of being a member of the Bar and I have very great respect for the members of the Bar. Lawyers are a great asset to society and I think that in the matter of permanent appointments to the judiciary, the lawyers must be considered in preference to others, but only in the matter of permanent appointments to the judiciary, whether it be the case of the appointment of permanent Sessions Judges or Judges of the High Court. But so far as temporary judicial appointments are concerned, I think it will be a very bad practice in principle to appoint lawyers. While I am agreeable and even insist that so far as Labour Tribunals, Election Tribunals and such other Tribunals are concerned, lawyers would do admirably well, for the trial of cases where the Government itself is a party, where the Government itself is the prosecutor, I don't think it would be a healthy practice for Government to appoint lawyers. The prosecutor should not be the appointing authority. True it is so in the case of Sessions Judges and High Court Judges but there the appointments are of a permanent nature. The person who is appointed has not to look to Government for any favour. He has security of tenure. Once appointment is made, it is a permanent appointment and he can exercise his discretion absolutely in an independent manner. In the case of Election Tribunals, the Government is not a party as also in the case of the Labour Tribunal and therefore the person who is sitting on that Tribunal has not to take into consideration as to whether the appointing authority will be pleased or displeased with the judgment. For these reasons I submit that for the temporary judicial appointments lawyers should not be considered though for the permanent appointments they must always be considered and given preference.

SHRIMATI VIOLET ALVA
(Bombay): Mr. Chairman, we on this side never get your eye and we can't catch your ear. I shall be very brief.

All these discussions" on this amendment boil down to this that there is a certain belief that a judicial frame of mind is absolutely necessary when a Bench is appointed but there is the other point and that is, ultimately what do we come to? We want to know whether justice will be meted to the accused, to the offender. Here I may refer with your permission and the permission of the House, to a case in which a murderer was on the dock and at a certain stage when the Police were getting evidence from him, it was found that the evidence was all going against the accused and so he appealed, "My Lord, I want justice and nothing but justice" and My Lord immediately turned to the Police Officer and asked him to shut him up, saying "This is a court of law"

It is all right having the letter of the law, but ultimately we have to see whether justice is going to be done and we have to see whether the minds of the Sessions Judges and others are going to stand in the way of justice being done, because of the letter of the law, when this Bill becomes the law and when it is being used for the abolition, of bribery and corruption. I make no reflections on retired judges nor do I believe that they do not want to do justice. But we know really what is happening in courts. Even when there is doubt in the mind of the judge, because of the letter of the law he has to go strictly by the evidence and sometimes justice is not meted out.

Therefore though I do oppose this amendment I would suggest that we may let in some freshness in this matter. Let Government bring in a fresh approach. A fresh set of people, younger men and women may bring in a fresher approach. We do not believe that our young people are all so hardened. They could bring in a freshness which may bring the success that the elders have not been able to achieve.

SHRI K. B. LALL (Bihar) : Sir, I do not want to make a speech, but just a request to the hon. Minister to let us know whether in the categories of judges envisaged by him, he includes lady judges also.

THE MINISTER FOR HOME AFFAIRS AND STATES (DR. K. N. KATJU) : May I, Sir, with your leave, intervene in this debate, just to clear up one point ? Let me explain how this idea of having Special Judges originated and what would be the grave difficulties if this amendment were acceded to. I am a member of the Bar and I know the whole of the provincial judicial service is recruited from the Bar. The High Court Judges are recruited from the Bar. So there is no question of any prejudice to appointing anybody from the Bar. In the Income Tax Tribunal under my colleague the Finance Minister you have appointments made from the Bar. So that is not the reason why we have another arrangement here. The reason why this thing came first to our minds was that up till now there was no power in the Criminal Procedure Code to give any pardon to any person implicated, unless it be that it was a very grave and serious case like murder, arson or some such thing. The Criminal Procedure Code provides that in every case wherever pardon is given, no matter what the nature of the case may be, the case must be committed to the Sessions Court. Now, the House would have seen that here in this Bill, in these bribery cases, it was thought proper that the power to give pardon in suitable cases should be provided for. If this power is given, then the case will have to come to the Sessions Court and there would be a multiplicity of proceedings—first the committing Magistrate's court, then the Sessions Court and third the criminal appeal before the High Court. Therefore, we thought that it would be proper that the moment the pardon is given to anybody then we cut out the commitment procedure and hand over

the case to an officer of the status of the Sessions Judge so that he may consider the case right from the start with all the powers of the Sessions Court and then have one appeal. Secondly, I thought to myself that the ordinary practice is this. Every bribery case is tried normally by a Magistrate. Then there is an appeal before the Sessions Judge. Then there is inevitably a further criminal reference in the High Court which also takes time and we wanted to expedite the proceedings. Therefore, this Bill ultimately came to have this provision that immediately, straightaway, there should be a trial by a superior court, an experienced court, a judge who may have official experience of some ten to fifteen years, a Sessions Judge with large experience. Similarly an Additional Sessions Judge has large experience of about 20 years. Assistant Sessions Judges are generally appointed from the members of the provincial judicial service who have been acting on the civil side, who have also about 20 years' experience. And so we thought it would be desirable to have every case in which there is a charge of bribery to be tried by a senior, experienced judge. I have heard it said over and over again in every High Court whenever an accused was on trial, even in criminal cases, the judge saying, "We must not forget that this man is getting not only two years and six months. He, in addition, stands to lose his job and that means that there are two punishments. And his livelihood is lost and also his right to his pension. Everything is lost." So the judge is very careful in dealing with such cases. Therefore we have to obtain competent, senior experienced judges for such trials.

The House will also see that we are not going to have one Special Judge for the whole province or a Special Judge for practically every district. Immediately this Bill is enacted by Parliament, very likely the State Governments will notify the court of every Sessions Judge and every Additional Sessions Judge as a Special

Judge under this Act. Suppose you appoint a member of the Bar or anybody else as a Special Judge, I do not expect that there would be such a tremendous number of cases in every district as to keep the Special Judge occupied for all the 365 days of the year. Supposing there are three cases at a particular place at one time. What would be the result? The Special Judge takes up the case, examines prosecution witnesses and then gives an adjournment for seven days for further cross-examination. What will happen during the seven days? If he were an ordinary Sessions or Additional or Assistant Sessions Judge, he will have plenty of work and will carry on his normal work, in addition to doing this special job. Under this proposal, your lawyer will be a Special Judge, doing work for three days in the month or four days and no other work. Now, is it contemplated that a practising lawyer should be a Special Judge for four days and on other days go back to the Bar and practise- and then again come back as a Special Judge? I have got the greatest reverence, admiration and respect for the practising profession but I may tell you from experience, senior lawyers will not accept this appointment because that will interfere with their practice and junior lawyers will not be suited for this. We want experienced lawyers and not lawyers with seven years' standing. Therefore, leaving aside all objections on the grounds, shall I say, of expediency to which my friend Mr. Kunzru has referred, appointment of Special Judges from the Bar under this Act is really not well suited and will not serve the purpose. It is on that ground and on that ground alone that I would beg the House and the hon. the mover of these amendments not to press these amendments. It is not a question of having powers because under the Act we can appoint a member of the Bar straight as a District and Sessions Judge. The Constitution provides for appointment to the High Court even from amongst the Bar.

Before I sit down, I may say one 30 CSD

thing. Every service has got a tradition. The moment you enter that blessed circle, the entrant is influenced by that tradition. It is one of our great good fortunes that our judicial service in India has built up great traditions. I am talking of the service right from the top to the bottom, from the High Court to the lowest Munsif's Court. They have built up a great tradition. The moment a man is appointed permanently and he becomes a member of that service, the traditions of that service guide him and surround him. Traditions of that service give him strength. Appointment of temporary Judges stands on a different footing altogether. That is not to be encouraged. It is not fair, either to the members of the Bar, or to the litigants or to anybody else. If you have a practising member of the Bar appointed as a Special Judge permanently, then, I say, there would be no work for him. If you appoint him on this sort of week-in and week-out basis—three days he functions as a Special Judge and for the 27 days as a practising member of the Bar—then I say it is not fair to him because he will not inspire confidence. People will say everybody is approaching him. I do not want to be open to that embarrassment. We have our Constitution which provides that a member of the Bar may be appointed as a member of the judicial service, straight as a District and Sessions Judge or even as a High Court Judge. That way, he is lifted out of the profession and goes into service when he becomes a member of the service.. That is absolutely distinct from temporary appointments for temporary purposes. It is that consideration which I thought I had better place before the House as strongly as I can.

SHRI TAJAMUL HUSAIN: On a point of clarification. The hon. Home Minister has given the reason why a lawyer should not be appointed temporarily. My point is, Sir, that by accepting this amendment, it will not interfere with his powers—he can still appoint Special Judges from

[Shri Tajamul Husain.] amongst the Judges, Sessions Judges, Additional Sessions Judges or Assistant Sessions Judges — but will give additional powers to Government, if they feel the necessity. I am only asking a question, Sir. If they at any time feel, in a case of emergency, that a judge may be appointed from amongst the members of the Bar—what will Government do if they have no power to appoint a lawyer? An emergency may arise when

MR. CHAIRMAN: Is it a question ? We do not want a long speech.

DR. K. N. KATJU: Is it a very complicated question ?

DR. TAJAMUL HUSAIN: A time may come when you cannot get the services of retired judges and you may require Special Judges from amongst the members of the Bar. He need not be temporary but can carry on in Circuit in the provinces and try bribery cases. May I know what is the objection ?

SHRI C. G. K. REDDY: I should like to say a few words before the Home Minister, Sir. I thought that after the introduction of the Bill we were going to tackle corruption and bribery in a very large way. But, after the intervention of the hon. the Home Minister, it would seem to me that this Bill is merely a sort of procedural adjustment. I, for one, misunderstood the Bill to mean that we are going to get into grips with bribery and corruption. I should like to know what he thinks about it.

DR. K. N. KATJU: I do not think any assurance has been given on behalf of Government that it will generate or procreate bribery cases. Bribery cases have got to be detected. They will have to be investigated. As a matter of fact, I know from personal knowledge that in every State and in the Centre there are specific instructions that no mercy should be shown to any bribe giver or taker.....

SHRI C. G. K. REDDY: But the hon. Minister himself said that it has not been successful.

DR. K. N. KATJU: and the utmost energy should be spent upon detecting these cases. I do not accept that immediately you pass the Act, there will be an enormous crop of bribery cases which will have to be tackled by these Judges. In a District there may be 100 cases and in others there may not be any. I wish hon. Members here and in the other House and in other Legislatures, would send us verified and authentic reports of bribery and corruption. My suggestion was this: "Don't proceed on the assumption that these Special Judges will have plenty of work."

KHWAJA INAIT ULLAH: Can the cases suggested by us be investigated by the Central C. I. D. ?

PROF. G. RANGA: Yes, they will be.

DR. K. N. KATJU: Either you have a trial according to the procedure or you have a trial, as I said the other day, trial by radio, trial by telephone and so on. That is a different matter. On the other hand I hear every day that there must be regular trial, that Everything should be done in accordance with the law. All that takes Time if you have to comply with the law. Otherwise let 20 men stand up and say 'A' is to our knowledge a bribe taker; hang him, and we hang him. I mean you cannot have it both ways.

SHRI B. GUPTA (West Bengal): May I say a word in support of the amendment especially in view of the speech of the hon. the Home Minister ? I wish the Home Minister had emerged out of the bounds of the existing Criminal Procedure Code. Now, if you have to fight such social evils as corruption and bribery on a scale on which it should be fought, it would be futile to stick to the existing set procedure of the Code or to develop arguments in the light of those procedures. If I had my.....

MR. CHAIRMAN : Mr. Gupta, please confine yourself to the amendment.

SHRI B. GUPTA: Sir, I am speaking in support of the amendment that they should engage men from the Bar, and since the hon. Minister has developed his arguments against this amendment, I should like to tell the hon. Minister through you, Sir, that this sort of argument had better be given up. I am naturally conditioned by the limitations of the amendment. If I had my way, I would have the judges elected by the people, and I would have allowed them to make up their want of legal experience by appointing assessors. But we cannot possibly take this step under the existing arrangements. Even so, I would be in favour of recruitment from the Bar for two reasons. First, members of the Bar are likely to be more alive and sympathetic to public opinion and at the same have a better human approach in matters like these. The hon. the Home Minister would probably say that they have not got judicial experience; but, Sir, judicial experience is not the only thing that counts in such matters. You must have a new social approach, a new social outlook. Members coming from the Bar would perhaps furnish these qualifications to some extent. At the same time if we had members from the Judiciary—the existing Judiciary—whether they are in service or superannuated—I am not going into that now—the danger is two-fold. Firstly, there will be a constant inducement and it is all the more dangerous because the appointing authority is the Ministers and you know from experience that if anybody has to be put under the searchlight of investigation, it is the Ministers first, Ministers second and Ministers third. Therefore I do not like these people to be appointed in that manner by a body which is open to question. Secondly, they have got set ideas. We have our experience of the Judiciary. The Judges are soaked in certain ideas given to them by the British. They

like the Criminal Procedure Code and the Indian Penal Code like the Bible as if everything has to be set after that. Now it is very difficult to present cases before them in a way which would conform to the requirements of social advancement and things like that and that makes it difficult. Therefore
(Bell rings.) One point, Sir, the hon. Minister.....

MR. CHAIRMAN: I am standing. Order, order. (*Turning to the Minister for Law and Minority Affairs*) Would you like to say anything ?

SHRI C. C. BISWAS: After the speech of the hon. the Home Minister, I do not think many words are called for from me, but I would make just a few observations. A tirade has been launched on the floor of the House against all retired men, judicial officers in particular. Being a retired judicial officer myself, I do not know if I have any *locus standi* for discussing this question. But I can give an assurance to my hon friends opposite—I can only speak for myself—that although after retirement it has been my misfortune to hold several other positions, I had never allowed myself to be influenced by the prospects of anything coming while I was on the Bench. And I believe, Sir, that is the tradition of which every member of the Judicial Service in this country is proud. It is a tradition of a very high order and it is very unfortunate that all sorts of reflections should be cast against the service with an amount of irresponsibility that takes me by surprise. Judicial officers, retired or in service, are not to be made a target of attack in this way. I as a member of the Judicial Service and as a retired member must respectfully but strongly protest against such an attitude.

AN HON. MEMBER: Is that a personal consideration ?

SHRI C. C. BISWAS: It is not a question of personal consideration. I repeat that the service to which I had the honour to belong and from which I have now retired has got those traditions, and they should not be so attacked.

[Shri C. C. Biswas.]

So far as this amendment is concerned, it is not that L is intended to employ retired Sessions Judges, Additional Sessions Judges or Assistant Sessions Judges. It is only if such Judges are not available from the service that power is taken to recruit from amongst persons who had already held such appointments and who are still found fit, both in mind and in body.

SHRI K. L. NARASIMHAM (Madras): Is any medical test prescribed ?

SHRI C. C. BISWAS: Let me not be interrupted. It has been suggested to the State Governments that they may notify as many of their Sessions Judges, Additional Sessions Judges or Assistant Sessions Judges as may be necessary as Special Judges for the purpose of this Bill. That will at once show that it is not the intention of Government to appoint retired men if they can help it, but the power is taken to meet any possible contingency.

Coming to the next amendment, that is about the appointment of members of the Bar of not less than seven years' standing, I have little to add to what has been said by the hon. Dr. Katju. The whole idea is to have the service of experienced judicial officers for this particular kind of work. That is all. There was no idea of barring members of the Bar. You are aware, Sir, that our Constitution provides that members of the Bar may be appointed as High Court Judges. So far as the subordinate judiciary is concerned there is also this specific provision: "A person not already in the service of the Union or of the State shall only be eligible to be appointed a District Judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment." There can therefore be no intention of barring members of the Bar. But as was pointed out, Sir,

the work which will be assigned to the Special Judges will not keep them occupied for the whole of the time. This is an experiment. It is expected, no doubt, that there might be quite a large number of persons coming forward to give evidence as approver witnesses and there might be a large increase in the number of cases to be tried. That may be so, but that is yet to be seen—as to what will be the effect of the new provisions that have been inserted in the Act. Therefore, Sir, it will not do to appoint somebody from outside who will be there only as a part time officer. We do not want to make any such appointment unless the work is sufficient to keep the incumbent permanently occupied and occupied for the whole of his time. So, Sir, it will not be right to make an appointment from the Bar. Another reason is that a member of the Bar whether the appointment is for a whole month or a whole year or any other period, will be appointed only on a temporary basis. That is bound to be so. Now, after the temporary period expires and his services are no longer required, will not that enable him to make this temporary assignment a plea for absorption into the permanent cadre? Would that be right or fair? As a matter of fact permanent appointments to the judicial services are open to members of the Bar, and there is no reason why that should not be sufficient. Under the very article of the Constitution which I have read out a practising barrister of seven years' standing may be appointed straightaway as a District Judge, and as such he may be called upon to deal with many important cases immediately on his appointment. But as regards these bribery and corruption cases, the Government's intention is that the trial should be in the hands of the most experienced judicial officers. When I say "experienced", I mean judicial experience. Government do not want to take any avoidable risks. There is no deliberate desire to exclude any particular class as such from appointment. Sir, I hope the hon. mover will not press this amendment, and the House also will not accept it.

DR. P. C. MITRA (Bihar): Is it a fact that practising lawyers are debarred from becoming honorary magistrates ?

DE. K. N. KATJU: I do not know about other States, but in Uttar Pradesh a practising lawyer is never appointed as an honorary magistrate.

SHRI C. C. BISWAS: That is the practice in West Bengal also.

MR. CHAIRMAN: I now put the amendments to the House. I put No. (0 and No. (») separately, because there is some difference of opinion with regard to «them. Amendment No. (1).

The question is :

That in sub-clause (2) of clause 6 of the Bill, the words "or has been" be deleted.

The amendment was negatived.

MR. CHAIRMAN: Amendment No. (il). The question is:

That at the end of sub-clause (2) of clause 6 of the Bill the following words be added:—

" or a member of the Bar of not less than seven years' standing."

The amendment was negatived.

MR. CHAIRMAN: The question is:

That clause 6 stand part of the Bill.

The motion was adopted.

Clause 6 Was added to the Bill.

Clauses 7, 8 and 9 were added to the Bill.

MR. CHAIRMAN : Clause io. There is one amendment by Shri Rajagopal Naidu.

SHRI RAJAGOPAL NAIDU: I only want the word "sent" to be substituted for the word "forwarded". If you refer to clause 5 of the Bill, in line 35 the word "send" is used. In order that the wording of this clause should be in consonance with that used in clause 5, I have suggested the substitution of the word "sent" for the word "forwarded". However, if the mover of the Bill is not particular, I will drop the amendment.

MR. CHAIRMAN:- The hon. Member is prepared to drop the amendment if the hon. Minister has any conscientious objection.

SHRI C. C. BISWAS: Sir, you will see that there is no difference in meaning. I had noticed that the word "sent" is used in the previous section and therefore that word should have been repeated here. Unfortunately this was an amendment moved by a private Member and this was not examined. It escaped our notice. However, I would suggest that for the purpose of securing the substitution of a word having the same meaning as the one which exists, the progress of the Bill should not be impeded. If this amendment is carried, it means that the Bill goes backwards and forwards. Therefore, I would request the hon. Member not to press the amendment. We quite appreciate the object.

io a.m.

SHRI RAJAGOPAL NAIDU: I will not press it, but I will only say one word by way of explanation. We will certainly be criticised by the legal profession if two different words are used to mean the same thing. The framers of our law should, I think, use language which is uniform throughout.

SHRI J. R. KAPOOR: Sir, I have a few observations to make on this clause.

The apprehensions that I had have been confirmed by the remark which just fell from the lips of the hon. the Law Minister that this clause had been incorporated at a very late stage, having been moved by a private Member, and that due consideration was not given to its phraseology. It is obvious that the Government not only did not give due consideration to the phraseology of this clause, but did not seriously consider its implications either. What are the implications of this clause? The Government under this clause would be under the obligation to transfer all the pending cases to the Special Judges whom they will appoint under

[Shri J. R. Kapoor.] clause 6 of the Bill. Now, only a few minutes ago I tried to find out from the hon. the Law Minister as to whether he had any idea with regard to the number of pending cases, and the answer came that he had no idea. Sir, I have some idea, because I have gone through the Tek Chand Committee's Report, and from that I find that at the end of 1951 there were more than 300 cases pending. I only wanted to know whether during this period of six months many more cases have been added to this long list of pending cases. I am sure quite a number of cases must have been taken cognizance of afresh during these seven months, and a few of the pending cases may also have been disposed of, and I suppose that if an inquiry on the subject were made, the number of pending cases now would surely be very much more than the 300 reported at the end of 1951. That being the case, I would respectfully ask the Government to consider seriously whether it is advisable for them, in the very interest of the speedy disposal of the cases, to take upon themselves the responsibility of transferring each and every pending case to the court of the Special Judge. What is to be gained thereby? My suggestion to them is that they should reserve to themselves the right of transferring or not transferring a case to the court of the Special Judge. They should leave it to the discretion of the State Government to pick and choose out of the pending cases and decide as to which of them must necessarily be sent to the Special Judge and which should be allowed to be finished and decided by the ordinary courts. There might be a very large number of cases, a pretty good number of cases, which may have reached a very advanced stage. In some cases only arguments may be pending to be urged; in some cases there may be only one or two defence witnesses to be examined; and in some cases only judgment may have been reserved. Now, if all such cases which are in an advanced stage of disposal must necessarily be transferred to the court of the Special Judge, will it lead to the speedy disposal of cases, or will it lead to waste of public

time and money? That is my submission. One of the reasons why Special Judges are going to be appointed is that the Government expect that they may have a number of approvers in some cases. Now my submission, therefore, is that all those pending cases in which the Government expect to have approvers, may be transferred to the court of the Special Judge so that the Government in such cases may have the advantage of tendering evidence afresh; the trial may be started *de novo* and new prosecution witnesses may be put in including the approver. This is one aspect?

The second aspect is that it does not make it clear whether those cases shall be tried *de novo* or not. I have not been able to understand clearly from what fell from the lips of my hon. friend the Law Minister as to what exactly the legal position would be, whether those transferred cases would be tried *de novo* or not. Now, Sir, the Criminal Procedure Code does not seem to be very clear on this subject. If it is the view of the hon. the Law Minister that all these cases will be tried *de novo*, well that is another thing. That will only lead to delay. But if they are not to start *de novo*, then the question arises, if there are some cases which are transferred in which the Government find it possible to secure an approver, how will it be possible for the prosecution to tender the evidence of such approvers? Because according to the existing Criminal Procedure Code while the accused has the right to insist on a *de novo* trial when the case is transferred from one court to another, the prosecution has no such right. It may of course be open to the court to recall any witness or to examine any new witness. That is another thing. But I do not know whether the Sessions Judges would feel inclined to permit the prosecution to tender evidence of an approver at a very late stage of the case if it is not specifically provided herein that the case shall be tried *de novo*. This is one important aspect of the case which I have to submit for the serious consideration of the hon.

the Law Minister and the Home Minister because, if all cases will not be tried *de novo* then the purpose of the Act, the object of the Act, in respect of the pending cases is likely to be frustrated to a very large extent. I therefore submit two things. Firstly in place of 'shall' they may have the word 'may' leaving it to the discretion of the State concerned whether to send a particular case to the Special Judge or not according to the circumstances of each case, and secondly to provide here specifically as to whether it shall be a *de novo* trial or not. I would prefer that it should be a *de novo* trial so that the Government may have their right to put in approver's evidence.

MR. CHAIRMAN: These are merely suggestions. You are not going to move any amendments.

SHRI J. R. KAPOOR: It is no use moving an amendment when it is unacceptable to them. I simply wanted to give these suggestions.

DR. K. N. KATJU: With your permission, Sir, may I say one word in regard to this matter? There are various difficulties. We considered them when these things came on. First of all, I think there is an article in the Constitution which prohibits discrimination against all varieties of accused persons. There was a long debate in the Court—in the Supreme Court as well as in the High Court—and it struck us that if the suggestions made by my hon. friend were accepted, then they will be choosing between one or the other. They dislike A. Therefore they ask the Magistrate to go on with the case. They dislike B. Therefore they send the case to

SHRI J. R. KAPOOR: On a point of personal explanation, Sir. I did not suggest that there should be discrimination between one case and another. But all cases in which the Government is able to secure approvers, may be transferred and not others. So there will not be any discrimination. There will be two classes of cases.

DR. K. N. KATJU: Anyhow this was what struck us that the power of retaining a particular case or a group of cases before a Magistrate and sending another group to somewhere else may give rise to all sorts of comments and even legal objections.

And secondly it struck us that even at the cost of some inconvenience in particular cases it was desirable that we were instituting this new provision of a trial by a Special Judge which would apply to all cases right from the start so that no accused may have any sort of grievance in this matter, saying "I am deprived of justice and my case is being tried now by a magistrate of five years' standing." Please remember one thing that there is always a right of appeal and there will be no harm done if the Special Judge takes cognizance right from the beginning even of pending cases.

So far as this question about *de novo* trial is concerned or taking up the case from the stage it may have reached, the Criminal Procedure Code makes great provisions about it. If the accused wants to spend a little more money on lawyers and take up another month or two, there is no harm done. Leave it to the good sense of the Sessions Judge. He is an experienced Judge and he will do what he thinks best in the circumstances. Therefore while I shall most carefully consider the suggestion that has been made on the floor of this House, I respectfully suggest that we had better let the Bill stand as it is and wait for developments.

SHRI J. R. KAPOOR: Will the Government have the right to claim a *de novo* trial? Supposing there is a case which has been sent to the Court and thereafter Government finds out an approver, what will happen in that case ?

DR. K. N. KATJU: In the first place, if a trial has been more or less completed, the chances of getting an approver are very slender. The approver comes right from the start. I

[Dr. K. N. Katju.] have never heard of an approver coming forward at the fag end of the case and even if an approver comes then, nobody is going to attach even the slightest value to his evidence.

SHRI K. S. HEGDE: Is the Special Judge an Assistant Sessions Judge or a District Sessions Judge?

DR. K. N. KATJU: Both.

SHRI K. S. HEGDE: What are the normal powers while acting as Special Judge ?

DR. K. N. KATJU: It is provided for by section 9.

SHRI K. S. HEGDE: But that does not define his position whether he is a Sessions Judge or a District Judge.

DR. K. N. KATJU : You better read it..... *{Interruption.}*

MR. CHAIRMAN: The question is:

That clause is stand part of the Bill.

The motion was adopted.

Clause is added to the Bill.

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

SHRI C. C. BISWAS: I move that the Bill be passed.

MR. CHAIRMAN: Motion moved: That the Bill be passed.

SHRI C. G. K. REDDY (Mysore): Sir, I rise to oppose this Bill in toto. You will remember, Sir, that at the consideration stage, I said that no Member of the opposition would grudge the Government the power to punish offenders in regard to cases of corruption, nepotism and bribery. It is therefore rather embarrassing for me to resile from that position, but this has been necessitated by the manner in which the hon. the Home Minister has thrown some light on this Bill. I had thought when I supported it

that the Bill was being fashioned to see that corruption and bribery which are so rampant in the country were going to be taken in hand, but here the hon. the Home Minister in answer to an interpellation says that the Government cannot generate or procreate new cases. I am sure no one wants any more procreation than what there already is in this country, and certainly the Government should not take a hand in it. I thought that everyone was agreed—even amongst the Government supporters there was a good deal of criticism—that the Government was not handling this problem in the manner in which they ought to handle it. We thought that by the passing of this Bill, by creating Special Judges and instituting a special procedure, something was going to be done to solve this problem, but the Minister in charge of the Bill and who indeed should have piloted the Bill, comes out with a novel explanation that it is only a sort of adjustment. If the same efforts are going to be taken for apprehension and investigation of offences, then nothing is going to be done. I thought that this Bill was intended to handle this problem, to come to grips with this problem. We find that one more Act is sought to be placed on the Statute Book and no more. I should like to oppose it unless we have a categorical assurance from the Home Minister that the introduction of this Bill and the passing of this Act would also mean that the Government would take some measures to see that the people who now commit these offences and go scot free are brought to book and punished.

SHRI T. S. PATTABIRAMAN: Mr. Chairman, there are no two opinion about the need for putting down corruption in this country, but I am very doubtful, Sir, whether the passing of this enactment by itself will put down corruption in the country. I do not know whether this enactment will put down corruption or whether it will be adding only one more law to the Statute Book without being of any use for the purpose for which it has

been introduced. Today there are various other provisions in this regard but still we are not able to do anything. Now, in the amending Bill there is a provision for approvers. It is a very welcome thing, and it is certainly going to help us in dealing with corruption cases. It is very well known that in corruption cases there are only two persons who know anything about it, the giver of the bribe and the taker of the bribe, and to get proper evidence, either the giver of the bribe or the taker of the bribe should be taken as approver. If this alone were the case I do not think we will be able to achieve the object we have in view unless other provisions, other enactments, are suitably amended. As a matter of fact, Sir, a ruling was given by the Privy Council in the N. S. Krishnan case that the uncorroborated evidence of an approver in material particulars will not be a justifiable ground for convicting the accused. That ruling still stands. Sir, I draw the attention of the hon. the Home Minister to section 114 of the Indian Evidence Act. That section says:

" The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. "

That section gives some illustrations.

" The court may presume—

* * * * *

(6) that an accomplice is unworthy of credit, unless he is corroborated in material particulars ; "

We know that the giver of the bribe is only a poor merchant or some other ordinary man and the taker of the bribe is usually a man high-placed in the official hierarchy, and so under the section I have quoted, you will not be able to convict the bribe taker. The court is not likely to believe the evidence of the approver unless it is corroborated in material particulars. And in these types of corruption cases, it is very difficult to find a third man

to give evidence. So unless something is done to amend these clauses, we will not be able to achieve the object we have in view and we will be only failing in our duty. The object of the Bill will be defeated unless we take some other measures also. How can we do that ? It can be done by taking the people into your confidence in corruption cases. Corruption is the greatest of crimes, the greatest social crime. In dealing with these cases, it is better to have the people with you. It may be through the mechanism of People's Courts. I do not want to be misunderstood. People have a right to try these cases. It is the people who are the worst sufferers in these cases. If the Government does not put an end to corruption, corruption will put an end to the Government. And in order to put down corruption, you must associate the people with these corruption trials. You cannot eradicate this trouble by adding one more Act to the Statute Book. You can only do it by associating the people with these trials by making this offence triable by jury. Sir, in making this suggestion, I would like to make it clear that I am fully in agreement with the object of the Bill. I am only making this suggestion for the better working of this Bill, for the better administration of the Bill. Sir, I support the Bill.

SHRI C. G. K. REDDY: Naturally you would.

SHRI B. GUPTA : Mr. Chairman, the excited speeches of the hon. the Law Minister have only added to our suspicions just as the learned discourse on Law by the hon. the Home Minister has disabused none of our apprehensions. There is no doubt that, this measure will come down with a heavy hand upon the poor people who are the victims of circumstances. We know, Sir, that their offences will not be viewed with the human sympathy, the social sympathy, that they deserve. But as far as the real high-placed bribe takers and their wealthy patrons in the business world are concerned, this Bill is going to be a damp squib. Therefore it does not raise any hope in us. The people should have been

[Shri. B. Gupt.]

associated in this anti-corruption drive. in this anti-bribery drive. The targets should have been fixed in high places. As it is, we have a law which is a soulless law, in which the people have no place. We have only produced another Act to be placed on the Statute Book. We have no assurance from the Home Minister that he would secure the co-operation of the people. Therefore this is sheer window-dressing as far as the Government is concerned. This will create no fear in the minds of those people who are creating corruption and bribery in the country. Therefore I request that the Government should reconsider this matter and find out other means of rooting out corruption. He should look to the people and draw upon the experiences of China where corruption has been totally eliminated in two years.

SHRI P. V. NARAYANA: Mr. Chairman, the purpose of the Bill is to make the offering of a bribe a substantive offence by itself, to raise the maximum punishment for an offence under section 165 to that under section 161 and to appoint Special Judges for the speedy disposal of corruption and bribery cases. I have no objection to these but the Government are trying to create a special group of people, the approver group. There are quite a number of people who are unemployed, not to speak of the others in the street who can be used by the officials to turn approvers. Ultimately these people who are likely to be converted into approvers, they themselves expose this information and they threaten either the bribe giver or bribe taker with consequences and demand huge amounts so that these people will be obliged to give these prospective approvers something to get rid of all the troubles. It is not a healthy sign. Now it is only in cases coming under Sections 337, 216A, 211 etc. i.e., for grave offences involving murder, dacoity etc. there is a provision in the Code for converting an accused into an approver. They are very grave offences and if it is not possible for the prosecution to obtain evidence, then it

might happen that some of them will be converted into approvers but here this is bribery. In these days of scarcity of materials etc. bribery and corruption have become the order of the day and so Government must see that their officials behave well and they must have a special branch to detect such corruption cases. If they begin by making the members of the public approvers in their own interest, it will be a very unhealthy sign and it does not serve the interests of the public and I hope Government will seriously consider this question of giving pardon and that they will come forward very shortly with another Bill deleting this clause so that this sort of encouragement to members of the public who have a criminal mind will not be given. With these words, I oppose the Bill.

SHRI K. B. LALL (Bihar): I beg to thank you for giving me this opportunity to speak a few words on this Bill. I was going on standing up for the last two days but I could not get an opportunity. Of course it is my fault. I am sitting in the Centre and the Chair only looks to his right and left sides.

I take this opportunity of speaking on this Bill to bless this child of the Government which is going to be ushered in as an Act just now. This Act, which may be said to be born of corruption and to be brought up by indulgence, requires to be watched as to how it is going to be put into practice. As a matter of fact, all the points were very nicely thrashed out from all sides of the House and I only hope that Government would come to realise that it is not a question of want of law— even at present the law exists—it is a question of want of imagination on the part of those who administer the law. I thought by the pomp and grandeur with which this Act is going to be ushered in, there will be really a sort of drive to eradicate corruption in the land. But I have heard from the Home Minister

that it is not going to be a drive to eradicate corruption and it will be just like so many pieces of legislation on the Statute Book. This has disappointed me a bit. I would only urge that it is imagination that is wanted in the matter of a drive to eradicate this corruption. That cannot be possible unless the Government really think of starting a drive. Of course the Government is not sleeping over the matter. In the States we find there are anti-corruption departments and officers are appointed to look into corruption cases. That should be tightened now by the help of such legislation. Many things have been said in favour of the bribe giver and against the bribe taker and although I also held the view that the Act may not work as the Official Safety Charter Act just as somebody was saying outside, henceforth the officials who were afraid of taking bribe and who were feeling that the man who is going to hand over the cheque or notes may be a spy of the Government will now feel a sort of rest in his mind that he cannot do that because he is also in the same position as the bribe taker. So all these things lead the people to believe that it may act as a sort of charter for those who were actually taking the bribes. If this sort of thing is not going to be checked, if this Bill is passed without having any drive to eradicate this evil of bribe taking, it will be of no use. As a mere piece of legislation on the Statute Book it will not serve the purpose in view. There should be a special drive to eradicate the evil and that is only possible if the State Governments are pulled up and the States Governments in their turn pull up the District Magistrates and see that there is no complaint in their districts regarding corruption. Today the position is that not even the magistrates are able to check this. I know of an instance in which the Magistrate felt helpless. There was one instance in which the Deputy Magistrate was acting as Treasury Officer. He was sitting there. Many persons went to draw some money. There was one Homeopathic doctor who

also wanted to draw some money and he came to me for an attestation certificate. He took it from me and he saw people paying at the rate of one or two rupees to the person in charge there to get the cheque cashed. This gentleman was not prepared to pay and the cheque was returned on some pretext or other. He came to me five times and the cheque was spoiled and there was no space left on the cheque to write anything. Then I went to the Treasury Officer and told him 'You can fix a regular fee, why get it by the back-door?' I told him that the money was being collected by his officer. He said 'Don't pay and see the matter through'. The man (the Homeopath) had taken a vow not to pay. The Magistrate ultimately said 'My own cheque is suffering in that way'. I then said 'it requires no proof when you yourself are having such difficulties'. I know there are so many instances of even Government servants who are looking into the corruption cases suffering. Unless you take it up as a drive, no amount of laws in the country will Help you. You ask the District Magistrates to be vigilant and to take it up as a matter of drive and to hound out the persons who are corrupt. I want that at least among Governments this should be taken up as a device. This is the only suggestion I have to make.

SHRI K. S. HEGDE : Let me first of all congratulate the Government and the hon- Law Minister for having brought forward this piece of legislation which has indeed been a long-delayed piece of legislation. As early as 1928 a judge of the Madras High Court—Justice Coutestrotter who later became the Chief Justice of Madras, pointed out that there was a lacuna in sections 161 and 165 of the Indian Penal Code as there was no suitable provision for dealing with the giver of bribes. As a practising lawyer I know how difficult it is to get the conviction of the giver of bribes as the law now stands. The judges convicted the

[SHRI K. S. Hegde.] offender by a circuitous way by bringing into use section 161, read with section 109 of the Penal Code. But that has its own limitations. That is why judges have, over and over again, brought to the notice of Government the necessity for amendment of the law. Unfortunately and possibly because there was no adequate machinery in the previous Governments to collect and collate the judicial opinions expressed on such cases, this much-advanced piece of legislation had to wait for well over a quarter of a century, and it was left to the Tek Chand Committee to bring the matter effectively to the notice of Government and thus pave the way for the present Bill.

We have now to pass this measure into law. But my hon. friends on opposition side have taken advantage of the occasion of the discussion on this Bill to abuse every congressman and every Congress Minister.

SHRI C. G. K. REDDY : No, no.

SHRI K. S. HEGDE : Whenever they see a Congressman they seem to see a ghost in him.

SHRI C. G. K. REDDY : Your own paity said so.

SHRI K. S. HEGDE : And then, Sir, we know there were lots of criticisms here about Congressmen and some Ministers. It is a good parliamentary practice not to attack a person who is not in the House.

SHRI C. G. K. REDDY : He ought to have been inside the House.

SHRI K. S. HEGDE : I mean Ministers not of the Government of

India, but of the Government of Madras. About them very scathing criticisms were made. All I can say is that there are at present no corrupt men among Congressmen, for most of them have left the Congress and formed their own parties. They are no more in that party.

SHRI C. G. K. REDDY : Good joke that.

SHRI K. S. HEGDE : I would only request them to see where the heinous crime actually is and repeat to them the old saying, "Physician, heal thyself."

Then again, our hon. friends of the Communist Party have been telling us that none of these provisions is going to heal the disease, "Come my way. Come to the Promised Land" and they all the time keep pointing to Siberia ! Over and over again we have told them that their way does not appeal to us.

A good deal of criticism was voiced as regards the amendment to section 337 of the Criminal Procedure Code and we have been told *that* we should not have approvers in these bribery cases. They say, approvers are black-sheep in society. On the other hand we had our hon. friend from Madras say, that section 114 subsection (b) of the Evidence Act is an obstruction to the proper appreciation of the evidence in these classes of cases. We have been trained in the system of British jurisprudence and we feel that evidence of the approver under section 133 of the Evidence Act is not an evidence of the first order. But in bribery cases we have to depend on the approver's evidence and it is important that we *get* this evidence. In most cases circumstantial evidence is the only kind of evidence we get and without the approver's evidence you will not get the full story or the full meaning of the

offence. Therefore it is important that we should have the approver's evidence before the court to be supplemented by circumstantial evidence of material character.

The question has also been raised whether in the so-called "trap" cases where the bribe taker is caught in the act of taking bribe, the evidence of the giver can be taken as accomplices evidence, when he gives the bribe in pursuance of a trap previously laid. I do not know how far this practice is sound. It is a matter which has to be considered by Government and suitable modifications, if found necessary, made in the law.

I may, however, submit one thing and it is this. Our Criminal Law is very old and times have progressed and so it is time that just as in other countries we too should try to bring the law in tune with the times. I would like to take this opportunity to request the Home Minister and the Law Minister to appoint a Law Commission to collect and collate the judicial decisions and change the law wherever necessary, especially so far as the criminal laws are concerned. Of course, the Indian Penal Code was most ably drafted by Lord Macaulay, but it now requires considerable amendment. I may bring to the notice of the hon. the Law Minister that in practice sections 420 and 409 of the Indian Penal Code which are generally invoked in dealing with government servants have been found to be ineffective; there seems to be a lot of lacunae and judicial verdicts are conflicting. I would only invite the attention of the Government Benches to the fact that the time has come when they should consider the whole series of criminal laws and amend them suitably without at the same time losing the spirit of the British jurisprudence.

I am glad that in this Bill the preliminary enquiry court has been cut out. This will expedite matters. I do not know whether the Law Minister

will adopt the same provisions and make them applicable to other cases as well. Of course, we are all crying against law delays and saying that justice delayed is justice defeated. Therefore every attempt should be made to see that disposals are expedited and I am confident that the Law Ministry and the Ministry of Home Affairs will endeavour towards this end. I therefore extend my hearty support to the present measure.

SHRI K. RAMA RAO (Madras) : Mr. Chairman,—there has been a feast of reason and a flow of soul in the course of this debate so far as the lawyer-Members of the House are concerned. We have heard eminent men on both sides discuss the provisions of the Bill with great ability. May I, at the third reading stage, make a layman's contribution to the discussion?

Honestly speaking, it appears to me that this Bill is somewhat like prescribing a pill for an earthquake. A mighty social and sociological problem like corruption cannot be solved by the passing of a number of legislative measures of the nature of the one with which the House has been dealing for some time now. The final solution demands the development of a high-class national background. It requires something more than man-made laws. There are three classes of corruption, broadly speaking, there is the customary corruption, in which our very gods take part. There is the bureaucratic corruption, which cannot be removed in a single day or in a single generation. There is the commercial corruption, so eloquently spoken of by a number of friends in this House. I do not, however, despair of an ultimate solution.

If I support the measure now before us, it is because I feel that it is the first instalment of greater things to come. This Bill is most likely to fail of its objective. But what does it matter? We are here to mend and to amend the laws and if the Government feel that the present laws are not sufficient and that they must

[SHRI K. Rama Rao.]
be made more drastic, we can be called upon to make them so. In this connection there is no need to refer to China or any other country, India is not going the China way. I believe in Anglo-Saxon jurisprudence. We have built up a splendid judiciary. We can also have parliamentary legislation from time to time to meet the growing needs of the people and the Government.

Sir, as I watched the proceedings of this House, I was reminded of a favourite subject we used to discuss in our inter-college debates in Madras. "Can man be made moral by Act of Parliament?" I am afraid that incorrigible animal cannot be made so, not so easily. I do not believe, however, that my countrymen are suffering from a double dose of original sin. It would be a shame to think so. If we are so bad, it would be disastrous to our self-respect and progress.

In this connection, Mr. Chairman, I am reminded of a classic speech made by Lord Bryce in America. It will be remembered that he was sent in 1904 to Washington as the British Ambassador by the Government of Sir Henry Campbell Bannerman. They say it was one of the finest selections made in the diplomatic history of Britain. Bryce wrote a standard book on that commonwealth. He visited America about 30 years after. In the course of a speech he discussed the vast transformation that had come over the American scene. When first he went there, he said, the country was seething with corruption, corruption in every department of life. The republic was only just over a hundred years old and the citizens had not attained the proper standards of public conduct. Thirty years after he witnessed a great change*. There was less of corruption, financial corruption, municipal corruption, administrative corruption and perhaps a little less of political corruption also, though political corruption is inevitable in a democracy.

1 Sir, after reading that speech, I thought that there was hope for my country also. It is no use exaggerating the evil. It is not so easy to change the national character overnight, but, as we grow from strength to strength and acquire greater moral fibre, both public and private, I have no doubt there will be less and less of corruption.

We have given adult franchise to the people. Do you think the masses are going to keep quiet after this? Do you think they are going to tolerate bureaucratic corruption any longer? Adult franchise is the greatest integral defence of democracy, and it will also lay the ethical foundations of the political structure which we are building. We shall end this problem ultimately by a drastic reformation of the national character. We are no longer slaves of a foreign empire, but are citizens of a free country. And freedom instils noble virtues in its votaries, and supplies the sovereign remedy, and brings salvation as well as solution. Great things, I am sure, can be done by us within the limits of parliamentary democracy without our going the China way.

MR. CHAIRMAN : I would like to say that we are in the third reading stage of this Bill and there is no point in retraversing old ground. The debate should be confined to support of, or opposition to this Bill.

SHRI S. P. DAVE (Bombay) : Mr. Chairman, I welcome this piece of legislation even though I feel it should have been brought up a bit earlier. I am sad, to say that it contains a feature which is not very welcome, viz., the institution of the approver. It is because of what we see every day in our life that our administrators have had to introduce it even though they would not have normally liked it. ! Sir, I welcome this Bill as a pointer of the direction in which we are going and, therefore, after two years I would welcome a change in this very Bill when we have been lifted to a moral

standard when we can avoid such mechanism for having to detect crimes because, after all, it is not an institution of which any country, law book or legislation can be very proud of. The discussions that were going on today brought to my notice certain features of the law which are not very welcome. Sir, the onus of having to prove a crime rests under today's administration on the Government and Government have to bring evidence in order to assure that the accused is really the accused and this has led to a class of pleaders who are expert in proving that he is not the accused. He is considered to be a very efficient, very proficient member and his charges are also very high. Socially, Sir, he is not being discarded as a man lacking in honour, integrity or all other virtues of social recommendation. Sir, I was just thinking whether it is not possible for us, side by side with legislation to see that no honourable pleader takes a bribe either for a bribe taker or bribe giver. That to my mind would be a fair solution.

SHRI C. G. K. REDDY : There will be no lawyers left. »

SHRI S. P. DAVE : Work for it if there are any chances of the people supporting it. I appeal to the hon. the Home Minister and through him to the Ministers of the Cabinet to see whether it is worth while considering this problem. We have, Sir, in our States the Home Guards who are utilised for purposes of helping the people. We have got political freedom, which, I am sure, would be shorn of its beauty, utility and virtue if we cannot lead our country out of this corroding disaster. Legislation is after all a palliative. We want a preventive and not a palliative. Your every organ is bandaged. Here is a boil, there is a boil and ai another there is cancer. Are we going to legislate and legislate for these things ? Then, Sir, we will find that simpler remedies not being effective we will have to go in for more drastic remedies. Therefore, Sir let us try to find something that ;

really of a preventive character and that, to my mind, Sir, is the change in values of human life, that is a regeneration of the human character. Ever since the world war we have lost our morale and, therefore, Sir, let us do something to rebuild our morale. I know that it cannot be done by legislation ; but, if we really are the chosen representatives of the people of our country, then we owe it to them not only to give them proper legislation but to see and point out to them the real causes that are against the progress of this country. I have nothing more to add, Sir. I learnt a lot about the difficulties in prosecuting—and they are real difficulties because I know personally of so many people having taken bribes but have got off and are enjoying their money. Even now under my very nose things aje happening and I cannot help them. The real remedy, as I say, is not in moving Bills or enacting legislation. Let us create a people among ourselves who help the Government by informing the police of whatever they know. We say "Well, he has done wrong, but God will punish him." God will not, Sir, descend from the temple unless the human agency is also active, helping the ways of God.

PROF. G. RANGA : Sir, as I have already said, I am in support of this Bill and my view continues to be the same even after the speeches made by so many of my hon. friends on my side. While my friend, Mr. Venkata Narayana, was castigating this Government as a reactionary Government, I began to wonder whether he was correct in his description of this Government. I gave to myself a number of reasons why this Government ought not to be treated in this way, ought not to be castigated as a reactionary Government. It may be that my hon. friend by virtue of the new company that he has come to keep has gone much more to the left than this Government and I welcome that. I

, would like all of us to be more progressive than the Government, but that does

¹ not necessarily mean that the Govern-

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[Prof. G. Ranga.]

ment should be castigated as a reactionary Government.

SHRI Q. G. K. REDDY : He said "a hopelessly reactionary Government"

PROF. G. RANGA : Yes, hopelessly reactionary Government. I congratulate my hon. friend who has evidently converted my other friend, Mr. Venkata Narayana.

It is not that every Government is reactionary merely because it happens to be a Government.

SHRI H. D. RAJAH : You may put it as non-progressive.

PROF. G. RANGA : I am convinced that our Government is not reactionary. Let us be quite clear in our minds. It is no good going on kicking ourselves all the time that way. Perhaps our Government is not as progressive as we would like it to be. That is another matter. Some of our friends would like to be as progressive as it is in those two countries in the Eurasian continent. I do not want it that way. Some other friends would like it to be a positively socialistic Government, well, I have no quarrel with that. Some others like myself would like it to be a ^{Kisan} Mazdoor Praja Government. Now I would like my friends here and other friends to co-operate with me in turning our Government into that, but that does not justify my agreeing with my friend and that is why I do not agree with him when he says that this is a reactionary Government. But at the same time here are ^{two} Ministers of Government—the Home Minister and the Law Minister—who by their attitude and their approach towards this terrible social evil, this social problem with which this country is confronted, giving justification for many people to feel that evidently they are not as progressive as the Government itself is and that is where my quarrel starts with them. I would like them to realise the signifi-

cance of the appeal—not from this side of the House alone, but from all parts of the House—that has been made during the last two days of discussion.

SHRI C. G. K. REDDY : Perhaps the hon. Minister has not even bothered to read them.

11 a. m.

PROF. G. RANGA : Hon. Members would not have cared to hold forth with so much enthusiasm as they have done and the Chair would not have taken the trouble to allow us to speak at length on this particular matter, if we had not all felt the seriousness of the situation, of this crisis, of this social evil and I want my two hon. friends to give us some indication that they are just as serious about it and that they are also going to use all their good offices, and especially the Home Minister, with all his influence and power in the whole of this land, in order to stamp out this terrible evil. Sir, I cannot congratulate my friend, Mr. Hegde, on the unjustifiable remarks that he made about those people who have had the good fortune or the misfortune of leaving the Congress. I know he holds a different opinion in regard to myself, but that is neither here nor there. Lots of people have left the Congress more because of the failure of the Congress Governments and Congress leadership in stamping out this terrible evil. This evil has become so great, as has been pointed out by so many Members. It is there not only within the Congress administration but it has also crept into the ranks of our political service and political workers and that is why I would like my friend to be a little more considerate and also restrained in his eloquence whenever he gets the opportunity of going in for the Opposition.

SHRI K. S. HEGDE : Why not we make it mutual ?

PROF. G. RANGA : It does not give you any credit to do a thing just because other people do it. Now, one other hon. friend said

MR. CHAIRMAN : Not necessary to answer friends.

PROF. G. RANGA : Now, Sir, I am in favour of associating assessors. I would like the hon. Minister in charge of this Bill to consider that suggestion made by us that jurors should be associated with these judges. I would like to know whether it would be of much advantage or not and if it comes to be of any advantage, then I would like him to come forward with another Bill later on. In conclusion, Sir, I would like my hon. friend, the Home Minister, to submit a report to both Houses of Parliament as to how his campaign against corruption is progressing.

SHRI C. G. K. REDDY : But there is no campaign.

PROF. G. RANGA : What is the good in our closing our eyes to that ? It was Sardar Vallabhbhai Patel, Sir,— let it be said to his credit, it was good that he was one of our national leaders,— it was he who initiated the Special Police Establishment. It was he who brought forward the first legislation before this House. It was because of him that the Tek Chand Committee came to be appointed and it was as a result of all these things that this Bill has come up here today. It only means that there is a campaign.

SHRI C. G. K. REDDY : The hon. Minister himself has denied it.

PROF. G. RANGA : That is why I have complained about the Minister. There has been a campaign and there is a campaign. I want the hon. Minister to see to it that this campaign is made as vigorous, as powerful and as successful as possible.

SYED MAZHAR IMAM (Bihar) :

سید مظہر امام (بہار) : مسطور
چورمیں ! آج دو دن کے بعد تیسرے دن
اس بل پر یہاں بحث ہو رہی ہے - مجھے
چونکہ کوئی موقع نہیں ملا اس لئے میں

اس بارے میں اب تک کچھ عرض نہیں
کر سکا - میں آج چلند باتوں گورنمنٹ کے
سامنے عرض کرنا چاہتا ہوں کہ میں اس
- بل کے پاس کرنے کے حق میں ہوں - اس
لئے کہ گورنمنٹ نے کرپشن (corruption)
کو بند کرنے کے لئے جو قدم اٹھایا ہے اس
سے کوئی شخص ایسا نہیں ہو سکتا جو
انکار کرے اور اسے پاس نہ کرے - مگر میں
گورنمنٹ سے یہ عرض کرنا چاہتا ہوں کہ
اس بل کو پڑھنے کے بعد میں یہ سمجھتا
ہوں کہ گورنمنٹ نے اس کرپشن کی
لہجہ کو بہت زیادہ نہیں سمجھا کیونکہ
اگر گورنمنٹ نے واقعی یہ سمجھا ہوتا کہ
اس کرپشن سے ملک میں کیا نقصانات
ہو رہے ہیں اور پبلک کو کس قدر تکلیف
ہے تو انہی معمولی قانون نہیں بناتے -
میں حکومت سے صرف یہ عرض کرنا
چاہتا ہوں کہ جس طرح سے ان لوگوں
کو ڈیٹین (detain) کرنے کے لئے کہ
جن لوگوں کو گورنمنٹ ملک کے لئے مضر
سمجھتی ہے اور نقصان دہ سمجھتی ہے
سیفٹی ایکٹ بنایا ہے اسی طرح سے اس
کے لئے بھی ایسا ہی قانون ہونا چاہئے -
میں گورنمنٹ اور ہاؤس کو یقین دلانا
چاہتا ہوں کہ ملک کے لئے کرپٹ
آفیشلس (corrupt officials) کرپٹ
پبلک (corrupt public) اس سے کم
مضر نہیں ہیں جتنے کہ پبلک سیفٹی
ایکٹ کے اندر ڈیٹین کیے جانے والے لوگ -
آج کل ہماری پبلک اور آفیسرس میں
روز بروز کرپشن بڑھتا جا رہا ہے - تواریخ
کو اٹھا کر آپ دیکھیں گے تو آپ پائیں گے

[Syed Mazhar Imam]

کہ جو بڑی بڑی قومیں جنہوں نے ایمپائر قائم کی تھیں ان کی تباہی اس لئے ہوئی کہ ان کے افسروں میں کرپشن آگیا تھا - رومن اور ترکش ایمپائر نے جو ذیہبت (defeat) کھائی وہ اس لئے نہیں کھائی کہ اس کی سلطنتی اچھی تھیں تھی بلکہ ان کے افسروں کے کرپٹ ہونے کی وجہ سے ان کی ذیہبت ہوئی - اس لئے حکومت کو یہ سمجھ لینا چاہئے کہ یہ کرپشن خواہ وہ پبلک کاہو یا گورنمنٹ سرونٹس کا ہو جو کہ ملک میں پھیل رہا ہے ہمارے ملک کے لئے بہت نقصان دہ چیز ثابت ہوگی - اس لئے میں سمجھتا ہوں کہ ایسے معمولی قانون کو پاس کرنے سے اس کو بند کرنے میں ہم کبھی بھی کامیاب نہیں ہو سکتے -

بہت سے لوگوں نے دو سال اور تین سال والی بات کہی ہے - میں اس کو دہرانہ نہیں چاہتا - میں صرف اتنا عرض کرنا چاہتا ہوں کہ جو لوگ دو برس کی قید کی سزا سے نہیں ڈرتے تھے وہ آج کیا تین برس کی سزا سے ڈر جائیں گے - تین برس کی سزا کا قانون پاس کر دینے سے کیا خاص اہمیت پیدا ہو جائے گی کہ وہ ڈر جائیں گے اور برائیب (bribe) نہیں لیں گے - اس لئے میں اس پر مشورہ (suggestion) ہے کہ سیفٹی ایکٹ کی طرح ایک قانون آپ بنائیں اور میں سمجھتا ہوں کہ ہاؤس کا کوئی فرد ایسا نہیں ہوگا جو کہ ایسے اختیار گورنمنٹ کو دینے کو تیار نہ ہو تاکہ چاہے برائیب تیکر (bribe-taker)

یا برائیب گیور (bribe giver) ہو کوئی بھی ہو ان کو اس ایکٹ کے اندر بند کیا جا سکے - اگر آپ اس قانون کے اندر بھی وہی ایویڈینس (evidence) کے قانون کو لائیں گے تو میں یقین کے ساتھ کہتا ہوں کہ گورنمنٹ کو کامیابی نہیں ہوگی - اس ایویڈینس کے قانون کی طاقت کی وجہ سے لوگوں کو تینتین کرنے کے لئے آپ نے سیفٹی ایکٹ بنایا ہے - تو میں سمجھتا ہوں کہ اس کام کے لئے بھی اسی طرح کا ایکٹ ہونا چاہئے اور درجنوں چھڑوں کو آپ ایک لیول (level) پر رکھیں اور جب تک آپ درجنوں کو ایک لیول پر نہیں رکھیں گے تب تک میرا خیال ہے کہ ملک سے کرپشن کی بیماری دور نہیں ہو سکتی -

میرا تو ایسا خیال ہے کہ جتنے قانون سنٹراں لیجسلیٹیو یا پروونشیل لیجسلیٹیو نے بنائے ہیں ان پر ہی اگر ہمارے افسر اور ہماری پبلک ایمانداری سے عمل کرے اور ان قانونوں کو چلنے دے تو ہماری بہت سی مشکلات دور ہو سکتی ہیں اور ہم نہایت آرام کی زندگی بسر کر سکتے ہیں - یعنی جتنے قانون ہم نے بنائے ہیں وہ کافی ہیں اور ان کی بنا پر ہی ہم خوشحالی کی زندگی بسر کر سکتے ہیں - آج جو آپ نے کنٹرول کی بلا کو ہٹا دیا اس سے لوگوں کو بڑی راحت ملی - کنٹرول کے قانون بڑے بڑے ملکوں میں یعنی ولایت وغیرہ میں آپ دیکھیں کہ کس طرح سے عمل میں آتے ہیں وہاں

لوگوں نے کس طرح سے کنٹرول کو چلایا لیکن ہمارے یہاں کنٹرول کا فیلچور (failure) ہوا۔ ہر جگہ اس کے خلاف آواز اٹھائی گئی اور وہ صرف اس لئے کہ اس ڈیپارٹمنٹ میں بہت زیادہ کرپشن تھا اور ایکویٹیبل ڈسٹریبیوشن (equitable distribution) نہیں ہو سکا۔ اگر ایکویٹیبل ڈسٹریبیوشن ہوتا تو اس کے خلاف کوئی آواز نہیں اٹھائی گئی ہوتی۔ تو سب سے بڑی چیز جو ہے وہ یہ ہے کہ ملک کے اندر جو بڑھا ہوا کرپشن ہے اسے ختم کیا جائے۔ اس لئے مجھے حکومت سے عرض کرنا ہے کہ آپ اس بل کو پاس کر لیتے لیکن اس کے ساتھ ساتھ آپ نہایت تہلڈے دل سے اس بات پر سوچیں کہ آپ کو آگے چلکر کیا کرنا ہے۔ میرا کہنا ہے کہ آپ کرپشن کو اسی طرح ذیل (deal) کریں جس طرح کہ سینٹی ایکٹ کے ذریعہ ایسے لوگوں کو جو کہ ملک کے ان کو نقصان پہنچا رہے ہیں اور جلتا کہ باہر رہنا تھیک نہیں ہے ان سے ذیل کرتے ہیں۔ اسی طرح کا ایکٹ بنا کر آپ اپنے ہاتھ میں پاور (power) لیں اور اس برائی کو متائیں۔ میں حکومت کو یقین دلاتا ہوں کہ ایسے اختیار کو دینے میں شاید ہی اپوزیشن کے کوئی ایسے ممبر ہوں جو کہ مخالفت کریں۔

بس انہیں چند الفاظ کے ساتھ میں اپنی تقریر کو ختم کرتا ہوں اور بل کو پاس کرنے کے حق میں ہوں۔

[For English translation, see Appendix II, Annexure No. 40.]

SHRI M. MANJURAN (Travancore-Cochin) : Sir, good intentions have often been self defeated and by this piece of legislation, we are going to add another illustration of that to the Statute Book. This Bill seeks in the first instance to shelter people who are accepting bribes by putting behind bars the people who are offering bribes. Our experience as political agitators against the Congress has been that where we made charges, in most instances specific charges, against judicial and executive officers of the Government, they were never attended to. Such charges have been made the basis of a whispering campaign against the Congress administration everywhere and in this we were given considerable support by the givers of bribes who always gave us information. I remember an instance when a District Magistrate in my State received a sum of Rs. 3,000 as bribe in order to invoke a special law for the suppression of a labour strike. I made a public speech and charged him with it. The same District Magistrate issued a warrant immediately for my arrest, although the Criminal Procedure Code did not permit him to do so. And it took me three and a half years to get out of that. That is how our Criminal Procedure Code stands today. The procedure is -very cumbersome. The procedure is not understood by the common man. It took me so much time to refer to the Code in order to find out that there was a particular section which was specific in this matter, under which the District Magistrate against whom the allegation was made could not issue a warrant of arrest against me. But he had done it. And even after I was acquitted of the charge, the Government did not take any action against the District Magistrate who had done it. What does it show? It shows that now, when we have an opportunity to make allegations against the Congress, against these men who indulge in corrupt practices, the Government want to put a stop to it by arresting people who give us information. That is what it will come to. For the last

[Shri M. Manjuran.]

five years since the Congress has been in the saddle.....

MR. C. H. N. : Please speak of the Bill and not on the last five years.

SHRI M. MANJURAN : I am only trying to refresh my memory of the way in which corruption has been going on. Quite recently there was an instance in the stevedoring section, of labour in the port of Cochin when we made an allegation and led an agitation to the effect that an officer of the 'Employment Exchange was receiving bribes in the name of a registration fee for registering labourers. This matter has not been attended to for six months. When I went further about this, I knew that the whole matter was thrown out by some Minister at a particular stage. I am not prepared to divulge the name because I do not want to bring Ministers into contempt, just as Mr. Hegde did not want to bring them into contempt. Mr. Hegde wants to support Ministers as he is a new entrant into the Congress. That is why he wants to support the Ministers with great zeal. But I do not want to approach this question in that spirit. The point is that if this Bill is passed and it becomes an Act, the channels of information will be closed. There will be no one to give information. I do not know from what source the Government will fish out information. I have had to fight a lot of cases against the Government, and it is to my credit that in most of the cases where I criticised Government openly, the courts had to acquit me for want of evidence. There has not been a single instance in the course of the last 20 years' agitation that I led against successive Governments where I could be convicted. The fact is that as the law of evidence stands today, evidence is very difficult to secure. Now, with the closing of the channels of evidence on both sides, I do not know how the Government is going to prove bribery cases. Usually the law of evidence

has sufficient loopholes whereby any one can escape if he engages a very good lawyer. That is not the attitude which one should adopt. It is not quite a judicial attitude, if the object is to root out corruption in administration. Of course, we can understand the necessity for rooting out corruption, because more than the Ministers, more than the Government, it is we, the people, who have been groaning under this evil of corruption. Naturally it is our greatest desire that this social evil should be put down severely. But how is it possible? The possibility is ruled out by the closing of the channels of evidence.

Sir; this matter has not been given full consideration, because the law of evidence under which the whole procedure has to take place has not changed. That old law of evidence stands today. Therefore, if a case is brought, we will not be able to prove corrupt practice. If a reference is made to that law, it will be apparent that no proof could be had in the circumstances.

Then there is the question of approvers. No decent man would become an approver. It militates against integrity. I do not know how it is possible to depend on the possibility of securing an approver who will give information. We have been fighting against approvers, as Mr. Rajah said. I had been involved in a conspiracy case against the British Government. They brought two approvers. Although I did not surrender to police and did not go to the court. Evidence was led against me. But I can assure you that those approvers had never met me before* or after the case. That is the condition in which we are going to be if this law is passed. Much thought has still to be given to this matter, and, as the business of this House is to check hasty legislation, I want this hasty legislation to wait for some time. A special law may be introduced by which all the sections of the Evidence Act may also be amended, so that

speedy disposal of cases can be facilitated. My objection is that it will not be able to check corruption at all.

DR. K. N. KATJU : Mr. Chairman, I should just like to say two words. The first is that there seems to be a misunderstanding prevailing in the House that bribe taking has been made an offence for the first time. That is not so as some hon. members pointed out. Bribe taking has been an offence for years and years past. As a matter of fact it is considered to be an abetment. If the offence is completed, namely, the bribe taker is bribed, then both the bribe giver and the bribe taker are guilty and are punishable with the same punishment, the bribetaker as an offender of a substantive offence and the bribe giver as an abettor. If bribe is offered and refused, then the Act says : Well there is no question of any bribe having been given and there is no bribe taker at all. The bribe giver is still guilty but can only be awarded one-fourth of the punishment which is prescribed if the action had been completed. Supposing the sentence is two years. Well, if the offence is completed, both get two years. If the offence is not completed and bribe is not accepted, then the bribe giver can only be given six months. That is the standing law.

SHRI K. B. LALL : May I know one thing ? At present whenever the question of detecting the bribe acceptor came up before an officer, he used to ask the bribe giver to hand over the bribe after initialling the notes

DR. K. N. KATJU : That is a different matter.

SHRI K. B. LALL : Then what will be the legal position in regard to the man who has given ? The offence is completed. The giver has given and the taker has taken.

MR. CHAIRMAN: Two -hypothetical cases.

DR. K. N. KATJU : Now my hon. friend was referring to cases where

' a trap was laid for the purpose of catching a bribe taker. Now please remember that those were cases mostly of bribe being received by way of extortion. Supposing there is a police officer who is investigating a

case of a murder having been committed in the neighbourhood or in a village and the police officer is a dishonest man and he sends a message to someone saying ' I am going to detect you unless you pay me Rs. 5,000'. Now this man is advised. He goes to the Sub-divisional Magistrate and says ' Your Thanedar is demanding Rs. 5,000 from me'. Then in that case the trap is laid and we know the whole procedure. Notes are marked and the District Magistrate or the Sub-divisional Magistrate tells him " You better go and give these marked notes to him so that he may be caught red-handed." So there is no question of the bribe giver committing an offence in this case because he never intended to give any bribe. He was all a party to this plot in order to catch the bribe taker. Therefore I want to dispel this public misapprehension that this Bill is going to create a new offence of bribe giving. That is not so. The offence is made a substantive offence from the point of view of a lawyer and the result is that punishment can be awarded substantially to the same extent whether the bribe giver succeeds or does not succeed.

Secondly, Sir, I venture to say— and very often this has been my view for many many years—that bribes can be divided into two parts—extortion and seduction. This has also been remarked by the very competent Committee which is really the author of these Bills because they are founded upon the Committee's recommendations—Bakshi Tek Chand Committee. Extortion is where money is unwillingly extorted. I gave you an instance of a crime having been committed in a village. Take one more case which I am very familiar with. Supposing a widow dies in a family. The information is given that she committed suicide. As soon as the information is given the police officer comes along and he thinks *hs* can make

[Dr. K. N. Katju:] some money out of it and he sends messages to the father-in-law or the brother-in-law and says ' It is not suicide. You killed her. Unless you give me Rs. 10,000, I am going to prosecute all of you'. And there it is no thing but extortion because for the sake of the family reputation and to avoid disgrace and trouble, the man pays but hates. He pays but has a terrible aversion, bitterness, and having paid and having got out of the clutches of the police, he talks to his friend, he talks to the Magistrates that he is always willing to come forward and give evidence. None but a fool will prosecute that bribe giver. You have got to make a distinction between a man who pays under extortion and the other class of cases which are now becoming very common. For example, you go or I go to the railway station. I say ' I want to reserve a berth '. The railway clerk says ' I am very sorry. There is no berth '. I have to come away if I am a decent citizen. But if I tell him 'Oh, I have got to go by a particular train ' and I pull out a five-rupee note, he at once manages to give the berth. Now here is that railway clerk getting about 100 rupees. Five rupees tempt him. So he manages here and there. Nobody is going to trouble you about those small cases. But we know these days when our Police State is becoming a Welfare State and' everywhere there is nationalisation and control and permits and licences, enormous sums are paid, 50,000, then 20,000, 40,000. And I suggest to you, Sir, that morally speaking it is very difficult to say as to who is the bigger offender—the man who seduces or the man who is seduced. Hang both. But my personal opinion is that the man who seduces is the worst individual. Take a Judge. I am more familiar with him. I am proud of my judges, munsifs, subordinate judges, getting Rs. 800 or Rs. 1000. Supposing a case is pending before that officer in which a property of 50 lakhs is involved and if the Judge were a little off the correct path of rectitude—I have known of cases where two lakhs of rupees might be offered to him and the tradition of the

service has been, what to say of two lakhs—they won't accept 20 lakhs. But the man who wants to seduce the Judge with two lakhs of rupees deserves the greatest punishment which you can inflict upon him in a point of law and in point of moral laws. As I said the other day, I realise more and more vividly the great wisdom of that biblical prayer : " Lead us not into temptation but deliver us from evil ". The man who leads officers into temptation is the greatest danger to society and ought to be punished. A man who seduces does not want to seduce one individual but he wants to seduce a succession of individuals. Supposing there is someone who wants to seduce the Textile Controller or a Police Officer : supposing there is an inter-State ban or an inter-district ban and someone wants to have his truck load of textile goods moved from one district to another; he seduces one Police Officer and then he seduces a second one and then he tries to seduce a third. He would never stop doing it because he wants to make money out of it. It is he who is more to blame. Therefore I only wanted to intervene here to say that there is no softness for the bribe giver. Government is very careful about these matters. Even the judges are very careful about these matters. Wherever there is a case bordering on extortion, if anybody comes forward to give evidence, whether approvers or police witnesses, we would welcome them. But I do want to stop this bribe giving for the purpose of making money. It is the profiteer, the hoarder, the racketeer, who wants to tempt our officers. It is not a question of how much is paid. It may be an officer was paid Rs. 2,000, or Rs. 5,000 or Rs. 2 lakhs.

Now, everybody talks about morale. That is perfectly correct. Public opinion ought to be very strong. Every one of us has thought about these matters. Sometimes it occurred to me that supposing the public, the people as a whole, were to say—they know who is a bribe taker and who is bribe giver; they may not be willing to give evidence before a court of law.....

PROF. G. RANGA : That is the difficulty.

DR. K.N. KATJU :were to say, " We will not go to any parties that he gives ; we will not go to his house; we will not admit him into our society; we will not enter into any matrimonial alliances with him". Then you will see that corruption will be finished. But what is the fact of the matter today? One has a daughter to marry. Naturally one wants to get a good home for her. Suppose a police officer or any public servant who is getting Rs. 300 or Rs. 500— on his salary he cannot make a huge sum—has Rs. 2 lakhs, one wants to give his daughter in marriage to that man's son. Nobody thinks that all that money has been accumulated by wickedness, by bribe taking. So, let us build up a strong public opinion on that basis. Then this thing will disappear.

My hon. friend there wanted juries. Personally I am a great believer in juries, but unfortunately I am almost in a minority of one on this point. This is a very difficult topic. It may be raised by some Resolution, and then you will hear the varied opinions expressed here. I may state here that I am personally—not as a Minister a great believer in juries because the people will then know, if there is any miscarriage, that no officer is responsible for it, Government is not responsible for it, but those twelve persons are responsible and they will go to them. If our mass of citizens can be depended upon to choose good legislators, can be depended upon to serve as good Committee men, to condemn Ministries, to enter into war or negotiate for peace, undoubtedly they are fit enough to decide cases as juries. Unfortunately, as I said, opinion vary. I do not know what the opinions will be here. You must build up your public morals and if public morals are not there, then the jury becomes an accessory, and if in a bribery case there is danger of punishment, I do not know what the jury will do. Otherwise I am in favour of juries.

Then, an hon. member said he disliked approvers. I heartily agree. He disliked the bribe givers, because evidence will not be forthcoming. But

in what shape does he expect evidence to come, as an approver or a mere prosecution witness ?

Lastly, there was criticism about Government taking quick measures, as if the Government has been slow. Someone referred to our dear beloved Sardar Patel that he had taken measures and he had started the Enforcement Branch to take quick steps. I should like to remove some misunderstanding about this Enforcement Branch. It exists but can take action only in the Centrally administered areas.

PROF. G. RANGA : That is the pity.

DR. K. N. KATJU : So far as the States are concerned, whether they are States in Part A, B or C, it can only go there and make investigations but the responsibility for starting prosecutions rests upon the State authorities. We will be willing to help. So far as the desire of the Government is concerned to make improvements in the investigation into corruption cases, I extend a general invitation to all Members of Parliament, to every Member of the legislature in any part of India, every citizen of India, to send me or send to your local Minister any case they come across.....

SHRI S. MAHANTY (Orissa): I will send you some.

SHRI K. N. KATJU: concrete cases which can be investigated, dependable cases. I have got curious views in this matter because when you start a case, there is a hum in being on the other side too. If he is guilty, he ought to be punished. But if you are not to establish the case against him, as a Member are aware, there are two consequences. In the Indian Penal Code there are sections—I think they are sections 211 and 182— which deal with giving of false information to the police or levelling false charges.

SHRI S. MAHANTY : If my information, is false, you can charge me.

DR. K. N. KATJU : I am not referring to you. You may give a thoroughly good case. I am only saying that we should act in all responsibility. Here it is said that everybody is corrupt, corrupt and corrupt. But who are these officers ? They have not come from Tinbuctu or from any foreign country. They are our kith and kin,—my ron, your son-in-law or somebody else's 1 ephew. They arc the flesh of our fle: h and bones of our bones. I do hope tha: as time progresses, their morale will rise high. The judicial officers of this country of whom I am proud have built up the soundest traditions of integrity. Similarly I hope every other service in this free India will build such traditions. But at the same time, let us be cautious about these matters. Let us act in a reasonable responsible way. Let us deal with concrete cases. Let us not indulge in generalities. And let us not be soft to bribe givers. The bribe giver is the real leper of society. If bribe giving is not there, bribe taking will disappear.

PROF. G. RANGA : But both ends of the stick are needed.

DR. K.N. KATJU: One must hold one side of the stick and wield the other side. I do not know the process of wielding both ends of the stick at the same time. I do not know the art of beating with both ends of the stick. I want to strike at both points.....

DR. RADHA KUMUD MOO-KERJI (Nominated) : Do you think that the two classes of offences are quite the same in logic ?

DR. K. N. KATJU : I am not talking in terms of logic. I am talking in terms of morality.

SHRI S. MAHANTY : Morality devoid of logic ?

DR. K. N. KATJU: Then I heard this usual complaint about the cumbersomeness of the Criminal Procedure Code and the cumbersomeness of the Indian Evidence Act. As one who has worked with these instruments, I know there are some difficulties, but these general Codes have stood the test of time, and speaking as a common citizen, I do suggest to you that the Indian Evidence Act is really based upon the wisdom of centuries. What is called hearsay evidence may do the greatest • injustice. Therefore the Indian Evidence Act contains a rule that there should be direct evidence. It should be the evidence of one who has seen something or heard something. So let us have concrete cases. On the one hand you decry all this and you say 'Don't mind the Criminal Procedure Code, don't mind the Evidence Act but strike at the corrupt '. Well, the Preventive Detention Bill which you have referred to a Select Committee will come up here and then I shall hear the Members singing praises of the virtue of a judicial trial strictly in accordance with the provisions of the Criminal Procedure Code and strictly in accordance with every rule of the Evidence Act. Every rule will be applied that there should be no detention without trial, but in favour of a judicial trial. Are you in favour of detention without trial ?

SOME HON. MEMBERS : No.

MR. CHAIRMAN : Let us not introduce the other question.

DR. K. N. KATJU : I don't wish to introduce any other question. I only plead for consistency in expression.

MR. CHAIRMAN : The questions is :

That the Bill be passed. The

motion was adopted.