LOK SABHA

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL, 1954

(Report of the Joint Committee)

LOK SABHA SECRETARIAT
NEW DELHI
September, 1954

LOK SABHA

CORRIGENDA

to

THE REPORT OF THE JOINT COMMITTEE ON THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL, 1954.

Report

(1) At page (ii), line 1,-

for "Barkatulla" read "Barkat Ullah"

(2) At page (iii), foot-note, line 2,-

after "the" add "27th April, 1954"

(3) At page (vi), lines 1 and 2 from the bottom,-

for "administiatrve" read "administrative"

(4) At page (vi), last line,-

after "examination" insert "of"

(5) At page (vii), para 16, line 13,-

for "cros-examine" read "cross-examine"

(6) At page (viii), line 5 from the bottom,-

for "nd" read "and"

(7) At page (ix), line 18,-

for "those" read "these"

(8) At page (ix), para 23, line 4,-

for "Session" read "Sessions"

(9) At page (xiii), para 54, line 6,-

after "recommend that" omit "that"

(10) At page (xiii), last line,-

after "under the" omit "the"

Minutes of Dissent.

(11) At page (xvi), line 29,-

for "it" read "he"

(12) At page (xxiv), line 6 from the bottom,-

after "responsibility for" insert "a"

(13) At page (xxviii), line 3,-

for "statement" read "statements"

(14) At page (xxviii), line 7,-

for "the" read "that"

P.T.O.

(15) At page (xxix), line 4,-

for " व्यावहारिके" read "व्यावहारिक"

(16) At page (xxx), line 16,-

after "अभियुक्तों को" insert "पूर्ण "

(17) At page (xxxi), line 17,-

for "पश्चात " read " पश्चात् "

(18) At page (xxxi), line 23,-

for " अभियुक्त " read " अभियुक्त "

At page (xxxi) last but one line,
after "वस्तु " insert "___ "

(19) At page (xxxii), line 13,-

for "तुरन्तु " read "तुरन्त "

(20) At page (xxxiv), line 21,-

after "free" omit "and"

(21) At page (xxxv), line 11,-

after "342" insert "go"

(22) At page (xxxv), para 8, line 2,-

for "those section" read "those sections"

(23) At page (xxxvii), section VIII, line 3,-

after "life" insert inverted commas

(24) At page (xxxviii), last line,-

for "at" read "of"

(25) At page (XLV), line 3,-

for "Council" read "Counsel"

(26) At page (LI), line 6,-

for "modfied" read "modified"

(27) At page (Lxxxv), line 6 from the bottom,-

after "examined" add "as other private complainants would have to be examined"

Bill as amended.

(28) At page 2, line 30,-

transpose the figure "30" one line down.

(29) At page 13, line 35,-

underline "or"

(30) At page 14, line 14,-

after "substituted" insert comma

(31) At page 14, line 18,-

after "juror" insert comma

(32) At page 17, line 34,-

for "Provide" read "Provided'

(33) At page 21, line 7,-

after "substituted" insert comma

(34) At page 29, line 4,-

for "593A" read "539A"

(35) At page 33, line 10,-

underline the words""2nd column and"

(36) At page 33, line 15,-

for "occures" read "occurs"

(37) At page 34,

sideline lines 1 and 2

(38) At page35,

sideline line 19

Appendix I

(39) At page 51, para 5, line 1,-

for "Clause" read "Clauses"

(40) At page 83, line 6,-

for "Sarker" read "Sarkar"

(41) At page 85, para 22, line 4,-

for "proceeding" read "proceedings"

(42) At page 86, para 2, Serial no. 8,-

for "Singh" read "Sinha"

(43) At page 91, line 1,-

before "notice" insert "quotation mark"

(44) At page 94,- line 1,-

below "XX" insert "Twentieth Meeting"

(45) At page 100, line 8,-

for "207" read "207 A"

(46) At page 117, item (5), line 3,-

for "fields" read "field"

Kapoor-1550.
25/9/54.

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

Composition of the Joint Committee

Lok Sabha

1. Shri Narahar Vishnu Gadgil—*Chairman.*
2. Shri Ganesh Sadashiv Altekar.
3. Shri Joachim Alva.
4. Shri Lokenath Mishra.
5. Shri Radha Charan Sharma.
6. Shri Shankargauda Veeranagauda Patil.
7. Shri Tek Chand.
8. Shri Nemi Chandra Kasliwal.
9. Shri K. Periaswami Gounder.
10. Shri C. R. Basappa.
11. Shri Jhulan Sinha.
12. Shri Ahmed Mohiuddin.
13. Shri Kailash Pati Sinha.
14. Shri C. P. Matthen.
15. Shri Satyendra Narayan Sinha.
16. Shri Resham Lal Jangde.
17. Shri Basanta Kumar Das.
18. Shri Rohini Kumar Chaudhuri.
19. Shri Raghubir Sahai.
20. Shri Raghunath Singh.
21. Shri Ganpati Ram.
22. Shri Syed Ahmed.
23. Shri Radha Raman.
24. Shri C. Madhao Reddi.
25. Shri K. M. Vallatharas.
26. Shri Sadhan Chandra Gupta.
27. Shri Shankar Shantaram More.
28. Sardar Hukam Singh.
29. Shri Bhawani Singh.
30. Dr. Lanka Sundaram.
31. Shri Rayasam Seshagiri Rao.
32. Shri N. R. M. Swamy
33. Dr. Kailas Nath Katju.

Rajya Sabha

34. Shri K. Madhava Menon.
35. Shri T. S. Pattabiraman.

36. Shri Barkatulla Khan.
37. Shri Biswanath Das.
38. Shri Sumat Prasad.
39. Shri J. S. Bisht.
40. Shri Gopikrishna Vijaivargiya.
41. Diwan Chaman Lall.
42. Shri P. T. Leuva.
43. Shri K. B. Lall.
44. Shri S. D. Misra.
45. Shri M. P. N. Sinha.
46. Shri S. N. Dwivedy.
47. Shri Bhaskara Rao.
48. Shri P. Sundarayya.
49. Shri M. Roufique.

SECRETARIAT

Shri M. Sundar Raj, *Deputy Secretary*

Shri A. L. Rai, *Under Secretary.*

Report of the Joint Committee

The Joint Committee of the Houses, to which the *Bill further to amend the Code of Criminal Procedure, 1898, was referred, have considered the Bill and I now submit their Report, with the Bill as amended by the Committee annexed thereto.

2. During the course of their deliberations the Committee have also considered the question of recommending amendments to the sections of the Code not covered by the Bill as well as the provisions contained in the Code of Criminal Procedure (Amendment) Bill, 1952 by Shri S. V. Ramaswamy, M.P., in accordance with the direction given by the House in their motion for reference to the Joint Committee of the Bill on the 8th May, 1954. The decisions of the Committee on these matters have been incorporated in paragraphs 55 and 22 respectively of this Report.

3. The Committee held twenty-one meetings in all.

4. The Committee were not in favour of taking evidence on the principles and provisions of the Bill as a whole since the Government had given the Bill the widest possible publicity and obtained opinion thereon from all sections of the public. The Committee, however, considered it desirable to hear evidence on specific points and accordingly invited the Indian Federation of Working Journalists to tender evidence on certain provisions in the Bill. A summary of the evidence tendered by the representatives of the Federation is appended to this Report.

5. The procedure adopted by the Joint Committee in the consideration of the Bill was to examine in the first instance, the provisions contained in the clauses of the amending Bill and further amendments directly arising out of such provisions, and thereafter to consider other amendments to the parent Act.

6. Upon the principal changes proposed in the Bill, the views of the Joint Committee are contained in the succeeding paragraphs.

7. *Saving Clause* (*Clause* 1): There is no saving clause in the Bill. This may cause serious difficulties in the disposal of cases that would be pending before the Courts at the commencement of this Act. The Committee, therefore, consider that it is desirable that a suitable date from which this Act should come into force be appointed by the Central Government. This would give sufficient time to Government to make the requisite administrative arrangements. The necessary provision has accordingly been made in this clause.

The Bill prescribes for certain types of trials and inquiries a procedure different from that under the existing Code. The Committee feel that a suitable provision should be made to enable the inquiries and trials which have already begun under the existing Act and which are pending on the date of commencement of the Amending Act to

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continue and be disposed of according to the present procedure, *e.g.*, when a proceeding under Section 145 has commenced under the existing Act, the procedure prescribed in the Amending Act should not apply to such proceeding. Similarly, in cases instituted on Police Report, any commitment proceedings or trials of warrant cases which remain pending on the date of the commencement of this Act, should be held in accordance with the existing procedure.

The qualifications of Magistrates specially empowered under Section 30 and their jurisdiction have also been altered in this Bill. Any case which may be pending before a Magistrate specially empowered under Section 30 on the date of commencement of this Act should be continued and disposed of by such Magistrate.

The Bill provides that appeals from Second or Third Class Magistrates will not lie to the District Magistrate but to the Court of Sessions. It has, however, been provided that all appeals pending before the District Magistrate upon the commencement of this Act should be heard and disposed of by the District Magistrate or any other Magistrate specially empowered in this behalf.

In like manner, trial before a Court of Sessions with the aid of assessors has been abolished by the Amending Bill. If, however, any trial with the aid of assessors has already begun and is not completed when the Amending Act comes into operation, it should continue and be disposed of as if the Amending Act had not come into force.

A suitable provision to save such enquiries, trials, appeals and other proceedings from the operation of this Amending Act, has, therefore, been inserted.

8. *Clause* 2: The question of substitution of the words "imprisonment for life" for the words "transportation for life" arose in connection with the consideration of original clauses 113, 114 and the Schedule. The Committee note that the expression "transportation for life" has not been defined nor explained in the Criminal Procedure Code. In the Indian Penal Code in section 53, "transportation" has been prescribed as one form of punishment. But even in the Indian Penal Code the term has not been defined and there is nothing to show what is the duration of transportation for life. As a matter of fact, this expression has not been defined in any Act. Transportation may be either for life or for a shorter term. Therefore, the mere substitution of the expression "imprisonment for life" for "transportation for life" should not change the nature of punishment. As a form of punishment, imprisonment for life must remain distinct from rigorous or simple imprisonment. Where, however, a sentence for transportation for a term only has been passed before the commencement of this Act, the offender should be dealt with in the same manner as if he was sentenced to rigorous imprisonment for the same term and all references to transportation for a term should be omitted. In the Code of Criminal Procedure the word "transportation" as would appear from the context means in some cases transportation for life and in others, transportation for a term only. The Committee, therefore, recommend that where transportation means "transportation for life" it should be substituted by the words "imprisonment for life", and where it means transportation for a term only it should be omitted. The intentions of the Committee have been clarified by the insertion of a new Section 53A in the Indian Penal Code.

Consequential changes have accordingly been made in the Code of Criminal Procedure also.

Questions as regards forms of existing punishments were raised but the Committee were assured by the Government that the whole question was under their consideration. The Committee therefore recommend that the matter be expedited while some members of the Committee were of the view that whipping might be retained as a punishment in cases of offences committed against women and children.

9. *Clause* 3: The Committee apprehend that an accused will not be able to obtain competent legal assistance if the trials take place at an out of the way place and this would involve a financial strain on him. It is also feared that where there is only one Sessions Judge, his absence on tour would delay the disposal of other cases. The Committee feel that it would be much better if the change in the venue of trial is left to the discretion of the Sessions Judge depending on the general convenience of parties and witnesses for the purposes of a fair trial after the consent of the accused and of the prosecution was taken.

10. *Clause* 4: The Committee feel that it should be ensured that the Honorary Magistrates possess certain standard qualifications and experience for the proper and fair discharge of their duties. The Committee therefore recommend that rules laying down the qualifications of Honorary Magistrates should be prescribed by the State Government in consultation with the High Court. Suitable amendments have accordingly been made in the clause.

11. *Clause* 6: The Committee consider that the High Court ought to be consulted by the State Government before investing Magistrates with power under Section 30 to try all offences not punishable with death or "imprisonment for life" or with imprisonment "for a term" not exceeding seven years. The Committee are also of the view that the powers should not be given to a District or Presidency Magistrate *ex-officio* but should be given only to those possessing a minimum experience of ten years. The Committee also support the idea that for the purposes of uniformity and quicker dispensation of justice the procedure laid down in this clause should be extended to the whole of India. All these views of the Committee have been incorporated in this clause by suitable amendments.

12. *Clause* 15 (*new clause*): Under sub-section (3) and sub-section (4) of section 103, a copy of a search list is delivered to the person concerned only at his request. The Committee feel that such copies should be given in all cases. The Committee have, therefore, omitted the words 'at his request' from both these sub-sections.

Consequent on the introduction of the new clause the subsequent clauses have been re-numbered.

13. *Clauses* 18 *and* 19 (*original clause* 17): In cases of disputes relating to immovable property, the existing provisions require a Magistrate to make an inquiry and come to a decision on the question of possession. Such inquiries by Magistrates are often dilatory and unsatisfactory. In order to obviate this state of affairs, a new section 145 was substituted in the Bill for the existing sections 145 and 146. Under this substituted section, the Magistrate would not concern himself with the question of possession at all and he would inquire only

into the question whether the property should be attached. If, on hearing the parties, the Magistrate is satisfied that the property should be attached, he would do so and leave it to the parties to go to the Civil Court for the adjudication of their rights. The Committee consider that section 145 as substituted may lead to undesirable consequences in some cases.

The Committee are of the view that, in a proceeding of this nature, the Magistrate should hold a summary inquiry into the question of possession. He should ask the parties not only to put in written statements of their respective claims but also to produce simultaneously all documentary evidence in support of such claims. If the parties propose to rely on the evidence of any witnesses, they should also file the affidavits of such witnesses. It should not ordinarily be necessary for a Magistrate to take any oral evidence but he may, if he thinks fit, examine any person whose affidavit has been put in. After taking into consideration the written statements, documents and affidavits put in and after hearing the parties, the Magistrate should, if possible, come to a decision as to who is in possession of the property. To avoid undue delay, the Committee consider that a time-limit of two months should be fixed within which the Magistrate must dispose of the case.

If, however, the Magistrate cannot come to a decision on the question of possession, he should draw up a statement of the facts of the case and refer the matter to a Civil Court for decision. In order to avoid any delay, the Magistrate himself should fix a date on which the parties are to appear before the Civil Court. The Civil Court should take into consideration the evidence on record and such further evidence as it may think necessary. It should conclude its inquiry within a period of three months, at the latest, and transmit its finding to the Magistrate that made the reference; and the Magistrate should dispose of the case in accordance with the decision of the Civil Court.

The Civil Court should determine only the question of possession and not the question of title. The proceedings before it will be analogous to a suit for possession under section 9 of the Specific Relief Act, 1877. No appeal, review or revision shall lie against the finding of the Civil Court. Such a finding, however, will not debar any person from instituting a suit for a declaration of his title and for recovery of possession.

The Committee have, therefore, omitted the original clause 17 and inserted two clauses 18 and 19 to amend suitably sections 145 and 146 of the Code.

14. *Clause* 20 (*original clause* 18): Drafting changes only have been made in this clause.

15. *Original clauses* 20 *and* 22: By clause 20, two sub-sections were proposed to be added to section 161. The proposed sub-section (5) to section 161 imposes an obligation on a police officer to get the statements of all the material witnesses recorded under section 164. This procedure is to be followed in all cases triable by a Court of Sessions and as far as practicable, in other cognizable cases also. The Committee consider that apart from other considerations, there are administrative difficulties in the examination of witnesses from time to

time before a Magistrate as the investigation proceeds. The Committee have, therefore, deleted the proposed sub-section (5) to section 161. They also consider that the proposed amendment to section 164 is not called for, and have omitted the original clause 22.

Sub-section (4) which was proposed to be inserted in section 161 is in fact a reproduction of the first few lines of section 162. As the Committee consider that section 162, with suitable modifications, should be retained, the proposed sub-section (4) has also been omitted.

16. *Clause* 22 (*original clause* 21): This clause provided that section 162 of the principal Act be deleted. The Committee feel that the deletion of this section will do away with the protection enjoyed at present by the accused against the prejudicial use of untruthful statements of witnesses recorded by over zealous police officers. The effect of such an omission would be that the statements recorded by the police under sub-section (3) of section 161 may be used by the prosecution both for the purpose of corroboration as well as of contradiction. The Committee consider that the statements recorded by the police should not be used by the prosecution for the purpose of corroboration. They may be used for contradiction only and this right should be available both to the accused and the prosecution. As the prosecution is not entitled to cross-examine its own witnesses without the permission of the Court, it has been specifically provided that the statements recorded by the police under sub-section (3) of section 161 can be used by the prosecution for the purpose of contradiction, with the permission of the Court.

The second proviso to sub-section (1) of section 162 has been inserted in section 173 with suitable modifications. The Committee have, therefore, omitted it from section 162.

The restoration of section 162 with the proviso that statements can never be used for the purpose of corroboration but for the purpose of contradiction, ensures that the papers will be available both to the defence and to the prosecution. Normally, it is only the defence which is entitled to cross-examine. The prosecution can never cross-examine its witnesses without the permission of the Court and the permission is never given unless the witness is held to be hostile by the Court. Therefore, if the witness turns hostile the Court may permit him to be confronted with the statements that he made before the Court.

17. *Clause* 23.—The Committee are not in agreement with the provisions made in this clause and have consequently recast it. They consider that it is very necessary, in order to give the accused all possible help in defending himself, that he should be aware of all the statements, reports, confessions, etc., before the commencement of the trial. The Committee also consider that supply of such documents to the accused should be free of charge. It has also been provided that if the police officer thinks that the disclosure to the accused of any part of any statement recorded under sub-section (3) of section 161 is inexpedient in the public interest and is not essential in the interests of justice, he may exclude such part from the copy of the statement furnished to the accused. But, in such a case, the police officer shall make a report to the Magistrate drawing his attention to the parts so excluded. At the commencement of the inquiry or trial the Magistrate

shall consider whether the police officer was justified in excluding the part from the copy supplied to the accused and he may, if he thinks fit, direct the part so excluded to be supplied to the accused.

18. *Clause* 25: The Committee consider that the offence of defamation against the President, the Governor or Rajpramukh of a State, a Minister, or other public servant should not be made cognizable. The Committee are also of the opinion that specific mention of the Vice-President should be made in the list of such persons. They have accordingly omitted original clause 25 by which section 198 was amended.

Instead, the Committee have inserted a new section 198B in the Criminal Procedure Code. In drafting this section, the Committee have taken into consideration the recommendations of the majority of the members of the Press Commission and the evidence tendered by the representatives of the Indian Federation of Working Journalists. While the Committee consider that defamation of a public servant should not be made a cognizable offence, they are of the opinion that, there should be an independent authority apart from the person aggrieved to set the law into motion. The Committee are of the view that the procedure laid down in sub-section (2) of section 194, is cumbersome and might prove expensive. The Committee consider that the Public Prosecutor should have the right to launch a prosecution in all such cases by a written complaint which should be filed before the Court of Sessions. The Court of Sessions may take cognizance of the offence upon such complaint without the accused being committed to it for trial, and it shall try the case following the procedure prescribed for warrant cases. The Public Prosecutor, however, shall have no right to make a complaint except with the previous sanction of the persons specified in sub-section (3) of section 198B. Such a complaint should set forth such particulars as may be reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him, and should be filed within six months from the date on which the offence is alleged to have been committed.

19. *Clause* 28: In section 204, one sub-section has been added to provide that when, in a proceeding instituted upon a complaint made in writing, a summons or warrant is issued against the accused, such summons or warrants should be accompanied by a copy of the complaint. This will apprise the accused of the nature of the offences with which he is charged.

20. *Clause* 29: The Committee have redrafted section 207A. As the original clause 20 has been omitted, there is no longer any obligation on a police officer to get the statements of all the material witnesses recorded under Section 164. It has, therefore, been provided that persons who have witnessed the actual commission of the alleged offence should be produced before the Magistrate and he should record their statements. The Magistrate has also been given the discretion to record the statement of any one or more of the other witnesses, if he considers it necessary to do so. The Magistrate shall take into consideration the statements recorded by the police under sub-section (3) of section 161 and all other documents referred to in section 173 along with the statements recorded by him. If he finds that these statements and documents disclose no grounds for committing the accused person for trial, he may discharge the accused. Otherwise the accused should be committed for trial, and the Magistrate shall frame

a charge which should be read and explained to the accused. In order to avoid delay in the disposal of these cases, it has been provided that the Magistrate should, on receipt of a report forwarded under Section 173, fix a date for the recording of the statements of witnesses which shall be not later than fourteen days from the date of the receipt of the report. It has also been provided that the absence of a witness or of any one or more of the accused should not be a ground for adjournment. This procedure will not prejudice the case of the accused because the witnesses whose statements are not recorded at this stage will be examined at the trial before a Court of Sessions.

The Committee are of the opinion that the existing procedure should, however, be retained in cases instituted on private complaint. While, in a case instituted on a police report, there are statements of witnesses recorded by the police under sub-section (3) of section 161 and other documentary evidence which give the accused an opportunity of knowing the case he has to meet, there are no such statements or documents in a case instituted on a private complaint. In most of those private complaint cases, there are no diary statements, the private complainant may feel that those diary statements are not satisfactory and do not indicate the real case. The Committee, therefore, have retained the existing procedure in respect of cases instituted on private complaints.

21. *Original clause* 32: As the Magistrate will no longer frame a draft charge, this clause has been omitted as unnecessary.

22. *Clause* 32 (*original clause* 33) *and Code of Criminal Procedure (Amendment) Bill,* 1952 *by Shri S. V. Ramaswamy.*

The Committee took up consideration of Shri Ramaswamy's Bill in accordance with the directions of the House contained in the motion for the reference of the Government Bill to the Joint Committee. The Committee decided that the system of assessors had outlived its utility. However, opinion with regard to the continuance of the jury system was not unanimous and therefore it was considered advisable to leave the matter to the discretion of the States as provided in the Government Bill. The Committee, therefore, consider that the provisions contained in Shri Ramaswamy's Bill are superfluous and unnecessary.

No change is recommended in original clause 33.

23. *Clause* 35 (*new clause*).—By this clause, a new section has been substituted for section 251 and a new section 251A has been inserted. In the case of inquiries into cases triable by the Court of Session, the Committee have already prescribed two different procedures depending upon whether the case is instituted on police report or on private complaint. The Committee are of opinion that a similar distinction should obtain regarding warrant cases also.

To ensure speedy disposal of warrant cases instituted on police report without in any way prejudicing the accused, the Committee consider that the Magistrate should peruse the statements of witnesses recorded under sub-section (3) of section 161 and all other documents referred to in section 173 and after examining the accused and hearing the parties, if he finds that the charge against the accused is groundless, he may discharge the accused. In any other case, he should frame a charge against the accused. Thereafter, a date would be fixed

for the examination of witnesses when they would be examined, cross-examined and also re-examined, if necessary, in a continuous process. The clause has been redrafted accordingly.

24. *Clause* 36 (*original clauses* 36, 37 *and* 38).—The Committee consider that in cases instituted on private complaint, the existing procedure should continue. They have omitted the original clauses 36, 37 and 38. The amendment made to section 252 by the new clause 36 is merely consequential.

25. *Clause* 40 (*original clause* 42).—The power conferred on the High Court by sub-section (4) of section 269 to direct that a case which is triable by jury should be tried by the Judge himself without a jury should be exercised only when the duration of the case is likely to exceed two weeks. The Committee have accordingly substituted the word "two" for "one".

26. *Original clause* 43.—As there is no draft charge, this clause has been omitted.

27. *Clause* 45 (*original clause* 48).—The Committee feel that sub-clause (b) relating to addition of a proviso to sub-section (2) of section 286 of the parent Act was not in consonance with the provisions in section 286 relating to trial by jury. It has accordingly been deleted.

28. *Clause* 52 (*original clause* 55).—The Committee have added the words "and a transcript thereof shall form a part of the record" to make the intention clear.

29. *Clause* 61 (*original clause* 63).—In this clause the Court has been empowered to put questions to the accused either on its own motion or on the suggestion of the prosecution or defence. But the Committee are of the view that the Court ought to be empowered to ask questions without specifying that it could do so at the instance of the prosecution or the defence, as the Court could always be assisted by either of them. Suitable amendments have accordingly been made in the clause.

30. *Clause* 62 (*original clause* 64).—The Committee are of the view that the accused should be called to give evidence as a witness only when he himself makes such a request in writing. This clause has been amended accordingly.

31. *Clause* 63 (*original clause* 65).—At present, owing to the frequent postponement of criminal trials which are often not held from day to day, considerable expenditure has to be incurred by all the parties concerned. The Committee consider that there is scope for reducing such unnecessary expense by speeding up the trials and avoiding postponements. The Committee, therefore, recommend that specific provision be made in this clause for conducting a trial from day to day unless there are good and sufficient reasons for the postponement. This clause has, therefore, been substituted.

32. *Clause* 64 (*original clause* 66).—The Committee consider that the offences punishable under sections 381, 423 and 424 of the Indian Penal Code should also be made compoundable with the permission of the Court. These sections have accordingly been inserted in the Table.

33. *Clause* 67 (*original clause* 69).—The amendment is merely consequential.

34. *Clause* 77 (*original clause* 79).—The amendment made is merely consequential.

35. *Clause* 79 (*original clause* 81).—The Committee have made some drafting changes in order to make the intention underlying the clause clear.

36. *Clause* 84 (*original clause* 86).—The amendment made is merely of a drafting nature.

37. *Clause* 85 (*original clause* 87).—In the opinion of the Committee there could be no justification for awarding compensation against a complainant even if the appeal filed by him is frivolous or vexatious, once the High Court admits such an appeal. The Committee, therefore, consider that the proviso in this clause is unnecessary and should be deleted.

The Committee are of the view that after a specified period no application for special leave to appeal from an order of acquittal should be entertained. In their opinion such period should be limited to sixty days from the date of the order of acquittal. In the case of the Government the existing period of limitation of six months is considered to be too long. The Committee have accordingly reduced it to three months.

The Committee further feel that in case an appeal of a complainant is rejected by a High Court, the Government should be debarred from making an appeal to the High Court in the same case.

The Committee have accordingly redrafted section 417, and amended articles 157 of the First Schedule to the Indian Limitation Act, 1908.

38. *Clause* 87 (*Original clause* 88).—The Committee have made certain changes in para. (a) of this clause in order to bring out clearly the underlying intention. The other changes are merely consequential.

39. *Original clause* 90.—In the opinion of the Committee the omission of the words "correctness, legality or propriety" in section 435 would mean the restriction of a revision to a point of law only. The Committee are of the view that, to meet the ends of justice, the High Court should be allowed to retain the revisional powers on grounds of impropriety or incorrectness of order of a subordinate Court. The Committee do not, in the circumstance, agree to the proposed amendment to section 435.

Clause 90 has accordingly been omitted.

40. *Clauses* 90 *and* 91 (*original clause* 92).—With the object of eradicating the evils of prejury, a new section 485A was proposed to be inserted in the Bill by the original clause 92. The Committee agree that in order to achieve the object in view, a change in law is necessary but they feel that the procedure prescribed in the proposed section 485A may not be helpful.

The Committee have, therefore, inserted a new section 479A by clause 90. When any person appearing as a witness before any Court gives or fabricates false evidence and the Court is of opinion that such person should be prosecuted for the offence committed by him, the Court which sees and hears the witness should, at the time of the delivery of the judgment, record a finding to that effect and make a

complaint to a Magistrate of competent jurisdiction. No further inquiry is required in such a case. The person against whom such a complaint is made shall have no right to appeal against such an order. If, however, an appeal is preferred against the decision arrived at in the judicial proceeding out of which the matter has arisen, the appellate Court will hear the person complained against and pass necessary orders and may, if it thinks fit, withdraw the complaint. In cases where no complaint has been made by a Court of trial, the appellate Court while hearing the appeal may, if it thinks fit, make a complaint.

The Committee have made it clear that for the prosecution of a person who appears as a witness and gives false evidence, the provisions of this section shall apply and the provisions of sections 476 to 479 inclusive shall not apply.

In clause 91 in the proposed section 485A, the Committee are of the opinion that a person who is dealt with under this section should be punished with fine only and not with imprisonment. The Committee, however, feel that the amount of fine which may be imposed should be enhanced to one hundred rupees. The necessary changes have been made in this clause.

41. *Clause* 92 (*original clause* 93).—The changes made are of a consequential nature.

42. *Clause* 94 (*original clause* 95).—In the proposed sub-section (3A), it was provided that an under-trial prisoner should be released on bail if the trial is not concluded within six weeks from the date of his appearance before the Magistrate. The Committee consider that the period should be increased to two months and it should be counted from the first date fixed for taking evidence in the case. The necessary changes have accordingly been made.

43. *Clause* 95 (*new clause*).—Under the existing law, doubts have been expressed whether a person who has been admitted to bail under section 498 of the Code can be caused to be re-arrested except in exercise of the inherent powers of the High Court. In order to remove these doubts, a new sub-section has been added to section 498.

44. *Clause* 96 (*new clause*).—The Committee have amended section 499 to make it clear that Courts may accept affidavits while considering the question of sufficiency of sureties.

45. *Clause* 97 (*original clause* 96).—The Committee have included the Vice-President among the persons mentioned in the proviso to sub-section (1) of section 503.

46. *Clause* 99 (*original clause* 98).—The Committee think that the Court should have powers to summon and examine any person whose report has been put in as evidence under section 510. The Committee have, therefore, added a new sub-section to this section.

47. *Clause* 100 (*original clause* 99).—The Committee are of the opinion that when the evidence of any person has been given by affidavit, the Court should be bound to summon and examine him as a witness, if either the prosecution or the accused makes an application on this behalf.

48. *Clause* 105 (*original clause* 104).—The Committee consider that when an offence triable by a jury is tried without a jury, objection should not be permitted to be taken after the Court proceeds to

record evidence in the case. Section 536 has accordingly been amended.

49. *Clause* 109 (*original clause* 108).—Under sub-section (1) of section 540A, the Court cannot dispense with the personal attendance of the accused unless he presented himself before it. The Committee are of the opinion that the scope of this sub-section is unduly narrow and that the powers of the Court to dispense with the personal attendance of the accused should be enlarged in the interests of expeditious disposal of cases. The Committee have, therefore, redrafted sub-section (1) to make it clear that the Court may dispense with the personal attendance of the accused, when represented by a pleader, if such attendance is not necessary in the interests of justice.

50. *Clause* 110 (*new*).—When death has been caused to a person, it is but proper that his heirs and dependents should be compensated, in suitable cases, for the loss resulting to them from such death, by the person who was responsible for it. Section 545 of the Code was amended in 1923 to cover such cases. The Committee feel that the intention was not, however, very clearly brought out. In order to focus the attention of the Courts on this aspect of the question, the Committee have amended section 545. It has been made clear that a fine may form a part of any sentence including a sentence of death. It has also been provided that the persons who are entitled, under the Fatal Accidents Act, 1855, to recover damages from the person sentenced may be compensated out of the fine imposed. Under the Act of 1855, the persons who may be compensated are the wife, husband, parent (including grand-parents) and child (including grand-children and step-children).

51. *Clause* 114 (*original clause* 112).—The amendments made are consequential to the insertion of a new section 198B by clause 25.

52. *Clause* 116 (*original clause* 114).—The changes made are consequential.

53. *The Schedule.*—The amendments made in the Schedule are merely of a consequential nature. The provisions of the proposed section 53A in the Indian Penal Code have already been explained.

54. The Committee considered a list of proposals (Annexure I) received by the Government from the general public for amendment of sections 68, 103, 160, 288, 337, 345, 417, 419, 422, 423, 497, 499, 545 and 562(1A) of the Code of Criminal Procedure, 1898, which were not covered by the provisions of the Bill. The Committee note as follows on these proposals:—

Section 68.—The Committee accept the principle embodied in the suggestion and recommend that that in warrant cases also the summons accompanied by a copy of the accusation, private complaint or copy of F.I.R. should be supplied to the accused.

Section 103.—The Committee approve the principle underlying the suggestion that a copy of the search list should be invariably supplied to the person searched. A new clause 15 making necessary changes in the section has therefore been inserted.

Section 160.—The proposal made is that in the case of a woman not accustomed to appear in public, she should be exempted from attendance before a police officer. The Committee are of the view that this exemption should be granted not only to women but should be extended to all females and males under the the age of 15. A new

clause 21 adding a proviso to this effect in the section has been inserted accordingly.

Section 337.—The Committee accepted the suggestion regarding the enlargement of the scope of section 337 to include all cases which are punishable with imprisonment extending upto 7 years and the proposal for the extension of the provision to grant pardon to cases of offences under sections 161, 165 and 165A of the Indian Penal Code. New clause 60 has, therefore, been inserted in the Bill.

Section 345.—The suggestion relating to section 381 of the Indian Penal Code only was acceptable to the Committee. Clause 66 has accordingly been amended.

Section 417.—The Committee accepted the suggestion that the Central Government should be empowered to file appeals against acquittals. This has been provided suitably in clause 85.

Section 423.—The Committee accept the suggestion that the High Court should be competent to exercise the power of section 426 to alter a conviction and at the same time be competent to exercise its revisional powers of enhancing the sentence. This has been provided in a new clause 86.

Section 497.—The Committee approve of the suggestion to provide for the cancellation of bail by the authority empowered to grant it. A suitable amendment to section 498 has been made.

Section 499.—The suggestion that the Court may, when determining the sufficiency of a surety, receive or accept an affidavit as evidence of facts for the purpose of its provisional acceptance, was accepted by the Committee. A suitable provision has accordingly been made by the incorporation of a new clause.

Section 545.—The Committee are in full agreement with the suggestion that at the time of awarding judgment in a case where death has resulted from homicide, the Court should award compensation to the heir of the deceased. This will result in settling the claim once for all by doing away with the need for a further claim in a civil Court, needless worry and expense to both sides of the party. The Committee also agree that similarly, in cases where the death is the result of rashness or negligence of the offender, appropriate compensation should be awarded to the heirs by the Court. This has been provided in new clause 110 of the Bill.

55. The Joint Committee desire to state in this connection that many amendments and suggestions relating to certain sections of the principal Act not covered by the amending Bill were submitted to the Committee. As some of these raised important issues, and opportunities for eliciting public opinion thereon had not yet been given, the Committee are of the view that these should be taken up for consideration after circulating them for public opinion. They therefore recommend that all such amendments may be referred to the Government, who will obtain the opinion of the public thereon and if necessary bring before the House another suitable amending Bill to the Code of Criminal Procedure, 1898 as far as possible within one year.

56. The Joint Committee recommend that the Bill as amended now be passed by the House.

N. V. GADGIL,
Chairman of the Joint Committee.

NEW DELHI;
The 3rd September, 1954.

Minutes of Dissent

I

The Bill was referred to the Joint Committee to examine its provisions and make suitable changes with the aim of—

(a) providing adequate facilities to every accused person for defending himself in a proper manner, and

(b) to ensure, at the same time, speedy disposal of Criminal business so that innocent persons should not suffer from protracted proceedings and the real offenders should be punished as early as possible. Though the anxiety does underlie the provisions yet the result would not achieve the aims. In over enthusiasm to make the system less expensive, less dilatory and less cumbersome there is the risk that the first principles of civilised jurisprudence may not be sacrificed.

Justice delayed is justice denied, no doubt. But is the procedure responsible for the delay in Criminal trials? The gross shortage of stipendiary magistrates; their multifarious duties on the executive and administrative sides; delay in investigation due to lack of experienced investigating staff; unnecessarily long time taken by the prosecutors to produce evidence and the occasional adjournments granted by the magistrates are some of the main causes of delay. It is very rare that the defence takes long to adduce evidence after the prosecution has completed its case.

Clause 4

The institution of special (non-stipendiary or Honorary) magistrates is being revived. It was not only the qualifications and the experience that these magistrates lacked for which they were disliked, but the fact that they always looked to executive authorities for favours and patronage and more often than not exploited their positions. The specification of judicial qualifications would not mend matters and the institution would not become less offensive. It is an irony of fate that the progressive legislation, sought to obliterate causes of delay, should contain such a provision. It is a retrograde step.

Clause 16

In the original clause it is only the District Magistrate or the Chief Presidency Magistrate who is invested with power to take action outside his territorial jurisdiction. Now every Magistrate is being given such extraordinary powers. This is not safe and would be liable to more frequent abuses. Restoration of the position that existed in 1882 cannot be a justification.

Clause 17

Under Section 117 (2) the enquiry for security for good behaviour was to be in accordance with warrant cases procedure. There was good deal of justification for this distinction, which is sought to be removed. Under Section 110 Cr. P.C. specific instances are brought in evidence and reputation alone is not to be rebutted.

Clause 22—*New Section* 162

The principle underlying Section 162 of Cr. P. Code is a wholesome one. However much we may wish otherwise it is a patent fact that our police lacks integrity and sincerity. No value can be attached to the record made by the investigating officer. The only use that it could be put to was that it could be availed of by the accused for contradicting a witness appearing against him. The Joint Committee have inserted the words "and with the permission of the Court by the Prosecution". This would mean that if the witness does not support his statement in the police diaries as recorded by the investigating officer then he would be discredited by being confronted with that record. It is common knowledge that police officers do not take down the statements to dictation. Rather after return to the headquarters they reproduce from memory the statements of witnesses and more often it is a record of what the officer wishes the witness to say and not actually what the witness did state. Without any reform or change in the honesty of the officer it would be dangerous to allow the prosecution to contradict witnesses. As soon as a witness deposed anything in favour of the accused the prosecutor would confront him with the previous statement made before the police to discredit him though we know he may never have given that statement.

Clause 25—*Insertion of New Section* 198-B

This is an important change. In the Bill it was intended to make the offence of defamation cognizable. That was much too drastic and would have curbed even legitimate criticism. The Joint Committee has modified that. But even now the change is not a wholesome one.

Primarily, the offence is a private wrong and it ought to have been left there. In a democracy no incumbent of any office, howsoever high it may be, should get any special privileges, and should be above criticism.

But if at all some consideration is to be shown to the President, Vice-President, or the Governor or Rajpramukh of a State, there is no justification for prescribing a special procedure for Ministers and for every public servant, however humble he might be. The Ministers in a Parliamentary democracy must be criticised for all lapses that they commit.

It is said that only the complainant is substituted. Under the present law, the Minister, if defamed, must come and file the complaints himself. He should appear and substantiate the facts stated. Now any of the Secretaries, authorised in this behalf, will initiate the proceedings.

Similarly it is argued that a public servant, when defamed, is reluctant to go to a court of law for fear of harassment that proceedings in the Court entail. He might be guilty and might shirk the ultimate result, but takes refuge under the plea that he cannot afford to suffer so much expense and worry. This may be all right. But it is not the method of initiation that is being changed. Rather the accused, under the amendment proposed, shall find the mighty State arrayed against him and the balance would be shifted. There would be psychological effect on the court, the litigants and the witnesses. The accused shall

be put at a great disadvantage. With such fears always present in the minds of a critic or a journalist, even the legitimate criticism would be foregone and suppressed. This would be injurious for the proper functioning of democracy.

Clause 29—*New Section* 207

Two different procedures have been prescribed in cases taken cognizance of upon police report and upon private complaints. This distinction would make the procedure more confusing whereas the intention was to make it simpler.

Instead of commitment proceedings the amendment proposed in 207-A seeks to simplify the procedure. Only those witnesses shall be examined who have seen the actual commission of the offence. Power is given to the Magistrate to record the evidence of any other witness. The most drastic change brought about is that the accused is precluded from putting any questions. He shall be a silent spectator to the scene enacted.

The object of these proceedings was to give the accused a clear notice of the case against him in serious offences punishable with severe sentences. A valuable right is being denied to him and the accused would feel prejudiced in his defence. Without commitment proceedings a Session Trial would be a summons procedure case before a Court of Sessions. The supply of copies of police statements and the examination-in-chief, by the Prosecutor of only a few witnesses would be no good substitute.

In our opinion there would be no saving of time and expenditure as well. It is not the cross-examination that takes much time. It is the prosecution that is responsible for delay. Under the present system everything was kept ready for the Sessions trial and it could go on smoothly there without a break. But now there would be occasions when the trial before the Sessions shall have to be adjourned. If the commitment proceedings were desired to be concluded within one month by an executive order, and the procedure is allowed to remain intact the objective of speedy disposal can be achieved. These changes would disturb the smooth working of the machinery that has been well set during so many years. Moreover sub-clause (17) makes the police complete master of the situation. No adjournment is to be granted for the reason that a particular eye-witness, desired to be examined before a committing Magistrate, is absent. When such be the case the police can very easily keep back a material witness and leave the accused only with police statement. The whole object would thus be frustrated, and the accused would be greatly handicapped.

Clause 31—*Section* 209

Here is a fundamental change. The Enquiry Magistrate was authorised to examine the accused "for the purpose of enabling him

to explain any circumstances appearing in the evidence against him". But now these words are being omitted. When the accused is being examined all evidence has not been recorded and he has had no opportunity of putting any questions to the witnesses that have appeared against him. At this stage he would not be required to explain any circumstances appearing in the evidence, but he can be questioned even on facts that have not come on the record. Any lacunae in the prosecution evidence can even be filled up and deficiency made good. This would not be fair to the accused.

Clause 35—*and Section* 251-*A*

The whole system is being upset. Under the jurisprudence every person is deemed to be innocent until he is proved to be guilty. It was after the recording of evidence that a charge was framed and the accused put on his trial. Now only after perusal of the statements recorded by police the Magistrate shall frame the charge. In a way he will be presumed to be guilty on the basis of the police diaries. This change will surely place the accused at a great disadvantage in meeting the charge.

Under the present procedure the accused was to plead under Section 255 whether he is guilty or has any defence to make. Then he was allowed time under Section 256 and on the next hearing required to state which of the prosecution witnesses he wished to further cross-examine. By the present proposal all safeguards under Section 256, Cr. P.C. have been taken away. Fair trial and proper opportunities are being sacrificed at the altar of speed and that too is not likely to be achieved.

Under Section 342: the accused can be examined generaliy on the case only after the prosecution evidence has been recorded though at any earlier stage he can be questioned by the Court "for the purpose of enabling him to explain any circumstances appearing against him". But now the change proposed would empower the Court to examine the accused and put any questions though there be no evidence on record about a certain fact. The accused shall have a chance to explain his case at the end. The whole order is being changed which is not fair.

Clause 62—*New Section* 342-*A*

This innovation is not a safe one. Though it is provided that he shall not be compelled or required to offer himself as a witness and that his failure to do so shall not be adverted to or commented upon yet the mischief would be done. If he appears he might be harassed by a severe cross-examination and might damn himself through simplicity or sheer ignorance. If he does not offer himself as a witness this would leave an adverse impression upon the Magistrate and would prejudice him though he might not be competent to comment upon this omission.

In Prevention of Corruption Act (II of 1947) accused has been given an option to offer himself as a witness. It is only in rare

cases that the accused has exercised the option given to him. Under this Act also it would be exercised very seldom.

N. R. M. SWAMY.

HUKAM SINGH.

NEW DELHI;

The 3rd September, 1954.

II

I should like to congratulate the Home Minister for attempting partly to keep his promise to the Lok Sabha that he would, in the Joint Committee, agree to the complete scrapping of the Bill if the Committee felt that such a course is necessary. In fact, I am struck with the remarkable resilience shown by him to offers of amendments to this important Bill, though I must record my opinion that even when he was yielding ground he was only indulging in a rear-guard action all along the line, so to speak.

This Bill should have been delayed for some time more, for amendment of the Criminal Law of the land could not be undertaken with any purposiveness without similar revision of the Indian Penal Code which cuts across the path of Criminal Law in a manner which is fundamental and intricate. Actually, the protracted discussions in the Joint Committee led to the decision that certain matters, which are within the purview of the Indian Penal Code, had better be left over, until such time that the Code is taken in hand for comprehensive decision. Two of these important issues relate to abolition of whipping and the law of slander. I consider that the reference to the Joint Committee on the present Bill is defective, in the sense that these and other vital issues are left over, and that their re-determination would take an unconscionably long time. I am anxious that Parliament must pronounce specifically on these and other issues which are held over, in order that Government proceeds with expedition towards their rectification, if such an expression can be used.

In this Minute I devote myself to a discussion of the new Clause 25, and by implication the new Clauses 97 and 114. I am happy to note that the Home Minister, and the Joint Committee in general, have heeded to the sincere demands of newspapermen like myself, who had a lifetime experience of the law of defamation, that no new law or procedure should have been introduced on the specious plea that without such power Government cannot cope with the menace of the scurrilous press. I am free to confess, even as I had stated repeatedly in the Committee, that no honest journalist has any difficulty about the need for curbing "yellow" or scurrilous journalism. In fact, I had stated without any mental reservations at all, and I even went against the position of the witnesses of the Indian Federation of Working Journalists, in regard to the need, in public interest, of measures which are calculated to curb character-assassination so widely indulged in these days by the language press.

and to a very limited extent by some journals published in the English language. The creation of procedures which, while ostensibly directed against these despicable specimen of Indian Journalism, would penalise the genuine press, which even according to the findings of the Press Commission, are upholding the highest traditions of the Fourth Estate, and which should be applauded without stint, through a steamrolling process, is reprehensible. I am glad that the Joint Committee have considered it proper to heed to the advice of the Press Commission in regard to the major implications of the original Clause 25 of the Bill.

The Home Minister must be congratulated for dropping the original provision regarding automatic apprehending of newspaper men for alleged defamatory writings. In fact, cognizability, with all its terrific implications, has been dropped, and the House would recognise the point that the Joint Committee have discharged a very important and helpful function by altering the original clause in this fundamental regard. Instead, the Court of Session was brought into the picture as a first forum in which offences falling within the purview of Chapter XXI of the Indian Penal Code (Act XLV of 1860), are to be discussed and disposed of, with the right of appeal to the High Court. Not being a lawyer I am not sure whether this procedural innovation is good law, *i.e.*, taking to a Court of Session in the first instance all offences which fall within the mischief of Chapter XXI of the Indian Penal Code. I had argued against the principle of this innovation, and I am not still convinced that this is the proper thing to be done, though I am free to confess that the District Magistrate, who would have come into the picture automatically under the present law and procedure, is no longer there. As a working newspaperman, I prefer to entrust my fortunes to a Judge in a Court of Session than to a District Magistrate, though I must here state, that newspapermen worth their salt would *plead privilege,* an expression which has hoary tradition behind it, to mean that he would not reveal sources of his information. Actually, the fundamental tenet of journalism in this country, as in other advanced countries, is that a journalist pleads privilege, and is not punished for not divulging sources of information, without coming within the mischief of contempt of court. This means, that even in a Court of Session newspapermen who are arraigned would be reluctant to reveal their cards, so to speak. While adhering to the first principles of honest journalism, I must state that this procedure is less reprehensible than the existing position in which the District Magistrate is at once a party (because he represents the State) and a Judge. Actually, the irrevocable objection of the newspaper world to the law as proposed today is that private wrongs (real and alleged) are lifted to the position of wrongs against the State, which has immeasurably larger resources at its disposal than any newspaper or journalist can ever hope to have, with the result that initially and even fundamentally, the scales are weighted against a newspaperman.

Once cognizability is dropped, the question of the gradation of procedure, in several tiers, in which the President, the Vice-President, the Governor and the Rajpramukh in the first category, the

Ministers of the Central and the State Governments in the second category, and other public servants in the third category, assumes some importance, in so far as the process of law is sought to be enforced. I am convinced that, by and large, the first category would be considered by the generality of people in this country to be a special category requiring some protection. But I am not sure that similar readiness would be forthcoming in the case of the second category, while I am positive in the conviction that in regard to the third category the opinion of the people of this Republic of ours would be definitely hostile.

My reasoning is simple and straightforward in regard to this categorisation of individuals for purposes of judicial process involving the punishment of defamation. Today we are a Welfare State, declared as such, with vast amounts of public money spent almost without stint. The Centre spends over Rs. 800 crores a year in the Railway and General Budgets, and Plan finance is a fact of equal magnitude. The State Governments also spend enormous amounts. All these put together constitute an astronomical proposition. The vast hierarchy of public servants from the President to the village drummer, is there for the disposal of these huge sums of money, and any citizen would be ready to affirm that chances for mis-spending of these moneys are today greater than ever before. In actual fact, everywhere in the country the cry has gone up against the existence of corruption, mis-spending and even mis-appropriation, and committees of the nation's legislatures have repeatedly reported the existence of this dangerous position in our midst. It is the duty of newspapermen and newspapers to spotlight any dereliction of duty on the part of public servants in regard to the husbanding of the tax-payer's money, and I hold, without any fear of contradiction, the view that, by and large, newspapers in the country have done a great public duty in bringing to light these lapses of public servants. The actual position is that not all cases of corruption, mis-spending and mis-appropriation have been exposed, for the existing law of defamation is sufficient to put restraints upon newspapermen and newspapers. The anti-corruption legislation also is there on the statute book. Now, under Clause 25, the scurrilous press might go underground, but the honest and upright press would be obstructed in the discharge of its normal and inexorable duties in the interests of the tax-payer and of the State itself. I deplore the possibility of a violent reaction in favour of keeping quiet by newspapermen and newspapers, who would hesitate to expose cases of corruption. This cannot be the concept of a Welfare State.

It has been argued that the public servants, who today keep quiet despite the fact that they consider themselves to have been defamed, would come forward under the provisions of the new Clause 25(3)(c). I wish that this would actually happen when the present legislative proposals become the law of the land. The argument that the superior officer, who has the power of removing a subordinate from his (the latter's) office, would now prefer the complaint, would be a guarantee that the defamed public servant would be compelled to go to court, is a specious one. I cannot conceive of a position in which a superior officer would launch proceedings without first going through a departmental enquiry, for he cannot risk, even assuming

that the close trade unionism of bureaucracy would ever permit such a position, taking action, without getting satisfied in advance that he could get a newspaperman or newspaper convicted. Indeed, I feel constrained to state that Government's argument that, though reluctant under present law to go to court in vindication of their honour and position in the discharge of public duty, public servants would in future come before court, for the reason that their superiors would launch proceedings, is utterly specious, and cannot be sustained.

Going a little deeper into the matter, it will become clear that under the existing law, in the case of an individual complaint of defamation, the District Magistrate, before taking cognizance of it, has to examine the complainant on oath, while under the present proposals of the Bill this important preliminary step is to be done away with. The majority of the Press Commission proposed that there should be a compulsory inquiry under Section 202 of the Code of Criminal Procedure. This proposal is in itself inadequate, for the reason that the Magistrate is not required to call the public servant concerned and to examine him under Section 202 before going ahead with the complaint, though it is not disputed that the discretion of the Magistrate to do so is there. Even this halting recommendation of the Press Commission has been negatived in the Joint Committee, which now proposes to take away even this discretion which is vested in the Magistrate. Further even after the Court of Session takes cognizance of a case and the trial begins, there is no mandatory provision to put the aggrieved public servant in the witness box, and to subject him to cross-examination. The Evidence Act is there, under which the "best evidence" has to be produced, but I feel strongly that the argument that the proposed changes in the law of the land would compel public servants to come before the courts would fall to the ground, as a result of this vital defect in procedure. I feel strongly that Parliament must reopen this point left alone by the Joint Committee and ensure that justice would be dispensed in an impartial manner.

I feel strongly that slander, or verbal defamation, has not been brought within the purview of Clause 25 of the Bill. This point was raised in Joint Committee repeatedly by some of us, but the answer of Government spokesmen was that revision of the Indian Penal Code is the proper occasion for such a course to be taken, and that it is the intention of Government to proceed in that manner. I am not satisfied with this argument, for the reason that defamation, both written and oral, belong to the same category, and that Clause 25 of the Bill is partial in its approach to the problem of defamation, in which newspaper defamation alone is taken into consideration. I am not given to making extravagant statements, but I must record here my view that the clause as such will become operative only against newspapermen and newspapers, with the result that the Fourth Estate would be justified in holding that the present legislative proposals are specifically directed against it, in a spirit of harassment and wanton prosecution. In the present state of the country, this certain conclusion of the newspaper world would recoil very severely on Government, for without the assistance of an upright, courageous and helpful press good government cannot become available to the citizen. I would urge Parliament to bring

slander also within the purview of Clause 25. In the alternative, Government must undertake on the floor of the House to bring, within a definite period, say six months, or one year, proposals for the amendment of the Indian Penal Code, to deal with slander on a par with defamation.

Finally, I regret that the Joint Committee have not considered it necessary to decide in favour of granting costs to newspapermen and newspapers which are acquitted in defamation proceedings under Clause 25, which certainly is a vital departure from existing law and procedure, and which seeks to promulgate new judicial procedures. Some of us went to the extent of asking the Joint Committee to make provision for compensation or costs, *only* in cases where benefit of doubt is *not given*, but the defendants are honourably acquitted. The arguments against this demand are not cogent, *e.g.*, it is pointed out that in the case of murder trials acquittal does not give the right to the accused to demand costs. But the comparison is untenable. Under the procedure now sought to be enforced, *i.e.*, special arrangements for a Court of Session to take cognizance of defamation cases against public servants etc., the entire weight and resources of the State are—contrary to the position under the existing law of defamation—placed at the disposal of the public servant concerned, to be pitted against newspapers, and against newspapermen who happen to be the worst paid people in the world. Cases drag on for unconscionable periods of time, during the course of which both newspapers and newspapermen would find stark ruination staring them in the face. Newspapermen would be dropped from employment by newspapers during the course of these trials, and seldom do newspapermen, thus left to fend for themselves, find opportunities for further employment. It stands, thus, to reason, that in case of acquittal, without benefit of doubt alone leading to such an acquittal, it is equitable that costs should be awarded to newspapers and newspapermen, who are to fight the entire resources of the State. I would beg Parliament to remember the point I have made earlier, *viz.*, that under Clause 25, private offences, which would be proceeded against under the existing law of defamation, are now elevated to the status of offences against the State, with the result that this equitable, yet small, protection to newspapers and newspapermen who are honourably acquitted should be provided for. I beg Parliament not to neglect its duty through rejection of this reasonable suggestion.

LANKA SUNDARAM.

NEW DELHI;
The 3rd September, 1954.

III

Clause 6.—It has been provided that the State Government may invest any District Magistrate, Presidency Magistrate or a First Class Magistrate of 10 years standing with power to try all offences not punishable with death or with imprisonment exceeding seven years.

There was such a provision in the Criminal Procedure Code for Punjab, Assam, Hyderabad and other Part C States. Now it is being extended to all other States.

(2) This is neither desirable nor necessary. In the first place, so long as the principle of separation of Executive from Judiciary is not carried out in its entirety in any State or part of a State, it would be manifestly unfair to invest magistrates with such extraordinary powers. Heretofore Magistrates, first class, could impose a sentence upto two years. Now their powers of sentence would go upto 7 years.

There is a distrust and suspicion in the mind of the people against the Magistrates who are working directly under the District Magistrate, supposed to be the Chief Executive authority in the district. There is no such feeling of distrust against the Sessions Judge, Assistant Sessions Judge or any other member of the Judiciary.

(3) Moreover, under the amended Code, Criminal cases in the Court of Magistrates would not take as much time as they used to take before, with the result that Magistrates would have comparatively more time at their disposal. That also makes the investment of these vast powers unnecessary.

(4) Above all no case was made out at all for this change. District Magistrates at present are mostly concerned with non-judicial work, nothing to do with Courts. They are in charge of Planning, Development, anti-corruption, raising this fund or that and so many other things, virtually out of touch with Court work. Many of the existing District Magistrates have had no experience of Court work for many years past. They, on account of their seniority or some other consideration, have been assigned this responsible job. It would be imprudent to invest them with such extraordinary powers.

(5) The present practice of Magistrate 1st class having power of imposing sentence of imprisonment upto two years should continue. Government of U.P. have also opposed this new change on the ground that they do not see any necessity for such a change.

Clause 34:

(6) The present, section 250 of Criminal Procedure Code provided that, in case the trying Magistrate comes to the conclusion that the complaint was vexatious, frivolous or false, he can call upon the complainant to pay compensation to the accused to an extent of Rs. 100/-. This is a very wholesome provision, but it is very rarely used. Criminal Courts as a rule are reluctant to award any compensation to the acquitted person. He is generally obliged to seek the aid of a Civil Court by filing suit for malicious presentation or damages. But the Criminal Law has placed a very handy provision in the hands of Magistrates who can effectively deal with frivolous complaints.

(7) But this principle should be extended to those glaring cases where the responsibility for frivolous, vexatious or false prosecution was mainly of the police. There have been cases and one comes across them every day that innocent persons are involved in serious offences by the police even when the complainant has no idea whatsoever to implicate them or the very prosecution initiated by the police is *ab initio* false. In such outrageous, false and concocted

cases where accused have been put to great inconvenience, hardship and loss of money, it should be open to the Magistrate, to impose compensation on the police officer who appeared responsible for it. That would go to a very large extent to open the eyes of the police with the result that they would hesitate to challan patently false and unfounded cases.

(8) It appears to me that the amendment of the Criminal Procedure Code, in a way revolutionary, would all go in vain, if the existing machinery of the police does not take a cue from it and adjust itself according to the exigencies of the situation. In case the police goes its own way, the reforms now being introduced may mean nothing or may ultimately be abused to the detriment of the public. It would therefore be in the fitness of things if the procedure is suitably amended so as to enable Magistrates to foist responsibility on police for palpably false and vexatious prosecutions.

Clause 35:

(9) With a view to cutting short the great delay in the decision of criminal cases, specially of warrant cases, it has now been proposed that there should be only one right of cross-examination to the accused instead of three which existed at present under sections 252, 256 and 257 of the Criminal Procedure Code. I am quite agreeable to that, but to propose that hereafter the trial of warrant cases in the Court of Magistrates would take place in accordance with the procedure adopted in Sessions cases, would be hardly fair.

(10) There is no doubt that under the Sessions case procedure only one right of cross-examination exists, but during the commitment proceedings the accused gets an ample opportunity to have a thorough glimpse of the case, the allegations of the prosecution, the witnesses and other material on which the prosecution relies. Under the existing Code, he had a right of cross-examination of witnesses. which he seldom exercised. Even in the altered circumstances, commitment proceedings have not been done away with, though, right of cross-examination has been specifically denied. But in the trial of warrant cases. which in many cases are of serious offences, it is expected that the accused should commence cross-examination at the very start. This will be very revolutionary and may go against the very interest of the accused. The mere supply of police papers beforehand would be no substitute.

(11) Sometimes prosecution witnesses while in the course of their examination-in-chief file papers material to the case, necessitating cross-examination which it may be difficult on the spur of the moment unless and until the paper has been thoroughly studied.

(12) Better proposal would have been that the accused or his counsel were given the option of either cross-examining prosecution witnesses under section 252 or reserving it under section 256. That would have equally saved time, it being understood that the trial would proceed from day to day. I am afraid the proposed provision in the amending Bill would not be acceptable to a large majority of the legal profession. who could have, in my opinion, reconciled to the provision of option. which was also suggested by the U.P. Judicial Reforms Committee, presided over by Justice Wanchoo, new

Chief Justice, Rajasthan. That was decidedly a better suggestion and more in the interest of the accused, which ought to be protected so far as is possible.

Clauses 61, 91 *and* 113:

(13) One of the professed objects of the amending Bill was 'to stop the prevailing evil of perjury'. There was a time when on an English Judge of the Allahabad High Court saying that he had not come across a single truthful witness in India, a great furore was raised not only in the High Court Bar but even outside. The Judge was condemned for having made a remark calumnising the entire Indian nation. Be that as it may, to-day the same thing is being openly said by the highest in the Judiciary as also in the Government without the least demur. The fact of the matter is that perjury is rampant in Law Courts and everybody is alive to it. It is in fact shaking the very foundations of justice, and virtually undermining the prestige of Law Courts.

(14) Now the problem is how to combat it—an evil recognised by everybody and condemned by all. In the amending Bill as originally introduced, it was proposed that the Magistrate be authorised to try a witness summarily for the offence of perjury. In the Bill as it has emerged out of the Joint Committee, a departure has been made from the original proposal inasmuch as now it is being provided that the Magistrate before whom a witness makes a perjured statement can make a note to that effect in its judgment and can accord sanction for prosecution at the same time. He would not try the case himself nor punish the witness then and there. This is good so far as it goes, but the question is will that stop the rampant evil of perjury. I am afraid not.

(15) In my own humble view it will not be enough if we tackle this problem from a negative approach only—as I would call it, because punishment for perjury may have a deterrent effect only but there should be positive approach as well. The law, as it is, should make people feel that speaking the truth would be looked upon with some merit. On the other hand, in the entire gamut of Indian Criminal Procedure Code, truth-speaking has not been shown any preference. And the law at any rate should not give the idea that 'telling a lie' in howsoever a manner and by whomsoever it be, will be permitted or countenanced in a Court of Law.

(16) Considered from that point of view I feel that the amending Bill, though a great land-mark in other respects, has totally fallen short of expectations and I am afraid, will not even touch the fringe, not to say of solving, the problem of perjury.

(17) Take for instance sub-clause (2) of Section 342, Criminal Procedure Code, which provides:—

> "The accused shall not render himself liable to punishment by refusing to answer such questions or by giving false answers to them, but the Court and the Jury (if any) may draw such inference from such refusal or answer as it thinks fit."

I can very well understand the right of accused when he is in the dock, not to make any statement at all. I can also understand his

refusing to answer any question put to him, if he thinks that by so answering he would be incriminating himself. But I cannot possibly understand why there need be an explicit provision in law that an accused is permitted to give 'false answers'. So long as these words remain on the Statute book, perjury cannot be put down and speaking the truth cannot be encouraged.

(18) I do not think, a similar provision is to be found in the law of any other country. The fear that if these words were removed an impression would be created that even an accused would be liable for making a false statement, is groundless, for that statement of his will not be on oath. I am opposed to this statutory guarantee against 'giving false answers'.

(19) At the present moment truth-speaking is at a discount. Law Courts as such are not interested in finding out the truth; they are interested in applying the law as it is to the evidence placed before them. Hardly would one come across a ruling where telling the truth has been extolled. The litigant public has reacted to this trend in Law Courts in the most obvious manner possible. If we want to change the course of events, we have to give an entirely new orientation to the administration of justice affecting the mind of the judge, the lawyer and the litigant public alike. It would not be a simple affair. It is a herculean task, indeed. We will have to do everything in our power to see that laws are so framed which would go to impress on all and sundry that telling the truth would be something of merit, law will be lenient towards those who tell the truth, if circumstances permitted and that telling a lie would be looked upon with disfavour. This has not been done by the amending Bill and hence my note of dissent. I feel that a great lacuna has been left. The offending words in Section 342(2) should not remain where they are. They are a standing disgrace to the Criminal Procedure Code. The law should expect even an accused person, if he should like to speak at all, to tell the truth. And that by itself should be construed as an extenuating circumstance.

(20) Side by side, it should be stated in unequivocal language in Section 562 that 'making a completely true statement without concealing anything' should be regarded as one of the extenuating circumstances. Whether the Court may be impressed by it or not is a different matter, but all the same the law should look upon speaking the truth with consideration. In the absence of these two, *viz.*, dropping of the words indicated above in section 342(2) and addition of the words in 562, we shall not be doing full justice to the problem of perjury.

(21) I agree we have to raise the social conscience of the people and 'make the witnesses realise that it is a very anti-social act on the part of anyone to mislead a Court of Justice by deliberately giving false evidence', but I do not share the view that for the present state of affairs, only the witnesses and the general public are responsible. It would on the other hand go to a very great extent to raise the morale of the public if a judge, even if awarding a sentence to an accused, were to remark in the course of the judgment that he was impressed by the truthful character of the statement the accused made. That is not the practice in our Courts nor the habit of our Magistrates or Judges.

(22) I was greatly impressed by the reports of Nuremberg trials wherein we find that even those who considered that death sentence was a foregone conclusion, made the most truthful statement possible thereby relieving the prosecution from the burden which lay heavily upon it. That showed the character of a nation, where truth speaking is the rule, and telling a lie specially in a Court of Law, an exception. If we have to revert to that condition, because we had been a nation of truth loving people as historians would bear us out, we have to create conditions, especially by changing the law wherever possible and the outlook of the judges as well as lawyers to lay greater emphasis on the quality of statements made by a witness or anaccused from the point of view of truth than on concealment of truth. If in international sphere we can succeed in creating an atmosphere of peace by resorting to arbitration and mutual discussion, surely can we succeed in our own country in purging perjury out by having a slightly different approach in Law Courts.

RAGHUBIR SAHAI.

NEW DELHI;

The 3rd September, 1954.

IV

भारतीय आपराधिक प्रक्रिया संहिता संशोधक विधेयक अभियुक्तों को प्रतिरक्षा सम्बन्धी अधिकाधिक सुविधा प्रदान एवं वादों के अविलम्ब निस्तारण, उद्देश्यों के साथ, लोक सभा में उपस्थित किया गया हैं। उद्देश्य स्तुत्य एवं अविवादास्पद हैं।

व्यावहारिक एवं आपराधिक प्रक्रियाओं में देश, काल एवं पात्र के अनुसार अन्तर पड़ना अनिवार्य हैं। अंग्रेजों का दृष्टिकोण आज के दृष्टिकोण से भिन्न था जब संहिता की रचना की गयी थी। शासक शासितों पर अत्याचार न करें तथा न्याय राज्य की नीति से विलग न हो सके इस दृष्टि से उन्होंने सूक्ष्म से सूक्ष्म प्रश्नों का विवेचन कर सब चीजों को इतना सीमाबद्ध कर दिया था जिसमें मानवीय विवेक के प्रयोग निमित्त क्षेत्र संकुचित हो गया था। स्वतंत्रता के पश्चात इस दृष्टिकोण में परिवर्तन करना समय की मांग हैं।

मानवीय अधिकार की रक्षा राज शक्ति द्वारा होती हैं। यही न्याय शास्त्र सिद्धान्त का केन्द्र बिन्दु रहा हैं। किसी कर्त्तव्य-पालन निमित्त नागरिकों को बाध्य करना व्यावहारिक एवं न करने वाले को दण्ड देना आपराधिक संहिता का प्रयोजन हैं। व्यावहारिक एवं आपराधिक प्रक्रियाएं अपने प्रतिकार की भिन्न प्रकृतियों के कारण दो धाराओं में प्रवाहित हो गयी हैं।

लोक के प्रति किया गया अपराध समाज एवं राज्य के प्रति किया गया लोक दोष कहा गया हैं। लोक दोष का निराकरण ही प्रस्तुत संहिता का प्रतिपाद्य विषय हैं। सत्ता वाचक विधि अधिकारों की परिभाषा करती हैं। प्रक्रिया विधि निराकरण का निश्चय करती हैं। अर्वाचीन न्याय सिद्धान्त में प्रथम को साध्य तथा द्वितीय को साधन कहा गया हैं। प्रस्तुत विधेयक केवल साध्य के लिए साधन नहीं हैं। अपितु वह अधिकारों का भी सृजन करता हैं। उसका गाढ़ा सम्बन्ध व्यक्ति स्वातंत्र्य एवं उसके अधिकारों से हैं। इस दृष्टि से विचार करने पर संयुक्त समिति के प्रतिवेदन से मूलतः सहमत होने पर भी भिन्न मत पत्रक प्रस्तुत करना आवश्यक हो गया हैं।

खण्ड २: भारतीय दण्ड संहिता की ७६ धाराओं का परीक्षण समन केसों के समान होता हैं। प्रस्तुत संशोधन के अनुसार २७ धाराएं जिनका परीक्षण इस समय वारण्ट केसों के समान होता हैं वे भी समन केस की श्रेणी में रखी जायगी। इस प्रकार कुल १०३ धाराओं का परीक्षण समन प्रक्रिया द्वारा होगा। व्यावहारिक क्षेत्र में यह संशोधन अधिक लाभप्रद प्रमाणित न होगा। शासन एवं न्याय विभाग को पृथक्करण के पूर्व मजिस्ट्रेटों की अधिकार सीमा बढ़ाना वांछनीय नहीं हैं।

खण्ड ४: लोकमत अवैतनिक मजिस्ट्रेट प्रथा के विरुद्ध हैं। वह उनका उन्मूलन चाहता हैं। पूर्व काल में यह प्रथा काफी बदनाम हो चुकी हैं और आजादी मिलने के पश्चात भी लोक प्रिय एवं अपनी उपयोगिता प्रमाणित करने में सफलता प्राप्त नहीं करा सकी हैं। यदि इस प्रथा को कायम रखना हैं तो मजिस्ट्रेटों की योग्यता की मर्यादा पर ध्यान देना आवश्यक होगा। प्रस्तुत विधेयक द्वारा मजिस्ट्रेटों के अधिकार बढ़ाए गये हैं। अनुभव किया गया हैं कि शिक्षा के अभाव के कारण वे विधान का अर्थ निरूपन नहीं कर सकते अतएव उनके लिये ला ग्रेजुएट की योग्यता रखना उचित हैं। बहुधा उनका चुनाव शासकीय दृष्टिकोण एवं दलगत भावना के आधार पर किया जाता हैं। जिसके कारण यह प्रथा न्याय-प्रियता की ख्याति प्राप्ति नहीं कर सकी हैं। वे अपने उत्तरदायित्व का निर्वाह नहीं करते। वे पहुंच के बाहर नहीं कहे जा सकते। स्थानीय वस्तु स्थिति के कारण उनके लिए विवेक-पूर्ण दृष्टि से काम लेना असम्भव हो जाता हैं। वकील तथा अवसर प्राप्त न्याय एवं शासकीय विभाग के व्यक्तियों द्वारा यदि यह प्रथा जारी रखी जाय तो कुछ लाभ हो सकता हैं।

खण्ड ६: जिन स्थानों पर न्याय एवं शासन व्यवस्था का पृथक्करण हैं वहां मजिस्ट्रेटों का अधिकार बढ़ाने में कोई हर्ज नहीं हैं। जहां जुडिशियल मजिस्ट्रेट प्रथा जारी की गयी हैं वहां भी विशेष आपत्ति नहीं होगी। इस संशोधन का प्रभाव सेशन जजों के कार्य पर पड़ेगा। उनके पास काम बहुत कम हो जायगा। न्याय शुद्ध न्याय विभाग द्वारा न होकर अधिकतया शासन सूत्रधारियों के क्षेत्र में आ जायगा। परिणाम यह होगा कि भारतीय दण्ड संहिता के दण्डनीय अपराधों में लगभग २८२ धाराओं के मुकदमे मजिस्ट्रेटों के अधिकार क्षेत्र में आ जाएंगे। और सेशन अदालतों के पास केवल ७२ धाराओं के मुकदमे रह जायेंगे यह संशोधन उत्तम परम्परा का सृजन नहीं करता। न्याय का कार्य न्याय विभाग द्वारा ही होना चाहिये। यह संशोधन न्याय एवं शासन विभाग के पृथक्करण की ओर इंगित नहीं करता जिसे हमें पूर्ण करना चाहिये।

खण्ड ७: यदि यह संशोधन मान लिया जाय तो सेशन जज किंवा अतिरिक्त सेशन जजों के पास केवल ७ धाराओं के मुकदमे रह जाएंगे। असिस्टेण्ट सेशन जज लगभग ६६ धाराओं के मुकदमों का फैसला करेंगे। उन्हें दस वर्ष तक दण्ड देने का अधिकार होगा। असिस्टेण्ट सेशन जज सिविल साइड में भर्ती होते हैं। उनमें बहुतों को फौजदारी मुकदमों का ज्ञान असिस्टेण्ट सेशन जज के पद पर आने के पूर्व नहीं होता। वे सिविल क्षेत्र में काम करते हैं। उसके अनुभवी हो जाते हैं। उनके हाथों में किसी नागरिक के जीवन का निर्णय दस वर्ष के लिये देना अविवेक पूर्ण समझा जायगा। उन्हीं असिस्टेण्ट सेशन जजों को इस संशोधन के साथ अधिकार दिया जा सकता हैं कि जो कम से कम पांच वर्ष तक फौजदारी मुकदमों का अनुभव प्राप्त कर चुके हों। इस संशोधन का दूसरा प्रभाव यह होगा कि सेशन अथवा एडिशनल सेशन जजों के पास नगण्य कार्य रह जायगा।

खण्ड ८: बँन्त की सजा अमानुषिक हैं। वह दासता युग की दुखान्त कहानी हैं। मनुष्य और पशु दोनों एक ही वर्ग में नहीं रखे जा सकते। मनुष्य विवेक शील प्राणी हैं। हमें उसके विवेक पर विश्वास कर उसे जागृत करना चाहिए। नैतिक अपराधों के अतिरिक्त अन्य अपराधों के लिए बँन्त दण्ड की प्रथा उठा देना उचित हैं। जुर्माना लगाने की अधिकार सीमा शत प्रतिशत बढ़ा दी गयी हैं। आनरेरी तथा द्वितीय एवं तृतीय वर्ग के मजिस्ट्रेटों के लिए जिन्हें कम अनुभव होता हैं, जुर्माना लगाने की अधिकार सीमा पूर्ववत रहनी चाहिये। उनमें परिवर्तन करना न्याय उन लोगों के हाथों में सौंपना होगा जो शायद उसका प्रयोग ठीक ढंग से न कर सकेंगे।

खण्ड १७: धारा १०८, १०९ एवं ११० अपराधों की प्रतिरोधक (Preventive) धाराएं हैं। उन्हें वारण्ट केस के वर्ग से उठाकर समन केस के वर्ग में रखना मनुष्य जीवन एवं विचार के साथ खेलना होगा। धारा १०८ भारतीय दण्ड संहिता की धारा १२४क (राजद्रोह) तथा धारा १५३क (विभिन्न वर्गों में शत्रुता एवं घृणा बढ़ाना) की निरोधक धारा हैं। स्वाधीनता संघर्ष काल में इस धारा का विशेष महत्व रहा हैं। देश के कर्मठ कार्यकर्त्ता इस धारा के अन्तर्गत कारावास झेल चुके हैं। वह मनुष्यों के विचार से सम्बन्ध रखता हैं। विचार स्वातंत्र्य स्वयं एक गम्भीर विषय हैं। इस विषय को वारण्ट प्रक्रिया से निकाल कर समन प्रक्रिया में रखना अभियुक्तों को न्याय प्राप्त कराने से वंचित करना होगा। समन प्रक्रिया साधारण अपराधों के लिए प्रयुक्त की जाती हैं। अभियुक्तों को वे सुविधाएं नहीं प्राप्त होंगी जो उन्हें वारण्ट प्रक्रिया द्वारा प्राप्त होतीं। इस अपराध का सम्बन्ध शारीरिक किंवा साम्पत्तिक हानि से नहीं अपितु विचारों से हैं। इनके अन्तर्गत सामाजिक एवं राजनैतिक कार्यकर्त्ता ही अपराधी होंगे। कोई भी तानाशाही सरकार अपने विरोधियों को परेशान और तंग करने के लिये इसका आश्रय ले सकती हैं। पूर्व स्वाधीनता काल में अंग्रेज यही करते आये थे। लोक तंत्रीय शासन में दलगत शासन होना अनिवार्य हैं अतएव दलों के दलदल से नागरिकों की रक्षा करना ही धर्म हैं।

धारा १०९ की कहानी सभी जानते हैं। पुलिस किस प्रकार निरपराधों को हमारी गुलामी के काल में जेलखानों में बन्द करती रही हैं वह किसी से छिपा नहीं हैं। पुलिस का यह रवैया अभी तक जारी हैं। यही अवस्था धारा ११० की हैं। नाम के लिए धाराएं १०८, १०९ एवं ११० निरोधक धारायें कही जाती हैं परन्तु वे सजा भी देती हैं। अतएव उनका सम्बन्ध मानवीय अधिकार एवं उसकी रक्षा से हैं। शासन एवं न्याय जब तक पूर्ण रूपेण पृथक नहीं होता तब तक इन धाराओं का दुरुपयोग होता रहेगा। मजिस्ट्रेटगण शान्ति एवं पूर्व प्रतिकारात्मक बातों की आड़ लेकर न्याय दृष्टि से नहीं बल्कि शासन दृष्टि से विचार करेंगे। अतएव प्रस्तुत संशोधन नागरिकों की अधिकार सीमा संकुचित करता हैं तथा अग्राह्य हैं।

खण्ड २०: प्रस्तुत संशोधन द्वारा अभियुक्तों को दौरा सुपुर्द करने में मजिस्ट्रेटों को अधिक सुविधाएं प्राप्त होंगी। इस प्रक्रिया में जो विलम्ब होता था उसका निराकरण हो जायगा। वर्तमान व्यवस्था को देखते हुए यह कहना ही पड़ता हैं कि पुलिस के रिमाण्ड लेने तथा मजिस्ट्रेटों के आलस्य से अधिक विलम्ब होता हैं। मजिस्ट्रेटों की अदालत में अभियुक्त जिरह आदि प्रायः नहीं करता और न सफाई देता हैं। यदि कुछ स्थितियों में होता भी हैं तो वह अपवाद ही कहा जायगा। इस अवसर पर विलम्ब का उत्तरदायित्व सबूत और अदालत पर रहता हैं। देखा गया हैं कि एक एक साल तक मुकदमा जांच की हालत में

चलता रहता है। अतएव समय की सीमा बांधना आवश्यक प्रतीत होता है। अभियुक्त की अदालत में उपस्थिति के दिन से दो मास के अन्दर तक अदालत के लिए बाध्य कर दिया जाय कि वह अभियुक्त को या तो दोषी सुपुर्द करे अथवा मुक्त कर दे। पुलिस को तीन मास तक रिमाण्ड का अधिकार मजिस्ट्रेट देता रहे। यदि तीन मास से अधिक काल तक रिमाण्ड की आवश्यकता पड़े तो डिस्ट्रिक्ट मजिस्ट्रेट पुलिस के विशेष कारण दिखाने पर लिखित हेतुओं को दिखाते हुए रिमाण्ड स्वीकृत करे। इस प्रक्रिया से विलम्ब की सम्भावना कम हो जायगी।

खण्ड ३४: वर्तमान प्रक्रिया संहिता के अनुसार तृतीय श्रेणी का मजिस्ट्रेट पचास रुपया तथा अन्य मजिस्ट्रेट एक सौ रुपया से अधिक हरजाना नहीं दिला सकते। यदि प्रस्तुत संशोधन स्वीकार कर लिया जाय तो उसका फल यह होगा कि एक सहस्त्र प्रतिशत हरजाने की संख्या बढ़ जायगी। समय का प्रवाह परिवर्तित हो रहा है। सस्ती का काल आ रहा है। एकाएक संख्या एक सौ से एक हजार बढ़ा देना तर्क सम्मत नहीं प्रतीत होता। मजिस्ट्रेट लोग इस अधिकार का दुरुपयोग कर सकते हैं। मुख्यतः आनरेरी तथा तृतीय श्रेणी के मजिस्ट्रेट। हमारा सुझाव है कि तृतीय श्रेणी के मजिस्ट्रेट एक सौ तथा अन्य मजिस्ट्रेटों को पांच सौ रुपया तक हर्जाना दिलाने का अधिकार देना उचित होगा।

खण्ड ३५: प्रस्तुत विधेयक द्वारा वारण्ट केस तथा सेशन केस की प्रक्रियाओं में कोई मौलिक अन्तर नहीं रह गया है। यदि कुछ है भी तो वह नगण्य है। विश्व में सन १९५४ में युगोस्लाविया की आपराधिक प्रक्रिया के पश्चात् भारत में ही इस दिशा में मौलिक परिवर्तन किया जा रहा है। विलम्ब के लिए भारतीय आपराधिक प्रक्रिया उतनी जिम्मेदार नहीं है जितनी कि मजिस्ट्रेटों और पुलिस की अकर्मण्यता। अनुभव सिद्ध है कि परिश्रमी मजिस्ट्रेट जिन मुकदमों का फैसला तीन दिन में करते हैं आलसी तथा काम चोर मजिस्ट्रेट उन्हें या तो आनरेरी मजिस्ट्रेटों को हस्तांतरित कर देते हैं अथवा मुल्तवी कर अपनी जान बचाते हैं। आनरेरी मजिस्ट्रेट भी वैतनिक न होने के कारण अधिकतर अनिच्छापूर्वक कार्य करते हैं। समय से नहीं आते हैं। केवल जेर तजवीज ही मुकदमा महीनों पड़ा रहता है। अभियुक्त आते हैं, दिन भर अदालतों में पड़े रहते हैं, शाम को तारीख सुना दी जाती है। इस प्रकार देखा गया है कि कितने ही मुकदमें जेर तजवीज सात आठ मास तक पड़े रह जाते हैं। अतएव समय का सीमा निर्धारण आवश्यक है। पुलिस जिस दिन चार्जशीट दाखिल करे उससे पन्द्रह दिन के अन्दर अभियुक्त पर चार्ज लगा देना अथवा पर्याप्त सबूत के अभाव में उसे मुक्त कर देना चाहिये। यदि चार्ज लग जाय तो अगले पन्द्रह दिन के अन्दर मुकदमा लगातार सुन कर फैसला दे देना चाहिये। यदि गिरफ्तारी के दिन से ६ मास तक मुकदमे का फैसला किसी विशेष कारण से न हो सके और अभियुक्त निरन्तर जेल की हवालात में बन्द रहे तो बिना मुकदमा चलाए उसे रिहा कर देना चाहिये। विश्व की आधुनिक आपराधिक संहिताएं इस सिद्धान्त को अपना रही हैं और हमें भी इस ओर ठोस कदम उठाना चाहिये। देखा गया है कि अभियुक्त महीनों जेल में पड़ा सड़ता रहता है। उसके इस प्रकार जेल में पड़े रहने का कारण उसकी गरीबी है। उसकी असहाय अवस्था है जिसके कारण वह सफाई अथवा जमानत का प्रबन्ध करने में असमर्थ हो जाता है। वह जितने दिनों हवालात में पड़ा रहता है उससे कम दिनों की प्रायः उसे सजा होती है।

खण्ड ४०: जूरी प्रथा सफल सिद्ध नहीं हुई है। वे निर्णय देने में स्थानीय वस्तु परिस्थितियों आदि से प्रभावित हो जाते हैं। सरलतापूर्वक उन तक पहुंच हो जाती है। यदि इस प्रथा को

जारी रखना हैं तो जुरी के लिये यह आवश्यक कर दिया जाय कि वह कम से कम सम्भ्रान्त ग्रेजुएट नागरिक हों।

खण्ड ६५ : आपराधिक संहिता के 'डी नोवो ट्रायल' के मौलिक सिद्धान्त एवं अभियुक्तों के महत्वपूर्ण अधिकार को प्रस्तुत संशोधन में तिलांजलि दे दी गयी हैं। इस प्रक्रिया के कारण सिविल तथा क्रिमिनल केसों के विचार में बहुत कम अन्तर रह जायगा। सिविल मुकदमों में गवाह का महत्व कागजात से अधिक प्रायः नहीं होता। फौजदारी मुकदमों में मौखिक गवाही ही का मुख्य स्थान हैं। अमुक व्यक्ति की मानसिक वृत्ति, आचरण एवं भावभंगी क्या थी यह गवाही के समय अदालत देख और समझ सकती हैं कि वास्तव में सत्य घटना कही जा रही हैं या गढ़ी हुई बात दुहराई जाती हैं। यह अधिकार अभियुक्त को देना चाहिए कि वह अपनी इच्छानुसार अदालत के बदल जाने पर किसी गुजरे हुए गवाह को बुला सकता हैं या नहीं। अदालत पर इसका निर्णय छोड़ना न्याय के प्रति न्याय करना नहीं कहा जायगा।

खण्ड ६६ : दण्ड सुनाने के साथ ही साथ तुरन्त अभियुक्त को आर्डर शीट की नकल अपील दाखिल करने के लिए दी जाय। जहां पूरे फैसले की आवश्यकता अपील दाखिल करने के लिए हो उसे २४ घंटे के अन्दर अभियुक्त को दी जाय। अभियुक्तों की लाचारी का नाजायज फायदा उठा कर इस सम्बन्ध में अदालती कर्मचारी बहुत तंग करते हैं।

खण्ड ८४ : अपीलों के फैसले में बहुत विलम्ब लग जाता हैं। जेल में बन्द अभियुक्त की अपील का फैसला अपील दाखिल होने के पन्द्रह दिन के अन्दर कर देना चाहिये। अपील में एक पक्ष हमेशा राज्य रहता हैं। अपील दाखिल होने से सात दिनों के अन्दर मिसिल मातहत अदालत से ऊपरी अदालत में जा सकती हैं। सात दिन का समय सरकारी वकील की तैयारी के लिए काफी होगा। हाई कोर्ट की अपील के लिये यह सीमा अपील दाखिल होने से तीन मास तक की होनी चाहिये।

रघुनाथ सिंह।

नई दिल्ली,
३ सितम्बर, १९५४

V

We have to submit the following Note of Dissent because in spite of certain modifications that have been accepted by the majority in the Joint Committee, the Bill, as it emerges out of the Joint Committee, does not help speedy disposal of cases launched by the police against the citizens, nor does it provide adequate facilities for the accused, nor enlarge the civil liberties of the citizens as it retains all those obnoxious sections in the Criminal Procedure Code enacted by British imperialist rulers in 1898.

I. Summons Procedure Extended.—In the Cr.P.C., there is Summary procedure, Summons procedure, Warrant procedure and Sessions procedure to be adopted as per the gravity of the offence, the maximum sentences that can be given being three months, six months, two years or imprisonment for life or death, respectively.

In the Summary procedure, in many cases, there is no appeal; there is no necessity to record evidence or even frame a formal

charge. But in appealable cases, only substance of evidence is to be recorded. The present Bill does not do away with this summary procedure and hand over minor offences to Panchayat Courts; but perpetuates it and enhances the power of Magistrates to impose increased fines from the present Rs. 50 to Rs. 200.

Similarly, in the Summons procedure, there is no preliminary hearing in the presence of the accused, before a formal charge is framed, but he is called upon to answer the police charge and directly enter into his defence. The evidence will not be recorded fully but only the substance of it will be recorded. The Summons procedure should have been abolished and Warrant procedure applied to all offences and thus give the accused a preliminary trial before the charge is framed; instead Summons procedure is sought to be extended to a larger number of offences punishable upto one year as against the present position where Summons procedure is adopted for offences punishable with 6 months' imprisonment.

Under section 117 of the Cr. P.C., the present position is that when Security bonds under sections 108, 109, and 110 for periods of one to three years are to be taken Warrant procedure is to apply. The present Bill does away with this and Summons procedure is extended to these sections as well.

Even in Warrant procedure or the Sessions cases, in the name of speeding up the trial, the accused was asked to submit a list of witnesses immediately after the prosecution finishes its case before the Committing Magistrate under new section 207(A), sub-clause 8 of the principal Act and any further list of witnesses by the defence will be admitted only at the discretion of the Magistrate, as against the present position wherein the accused can submit any further list of witnesses before the acutal trial begins in the Sessions. Similarly by clause 65 amending section 350 of the principal Act, the right of the accused to summon witnesses as well as to cross-examine them is taken away and is left to the discretion of the Magistrate.

Under Section 207A(17) of the principal Act, the police can escape from producing material witnesses, by taking advantage of the fact that in any case the Magistrate is bound to commit the accused even though the witnesses are not produced. It thus enables the prosecution not to divulge its full case to the accused which is the purpose of the committal stage. To prevent such mischief, there should have been a proviso, that such material witnesses who are not produced before the Committing Magistrate cannot be produced later before the Sessions Court.

II. *Time limit for ensuring Speedy Trials not fixed.*—Though the whole Bill is sought to be justified in the name of speedy justice, nowhere is time limit fixed for police investigation nor the time within which the Magistrate or Sessions Court will have to finish the case. Even the suggestion made by the Home Minister that police investigation should ordinarily finish within a month and a trial or enquiry by a Magistrate within another month and the Sessions Court should not take normally more than three months from the date of committal of an accused to the disposal of the case, does not find a place in this amending Bill. If this proviso had been incorporated in the Cr. P.C., it would have at least enabled the accused not to

rot under police custody in the first instance, and later during the magisterial trial and further on, in the Sessions trial, thus undergoing long period of imprisonment, which will not be counted as part of the sentence imposed later.

Clause 95 tries to amend section 497 of the Principal Act, by which the Magistrate shall have to release the accused on bail if the trial is not concluded within 60 days from the date fixed for taking evidence. Even this is hedged by the proviso that the Magistrate can refuse bail by recording the reasons for the same. Further since the time fixed is from the day fixed for taking evidence and not from the time of arrest of the accused, this will not help the accused at all and he will continue to rot in jail, because there is not time limit in which the police will have to finish their own investigation.

III. *More Facilities for the Prosecution and less for the Accused.*— Apart from the disadvantages which the accused has to undergo by extension of Summons procedure, etc., further facilities for the prosecution had been provided under this amending Bill.

1. *Clause* 13 *of the Bill for Amendment of Section* 47.—This amendment makes any person living in a house, a guest and even a child liable for prosecution for refusing the police free and ingress, as against the present position wherein only the person actually in charge of the house is liable.

2. *Clause* 16.—Amendment of section 107 of the principal Act: This enables any Magistrate to haul up any person, to be bound for keeping the peace in any other part of India, outside his jurisdiction, if by mere chance the accused happens to be living in the area of the said Magistrate.

3. *Clause* 22.—Section 162 of the principal Act has been amended by this clause of the Bill in such a way as to enable prosecution to use the police diary to contradict a witness, whereas the present position is that only the accused can use it to contradict the prosecution witnesses.

4. *Clause* 29.—Under this clause, the introduction of section 207A of the principal Act makes it possible that in the committal stage, the prosecution need produce only such witnesses whom they consider as witnesses of actual offence, and the Magistrate shall not record the evidence of any person whose statement has been recorded under section 164 of the principal Act in the absence of the accused or his advocate. The right of the accused to cross-examine these witnesses at that stage is taken away, all in the name of speedy justice.

The Magistrate is further given the right to examine the accused and put any questions to him, whereas under the present Code, Magistrate can put questions to the accused only for the purpose of enabling him to explain any circumstances appearing in the evidence against him.

Under 207A(6) and 208, the Magistrate can put questions which may even incriminate the accused.

5. A new section is being introduced by Clause 62 as 342A wherein the accused may give evidence on oath for disproving the charges made against him on his own request in writing. This dangerous provision is prejudicial to the accused. Because though it is provided in the proviso to this section that his "failure to give evidence shall not give rise to any presumption against himself", yet it will be taken that once he is not prepared to come forward to give evidence, the Magistrate, human as he is, concludes that the accused is suffering from the consciousness of his guilt and that is why he is not coming forward to give evidence. In fact, section 207A(6), and the amended sections 208 and 342, against Article 20 of the Constitution that no person shall be compelled to give evidence against himself, because these enable the Magistrate to put such questions as to make the accused incriminate himself.

6. While abolishing assessor system in Sessions trials, Jury trials are not made compulsory in all sessions cases and it was left to various State Governments to keep or abolish Jury system. This means, that even the present practice of a little association of the general public with the determination of the guilt of the accused, against whom the police has brought serious charges, is being given up; it is now entirely left to the discretion of a single Judge where the Jury trial does not take place.

7. Government which speaks of "cheap justice" does not amend those section, *i.e.*, proviso to section 165(5), proviso to section 166(5), section 244(3), section 257(2), proviso to section 337(1A) proviso which demand from the accused payment for copies of all the records, or evidence and for calling witnesses. If at least those sections had been removed and the accused had been given the copies of the evidence etc. free of charge and expenses to engage a defence lawyer were met with, then it would have been a step in the right direction to fulfil the very object of cheap justice.

IV. *Separation of Judiciary and Executive not effected.*—(1) The whole National movement has been agitating for separation of Judiciary from the Executive. But even now, after 7 years of Independence, when the Cr. P.C. is sought to be amended, the Government has not thought fit to amend it in such a way that Judicial and Executive functions stand separated. If this principle is to be carried out, the Cr. P.C. should have been amended on the following lines.

The Magistrates who are empowered to issue warrants and remand the accused on the basis of police report or a private complaint, should not be allowed to try cases. All cases should be tried by Judges at different levels, for instance, there may be District, Divisional or Taluk Judges or Judges having jurisdiction over similar areas in place of the present Magistrates, Sub-divisional Magistrates, Stationary Magistrates or Magistrates of first, second and third class.

V. *Powers of Magistrates increased.*—Not only does this Bill not seek to separate judiciary and executive, but, in fact, the amending Bill has sought to increase the powers of the Magistrates.

1. The State Governments are empowered under Section 30, I.P.C. (clause 6 of the Bill) to invest any First Class Magistrate of 10 years standing, with the right to try any offence carrying a sentence up to

seven years and they are also authorised under section 34 to inflict the maximum sentence for that offence permitted by law. Whereas, the present position is that only in Part B and C States and in Part A States of Assam, Madhya Pradesh and Punjab, these special Magistrates with special powers exist. This is now extended to the whole of India. These sections also offend Article 14 of the Constitution.

2. Similarly, under clause 7 of the Bill, the Assistant Sessions Judges are empowered to try offences punishable for 10 years as against the present position of 7 years. The powers of Assistant Judges should not be enhanced.

3. Clause 8 of the Bill (Section 32) gives power to all classes of Magistrates to impose heavier fines.

VI. *Powers of Police not curtailed.*—Our amendments to section 54 of the Cr. P.C. which are intended to curtail the powers given to the police, *viz.*, the right to arrest without warrant, has been referred for adoption in some future amending Bill, if the Government ever thinks to bring such Bill. Our proposal has been that arrests without warrant by any police officer shall be exercised only in case the person is involved in any cognizable offence or is about to commit a cognizable offence or is an absconder or one who obstructs the police officer in the execution of his duty, instead of the present wide provisions contained in sections 54 and 55. Under section 55 (b) any officer-in-charge of the police station can arrest any person who has no ostensible means of subsistence.

4. Similarly, section 151, which is one of the most misused sections in the Cr. P.C., empowers the police to arrest any body under the plea that he has a design to commit a cognizable offence. We wanted it to be amended to the effect that arrest can take place only on a warrant issued by a First Class Magistrate—all these suggestions have been relegated to future action by the Government with the police *zoolum* continuing as in the days of British rule, not to touch any of these sections does not help the citizens of India to get out of the clutches of the police and breathe the air of freedom!

5. Similarly, the preventive sections of 107, 108 and 109 and clauses (e) and (f) of section 110 should have been deleted. Their continued existence in the Statute Book can be justified only on the ground that the Government looks upon every citizen as a criminal and as such it should be armed against them by such powers given under these sections.

6. Similarly, our amendment to section 144 to restrict the rights of the Magistrate to issue an order under section 144 to be limited to "give such direction which is necessary to prevent obstruction or injury or risk of obstruction to any person lawfully employed or danger to human life, health or safety or a riot", in the place of the present all-inclusive wording "if such Magistrates consider that such direction is likely to prevent or tends to prevent obstruction, annoyance or injury or risk of obstruction, annoyance or injury, to any person lawfuly employed or danger to human life, health or safety or disturbance of public tranquillity or a riot or an affray", even this suggestion has also been brushed aside.

7. Our proposal, that every arrest made by a police officer without any warrant be investigated by judicial officer empowered specifically by the State Government and if found to be frivolous and vexatious, the accused be paid suitable compensation amounting to not less than Rs. 50, had met the same fate.

8. Our proposal that no Magistrate should authorise the detention of the accused in custody of police and he shall always order detention of an accused in judicial jail custody and that such custody shall not be for more than 7 days on the whole, unless a proper charge-sheet is laid and accused brought to trial, has also not been taken into consideration.

All these things show that the accused will continue to be at the mercy of the police and executive officers just as at present.

VII. *Whipping to continue.*—Our amendments to abolish the punishments of whipping and solitary confinements have once again been referred back to the Government, with no action to be taken immediately. A perusal of sections 390 to 395 will show the barbaric nature of the punishment of whipping as explained in these sections.

VIII. *Imprisonment for* 14 *years now enhanced to* 25 *years.*—In the whole Cr. P.C. "transportation for life" has been amended as "imprisonment for life." Under the existing rules, the transportation for life can be considered either for 20 years or 25 years under the Prisoners' Act. Under section 55 of the Indian Penal Code, the Government can commute the transportation for life to imprisonment of either description for a term not exceeding 14 years. Taking these together it means that when a person was sentenced for transportation for life and transported to Andamans or to any other place, then he is to serve a maximum period of 20 or 25 years; but if he is not transported and if he is kept in imprisonment in any of the jails in India. the State Governments will have to commute that sentence to one of 14 years. This means a person convicted for transportation for life has to spend 20 or 25 years in transportation, or 14 years in jail. Rightly this is so because when a person is transported to Andamans, he has to spend first few years in jail but later he is allowed to settle with his family and lives a normal life in Andamans. without the right to return to India till he finishes his term of transportation. But in imprisonment, this cannot take place. Yet Government now equates transportation for life with imprisonment for life and thus automatically increase the maximum terms of punishment from the present 14 years' imprisonment to 25 years. Enlightened opinion considers that a punishment is not intended to take revenge on the prisoner but to win him back to society as early as possible. The present outlook of the Government is exactly the opposite and intends to prolong the sentence from what even the Indian Penal Code itself originally lays down.

IX. *Defamation made a Public Offence from a Private Complaint.*—As if the present Cr. P.C. and the Indian Penal Code are not severe enough and comprehensive enough, a new amendment has been brought by adding a new section 198B making criticism of Ministers, Rajpramukhs, Governors, Vice-President and President, as an act of defamation, and as an offence which the State will take cognisance of and launch prosecutions against the press and individual citizens. The reason given for this change from the present

position where a person aggrieved has to file a private complaint of defamation is this: When an officer or public servant or a Minister is accused of corruption or bribery in order to bring them into account, the Government thought of a new remedy of prosecuting the person who brings those charges and not the person who is alleged to have taken the bribe! This new measure, it is held by the Government, will root out corruption and will vindicate their officers as well. It is strange logic!

If the public servant or Minister or Governor or Rajpramukh is accused of corruption, it is not the accused that is being brought before the bar, but it is the person who brings the charge that is being prosecuted. If the Government is really anxious to root out corruption, they should have enacted anti-corruption measure laying down that any officer or Minister or Governor or Rajpramukh or their near relatives either on his side or his wife's side who cannot explain the increase in their property, should be considered as guilty of bribery and summary confiscation of their property and deterrent imprisonment should be meted out to them.

Instead of this, elevating defamation from a private offence to a State offence, is nothing but a calculated attempt to suppress legitimate criticisms of Ministers and the Government by the press, the public and political parties. Even our suggestion, that if the Government is prepared to spend money and launch prosecution on behalf of public servant or Minister or the Governor etc., let the Government bear the expenses of defence as well, is also negatived. Even when the case launched by the Government fails, the Government is not prepared to pay the expenses of the defence nor is it prepared to make amends by paying suitable compensation to the accused.

This new section, instead of making people come forward to criticise the corruption, will only terrorise the people not to speak out and thus give greater scope for corruption to flourish.

Further, the Government has not even thought fit to make suitable amendments to the section of I.P.C. on defamation to exclude the honest criticism from coming under the mischief of this new offence by making the following further provisions:

> "Nothing should be defamation, which is spoken or written without malice and without bad faith. Absence of malice and of bad faith should be presumed at least when the prosecution is launched in connection with the writings in the press."

X. *Miscellaneous.*—Clause 29 amending section 207A(15) makes it compulsory that when commitment to the High Court is made, all documents are to be translated into English. This is quite unnecessary and sheer waste of public funds and causes delay. In fact, it should have been laid down that any part of the record that is not in the regional language should be translated into the regional language of the State in which the High Court is situated.

2. *Clause* 64: *Amendment of section* 345.—We do not want offences under section 509 to be compoundable, because "uttering words or sounds or making gestures or exhibiting any object intending to insult the modesty of a woman or intruding upon the privacy of a woman" should be taken more serious note of. Similarly section 374 offence at forced labour should not be made compoundable.

We feel that offences under sections 143, 144, 147, 148 can be made compoundable with the permission of the Court as these offences do not involve moral turpitude and in many cases, they arise out of momentary impulses or are of technical nature.

Similarly offences under section 326 can be made compoundable with the permission of the Court especially when offences under section 325 are made compoundable, as in both cases grievous hurt is the resultant. When sections 379 and 381 are made compoundable, why not section 380 also, as all these sections are offences of theft? And when section 403 is compoundable, why not section 404? Similarly, if the offences of theft under sections 379, 381 as well as that of trespass under section 451 are made compoundable, offences under sections 453, 454, 456 and 457 can also be made compoundable.

3. *Clause* 97: We are opposed to the proviso which is sought to be added to section 503, permitting President or Vice President or the Governor or Rajpramukh to be exempted from appearing in the court and to be examined by Commission. When these personages are to be examined as witnesses, then they must be treated alike as any other witness.

CONCLUSION: We have to conclude that the whole of this amending Bill has completely failed in the laudable object of giving adequate facilities to the accused for defending himself or for procuring speedy and cheap justice or for enlargement of civil liberties of citizens of a free India. We feel that this is nothing but a step towards a Police State.

P. SUNDARAYYA.
SADHAN CHANDRA GUPTA.

NEW DELHI,
The 3rd September, 1954.

VI

We wish to refer briefly to some points where we have not been able to see eye to eye with the majority view of the Committee and also where we feel sufficient consideration has not been given to some important aspects.

Clause 8.—We feel that whipping as a punishment is barbarous and while amending section 32 of the principal Act which is clause 8 of the amending Bill, this should have also been amended. Majority of the members of the Committee thought it prudent to leave this matter for consideration of the Government, but we feel that public opinion in this matter has sufficiently been agitated and in free and democratic India we should no longer tolerate free and indiscriminate use of whipping as a form of punishment.

Clause 16.—We think while amending section 107 of the principal Act V of 1898, a proviso should have been added to the effect that no proceeding under this section can be taken up in cases where persons economically or socially oppressed are agitating for the redress of their grievances. Experience has shown that in very many cases where land disputes occur even for failure on the part of the landlords to give legal rights to the tenants, and when the cause is taken up by organised bodies after giving due notice to the authorities concerned, the police officers in order to avoid trouble recommend proceeding under this section which are usually

granted by the Magistrates concerned and the people are put to much harassment.

This is further borne out by the fact that in the majority of such cases, the accused persons after a prolonged trial extending over years are honourably acquitted. We, therefore, think that such a provision is highly necessary.

Clause 22.—We are unable to agree with the majority view that the prosecution can use with the permission of the Court statement of a witness recorded by the Police to contradict the evidence of such a witness in Court as provided by section 145 of the Indian Evidence Act. It will be highly prejudicial to the accused and unfair to the witness if a statement recorded by the police is utilised for supporting the prosecution case. This amendment introduces a dangerous principle contrary to the tenets of Criminal Jurisprudence. It is much more so because it does not require the Court while granting permission even to record the reasons for granting such permission.

Clause 25.—We now come to another controversial matter in the amending Bill *i.e.*, clause 25 which seeks to insert a new section 198B in the principal Act. While we are glad that the Committee unanimously decided against making 'defamation against the President, the Governor or Rajpramukh of any State or a Minister or any other public servant in the discharge of his public functions' a cognisable offence as was originally proposed by the Government and it was dropped, we are not at all happy over the new change that was made by a majority vote. Both public and expert opinion on this matter has been expressed all over the country and overwhelming opinion seems to be against any amendment to the present Section 198 of the principal Act. It is repugnant to the growth of democracy and it militates against ideas of free society, as it seeks to create a privileged class and gives more and more powers and protection to the Executive, whose action in view of the changed circumstances in the country, should be scrutinised by the people who are the real masters. While we do not plead for any special privileges for the Press, at the same time, we do not want that it should labour under any special disabilities. Neither the Press nor public servants should be given any special privileges or protection by Law excepting what is applicable to the common citizens.

As such, there has been a deviation from the standpoint of equality before the Law by what is provided in Section 197A of the Criminal Procedure Code in respect of ex-rulers of the former Indian states. Although they are under no handicap like the judges and in spite of the fact that they enjoy full citizenship right including that of representation in the Legislatures and Parliament, they are given certain privileges as accused persons which ordinary citizens in this country do not enjoy. Now, added to this, another section of a privileged class is sought to be created, much larger in number, by inserting this new section 198B, thereby granting immunity against legitimate criticism to all public servants.

We have given our most earnest consideration to this and the more we think of its consequence, the more we are convinced that after this provision has been enacted as Law, the voice of criticism

and opposition would be severely throttled and authoritarian executive would easily disregard even valid criticism which is so essential in a democracy.

The Law of Defamation relates to the person concerned and as such the present provisions in the Criminal Procedure Code give the aggrieved persons enough scope to proceed in the Court of Law. But what we are concerned in this case, is the question of a person functioning in his public capacity and surely every citizen must have unfettered rights to write publicly and bring to light such misdeeds or wrongs as appear to him to be detrimental to the best interests of the society. It is not that the public servant concerned is debarred from making any refutation nor can it be said that the Government Servants' Conduct Rules debar him from issuing necessary contradiction. When it is provided in the present amending Bill that a complaint may be filed within six months from the date on which the commission of the offence is alleged we do not see any reason why in the course of this period the public servant who is governed by the Conduct Rules would not be able to get the necessary permission to refute the charges levelled against him or file a case of defamation in case he so desired.

It is all the more objectionable when the Minister, both at the Centre and the States, are included in this category. These persons are neither governed by the Government Servants' Conduct Rules nor are they engaged only in discharging certain specific Government duties. Their public activities are varied and wide-spread and as has been observed elsewhere* rightly, "they are figures of controversy and cannot claim to escape the democratic obligation of following the procedure applicable to other citizens". Further the Ministers occupy their present position owing to their association with some political parties and the special privileged position in which they would be placed under this clause would very well be exploited for political and party purposes and thus create a very dangerous situation. We have not come across any single opinion, excepting that of a few who have held the view that the Ministers should be given special protection. In this matter no party consideration should weigh our decision and by no means, the Ministers should be brought under this category of public servants.

As in the case of Ministers, so also in cases of the President, Vice-President, the Governor or Rajpramukh of a State, we have very serious objections to their inclusion in this new section. This is still more unacceptable when read with clause 98 of the amending Bill which exempts their presence in the Courts, because in such offences, the personal presence of the complaint will play a great part in deciding the issue. We, therefore, oppose the inclusion of these high dignitaries.

As already described above, we are totally opposed to this new clause and we would most earnestly desire that Parliament when considering this would, irrespective of party or political considerations, concur with our view and throw out the clause as has emerged from the Joint Committee representing the majority opinion.

*Note of dissent to the Report of the Press Commission by four members of the Press Commission.

After stating our objections, we also want to state that the provision, as has been passed by the majority vote of the Committee, has not given due consideration to the disadvantageous position and harassment in which the accused person would be placed in such cases when the State would be a party. We, therefore, feel that the ends of justice would be met to a great extent if in all cases of acquittal the accused are also given costs and also in case of acquittal, where the guilt of the officer is established, the trying judge is able to set in motion the process of Law against him. To leave these matters to the Government, as experience has shown, is not likely to bring any satisfactory result. If Parliament thinks of adopting this clause as has been passed by the majority, our earnest appeal would be for the inclusion of these two provisions to safeguard the interest of innocent accused and also to prevent unnecessary proceedings on such matters. In any case we are of opinion that such trials should have the benefit of the Jury system and sub-clause (5) should be deleted. We also feel that the authority to sanction prosecution in the cases covered by (a) and (b) of sub-clause (3) should not be a subordinate to the person said to have been defamed. Sanction of prosecution by a subordinate is not only meaningless, but it tends to give an upperhand to the subordinate in day-to-day administration.

Clause 31.—Section 209 provided that the committing Magistrate would examine the accused for purpose of enabling him to explain any circumstances appearing in the evidence against him. By deleting this limitation on the Magistrates' power of examination, the doors may be thrown open to regular cross-examination of the accused by the Magistrate which might enable gaps in the prosecution evidence to be filled up by such examination.

Clause 34.—As regards clause 34, we are of the opinion that a serious omission has been made. This clause, *i.e.*, Section 250 of the principal Act as amended empowers the Magistrates to impose fine and give compensation to persons against whom cases are instituted by private persons or by the police on information are found to be false, frivolous or vexatious. But in this matter, the police is left scot-free. It is a matter of common knowledge that very often police institute cases without proper investigation and sometimes even cases are concocted in order to harass particular persons. This is one of the reasons why the police are not believed by the villagers even in free India. We feel that in police cases which are found to be false, frivolous or vexatious the Court should have the discretion to award compensation against the police officials as well.

Clause 61.—The objection referred to under clause 31 applies equally to the amendment suggested under 342(1) of the principal Act. We feel that the old section should stand or alternatively there should be a proviso that such examination by Magistrate should not be of the nature of a cross-examination.

Clause 98.—On principle, we are opposed to the proviso (b) contained in clause 98 of the amending Bill *i.e.*, in section 503, Act V of 1898, which provides that whenever the President, Vice-President, Governor or the Rajpramukh is called as a witness, they shall be examined by a commission. This is putting some persons above the

Law Courts which we strongly object to. Every individual, however high in position, must be treated equally in the eyes of the Law and unless he or she is physically incapable, such exemption from personal attendance from Courts of Law should never be given. We are therefore for deletion of Sub-Clause (b) of Clause 98 of the amending Bill.

Regarding Jury System.—As regards Jury trial, we are of the opinion that the Committee has rather taken a very weak stand in this matter. By giving option to the Courts and the States for the introduction of Jury, if and when they think necessary, the real purpose of Jury System is not likely to be served. In order that the Courts may benefit themselves by the wise and experienced counsels of persons in the locality in cases where mere legalistic view may not be quite adequate to meet the ends of justice, association of the Jury is needed. We could have understood if the Committee had expressed itself totally against the Jury system. Although we don't subscribe to this view, we could have thought that the majority in the Committee are consistent in their opinion. But the present decision is far from satisfactory. We therefore think that suitable amendments should be made so as to make the association of Jury obligatory in respect of certain cases.

In this connection, we also want to point out that the present method of selection of members of the Jury is not healthy and is not based on any principle. Generally a certain section of the community are chosen as members of the Jury. This should also be changed. There should be no class or caste distinction in such matters and even ordinary kisans should be requested to sit on the Jury when necessary.

S. N. DWIVEDY.

C. MADHAO REDDI.

NEW DELHI;

The 3rd September, 1954.

... VII

I find myself in accord with most of the matters dealt with in the majority report of the Joint Committee. I am constrained to append my note of dissent not so much with a view to criticise the changes suggested, though in a few matters my views are not *ad idem* with those of my colleagues, but my underlying object is to draw the attention of the Parliament to certain far reaching reforms in the Criminal Procedure which have not been included in the provisions of the Code of Criminal Procedure (Amendment) Bill. I, therefore, wish to divide my note of dissent into two parts: Part I deals with the broad but vital reforms that require early consideration and adoption with a view to completely overhaul both the substantive and the adjective law relating to administration of justice in Criminal matters.

In Part II, I propose to deal with the actual amendments proposed which I consider opposed to just and efficient administration of Criminal justice.

PART I

The objects and reasons for this Bill are that while providing adequate facilities to the accused person for defending himself, speedy disposal of all Criminal Judicial business should be ensured by simplification of procedure. It is felt that the existing procedure because of its complicated texture leads to great delay. The protagonists of this Bill also feel that the existing procedure conduces to the acquittal of the guilty in a large number of cases leaving a trail of bitterness, frustration and keen disappointment in the minds of the relatives of the victims of the crimes, who feel that justice has faltered in punishing the guilty. There is no gainsaying the fact that miscarriage of justice whether culminating in the acquittal of the guilty, or in the conviction of the innocent is a stigma and a blemish on the administration of Criminal Justice, which should not be countenanced. The long delay in the disposal of Criminal cases, the heavy expense they involve both to the State and to the accused are some of the other undesirable features of our Criminal law, as practised.

While appreciating substantially the gravamen of the criticism I cannot help feeling that the proposed changes contemplated in the Bill are merely in the nature of palliatives hardly touching even the fringe of the problem of miscarriage of justice in Criminal cases.

It would have been, in my view, more appropriate to have set up a Criminal Justice Commission manned by High Court Judges, eminent Criminal lawyers, high police officers, medico-legal and other experts, jurists and criminologists who would have thoroughly scrutinized the problem, in its multiple manifestations, and had then proposed changes not only in the criminal procedure but also covering various other matters relating to detection and investigation of crime, employment of science for its discovery and eradication. It should also have embraced within its ambit matters like jail reforms, juvenile delinquency and other allied problems pertaining to prevention of crime. The piecemeal reform that has been attempted, completely ignores the real causes and emits their cures, which alone can reduce the high incidence of crime in India.

A detailed survey of the pressing problems in view of their varied nature, and vast canvas, is obviously outside the scope of this note. I may, however, indicate some of the really important features which require closer attention and which have not so far received any or adequate notice.

THREE FUNCTIONARIES

(*i*) *Police investigators.*—Miscarriage of justice can be avoided and in any case can be mitigated, if the three functionaries could discharge their duties efficiently and honestly. Responsibility in the initial stages falls upon the crime detecting agency and the crime investigators who collect evidence, *i.e.*, the police officers engaged in detection and investigation. Failure to pursue the trails left behind by the criminal, haphazard involvement of the innocent along with the guilty, the frequent and clumsy padding resorted to in a large number of criminal prosecutions, the dependence on extorted confessions, the tutoring of witnesses, the application of third degree

methods. which are the common repertoire of the police. more often hinder than help the conviction of the guilty.

(ii) Counsel.—In the second place the responsibility for finding the truth. is shouldered by the counsel appearing for the prosecution and the defence who are expected to carefully marshall the evidence and present it from different angles with such comments as throw light on the merits of their respective cases.

(iii) Magistrates:—In the final resort the burden of shifting truth from falsehood rests on the presiding Magistrates and Judges of the court whose knowledge, experience, capacity to understand. impartiality and vigilance, determine the fate of those arraigned before them.

Detection of crime.—Detection of crime which is the first operation depends upon capabilities, industry, ingenuity and highly developed powers of ratiocination of the police officers engaged in investigation of the offence. The training is deficient and detective work is of poor quality. The seed of miscarriage of justice is sown at the initial stage. At present science is hardly harnessed to the aid of the police investigator. Articles and traces which are inconsequential to the eye of a layman assume greater significance when examined by an expert. Many a criminal was made to pay the penalty for the crimes when the solitary clues were a dried up stain or a piece of cloth, a hair, a finger impression, a foot print, a discharged bullet. or some other apparently inconsequential and seemingly unimportant, but nonetheless a tell-tale piece of evidence. A well-equipped forensic laboratory staffed with scientists competent in different fields of scientific investigations, is urgently needed.

Scientific Investigation.—Apart from a Central Institute of Scientific Investigation, Mobile Police Squads equipped with wireless telephone and a miniature laboratory on wheels quickly visiting the scene of crime, will serve to prevent obliteration of helpful clues, and aid in securing the culprits.

But dangers from pseudo experts whether in ballistics, pathology, serology, finger prints etc., not properly trained and qualified, are a source of danger and more often than not mislead the Courts.

Prosecuting agency.—The prosecuting agency contributes its quota to the miscarriage of justice by their over-zeal in trying to secure conviction by hook or by crook and not by assisting the court in eliciting the truth. The fountain of justice is contaminated when incompetent public prosecutors consider it meritorious to obtain convictions by distorting or suppressing facts, by fabricating evidence. or by suborning or tutoring witnesses. This rather pronounced proclivity is reciprocated in equal measure by the advisers for the defence who vie with the prosecution in adducing false and faked evidence, by having recourse to dilatory tactics and by setting up false defences. In the end the trial of a criminal case reduces itself to competition in ingenuity of the respective parties in suppressing truth and in presenting a seemingly credible falsehood. Law and unfair means employed in prosecuting and defending criminal cases are glaring causes of miscarriage of criminal justice. Want of fairness, candour, suppression of facts, fabrication of false

evidence, victimisation of witnesses and resort to harassing tactics are a few of the many impediments in the way of ascertainment of truth and in this race the conduct of neither prosecution nor defence is ever blameless.

Dying declarations and confessions.—The mode of recording dying declarations and confessions is in a number of cases farcical and rarely represents the *ipsissima verba* uttered by the declarant. In the case of dying declaration the statement is rarely unalloyed with the hints and suggestions thrown in. In the case of confessions these are very often laboriously drawn out statements prepared by police officer which are rammed down the throats of the accused persons who are made to cram them and then to reproduce them in the court. Confessions are rarely the offspring of qualms of conscience which they purport to be. They are invariably the results of false premises held out to the hapless gullibles. These are extremely unfair tactics resorted to by police especially where there is a paucity of credible and independent evidence. It is therefore no wonder that Courts hardly ever rely upon such declarations or statements. Approver's statements are obtained usually by a similar process.

The Bill should have provided that dying declarations whereever possible should be recorded in the presence of the accused when available and confessions should be taken down in the presence of the counsel of the accused or at any rate after the accused has had occasion to consult his advisers.

Separation of Judiciary and Executive.—Separation of Judiciary and Executive should be achieved at the earliest as that will be a great factor in dispensation of impartial and even-handed justice uninfluenced by considerations of policy and pressure. The High Courts in a number of decisions were constrained to animadvert to lamentable tendencies of late of attempts by executive officers to interfere with and hamper the course of justice. Such a practice not only impairs the faith of the common citizen in the impartiality and independence of judicial tribunals in the land but it adversely affects the mental approach of the Magistrates who perforce have to adopt a subservient attitude pleasing to their superiors but impinging on their judicial conscience.

While appreciating the force of the compelling reasons in favour of separation of judiciary and executive Dr Kailas Nath Katju published an article in a newspaper in 1948 on "Separation of Judiciary and Executive" and expressed himself as follows:

"....In fact, in important cases, I imagine they (Magistrates) are kept in touch with the progress of the police investigation, and what is much more important, action under the all pervading preventive sections of the Criminal Procedure Code—I refer particularly to sections 106 and 110, 144 and 145 of the Code—is often taken with their previous tacit or express approval. As executive officers, they acquire a good deal of knowledge through police and other sources about the case which they are subsequently called upon to try judicially."

"Then there is a widely prevalent feeling that most of them are subservient to executive influences and labour under a fear that

their career may depend upon how they decide cases in which the provincial Government or the higher executive authorities may be interested. Under the British rule it was commonly said that in the so called cases it was difficult to expect even-handed justice from the magisterial courts..... The whole problem to my mind is capable of a very easy solution which has not found general acceptance throughout India. The District Magistrate is the principal officer in the District charged with the duty of maintaining law and order in his district. He must be assisted by several subordinate magistrates. The District Magistrates and his colleagues should continue to discharge all executive authority and exercise all discretionary powers which may be vested in them as such executive officers."

Dr. Katju praised the Civil judiciary in the following terms:—

> 'It is sometimes overlooked that while the civil judiciary is entirely independent of the executive from top to bottom, even on the criminal side in so far as trials of serious offences are concerned, independent tribunals exist presided over by Sessions and Assistant Sessions Judges. I think there should be no difficulty in appointing judicial magistrates for trying all criminal cases of every description. Their appointments should be made after an examination and on the recommendations of the Public Service Commission. They should enjoy security of tenure and absolute freedom from executive control. After all what is the object that we intend to achieve by separation of two functions. The object is that the accused person should have the benefit of trial before an independent and impartial magistrate, who should try and dispose of the case before him according to law without any bias, without "interruption and without pressure or influence of any sort or kind being brought upon him."'

I hope that the Home Minister agrees with the above expression of views.

Executive Interference.—Misguided zeal, partisanship, tenacious officiousness, lower the standards of fairness. The attitude of the public prosecutors and other officers of the government interested in the case should be free from partiality and unaffected by any considerations of policy. The State as a litigant must eschew harassing and obstructive tactics which would be unworthy of an upright and honest litigant. Frequent resorts to technicalities, withholding of documents on specious but untrue reasons of State privilege, not only amounts to denial of justice but lowers in the eyes of the common man the prestige of the State. Occasions on which, obstacles are placed by the officers of the State in the way of the Courts dispensing justice are by no means infrequent. Such practices whenever found by Courts in England have been censured severely. In the words of C. K. Allen in his book "Law and Order" at page 272, "Censures which would place a lasting stigma on any private person find neither a body to kick nor a soul to damn in great elusive impersonality of the State. The system goes on unperturbed, and will continue to go on, until the common man, who has ultimate power in his hands, realizes that a muddied stream flows from governing authority, which in the theory of our Constitution, is the 'Fountain of Justice'."

The fears expressed by C. K. Allen are echoed with greater frequency and found in plentiful abundance in Courts in India *vis-a-vis* the executitve.

Whipping etc. as punishment.—In matters of certain forms of punishment our law requires restatement. Punishments of solitary confinement and whipping deserve to be resorted to sparingly and after very great circumspection. Despite Chapter 28 of the Code of Criminal Procedure which provides for mode of inflicting and of execution of sentence of whipping it is felt on all sides that this is the most degrading and barbarous form of punishment and the Whipping Act (IV of 1909) deserves to be scrapped. Opinions may differ regarding the advisibility of retaining section 4 of the Act but there can be no manner of doubt, that section 5 which sanctions the imposition of whipping as a punishment on juvenile offenders, which means a person under 16 years of age, with respect to virtually all offences punishable under the Indian Penal Code, is a stigma and a slur which would be a disgrace to the penal law of any civilized society.

Section 5 of Act 4 of 1909 is reproduced below for purposes of ready reference:—

> "5. Any Juvenile offender who abets, commits or attempts to commit—
>
> (a) any offence punishable under the Indian Penal Code, except offences specified in Chapter VI and in sections 153A and 505 of that Code and offences punishable with death, or
>
> (*b*) any offence punishable under any other law with imprisonment which the (Provincial Government) may by notification in the (Official Gazette) specify in this behalf,
>
> may be punished with whipping in lieu of any other punishment to which he may for such offence, abetment or attempt be liable.
>
> *Explanation*:—In this section the expression "Juvenile offender" means an offender whom the Government after making such enquiry (if any) as may be deemed necessary, shall find to be under sixteen years of age, the finding of the court in all cases being final and conclusive".

Whipping as a mode of castigation with respect to young delinquents under sixteen years must never be resorted to as that would inflict wounds on impressionable minds, which cannot easily be healed.

Compensation to accused persons.—Section 250 of the Code of Criminal Procedure enables the Magistrate to award compensation to an accused person where the accusation is found to be false and frivolous or vexatious and consequently an order of discharge or acquittal is passed. Compensation in such a case is allowed against a complainant or against a person who lodges information with a police officer. The existing law does not allow awarding of compensation in a case instituted on a police report. It is little realised that facing a criminal trial is in itself an agonizing and exasperating experience apart from the resultant suffering, not only in reputation but also in the bearing of a financial burden far in excess of

one's capacity. In those cases where an accused person has been found to be innocent and where it is proved that he has been subjected to a prosecution which was not only false but also vexatious or frivolous, the State should not hesitate to compensate the acquitted person for the injury done to him. In cases where an innocent person is falsely accused of having committed a crime and has undergone a tremendous emotional strain full of suspense and worry, has been deprived of his liberty for months as an under-trial prisoner, has suffered the lasting suspicion, ridicule and hatred of his fellow beings, his nerves have been shattered and he has been financially crippled, is it not just and fair that the State should make whatever amends it can, for the injury he has been gratuitously made to undergo. I am aware of cases where a man who has been falsely convicted and sentenced by the lower Courts and eventually found to be innocent by the High Court, has undergone the full term or major portion of his sentence before the order of his acquittal has been passed. In such cases it is the bounden duty of the State not only to publicly express its regret but also to offer a suitable compensation and to ensure that he is properly rehabilitated in the society without a blot or blemish clinging to him. It is not a novel suggestion that I am making. In England acquitted persons are paid their costs and compensation and this has been the law for over a century. The Government of England has not hesitated to pay ample compensation for undergoing a trial which ended in acquittal. Adolph Bech was paid £6000 on acquittal, and Salter received a compensation of £5000 for undergoing the ordeal of a criminal trial when he should never have been prosecuted. It is a barbarous and savage system where an innocent man may be subjected to a terrible suffering because of the over-zealous, muddle-headed and in some cases not upright investigation agents, who neither cared to weigh the evidence nor worried about the sorrows and sufferings that their thoughtless indifference inflicted on the accused and his family. A perusal of the relevant provisions of the Summary Jurisdiction Act 1858, Costs in Criminal Cases Acts, 1908 and 1952 and Criminal Justice Act of 1948, will repay the labour and prove that awarding of costs and compensation to the acquitted accused is the barest justice that should be done to him.

PART II

In this part I proceed to offer my comments on the clauses of the Bill on which I do not see eye to eye with my other colleagues.

Clause 3.—The condition that the Court of Sessions, even when it is of opinion that its sitting should be at any other place in the Sessions Division has to obtain the consent both of the prosecution and the accused is not in the interest of justice. This matter should be left to the unfettered discretion of the court, after he has heard the respective points of view of the prosecution and the defence.

Clause 4.—The system of honorary magistrates which had been discredited in the light of past experience should not be revived. Persons called upon to serve as honorary magistrates must, in view of the very nature of their appointment, belong to the locality and are not going to be transferred. Their personal and local contacts and connections will be an object of misgivings and they are apt to be influenced by local prejudices and may be amenable to local pressure.

Clause 25.—Though to a certain extent the objectionable features of the proposed new section 193-B in Act V of 1898, have been mitigated, I feel that the special protection sought for a Minister, or any other public servant is not called for. Its most obnoxious characteristic is that it creates a privileged class of public servants in contradistinction to any ordinary citizen. It is contrary to the spirit of the Constitution which lays down the principle of equality before law, which this provision undermines with impunity. It is an attempt to introduce the undesirable features of *Droit Administratif*, which has received uniform condemnation from English and American Jurists, as destructive of democratic concept of rule of law. In the right to criticise freely and fearlessly, the public conduct of public servants, distinguishes democratic freedom from autocratic despotism. If the right is abused and the boundary is overstepped, the aggrieved public official, has, like any other citizen who has been defamed, an access to the ordinary civil Courts for redress of wrongs done to him. The special statutory protection extended to all public servants from the President to the village Patel or Patwari is without merit bound on principal and policy. There will be a tendency to stifle criticism of the corrupt and the incompetent and these favourites of law will invoke the aid of the State machinery to frighten, and silence their critics.

Even if this measure is deemed justified by the exigencies of the moment, the special protection should be given, if at all, in the case of defamatory libels and not in cases of slanders.

Clause 29.—Section 207-A (5) provides that the accused shall not be at liberty to put questions to any witness produced before the magistrate. It should, however, be made clear that if questions are put in a manner which contravene the provisions of the Indian Evidence Act, the accused should be at liberty by himself or through counsel to raise objections to questions put as are permitted under law, whether they relate to admissibility or relevancy or are on the ground that they are leading.

Clause 40.—New sub-section 4 which has been added to section 269 is open to an objection on the ground of vagueness, want of precision and uncertainty. Firstly, it is difficult for the High Court in all cases to ascertain before-hand as to the voluminous nature of the evidence in all cases and further if the trial is not likely to be concluded within two weeks. It will be extremely difficult for High Court to anticipate the length of cross-examination before the evidence is recorded. In view of other cases fixed on a particular date it is not possible to determine whether the two weeks will be devoted entirely and exclusively to the trial or only partially. It will be better if this matter is left to the discretion of the Sessions Judge.

Clause 61.—Section 342 (1) as proposed is open to objection on principle. This provision is apt to be abused so as to include cross-examination of the accused. After the removal of this safeguard the examination in some cases will be of inquisitorial nature for the purpose of entrapping the accused with a view to extract from him admissions of a damaging nature in order to fill gaps in the prosecution case.

TEK CHAND.

NEW DELHI;
The 3rd September, 1954.

VIII

The Bill, as it emerges from the Joint Committee, is improved almost beyond recognition. Many of the original proposals, which provoked heated opposition both from the judiciary and the legal profession, not to say the general public, have been substantially modified and softened. I must state here that Dr. Katju, the Home Minister in charge of the Bill in the Joint Committee, appeared to be in a very accommodative mood and was always ready and willing to appreciate, and even yield to, the views expressed by the Members of the Committee.

Though Dr. Katju was ready to go with us some distance by way of accommodation, he naturally could not be expected to go as far as some of us desired. There has been a fundamental difference in the basic approach of the different sections of the Committee to the problems of administration of justice in general and the amendment of the Criminal Procedure Code in particular. Consequently, many of us did not agree with Dr. Katju and the majority of the members who supported him on many of the points on which decisions were taken and finally incorporated in the Report of the Joint Committee.

I am writing this minute to indicate, as briefly as possible, my material disagreements on some of the points at issue.

I cannot proceed further without mentioning an initial handicap which prevents me from substantiating my point of view by citing authoritative opinion expressed by those in power or on the Bench. Government of India, keen on reforming our judicial system, have invited from time to time State Governments, members of the judiciary and the legal fraternity to express their opinions on different legal problems, mainly procedural. All these opinions have been collected and printed in four volumes which are marked as Group A, Group B, Group C and Group D. They are a mine of information and reveal, in an unmistakable manner, the grave and wide diversity of opinion that prevails amongst State Governments and eminent members of the Bench and Bar on the different points on which considered views were solicited.

Government of India decided to amend the Criminal Procedure Code (Act V of 1898) "with a view to make the judicial administration more speedy, less expensive and less cumbersome" (*Press Information Bureau, Government of India, dated December* 22, 1953). Accordingly, the present Bill was introduced in the House. Nobody will venture to deny the proposition that judicial administration should be sufficiently speedy, less expensive and elastic. The British rulers of the country, who fashioned the whole set-up of our judicial administration on the pattern of that in operation in England, were also animated with the object of making the administration of justice speedy, inexpensive and non-cumbersome. It is true, indeed, they were running a Police State designed to keep the people of this country suppressed, but all the same the British tradition and principle, which shaped their own judicial system, were in their very bones, and therefore, in spite of their imperial objective of exploitation, they succeeded in founding and developing a system which has stood the test of more than a century.

This does not mean that the present system does not require some necessary modifications to suit the modern conceptions about penalogy and criminal law. Even the Britisher was trying, from time to time, to modernise the criminal law, though occasionally he was also trying to make it ruthlessly repressive. The Code of Criminal Procedure, Act XXV of 1861 which replaced the old Regulations, was repealed by Act X of 1872. This Act was replaced by the Code of 1882 (Act X). This enactment was displaced by the present Code of 1898. This Code was amended frequently but a very substantial amendment was effected in 1923 (Acts XXXV and XXXVII of 1923).

And, in spite of these attempts to reform, the administration of justice has remained highly unsatisfactory and a fruitful source of irritating delay and wasteful expenditure. Is the system at fault or something else is the root cause of these defects?

One eminent Judge, expressing his opinion on the proposals of Government, has attempted to reply to this very pertinent question. He says:—

> "In my opinion, there is nothing very much wrong with our system of administration of Justice. I respectfully differ from those who think that there is really very much wrong with the existing system of administration of Justice as such. The system devised by the British is quite simple and provides necessary safeguards for ensuring just conclusions. The dissatisfaction generally voiced regarding the administration of justice is not due to any material defects in the system itself, but is due to its faulty administration. Generally speaking, the machinery that is responsible for the administration of the system has become inefficient, indolent, dishonest and corrupt. No reform in the system can improve matters, if the machinery for its administration remains the same."

The machinery for the administration of justice is composed of human wheels and bolts. The police, the complainant, the accused, the witnesses, the magistrates, the Judges, the jurors and the last but not the least, the members of the legal profession are the various parts of the machinery in charge of the administration of justice. The Britisher modelled the system after that in England but the machinery was practically indigenous. In England, the judicial system was operated by persons with a high probity, honesty, integrity, sense of duty and regard for truth. But in India, the judicial system, intrinsically of a high order was worked by persons who were demoralised and corrupted by the foreign rule with the sinister purpose of making them agents of the imperial exploiters. The inevitable result of this was delay, expensiveness, perjury, bribing of witnesses and even corruption of the judge and the jury. Justice became an extremely rare commodity. Mahatma Gandhi did rightly say:—

> "I have said enough in these columns to show that Justice is practically unobtainable in the so-called courts of justice in India." (*Young India*, September 19, 1929).

Even after the departure of the Britishers, the faulty machinery set up by him still continues to operate the judicial system of this country. A welfare State is being worked with the rigorous apparatus fashioned by and for a Police State. Naturally, justice is even now to use again the telling expressions of Mahatma Gandhi—

> " the luxury of the rich and the joy of the gambler ". (*Harijan*, August 21, 1937).

I appreciate the desire of Dr. Katju to do something for reforming the judicial system with a view to making justice swift and cheap, but amendment of the Criminal Procedure Code is not the only remedy. He himself has stated " there is nothing radically wrong with our Criminal Procedure Code." What is radically wrong, is, as stated above, the human element which is in charge of the judicial machine.

The mental make-up of the police has been the product of the British ruler. Were they trained, like the police in the United Kingdom, to serve the people with honesty and integrity? They were made by the foreign ruler to be the hated instruments of harassment and persecution. The late Mr. Gokhale when speaking on the Seditious Meeting Bill, 1911, in his own sober and balanced manner, described the police in the following terms:—

> "And with the kind of the police we have in this country the fear of wanton or malicious harassment is not wholly imaginary. My lord, I am aware that the question of the character of the Indian police has now assumed a form when it is difficult to discuss it without rousing a certain amount of feeling. There is no doubt, however, that as a class the police are not trusted by the bulk of my countrymen, and that innocent people often go about in the dread of what they might do, and the position has grown worse since the formation of what is known as the Criminal Investigation Department. This is largely the result of two causes, first, the quality of the material from which our police is drawn and secondly the lack of a spirit of self-assertion among the people generally. The Government, no doubt have of late done a good deal to secure a better type of recruits for the force, but the improvement in this respect can only be gradual. Moreover, as long as the people themselves do not know how to take better care of themselves as against the police, things are bound to continue pretty much the same as they are at present. What is absolutely necessary, however, is that the Government should not put additional powers into the hands of the police until substantial improvement has taken place in their character and tradition. My lord, it has been well said that more depends upon the manner in which a law is administered than upon the law itself."

It is more than 45 years since Gokhale spoke and many things have materially changed in this country but the police have remained the same. People are still living, to adopt the words of Dr. Katju, in "fear and terror of the police". Responsible dignitaries have also stated that "distrust of the police" is a lamentable fact in

India, "there every police constable is supposed to tell nothing but lies", "most of them (police) know third degree methods and no more". Till steps are taken to improve the character of the police so as to make them honest and truth-loving, intelligent in the detection of crime, our administration of justice will not show any signs of improvement.

What about the Magistracy? The Britisher made them unthinking tools to secure convictions. Their minds were deadened and morally paralysed. They decided cases, not on merits, but according to the orders of the superior executive officers. Mahatma Gandhi was well justified when he stated in his written statement to the court in 1922:—

> "The law itself in this country has been used to serve the foreign exploiter. My unbiassed examination of the Punjab Martial Law cases has led me to believe that at least 95 per cent. of the convictions were wholly bad. My experience of political cases in India leads me to the conclusion that in nine out of every ten, the condemned men were totally innocent. Their crime consisted in love of their country. In 99 cases out of 100, justice has been denied to Indians as against Europeans in the courts of India. This is not an exaggerated picture. It is the experience of every Indian who has had anything to do with such cases. In my opinion, the administration of the law is thus prostituted consciously or unconsciously for the benefit of the exploiter". (*Speeches and Writings of Mahatma Gandhi, 4th Edition, page* 700).

Even under the present rule the Magistracy is the same as it was under the Britisher. Separation of the Judiciary from the Executive is a condition precedent for improving the Magistracy and the tone of administration of justice.

The witnesses are an important factor in the administration of justice. Do they exhibit any regard for truth? Dr. Katju says, in India "perjury is rife". But even the Britisher was saying the same thing a century back:—

> "It was alleged in the course of the discussion which preceded the passing of the Act V of 1840 (and there was no doubt of the fact) that perjury prevailed to a great extent in all the courts in India." (*Judicial Procedure in India, Despatch dated 12th May* 1859 *from the Secretary of State*).

Want of proper education and the demoralisation due to political enslavement are responsible for this deplorable tendency to perjure. Poverty also encourages corruption and consequent winning over of the witnesses by the opposite party.

All these and many more are running sores which will not be healed by the amendment of the Criminal Procedure Code. The Government will have to carry a many-pronged attack on all the fronts and this cannot be done unless Government institute a

thorough enquiry by an All India Commission as suggested by many responsible persons who have given their opinions on Dr. Katju's proposal.

With these preliminary observations, I shall proceed to express my dissensions with the majority, clause by clause.

Clause 2.—Sec. 4(v) and (w) of the Criminal Procedure Code defines a "summons case" and a "warrant case". Clause 2 of the Bill widens the ambit of summons cases. Government in their statement, dated the 22nd December, 1953, state "Criminal Procedure Code was enacted in 1898 and there is no denying that this classification of offences admits of some revision" and yet by this clause they simply put larger number of offences under the summons-case-category, and sit back with the smug satisfaction that they have done the necessary revision. I think that this division of offences is arbitrary and must be done away with. Good many offences, which are at present triable under warrant case procedure, will now be tried according to the summons procedure. This is supposed to be done in the interest of the accused. Government state "the procedure prescribed for a summons case is simpler, speedier and cheaper and experience has shown that it does substantiate justice to the accused." (*Statement of 22nd December 1953, Press Information Bureau, page* 5).

One of the eminent Judges has emphatically opined,—

> "I am also not in favour of extending the scope of summons procedure. That kind of reform can only take place if we have really judicially minded magistrates, with less of executive bias in their minds. I am afraid our magistrates at present are more executive minded than judicial minded".

The offences which are now being taken out of the domain of warrant cases are of more serious nature and therefore it is dangerous to transfer them to the sphere of the summons procedure.

Now, the Joint Committee have very much simplified even the warrant case procedure. In the light of this simplification, I should like to urge in the words of a Chief Minister of a State, "the distinction between the summons and warrant case procedure need no longer be maintained". All offences in the category of summons cases be tried under the simplified warrant case procedure.

Clause 6.—This clause seeks to bring more offences within the competence of Section 30 Magistrates. I am very strongly opposed to this clause for the following reasons:—

(1) Ordinarily, these offences will be tried by Sessions Judges, either by themselves or with the aid of a jury, and as such the accused will have better justice than if they were tried by these special magistrates. Such magistrates, being unthinking tools of the executive Government, play to the tune of the unscrupulous police and believe that it is their unavoidable duty to convict every man that is placed before them for trial. In their courts conviction is the rule and an acquittal is an exception.

As long as these magistrates are limbs of the executive Government these drastic powers should not be given to them. This view is supported by some Judges. I quote only two specimen opinions:—

Justice J. L. Kapur, High Court, Punjab says:—

> "No magistrates should have the power to sentence any citizen for 7 years which is a good bit of man's life. As far as I am aware, nowhere can a member of the Executive award such a sentence. It is everywhere the function of a judge to try a person for serious offences and to give heavy sentences. Even in the British period, except in non-regulation provinces, a magistrate could not award more than two years and in England his powers extend to 6 months only". (*Opinions, Group D,* page 24).

District Judge and Judicial Commission, Tripura, have stated:—

> "The amendment should be preceded by separation of judiciary from executive". (*Ibid.*).

The non-official opinion and particularly, Bar Associations have severely condemned this undesirable provision. I quote some representative opinions:—

"*Bombay Bar Association.*—The proposal is all the more retrograde and misconceived inasmuch as it confers power under this Section to State Governments to extend the jurisdiction of First Class Magistrates by which they could bypass the more independent Sessions Courts in all but in most serious cases. It is specially relevant to bear this serious contingency in mind and to guard against it when the complete separation of the judiciary from the executive is very far from being an accomplished in this country." (*Ibid.* page 31).

"*Bar Association, Meerut.*—The moffusil courts and also the litigant public never believe giving more powers to Magistrates. The amendment is not in the interest of justice." (*Ibid.*, page 30).

"*Bhavnagar Bar Association* (*Saurashtra*).—The District Magistrate being an executive officer should not be vested with special power in view of Art. 50 of the Constitution which directs the State Governments to take steps to separate the judiciary from the executive in the public services of the State." (*Ibid.*, page 30).

(2) The original Sec. 30 applies only to some areas but this clause will extend it to the "whole of India except the States of Jammu and Kashmir and Manipur". Government of India wants to use this instrument of repression all over the country. In their Press statement they say:—

> "It will be sure that for some reason unknown Sec. 30 at present does not extend to the whole of India. Experience has shown that it is an exceedingly useful provision. For crimes of lesser gravity punishable with 7 years imprisonment, speedy disposal can be effected by trial before Senior Magistrates." (*Statement of December* 22, 1953).

This extract shows that under the specious plea of securing "Speedy disposal" Governments are trying to have a weapon in their hands, this "exceedingly useful provision" for securing "Speedy convictions" all over the country.

But, the Government of Uttar Pradesh is not prepared to take this warmly appreciative view of this provision. They state:—

> "Now that sessions divisions have been established everywhere throughout the State an uniformity of law should exist throughout, the need for section 30 does not seem necessary..... Perhaps this section may be omitted altogether." (*Opinions—Group D, page* 23).

(3) Government of India's contention that the trials of such offences before senior magistrates will effect "speedy disposals" is not justifiable. The Government of Uttar Pradesh say:—

> "That since the procedure relating to serious trial is also being simplified, the utility of the change does not exist."

(4) Classifying offences on the basis of the experience of the trying magistrate is not justified. This view is advanced by the Government of West Bengal, who say:—

> "The proposed classification on the basis of the magistrate's experience and not on the classes of offences or the classes of the accused will be difficult to justify." (*Ibid.*, page 23).

(5) This provision is rather discriminatory and therefore its constitutionality is open to doubt. Justice J. R. Madholkar, High Court, Nagpur, has expressed this view and suggested that the section itself "may be deleted from the principal Act". (*Ibid.*, page 24).

The Bihar Lawyers Association has also taken a similar view. It says:—

> "It (Cl. 6) is unacceptable. This Association has been strongly of opinion that section 30 of the Code of Criminal Procedure be deleted entirely.
>
> The idea of separation of executive and judicial functions having been accepted as a sound principle, it will be indirect contravention of that principle if larger judicial powers are concentrated in the hands of District Magistrate or any other Magistrate." (*Ibid.*, page 30).

Clause 8.—I am opposed to the enlargement of the powers of magistrate to fine. It is contended by Government of India that a "majority of States has suggested that 1st Class Magistrates may be empowered to fine up to Rs. 2,000. It is proposed in the Bill, therefore, to enlarge the powers of all magistrates to fine double the amount they can now award." (*Statement of December* 22, 1953). Thus the State Governments were demanding half a loaf but Government of India has been generous enough to give them a loaf and a half.

But the State Governments nor the Government of India have given any reason why such enlargement of powers has been felt to be necessary. The Statement of Objects and Reasons does not refer to this clause nor the Notes on clause do give any explanation for this enlargement of these powers.

Government of India in their Press Statement of 22nd December, 1953, justifying why the scope of section 260 is being extended, state—

> "This (increase of the value of subject-matter of the offence) is also justifiable on the ground that the value of the rupee as compared to its value in 1898 has fallen considerably."

This very argument is advanced by many Government officers, including judges, to support this clause 8.

To link up the quantum of punishment to monetary values—which fluctuate from time to time—is highly undesirable and unwise. Punishment is related to the offence and not like the prices and taxation, to monetary conditions.

Even assuming that this is a valid argument, I contend that even the economic condition of the people, from whom majority of those who pay fine come, has much worsened. The magistrates will use these increased powers to impose higher fines than they would have done under the present powers and thus help to aggravate the economic malady from which the people suffer.

I also feel that the punishment of whipping and solitary confinement should be completely abolished as they have done in the United Kingdom and the United States.

Clause 13.—I fear that the amendment proposed will enable the police to harass everybody—even guests—temporarily residing in a house. I am, therefore, opposed to this clause as I believe that the original section is enough to meet the legitimate needs of the police.

Clause 16.—Under the original section the Chief Presidency Magistrate and District Magistrate only were empowered to take action under section 107 when "either the person informed against or the place where this breach of the peace or disturbance is apprehended, is within the local limits of such Magistrates."

Other Magistrates could not take any action under this Section, "Unless both the persons informed against and the place where the breach of the peace or disturbance is apprehended are within the local limits of the magistrate's jurisdiction."

The present amending clause is designed to raise sub-divisional or 1st Class Magistrates to the level of the Chief Presidency Magistrate and a District Magistrate.

It is our experience that any power given to executive officers in the name of peace and order are gravely abused by such officers who are very sensitive to any criticism against the administration or to political and peaceful agitation by the people to protest against the sins of omission or commission by the bureaucratic administration. This provision has outlived its utility as an instrument to keep peace. But the present Government, instead of deleting this provision from

the Code, is determined to widen its sphere of operation. I am of the opinion that this amended provision will be used as an engine to harass political agitators whose civil liberties, *i.e.* the fundamental right of going anywhere in the country and to agitate in a peaceful manner for the redress of grievances, will be seriously jeopardised.

I, therefore, oppose this clause.

Clause 17.—According to the original section 117 proceedings under section 107 are to be held according to the summons procedure and the inquiry for good behaviour under sections 108, 109 and 110 is to be conducted according to warrant case procedure.

Out of these three sections, section 108 refers to "Security for good behaviour from persons disseminating seditious matter". Now, it is hardly necessary to state that the British rulers have invariably used the word "sedition" to stifle even reasonable criticism of the administration and peaceful agitations. "Sedition" has been used to smash and suppress the political opponents of those who were in office.

Section 109 is for getting "security for good behaviour from vagrants and suspected persons". But sub-section (b) refers to a "person who has no ostensible means of subsistence". Thus, this section has been used to take security from persons who are abjectly poor and without any means of livelihood.

The Britisher, even when he tried to demand security for good behaviour from "seditious" persons or paupers, held the enquiry according to warrant case procedure which gave them better opportunity to refute the charges and secure better justice.

But, this clause 17 of the Bill wants to place in the hands of the Magistracy a more potent and expeditious weapon to throttle the critics of Government and the unemployed poor.

Clause 19.—I substantially agree with the amendments proposed by clauses 18 and 19. Clause 19 says that the magistrate, under certain contingencies, has to forward a statement of facts "to a civil court of competent jurisdiction". But, in States where there is separation of the judiciary from the executive the executive magistrates take up the matter in the initial stage and the recording of evidence and the necessary findings on points at issue, and especially on the point of possession, are given by the judicial magistrates who are, by training and experience, as competent to decide such matters as the Civil Judges. If the clause stands as recommended by the Joint Committee, the executive magistrates in such States where there is such separation, will have to decide the matter themselves (and this is not permitted to them by the separation Act) or to send the statement of facts to civil Court over the heads of their judicial magistrates. In order to avoid such a situation the clauses will have to be suitably modified.

Sub-clause (1A) says that, "on receipt of the reference the Civil Court shall..... take such further evidence as may be produced by the parties respectively." If the parties are to produce all the relevent documents and the affidavits of the witnesses, as they rely upon in support of their claims, under sub-clause (1) of Sec. 145, then there is no reason why the parties should be allowed to give

further evidence before the Civil Court. The sub-clause (1A) gives no discretion to the judge to refuse to take further evidence, if the record, sent by the magistrate, gives him enough material to arrive at a finding. I fear that the parties will unnecessarily insist on giving further evidence and thus try to protract the proceedings. The said sub-clause will have to be amended suitably to prevent its abuse.

Clause 22.—I must admit that the Joint Committee have succeeded in retaining section 162, though in a multilated form, which has proved to be one of the great safeguards for protecting the accused against the wiles of the police recording statements of witnesses. The Evidence Act permits the use of previous statements of witness for corroboration or contradiction. But section 162 of the Criminal Procedure Code restricted the use of the statements, recorded by the police during investigation, to the great advantage of the accused. Shri K. G. Khambatta, Chief Presidency Magistrate, Bombay, has rightly observed that "Section 162 has been the sheet-anchor of the Advocates for accused during the last hundred years or so during which the Section has existed on the Statute Book in one form or another." (*Opinions—Group D, p.* 95).

The original Bill, as introduced in the House of the People, proposed the entire deletion of section 162 with a view to remove the legal impediment in the way of using police statements even for corroboration. But a large majority of those who expressed opinion violently condemned the proposal. Even some of the State Governments expressed strong disapprobation and, therefore, the Government of India yielding to the chorus of condemnation accepted the present clause by way of compromise.

But, even this formula takes away the safeguard which the original section provides. Now, the prosecution can use the statements made to the police, for, first, getting a witness declared hostile and then, for his contradiction. So also the prosecution will be competent to use the statement in the re-examination of their witness though for the purpose of explaining any matter referred to in his cross-examination. Thus, whatever useful replies have been elicited by the defence counsel in cross-examination will be washed out by the use of those statements in the re-examination. Such a use must be deemed to be a use for corroboration and for nothing else. This is undoubtedly a great gain to the prosecution and to that extent, almost irreparable loss to the accused.

Hence I am opposed to this change.

Clause 23.—This clause registers some advance over the previous position and to that extent has to be appreciated.

But I dislike sub-clause (5) which permits the police to withhold from the accused "any part of any statement recorded under sub-section (3) of section 161", if he is of the opinion that "it is not relevent to the subject matter of the enquiry or trial". The police officer is made in the first instance the judge to decide questions of relevance. The proviso authorises the magistrates to peruse the part so excluded and order its supply to the accused, if he disagrees with the opinion of the police officer. But during all this process neither the accused nor his lawyer will be permitted to see the part excluded from his knowledge or to have any say in this matter.

Questions of relevancy are, to say the least, often difficult to decide and arguments from both sides become necessary to enable a magistrate or a judge to decide them correctly. But under the present clause, the question of relevance is made a matter exclusively for the police to argue and the magistrate to decide.

This is extremely unfair to the accused.

Clauses 25, 97 *and* 114.—The amendments in these clauses are decidedly, speaking comparatively, many times better than original proposals which were the concentrated essence of reaction and repression. The Joint Committee has taken into consideration the vehement opposition, almost from all quarters, which the original clauses provoked and effected some substantial alterations so as to make these provisions less offensive to the Press in particular. But, in spite of these changes, I think, these clauses, if enacted into law, will constitute a serious danger to our infant democracy and the efforts to purify the administration. The grounds for my opposition are as under:—

(1) These provisions have the facial likeness of section 124A, I.P.C. The latter section used the word "disaffection" as a stick to beat Indians, while the present provisions will use "defamation" as the lash to whip those who dare to criticize Governments or any of their servants. These provisions are as much political in implication as section 124A. Mahatma Gandhi, in his written statement in the trial held at Ahmedabad on the 12th March 1922 said:—

> "Section 124A under which I am happily charged is perhaps the prince among the political section of the Indian Penal Code designed to suppress the liberty of the citizen... I have studied some of the cases tried under it and I know that some of the most loved of India's patriots have been convicted under it".

Now the section 500, I.P.C. will be used for smashing political opponents who, either orally or in writing, shall dare to expose inefficiency, favouritism, nepotism, bribery or corruption. Even the most sober editor or a political opponent if critical of the party in power, will be in constant fear of this section 500 being mobilised against him. To quote Mahatma Gandhi again, he said:—

> "Section 124-A is hung over our heads like the sword of Damocles whether we are feasting or fasting". (*Young India,* July 18, 1929).

The same way, this section 500 will be ever threateningly hanging over our heads.

(2) It will particularly and seriously affect the Indian Press. It has fearlessly fought during the glorious phase of our national struggle and the bureaucratic minded British official brought on the Statute Book various Press Laws and other pieces of legislation to muzzle the Indian Press. The late Shri Gokhale, speaking on the Press Bill, introduced by Sir Herbert Risley, Acting Home Member, in the Imperial Legislature, said on the 8th February, 1910:—

"My lord, I am not one of those who think that any appreciable section of the Indian Press has always been seditious or that the Press in India has, on the whole, done more mischief than good. On the contrary, our Press has been the main potent instrument of progress. It has quickened our national consciousness; it has spread in the country ideas of justice and equality not only between man and man but also between class and class; it has stimulated our public spirit; it has set us higher standards of public duty. And till five years ago, I do not think that, barring a very few exceptions, any section was actually seditious, if by sedition a desire to see British rule overthrown is understood. A considerable proportion was no doubt often ill-informed, prejudiced, even intolerably bitter in its comments on the administration and its measures; but this sprang mainly from ignorance and from feeling that grievances were not redressed, and not from any actual hostility to the rule itself."

Barring a few yellow journalists, the Press in India since Independence, is maintaining a high standard of honesty, responsibility and fair criticism. At the same time it is doing its best to expose those who are indulging in rank corruption or behaving in an irresponsible or inefficient manner so as to cause wasteful expenditure. The representatives of the Press, who appeared before the Joint Committee, did claim, and with ample justification, that many of the scandals that came to light, since 1947, were initially exposed by the Press.

We must purify and reform our administration. The Five Year Plan has devoted a separate Chapter (VI) to consider ways and means for reforming our Public Administration. The very first sentence of this Chapter gives the objective of the Plan as follows:—

"The principle objectives to be achieved in public administration are integrity, efficiency, economy and public cooperation." (p. 115).

Speaking about corruption the Plan says:—

"The influence of corruption is insidious. It not only inflicts wrongs which are difficult to redress but it undermines the structure of administration and the confidence of the public in the adminstration. There must, therefore, be a continuous war against every species of corruption within the administration as well as in public life and the methods to root out this evil should be constantly reviewed." (*Para.* 3, *p.* 115).

Newspapers are the best allies of those who are out to wage a "continuous war against every species of corruption" and they must be encouraged to carry on the work of criticism and exposure. But some of the present rules seem to be determined to wage "a continuous war" against those who are exposing want of integrity, inefficiency or other evils of the Public Administration. Gagging the Press in this way is to clear the stage for the sinister play of the corrupt and the inefficient.

(3) Defamation has always been treated as an offence against an individual and it is the individual, if he is aggrieved by any defamatory statement, who is to file a complaint to bring the offender to book. But now the proposed amendment will make the offence of defamation virtually an 'offence against the State' so that the State machine will advance, with all its repressive might, against the alleged defamer of a public servant. And this momentous change is being effected, not by the front door of amending the substantive law but, by the back door of amending the procedure law.

(4) By way of justification of the amendment in section 198, which permits other than an aggrieved person to file a complaint, it is contended on behalf of Government that the amendment is proposed with the object of weeding out corruption. It is further argued that when allegations of corruption are made, the public servant concerned shows reluctance to start a prosecution with the result that the allegations remain unproved. If somebody else launches the prosecution, the officer defamed will have to appear in the witness box and the accused will get an opportunity to prove his allegations.

This argument will not stand a deeper probe. If the argument about weeding out corruption is genuine then one might reply that Government can do it by two other ways. They can insist that the public servant must file a complaint and frame rules to enforce this obligation. If a complaint is filed the fight will be between one individual against another individual, while according to the proposed amendment the fight is 'the State *Vs.* one individual'.

Another way will be to amend the Prevention of Corruption Act in order to establish a Tribunal with power to inquire into such allegations and proceed against the public servant if the allegations are found to be true.

It is difficult to understand how Government will successfully fight corruption by placing the man, who exposes it, in the prisoner's dock.

(5) Section 500 is very comprehensive. Not only allegation of corruption, but any other allegation which affects the reputation of a public servant, will be covered by this section. The new amendment does not limit itself to allegations of corruption but covers every defamatory allegation including those about corruption.

(6) The President, the Governors and the Ministers are and will be politicians and members of the party in power. The Press and the public have a democratic right to criticise them. The present amendment, by thus giving protection to these dignitaries, is, as a matter of reality, shielding the party in power from the slings and arrows of popular criticism. This protection will pave the way for one party dictatorship which will ruthlessly smash the opposition in the country. These clauses will be the potent weapons for crushing the opposition.

(7) It is grossly discriminatory and therefore against the provisions of the Constitution.

(8) If this provision is to be brought on the Statute Book, then, along with it, we must also provide for the payment of cost to the person acquitted.

For all these reasons, I oppose the said clauses.

Clause 26.—This clause will add to the work of the magistrates by compulsorily requiring them to examine witnesses of the complainant. The magistrate is to record the substance of what they say. Unscrupulous complainants will bring simple minded witnesses along with them and get them examined so as to pin them down to what he would make them say in the absence of the accused. This provision is a slight variation of section 164 designed to help rich private complainants.

This amendment has been severely opposed even by some State Governments. I shall quote, with approval, what the Government of Madras have emphatically stated:—

> "It is very doubtful whether the examination of witnesses at this stage of the filing of the complaint will be of much use as there will be none to cross-examine them. There is even now provision under Sec. 202 for examining witnesses if a Magistrate considers such a course necessary. The amendment will be an encouragement for complainants to bring tutored witnesses and will in every way make the further progress of the case more difficult and complicated. There appears, therefore, to be no need to make any change." (*Opinions—Group D, p.* 130).

Clauses 29, 35 *and* 36.—These clauses relate to the changes in procedure of the different kinds of enquiries and trials and, therefore, I propose to deal with them together.

Clause 29 provides two kinds of committal proceedings *i.e.* one for prosecution on private complaint and another for proceedings instituted on a police report. The former proceedings shall be regulated by the present sections 208 to 220, while the latter will be regulated by the new Section 207A.

Similarly, clauses 35 and 36 give us two procedures, one applicable to warrant cases started by private complaint and the other for cases on police report.

Under the present Code as it is, we have different procedures for summons cases, warrant cases, summary trials, commitment proceedings and sessions trials. But by the new proposals of the Joint Committee the number of these different procedures will be doubled as a distinction is made between a private complaint case and the case started on police report. It is doubtful whether this wide variety of procedures is a very desirable feature of our Criminal Procedure Code.

The proposals by the Joint Committee, I fear, will make the procedure cumbersome for the doubtful gain of securing speed and expedition in the disposal of cases.

The use of the adjective 'doubtful' should not give the impression that I do not desire speed in the disposal of cases. But, speed in disposal must be consistent with a fair and just trial. Such a speed is extremely desirable. The Expert Committee, appointed recently in the United Kingdom, has emphasized this element of speed in the following words:

> "It is of the essence of the administration of the criminal law in this country that justice should be swift and final. In our opinion it would be contrary to the public interest to make any substantial inroad in this principle." (*Report of the Departmental Committee on New Trials in Criminal Cases*—1954—*Cmd.* 9150, *Para.* 35, *p.* 15).

They have also deprecated delays in proceedings in strong language:

> "The prolongation of criminal proceedings is against the public interest, because it is a cardinal principle that the administration of justice should be swift and final." (*Ibid.*, *Para.* 16, *p.* 10).

Referring to delays in appeal matters they say:—

> "We cannot escape the conclusion that the prolongation of criminal proceedings might often be unfair and oppressive to the appellant." (*Ibid.*, *Para.* 36, *p.* 15).

The Constitution of the U.S. has made 'speedy trial' one of the Fundamental Rights of the accused. The Sixth Amendment states it in the following words:—

> "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial."

With a view to give effect to this Constitutional safeguard, Rule 2 of the Federal Rules of Procedure in the U.S., states the 'purpose and construction' of these Rules as under:

> "These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to serve simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay."

It is universally accepted that our criminal proceedings are extremely tardy and dilatory. One judge, with a sense of exasperation has stated:

> "The delays in criminal trials are almost phenomenal and have brought the administration of criminal justice into contempt."

But what causes are responsible for these delays? To this question I shall reply by saying that the major causes for these delays are the inefficiency of the police who investigate, and the weakness of the magistrate who hold the trials.

That the quality and manner of the police investigation are responsible for the phenomenal delays in the criminal administration of justice is admitted by the Government of India, some of the State Governments and eminent judges.

Dr. Katju, himself, in one of his statements, frankly admits: "Delay in criminal cases is very often due to the procrastination in police investigations".

The Note on the system of Administration of Criminal Justice in India, circulated by the Government of India for eliciting opinions regretfully admits:

> "The investigation of crimes by the police does not also appear to be satisfactory. It is often highly defective and inefficient besides being dilatory." *Opinions—Group B p.* 3).

The Secretary to the Government of Bihar, Law Department, Judicial Branch, referring to paras. 7 and 8 of the Government of India Note, quoted above, pertinently says:

> "If police force is not efficient it is not the fault of the Court or the Criminal Procedure Code. It will take a long time before detection can be possible by the police. Their whole training has been different." (*Opinions—Group B, p.* 8).

Some judges also have laid their finger on these delays by the police. One learned Judge has expressed himself thus:

> "I also concur with your view that the delays in Criminal cases is due to procrastination in police investigation."

The principal judge, Bombay City Civil Court and Session Judge also remarks:—

> "The delay in the disposal of criminal case is noticed also in the stage of investigation. An attempt should be made to seek that investigations are not unnecessarily delayed by the police." (*Opinions—Group B, p.* 22).

The magistracy is also substantially responsible for these delays. In order to emphasise this point I am quoting below some weighty opinions:

> "The general complaint about dilatoriness may partly be the fault of procedure but is mainly the fault or weakness of the presiding judge or magistrate. Given a strong and competent judge who can apply an intelligent mind to the case and can control the proceedings the results are speedy. In the early part of the century in certain States the normal period allowed to a magistrate to finish a case was six weeks. Unfortunately, however, such a speedy disposal is hardly noticeable now." (*Government of India Note, Para.* 5, *Group B, p.* 3).

The Secretary to the Government of Bihar, who has already been quoted once, endorses the Government of India's above remark by saying:

> "I agree that competent and strong Judges can help a great deal to avoid delays in a trial." (*Opinions—Group B, p.* 8).

The same view is held by the members of judiciary also. One respected Judge says:

> "In a Court presided over by a good and efficient judge even today justice is speedy."

The Principal Judge of Bombay City Civil Courts and Special Judge for greater Bombay also gives a similar verdict:

> "It is perfectly true that delay in the administration of criminal justice is not so much due to any defect in the Code of Criminal Procedure but is mostly due to the fault or the weakness of the presiding Judge or Magistrate." (*Opinions—Group B, p.* 22).

I have purposefully cited these opinions to emphasise an obvious truth. Any one who is really determined to cure our administration of the exasperating delays, which are so costly to the accused who is going through an ordeal of a trial, must begin by effecting immediate reforms in the police department and in the judiciary. Without such a serious attempt at reform any effort to amend the Criminal Procedure Code is merely barking the wrong tree. The Government of India are applying their curative ointment to a part of the body which is less affected than other parts which really demand prior treatment. As I have stated in the earlier portion it is the machinery —the police and the magistracy—who are working the system of our administration which needs revolutionary repairs. But that is precisely what the Governments of the day are scrupulously avoiding to do. Government of India have confessed:

> "The question of delays is a matter which no amount of revision or review of the substantive or procedural law merely can perhaps cure." (*Opinions—Note, Para.* 5, *Group B, p.* 3).

And yet under the specious plea of accelerating trials they have proceeded to tamper with procedures for warrant cases, commitment proceedings and even sessions trials in a manner which will result in the negation of justice to the accused concerned.

Commitment Proceedings.—I agree with those who contend that the committal proceedings cause protraction of a trial and entail duplication of work. Even in United Kingdom, where committal proceedings are yet an essential part of the criminal procedure, people have been insisting that these proceedings should be done away with. They argue:

> "Delay and expenses are caused by the necessity of what is really a double hearing." (Vide *'Outline of Criminal Law' By Kenny*—1952—*p.* 483 *and the footnote on the Page.*)

It is easy to condemn these proceedings but extremely difficult to find out an effective substitute which will avoid delay and expenses and, at the same time, assure the prisoner in the dock of a fair and just trial. It is a truism to state that justice should not only be done but must appear to be done. Without such public confidence no judicial system can be effectively built up.

I must confess that the Joint Committee's proposal, as embodied in clause 29, is more acceptable than the original proposal. But it is not free from serious defects. In Sessions Court persons are tried for various serious offences the punishment for which is loss of life or liberty for good many years. An accused, faced with such a

grave punishment, must be confronted with the witnesses, who come forward to denounce him, at the earliest opportunity and be allowed to cross-examine them. The Sixth Amendment to the American Constitution gives to the accused the right 'to be confronted with the witness against him' as inalienable right. The word 'confronted' includes the right to cross-examination.

But the new section 207-A, applicable to cases on police report, does not give this right to the accused. According to this section the statement of so-called eye-witnesses shall be recorded in the presence of the accused. But the accused shall not be permitted to put questions to such witnesses. Thus, the prosecutor will be permitted to put questions—because without such questioning the material and relevant facts will not come on record—but the accused will not be permitted to put any cross questions. The questioning by the prosecutor is virtually examination in chief which will not be followed by any cross-examination.

The magistrate is also permitted to put any question to the witnesses and this power, more often than not, will be used, at least by some magistrates under the executive Government, to fill up the gap in the prosecution evidence.

So, under the new procedure the accused alone will be the loser and he loses his most precious right of cross-examination. This provision is a slight variation of section 164, Criminal Procedure Code.

Then, some of the witnesses, whose statements are recorded under section 164 will not be produced in Court nor will the case be adjourned if some witnesses for the prosecution are absent. All such witnesses will be seen by the accused for the first time in the Sessions Court. And yet, the Report of the Joint Committee, which reflects the view of the majority, says:

> "this procedure will not prejudice the case of the accused." (*Para.* 20).

I am, to put it very mildly, astounded at the statement which reveals callous disregard for the interest of the accused. Not only the right of cross-examination, but even the fundamental necessity of examining eye-witnesses at the earliest opportunity in the presence of the accused, have been slaughtered at the altar of speedy disposal. As I have stated earlier, the delays are due to the police and the magistracy but it is the poor accused who is forced to help in avoiding the delay by sacrificing his own important rights.

Sub-Clause (6) gives power to the magistrate to discharge the accused if he comes to the conclusion that the record reveals no ground for framing a charge. But this power is more chimerical than real. Under the present procedure the committing magistrate has a full dress trial before him and yet these magistrates reveal great reluctance to discharge an accused. Adverse to take any responsibility, they act like post-boxes and send the record to the Sessions Court. Government of India in their Press Statement of 22nd December, 1953, has stated:

> "They (Commitment Proceedings) prove cumbersome and expensive both in time and money to the accused, and adjournments are frequent for a variety of reasons, causing great inconvenience to all concerned. Then, again, Magistrates seldom discharge any accused persons. The number of such discharges has been estimated to be not more than 2 or 3 per cent. altogether. High Courts have consistently ruled that it is not within the province of the Magistrate to assess the evidence like a trial judge."

If this is the case under the present provisions what will happen under the new provision is easy to imagine.

In the Sessions Court the procedure will be the summons case-procedure. Examination, cross-examination and re-examination of a witness will follow in quick and unbroken succession. This did not do any harm to the accused under the present procedure as he has an opportunity to see the witnesses, hear their evidence and even to cross-examine them in the committing Magistrate's Court. But under the new procedure things will be entirely different. He will see for the first time material witnesses in the Sessions Court and this will undoubtedly be a great disadvantage for the defending counsel.

The Bill referred to the Joint Committee was more considerate to the needs and conveniences of the accused than the proposals of the Joint Committee in this respect. Clause 48 (B) provided:

> "Provided that if after the examination of prosecution witnesses, the Court is of opinion that any of the prosecution witnesses is necessary in the interests of justice it may allow further cross-examination of such witnesses and the witnesses shall be recalled and after such further cross-examination and re-examination, if any, they shall be discharged."

The new Clause 44 is shorn of this (B) part. This is done because Government have generously consented to allow the accused to be present when the statement of eye-witnesses will be recorded by the Magistrate under sub-clause (4) of the new Section 207-A.

I shall not be far from the truth if I say that not the interest of justice but the interest of the prosecution is the foremost consideration with the Government.

The accused, indeed, in private complaint-case, regarding an offence to be tried in a Session, will have the benefit of the present commitment proceedings and as such shall be in a better position than his counterpart in a police prosecution.

I suggest that the present procedure with the slight modification that only material witnesses be examined (with the right of cross-examination to the accused) in the committing Magistrate's Court and the evidence of other witnesses be taken by affidavits. The magistrate be further obliged, by suitable legislative amendment, to hear the cases from day to day. This will ensure speedy disposal and will further permit the prosecution to avail themselves of

section 288 when necessary. Under the new proposal the statement of the witness will not be 'evidence' and consequently section 288 will have no application to such statements.

Warrant Case Procedure.—With the foregoing detailed discussion I need not say much about clauses 35 and 36. The new section 251 will govern warrant cases. Under the present procedure the accused has three chances of cross-examination, namely, under sections 252, 256 and 257. The Joint Committee have retained that under section 252 and done away with the other two chances.

Admitting that the present provisions are more than generous to the accused, I am constrained to say that the final proposals by the Joint Committee veer to the opposite extreme.

The proposals contained in the clauses 36 and 37 of the original Bill will surely be the golden mean between the two extremes. I plead for their restoration.

Clauses 31, 35 *and* 61.—These clauses extend the scope of the examination of the accused by the Magistrate.

According to sections 209 and 342 (1) the magistrate's power of examining the accused was restricted to one purpose—"purpose of enabling him to explain any circumstance appearing in the evidence against him". But the amendments remove this beneficent restriction so that the magistrate will be free to ask any questions to the accused and some of these questions may be asked with a view to making good the deficiency in the prosecution evidence. There is nothing to prevent a magistrate undertaking a searching cross-examination of the accused so as to condemn him out of his own mouth.

Clauses 34 *and* 110.—(1) Clause 34 seeks to amend section 250 but I feel that it needs further amendment as shown below.

(a) The Magistrate must be able to award compensation if he came to the conclusion that the accusation was false. Every false complaint or information must result in vexation to the accused and be presumed to be vexatious. A complaint or information may carry a grain of truth but it might be frivolous. In that case also the Magistrate must be allowed to grant compensation. The words 'and either' should be replaced by the word 'or' and also the word 'and' between the words 'frivolous' and 'vexatious' should also be substituted by the word 'or'.

(b) This provision only provides for payment of compensation from the complainant in a private case and the first informant in a police case. The Police, who go out to procure information and vexatiously or falsely launch prosecution, must also be punished under this clause. The Prevention of Food Adulteration Bill, recently passed by the House, contains Clause 10(8) which provides for punishing Food Inspectors, who use their powers 'vexatiously and without any reasonable ground of suspicion' or 'commits any other act to the injury of any person without having any reason to believe that such act is necessary for the execution of his duty'. Section 250 should contain some similar provision for punishing a police officer abusing his powers.

(2) Section 545 is being amended by Clause 110. The proposed amendment is a material and desirable one. Under this new provision the heirs of a murdered man shall be able to get some compensation from the murderer even after he swings. But even this change is not enough.

I feel that the following provisions are necessary:

(a) When an accused person is convicted of an offence, which is also a civil wrong for which damages are legally payable, the final judgments in the criminal proceedings should be accepted, without further query, by the Civil Court which should proceed to assess and award damages. This final order by the Civil Court will be a decree executable. This will avoid multiplicity of proceedings and the duplication of different courts hearing the same evidence over again. It will thus enable the person, offended against, to get quickly further relief by way of damages. Sections 11 and 13 of the Civil P.C. refer to *res-judicata* and foreign judgments. On the same principle a decision of a Criminal Court between the same party should be accepted to be final and conclusive regarding facts constituting the offence, by a civil judge if the same facts are directly and substantially at issue in a suit or proceeding in its court.

(b) We must also provide for the payment of costs to a successful party in Criminal Proceedings. In England the 'Costs in Criminal Cases Act' was placed on the Statute Book in 1907. It was replaced in 1952 by another Act of the same title. Section 6 of that Act provides for the payment of costs to the successful party. Such orders are passed even against a State and the costs are paid out of local funds. Appeal Courts are also empowered to award expenses.

The provision of awarding costs is not absolutely unknown to the Criminal Procedure Code (*Sections* 148, 553).

Government of India have been opposing such a proposal by stating:—

> "In India the general rule is that the State neither pays nor receives costs in regard to any criminal proceedings initiated by it."

I think this statement is not correct. When an accused is fined the whole of the fine, unless there is an order under section 545, goes into the Government Treasury which foots the bill for prosecution. Thus, they get their cost and something more. But it is only the poor accused who even when honourably acquitted, gets not a pie by way of expenses, unless the informant is made to pay compensation under section 250 which is extremely rare. This is iniquitous and should be remedied.

I find strong support to this suggestion from official quarters. Shri K. J. Khambata, Chief Presidency Magistrate, Bombay, has put

in a similar plea in his very elaborate and well argued Memorandum. I shall do well to quote a small extract from his Memorandum:—

> "In order to be able to do even-handed justice, certain powers of awarding *costs against the State* also, may be given to Criminal Courts, so that the police may not themselves frivolously or vexatiously bring cases before the Court. It is well known that (just as certain Magistrates are affected by the complex of 'disposals'), a number of Police Officers and their superiors are affected by the complex of 'the number of cases detected'. It is equally well-known that a number of paltry cases are brought up by the Police only for 'statistical purposes', as I sometimes observe. Our Courts are familiar with the 'Chapter Cases' (Cases under Sections 109 or 110 Cr.P.C.), a number of which are brought by the Police in order to pile up the statistics of their work. Therefore, the Magistrates should be empowered to throw costs on the State where they find that the prosecution is frivolous or over a paltry matter, for which the State machinery ought not to have been used and the time of the Court taken up. In such cases, Government will eventually take the Police Officers to task—which fact would make them think twice before bringing frivolous cases before the Court." (*Opinions—Group B, p.* 60, *Para.* 98).

Clause 39.—The jury system is not universally prevailing. Madras and Uttar Pradesh have abolished the Jury System while in Punjab and some other States it is utterly unknown. In the Bombay State it obtains only in a few districts.

Theoretically considered, one will have to say much in its support. But we have to assess its utility in the practical field by looking to the objective conditions in which it functions. When we thus proceed to measure its utility differences of opinion begin to come to the surface.

Large volume of opinions have been collected and made available to us by the Government. Shri S. V. Ramaswamy's Bill was circulated for public opinion and the opinions received are also made available to us. I have carefully studied those opinions and given my anxious consideration to the problem. I have now very reluctantly come to the conclusion that we must abolish the system completely, at least, for some years to come. Everybody has been complaining that jurors of the right type are hardly available, that many of them are easily influenced or even corrupted.

I shall support my view by quoting what Mahatma Gandhi said about this system:

> "I am unconvinced of the advantages of jury trials over those by judges. In coming to a correct decision, we must not be obsessed by our unfortunate experience of the judiciary here, which in political trials has been found to be notoriously partial to the Government. At the right moment juries have been found to fail even in England. When passions are aroused, juries are affected by them and give perverse verdicts. Nor need we assume that they are always on the side of leniency. I have known

juries finding prisoners guilty in the face of no evidence and even judge's summing up to the contrary. We must not slavishly copy all that is English. In matters where absolute impartiality, calmness and ability to sift evidence and understand human nature are required, we may not replace trained judges by untrained men brought together by chance. What we must aim at is an incorruptible, impartial and able judiciary right from the bottom." (*Young India, Aug.* 27, 1931).

Conclusion.—I have expressed my differences and also my suggestions very fully. By way of conclusion I say that by these amending provisions the Police are given more powers and the Magistrates and Judges have their powers augmented; only the accused has severely lost all along the line. This is due to the fact that those who are responsible for this measure believe that every person against whom the Police proceed must be deemed to be guilty and should not be shown any sympathy or consideration. They, therefore, incorporated provisions in the Bill with a view to ending the prosecution in speedy conviction. The cardinal principle of the Criminal Law that every man has to be presumed to be innocent till he is convicted is sought to be replaced by another canon that every man has to be presumed to be innocent till he is charge-sheeted by the Police.

S. S. MORE.

NEW DELHI;
The 3rd September, 1954.

IX

During my somewhat sporadic contact with law and law courts, I have always been wanting some change in the mechanics of criminal procedure in order to achieve speedy disposal of criminal judicial business. It is for this reason all the more painful to me to have to disagree from some of the pivotal amendments proposed in the present Bill to amend the Criminal Procedure Code of 1898.

The object of the amendments is stated to be:—

(a) to provide adequate facilities to every accused person for defending himself in a proper manner, and

(b) at the same time to ensure the speedy disposal of all criminal judicial business so that innocent persons may not suffer from protracted proceedings and real offenders should be punished as early as possible after proper trial.

Out of 116 amendments proposed to the different sections of the Criminal Procedure Code, about 100 are either formal or consequential or of no consequence or value as far as the main scheme of the Act itself or of the criminal justice in this country is concerned. The other 16 amendments purport to aid at fulfilling the laudable object of eliminating delays in disposal of criminal work without prejudice to the right of the accused to fair and impartial

trial and with emphasis on the closing of the loopholes in law which enable the guilty to escape with frustrating frequencies.

I regret to have to say that these 16 amendments not only do not fulfil the object with which the Bill has been introduced but they leave the law in a state of confusion and the charter provided by them for opportunities to delay proceedings is even now as large as for the proverbial wind to blow. Without abolishing the cause of delays, these amendments cut at the root of some of the fundamental conceptions of criminal jurisprudence. It is a half-hearted attempt to obtain convictions without the help of good investigation or intelligent prosecution. But let me deal with these clauses themselves.

Clause 17.—I am opposed to the new sub-section (2). The Summons procedure is intended for trivial offences, which do not generally involve any moral turpitude. Sections 109 and 110 are two of those Sections in the criminal law of this country which, even as preventive sections carry a stigma of bad character generally and on somewhat special kind of evidence can ruin the life of a man. Section 108 is a political section and all sorts of party and political motives can be attributed for taking action under it and trying the non-applicant as in a Summons case. The non-applicant should be given the fullest opportunities to make his defence so that the law may appear to be kept above political misunderstandings.

Clauses 18 *and* 19.—The original Clause 17 was much better than the present amendments proposed by Clauses 18 and 19. Part IV of the Criminal Procedure Act deals with the prevention of different kinds of contemplated offences, specially a public offence like breach of peace. The action contemplated by Sections 145 and 146 is primarily with a view to tackle a situation that has the germs in it of leading to the breach of peace. Other questions under these Sections, such as juridical possession, attachment of property and appointment of receivers are satellite questions. The criminal law was never intended to deal with, nor is by its traditions capable of dealing with, fine questions of possessory rights. The remedy in respect of right to possess pertains to a branch of civil law which is more than self-contained and exhaustive. The present amendments to Sections 145 and 146 of the Criminal Code in effect provide for proof of possession by affidavits of witnesses. It would not be surprising if a Court has sometimes as many as 300 affidavits from either side to examine. In that case it would be hard put to it to come to a conscientious conclusion. More often than not, it would be an attempt on the part of the parties to overwhelm the mind of the Magistrate by number of affidavits. It would be as good as fighting a case by propaganda. More often than not, a conscientious Magistrate would be constrained to refer such a case to the Civil Court under the new sub-section (1) of Section 146. The object of expediting the proceedings before a Magistrate can be attained with a greater simplicity by providing that the Magistrate should not go beyond attaching the property and referring the parties to the Civil Court. It would be open to the parties to fight

out their respective claims for possession under section 9 of the Specific Relief Act or on the basis of their titles. Peace would be preserved and, at the same time, criminal court would have little or nothing to do with handling questions involving determination of civil rights.

The time limit for the decision of the disputes in sub-section (4) of section 145 looks like an epitaph to a hope. It is hardly possible in the actual working that the Magistrate would and could stick to the time limit. It is like providing limitation for disposal of cases but as a limiting provision it suffers from absence of definiteness and suggestion of consequences.

Clause 22.—This Clause adumbrates amendment of section 162 of the Criminal Procedure Code. It will be noted that this amendment to section 162 has been effected by omitting from the first proviso thereof the following words, *viz.*, "the court shall, on the request of the accused, refer to such writing and direct that the accused be furnished with a copy thereof in order that," and by inserting in the same proviso the following words between the words "be used" and the words "to contradict", *viz.*, "by the accused and with the permission of the Court by the prosecution".

These amendments change the entire character and probitive qualities of statements of witnesses recorded by an Investigating Officer in his diary. Section 162 has provided a great safeguard against abuse of his power by an over-zealous Police Officer. The cause of this safeguard appears to be that there is no guarantee or check that the Police Officer will not, in the course of taking down the statements of the witnesses, vary or change the same to suit the case of the prosecution. The statement is not read over to the witness, his signatures are not taken on it and it is not made in the presence of the accused. The witness has no means of checking that it has been correctly recorded. Sometimes, the statements are recorded on chits and slips and then after many days transferred to the diary. Under such circumstances to create a legal fiction to impute such a statement to a witness and allow him to be confronted with it for the purpose of cross-examination under section 145 of the Indian Evidence Act is to encourage, on the part of the Investigating Officer, the practice of writing down imaginary statements on the change of giving them the respectability of "previous statements". At present, the status of such statements is that the prosecution adopts them and has to do it. But the accused does not adopt them and hence the wholesome provision of allowing only the accused to use them for purposes of contradicting the witnesses. The working of Amendment to section 162 will resolve itself into a conflict between the word on oath of a witnesss that he had never made a particular statement and that of a Police Officer that he did make such a statement. The mischief inherent in such a conflict and the difficulty in inferring the truth from it are obvious. The sense of judicial nausea in those who would be called upon to administer such a law can better be imagined.

Clauses 23, 29, 35 *and* 36.—The Amendments proposed by these Clauses to the Criminal Procedure Code can be read together because they appear to form part of a plan to reduce the trials in

warrant cases and trials in sessions cases to giving one right only of cross-examination to the accused. It appears that the procedure now provided for trials in warrant cases as also to a certain extent, for the trials in sessions cases is in no way different from that provided in the Criminal Procedure Code for trials of summons cases.

Amendment to Section 173 has been made in order to give the accused notice of the case against him. I am opposed to the new procedure both in trials of warrant cases and inquiries in cases triable by a Court of Sessions. In the case of warrant cases initiated on a police-report I cannot see how a charge can be framed only on the police presenting a challan along with the document referred to in the amended section 173, or how the examination of the accused can be held on evidence which is not legal evidence at all, *i.e.*, on unproved documents and a summary of allegations in the challan. In the first place, this procedure reverses the entire conception of the burden of proof in criminal trials. It raises a presumption and is against the provisions contained in Part III of the Indian Evidence Act. Framing a charge without anything whatsoever having been proved or brought home to the accused is tantamount to presuming that the accused is guilty unless he proves his innocence. Suppose, after the charge, all the witnesses both as to facts and documents die or disappear and not one of them is available for examination as contemplated in sub-section 7 of the amended section 151, the accused would still be required to give evidence in defence for the charge implies something which the accused has to meet. This position is borne out by the fact that the accused is asked to plead to the charge before the prosecution has led any evidence and only on the facts recorded in the police diary. These amendments remind me of the plea of an Irishman during the age of Blacks & Tans. Brought before a Court Martial, he was asked to state whether he pleaded guilty or not guilty to a charge of waging war against the King. The poor lad looked down sheepishly and said: "How can I say, my Lord, unless I have heard the evidence." The wit of the man had a flavour of fatalism about it. All the same, the answer was one of commonsense and fully in accordance with traditional jurisprudence.

Another objection to this procedure is the hurry with which the trial is sought to be hustled through. According to new section 173, the police is required to give copies of the documents mentioned therein to the accused before the commencement of the trial. This can be stretched to mean even one minute before the commencement of the trial so that technically the accused would have been supplied with necessary documents to give him notice, but all the same, in effect he would have little time left to prepare his case. It looks more like a trap.

The objection to the amendment of the procedure in warrant cases is equally applicable to changes in procedure as applicable to committal proceedings. It would have matterd little if evidence of a formal nature had been done away with in the course of the inquiry. Even now, it figures very little before the inquiring

Magistrate. But to prevent cross-examination of material witnesses as it is intended to do by sub-section 5 of the amended section 207A would lead to a result which could hardly have been contemplated. At present the accused has a right of cross-examining a witness during the committal proceedings. If he does not exercise that right and if before the trial commences before the Sessions Judge the witness dies his deposition is nevertheless admitted in evidence under section 33 of the Indian Evidence Act, as the accused has had an opportunity of cross-examining the witness. Under the law as proposed now if, after his examination, a material witness dies or disappears or is made to disappear his evidence would be inadmissible as the right and opportunity to cross-examine him is denied by law. In serious cases of murder and dacoity against influential men or factions material witnesses would disappear or would be made to disappear for some time with the result that the testimonial record prepared during the inquiry would not be worth the ink with which it was written. The present amendment in committal proceedings would lead to very undesirable practices. The deposition of a witness and section 33 are so schemed together that it is impossible to separate them or the consequences flowing from their non-observance. The grievance that the committal proceedings take a long time is somewhat unreal. It is not because of the cross-examination that the inquiries are delayed but the causes of the delay are due mostly to the Magistrates being burdened with administrative and other work, and because of the prosecution being unable to produce the evidence at a time. Even now, in my State, in ordinary sessions cases, the inquiry does not take more than three months from the date of its commencement.

Clauses 29, 31, 35, 46 *and* 61.—These Clauses concentrate upon the amendment not of a few sections but of conception of law itself. The position of the accused *vis-a-vis* the prosecution has been stated with inimitable clarity by Mayne. He says: "It is the business of the Crown to prove him guilty and he need not do anything but to stand by and see what case has been made out against him.....He is entitled to rely on the defence that the evidence, as it stands, is inconclusive, and that Crown is bound to make it conclusive without any help from him." This principle runs through the entire Criminal Procedure Code. In sections 209 and 342 as well as in section 287, the examination of the accused is contemplated only for the purpose of enabling him to explain any circumstances appearing against him. This also would appear to be the law in England and America. In America the Fifth Amendment was enacted specifically with the object of protecting a person from being a witness against himself. This idea of allowing the accused to stand by and watch while the prosecution discloses its case step by step is based on the rule of law that it is for the prosecution to bring the guilt of the accused home to him. The law in the Continent of Europe, especially in France, is inquisitorial, *i.e.*, the accused can be cross-examined and tricked into filling up gaps in the case of the prosecution. Since the entire basis of our criminal law is Anglo-Saxon, it would be patchy and opportunistic to introduce a conception which is not in harmony with our basic jurisprudence. I am opposed to the changes contemplated in Clauses 23, 35, 31, 46 and 61 also because such a change is against

the spirit of the clause (3) of Article 20 of our Constitution. After the enactment of this Article, it has been a moot question whether the existence of the present section 342(3) itself is not, in the words (used in some other connection) of the draftsman of the Indian Evidence Act, "embarrassing, illogical and hypothetical."

The Amendments giving right and power to a Magistrate to examine the accused on any question connected with the case irrespective of the evidence against him would give the Magistrate liberty to put to the accused fishing, hypothetical, embarrassing and leading questions in the nature of cross-examination without any limit. This is worse than forcing him into the witness box and deposing against himself. A witness enjoys perhaps more protection under section 132 of the Indian Evidence Act, and under section 164(3) of the Criminal Procedure Code, even an accused person is warned that he is not bound to make an incriminating statement and that if he made it, it would go against him. Even so, a retracted confession recorded under section 164 of the Criminal Procedure Code is seldom acted upon. But a confessional or incriminating statement of an accused during his inquisitorial examination now proposed to be permitted by the amendments would be treated as a part of the evidence against him, although in its essential character it would have been obtained under compulsion. Railroading such a provision of law through Parliament is a very poor compliment to the investigating talent of the country.

Clause 25.—On the whole, this clause is a great improvement on the provisions contained in the original clause 25 contained in the Bill as introduced in the Lok Sabha. I think sub-section 5 of new section 198B is not quite clear as to whether the trial before the Sessions Judge is to take place according to the procedure prescribed for warrant cases on police report or according to the procedure for warrant cases on a private complaint.

General.—It would have been better for creating a co-ordinated and planned change in the criminal law to have appointed a Law Commission. Legislators are generally laymen and few of them have academical contacts with legal problems. It is the business of the jurists—not even of practising lawyers—to undertake the reform of the law in the light of changed social and economical conditions in the country. Some very eminent judges and lawyers whose opinions are available on the present changes in the Criminal Procedure Code do not find anything amiss with the law itself. But they have a crying grievance against the people who administer the law and their methods of administration. A very learned judge with a strong bias for commonsense administration of justice has squarely put the problem at the door of the lawyers, magistrates and litigants. He has blamed the lawyers for allowing their clients to fight cases that are not worth fighting, the magistrates for granting adjournments on the slightest pretexts and the litigants for not exercising requisite self-restraint in making or fighting claims.

It is the social atmosphere which makes or mars the administration of laws for if the laws are not in the hearts of men there is no use having them on the Statute Book. The difficulty of the

Government is the quality of the human material which does not generally react favourably to the ethical contents of legislation. It is a big problem of collective character building.

SYED AHMED.

NEW DELHI;
The 3rd September, 1954.

X

I am in disagreement with the views of the Committee regarding clauses 29 and 35. Under both these clauses a distinction has been made in the procedure to be followed in cases instituted on a police report and those instituted on a private complaint. In proceedings instituted on a Private Complaint the existing procedure has been recommended whereas in proceedings on a police report a new procedure has been evolved both in commitment proceedings as well as in warrant cases. There is no justification for making such a distinction. It seems illogical that for the same type of cases a particular procedure is obligatory if a private complaint were filed but that they should be dispensed with if the police brought a charge-sheet.

In commitment proceedings the Committee have recommended a much shorter procedure under a new section 207A. The Committee have been right in not suggesting the abolition of commitment proceedings, although such a course would have done away with the invidious distinction as provided under proposed section 207. I am of the opinion that in proceedings instituted on private complaint some method should be devised that would be in consonance with the spirit of the proposed section 207A. It is my considered view that the existing procedure should not govern commitment proceedings instituted on private complaint and suitable amendments in this procedure must be made to fall in line with that proposed for proceedings instituted on police report.

I am strongly opposed to clause 35 which proposes the creation of two new sections 251 and 251A in place of the existing section 251. In the first place a distinction again has been made in the procedure of warrant cases instituted on police report and that instituted on private complaint. All that has been said in the previous paragraphs is equally applicable to trials in warrant cases. The Committee should have evolved a procedure applicable equally to both type of cases.

Secondly, the procedure suggested in section 251A to be adopted in cases instituted on police report is one in which the accused seems to have lost a great deal of his right of cross-examining the prosecution witnesses. Under the existing provisions the accused has opportunities of cross-examining the prosecution witnesses, once under section 252 before the charge is framed, secondly under section 256 after the charge is framed and under section 257 the accused is given the third opportunity of cross-examining the prosecution witnesses, unless the magistrate decides that the application for cross-examination is vexatious. Granted, that such a procedure is long

and dilatory but the procedure as suggested is dangerous to the interests of the accused. The right of the accused to cross-examining prosecution witnesses is enormously curtailed. It is to be regretted that even the word "cross-examination" is missing in whole of the section. Sub-clause(6) only deals with examination of witnesses and it is suggested that under section 137 of the Evidence Act examination of witnesses includes their cross-examination as well as re-examination. I am unable to appreciate the objection to the inclusion of the word 'cross-examination' in the proposed section, when under the existing provisions it appears three times and section 137 of the Evidence Act has continued to exist and thrive side by side. I shudder to think of the effect it will have on the public mind.

I am afraid the Committee did not give due consideration either to the existing provisions or to those proposed under the Bill. Even the provisions of the Bill while restricting the lengthy procedure are far more liberal. The proviso to section 252(1) as proposed by Clause 36 empowers the Magistrate to defer the cross-examination of any witness until any other witness or witnesses have been examined. Cross-examination of a witness is deferred in everyday practice to a suitable occasion in the interest of the accused. And the Magistrates would find no difficulty in complying with the proviso. Secondly, clause 37 of the Bill gives a discretion to the Magistrate to recall witnesses for their cross-examination in the interests of justice. Magistrates are prone to use such discretion rather liberally, so as to leave no lacuna in evidence. A comparison of the provision of the Bill with the proposals of the Joint Committee will thus show that the former are far more in the interests of the accused than the latter.

The right of the accused to cross-examine the prosecution witnesses when he is fully aware of the case against him is very valuable and under the proposals of the Joint Committee it is bound to be lost. The prejudice caused to the accused is far greater than any saving in time that may be achieved by these proposals.

For these reasons I am of the view that changes in sections 252, 254, and 256 are uncalled for. And if at all any amendment is considered necessary then it should be on the lines as suggested originally in the Bill. The latter course would also do away with the distinction as is proposed to be created between cases instituted on police reports and those instituted on private complaint.

N. C. KASLIWAL.

NEW DELHI;
The 3rd September, 1954.

XI

I agree with the Minute of Dissent submitted by Shri N. C. Kasliwal.

BARKAT ULLAH KHAN.

NEW DELHI;
The 3rd September, 1954.

XII

The entire approach towards the law of defamation is sought to be changed after it has faced the test of decades. Any aggrieved person is welcome to seek remedies in our criminal or civil courts. The guilty ones are severely penalised under the civil process; and those that can justify defamation under the ten exceptions to section 499 (Defamation) of the Indian Penal Code rightly get away from the penalty. Now, however, new remedies are being hammered out to penalise alleged defamers, especially newspapermen overwhelmed with responsibilities—whose journals have stood the ravages of press confiscations, press ordinances, securities and prosecutions for sedition. The Press of India has bravely faced these dangers during the worst days of the British Raj. It made an unforgettable contribution towards the freedom of the motherland; but now the entire press is imperilled under revised clause 25, though the original clause which sought to make the offence of defamation cognizable has been dropped on account of the unanimous opposition from the press and the public of India.

Corruption is not pin-pointed and evil-doers whether they be Officials or Ministers still go scot-free under the tolerant abuses of a free democracy. If some Ministers are found to be efficient, they are sometimes not above board where honesty is concerned. If they have been essentially honest, not infrequently they have been lacking in efficiency. New India must develop the methods of British Parliamentary democracy where a mere breath of suspicion of a scandal compels a Minister to quit office. Hugh Dalton, one-time British Labour's Chancellor of Exchequer resigned his office for unconsciously speaking to a journalist, on the eve of a budget, without any motive of gain. So great are their Parliamentary traditions that it will be worth while emulating them here. In our country, some Ministers continue to sit in the saddle even when grave allegations are made against them. So also the case about officials, who are doubly protected with old-time conventions and rules of service which need to be drastically amended so that Government may possess the inherent right of transferring them, demoting or dismissing them without much ado if they are found guilty of corrupt practices. The fountains of our democracy have to be cleaned up and purified. No amount of hard enactments against alleged defamers will purify them. Corruption will grow underground and no responsible Editor will incur the danger of facing the Law Courts when the dice is already loaded against him in the shape of an enquiry by a Court of Session. The State, no doubt, will call the tune and a fearless journalist genuinely devoted to the cause of public service will suffer. What Parliament or State Assemblies have often failed to do, newspapers have taken upon themselves to

expose. If you seek to penalize them, then the vitals of free democracy are indeed sapped out. Let not the process of law be further tightened, without a whole-hearted and intensive cleansing up of the augean stables.

True, quite many scandals have become less now-a-days. The fierce light of publicity emanating both from the platform and the press has put fear in the hearts of wrong-doers whether they be officials or Ministers. Hence the inevitable danger of corruption running underground in the face of Editors, retreating from their solemn obligation of exposing genuine public wrongs and scandals. Therefore, an Editor or a newspaperman hauled up in the Court of Session under clause 25 must be paid monetary compensation, if he has substantiated his charges. He incurs considerable expenses for his defence. Who is to pay him, when the State has an elaborate machinery at its command to institute or continue prosecutions? Ministers are servants of democracy and public opinion must chastise them or hound them out of office, when they are neither able to deliver the goods nor preserve their reputation unsullied.

The famed Harvey-Nariman Defamation case which I attended as a student before the thirties when I arrived in Bombay, is a classic example of the persecution of a patriot, who single-handed exposed the scandals of the Bombay Backbay Reclamation. The full machinery of the British Raj was pitted against gallant Khurshed Framji Nariman. The Province put its hands in its pockets and drained out thousands of rupees to prosecute Nariman. He did not get a farthing by way of compensation for his defence. He only earned the gratitude of a stunned Bombay Public. There is no provision in the Bill for compensation or costs for harassed journalists who are able to sustain their charges either against Officials or Ministers. This gap ought to be filled up by Parliament. The Sessions Judge must be authorised to award costs wherein newspapermen are acquitted in defamation cases. If you can impose a heavy fine on a guilty person under the provisions of the Indian Penal Code, why not award at least reasonable costs for the successful legal defence of an Editor or newspaperman. It is no argument to say that accused in murder cases get no costs. In U.K. costs today are allowed in all cases of acquittal.

Why should we penalise the good sheep just because there are a few black-sheep? Who does not admit that there are a few yellow-journals in our land? They are, however, not the salt and savour of our journalism, whose best and noble instruments have all along fought for the liberty of our land. Aggrieved Officials or Ministers or even individuals must be compelled to seek the civil process of law against alleged offenders of defamation so that they obtain not only full justice but go out with their reputation untarnished. The *Hindustan Times* Defamation case against the *Blitz* is a recent example.

My own paper *Forum* which lasted for nearly ten years (which, alas, has now been closed down on account of the boycott by the British and American advertisers for its aggressive pro-Asian policy) was severely penalised after the murder of Mahatma Gandhi for the alleged defamation of Shri Jamnadas Mehta, a former member of the old Central Legislative Assembly. He sought remedies against

me under the Original Civil Jurisdiction of the Bombay High Court. We had not only to publish an apology in three or four papers, but also to spend over Rs. 10,000 by way of donation and expenses. All that *Forum* stated was that Jamnadas Mehta pretended to be innocent when he was guilty in the list of accused hauled up for the murder of Mahatma Gandhi. I am grateful to the Bombay Government for having allowed me inspection of Godse's diaries, wherein Godse, who was already hanged, was found to have jotted down in his own hand that he met Jamnadas Mehta in Bombay within the week prior to the murder of Gandhiji. But what if the murderer met Jamnadas Mehta?.....argued out the best legal talent of Bombay. We lost a lot of money, which we could ill afford to lose; but had the plaintiff chosen the forum of the Criminal Courts, he would not have had a chance of winning the case against me. I am speaking from personal experience as an Advocate who once successfully defended the late Benjamin Guy Horniman in several defamation cases in the Bombay Criminal Courts. Horniman was really a titan in our journalism. Further, Soorajmulls *Vs.* Horniman is an authoritative civil case in defamation in which Horniman ultimately triumphed. If I am not mistaken, it reached the precincts of the Privy Council.

On another occasion, sometime in 1943, two irate British Civilian Judges of the Allahabad High Court, Messrs. Allsopp and Collister issued a warrant for Horniman's arrest (he was then a Bombay resident and edited a Bombay daily) on charge of contempt of Court. I was associated with his defence in the lower Court—it was my last appearance as an Advocate before I plunged into journalism. We were flabbergasted when the Chief Presidency Magistrate ordered that Horniman should be handed over to the tender mercies of the Allahabad High Court. But a real exponent of justice, Sir John Beaumont, then British Chief Justice of Bombay sitting in Appeal with another Judge quashed the order, refusing to hand over Horniman unto the jurisdiction of the Allahabad High Court, stating that grounds of Horniman's offence were flimsy and too thin indeed! Uttar Pradesh's present Governor, K. M. Munshi appeared for Horniman in the High Court. Yet those great guardians of justice in Allahabad kept their orders "alive" on the file demanding that Horniman be produced for justice being meted out, whenever he was found in Uttar Pradesh! May God grant peace unto his soul.

Sometime before in 1945 a British Judge of the Madras High Court (Justice Byers) who was involved in the assault of a boy moved that I be produced from Bombay for contempt of Court on account of the exposure of his glaring misdeeds in the columns of the *Forum*. But Horniman's judgment came in the way. The angry judge moved his Chief Justice that the entire law of the Contempt of Courts be amended so as to produce an accused from anywhere in India to stand trial for contempt of Court in any Court of the land. These incidents have been referred to by me to show how sensitive the high-placed ones in the land can be and how our own officials may not conduct themselves any whit less than before. Woe betide our fraternity of journalists in the future if they become victims to the indignation of Officials or Ministers armed with extra privileges of law. I am narrating the above mentioned two incidents to highlight the seeming association of Defamation and Contempt of

Court, though pitched on different planes. Both offences sometimes spring out of extreme sensitiveness and it is the poor Editor or newspaperman who has to be ready to be run to earth.

Hence my strong plea that both Officials and Ministers should be compelled to have recourse to civil process against alleged defamers, when they have a chance of not only standing vindicated but being awarded heavy damages. Why should the Government feel hesitant to push their officials or Ministers into the box—at least in the civil box and vindicate their character? My own case in the Bombay High Court was over within a few months for trial and decision, though I pleaded that the case may be heard a little later as I was then occupied with the office of the Sheriff of Bombay. But the Court rejected my plea for a later hearing. The authorities are welcome to give the benefit of the process of the Civil Procedure Code to harassed Ministers or Officials so that their cases may be expedited. If the Civil Procedure Code does not give this benefit, then due remedies must be provided with amendments to the Code.

I am not in favour of any change in Chapter XXI entitled Defamation of the Indian Penal Code—Act XLV of 1860, in conjunction with its procedure as laid down in the Criminal Procedure Code of 1898. Any change arms Officials, Ministers and even Chaprasis with more privileges as against the ordinary citizen. Hitherto, wherein defamation is concerned, every citizen is equal in the eye of the law. But henceforward, the public servant or official, call him the President, Vice-President, Rajpramukh, Governor, Minister or Chaprasi—becomes a privileged individual. The authorities should have devised other effective measures to deal with the elements of corruption in their own ranks. They now seek to stifle the voice of Opposition, even if it is actuated by honest motives as the present Hon'ble Home Minister has striven to do—he, who has been known to be as incorruptible Minister.

However, we must thank ourselves for small mercies.

I am glad the original clause 25 has been amended and the Committee has expressed itself against making defamation of President, Vice-President, Governor or Rajpramukh of a State, a Minister or any other public servant cognizable. It is a pity that the Committee has been unable to drop the clause altogether. I am unable to agree with the opinion that an independent authority, apart from the person aggrieved, should be able to set the law in motion. Defamation is a purely personal offence and by no stretch of imagination can it be said that defamation of a public servant also injures the State and the State is an aggrieved party. This was the logic behind section 124A of the I.P.C., namely that criticism and defamation of an officer or official of the Government brought down the reputation of the Government and hence it was punishable. It is worth recalling that as long ago as 1942, the Federal Court acquitted Niherendu Dutt Mazumdar in N. D. Mazumdar *Vs.* State in an appeal against the High Court's judgment under the provisions of the Defence of India Rules analogous to Section 124-A for making defamatory speeches against the Council of Ministers in Bengal. The Ministers and public servants in India should usefully read that judgment and learn to be less sensitive.

Fortunately, after the enactment of the Constitution, and even after the amendment of Art. 19(2) Section 124-A is invalid. When the substantive power of the Government has been declared void, Government cannot by a procedural change obtain a power which is a colourable imitation. Even the new change offends against the Constitution. The fact that "public servants" have been "classified" for offences like bribery cannot make it reasonable for all purposes and in any event cannot justify the public servant being placed in a privileged position in respect of procedure and hence it is against Article 14 also.

Apart from these above constitutional objections, I believe even on merits the proposals are fraught with great danger and should be dropped. It has been argued that charges of corruption made against officers and other public servants should be enquired into independently and the State must be able to set the law in motion if the aggrieved party is unwilling to do so. This is queer logic.

For putting down corruption one could have understood the setting up of anti-corruption tribunals to whom all such charges as well as charges made privately by citizens, could have been referred to for investigation and action. But here what is sought to be done is that defamation of certain kinds is sought to be punished in a special way. Defamation, it must first of all be understood, is both by slander and libel, and is not necessarily confined to charges of corruption. To characterise a Minister or any other public servant as a "mere man of straw" is defamation. To state that the Law Minister or a Law Officer in respect of any of his public duties has shown his utter incompetence and ignorance of law is to cast doubts on his professional ability and will constitute defamation. When the offence of defamation is of such a wide character, and the question whether a particular statement comes within the exceptions to Section 499 I.P.C. or not is a matter not easily ascertainable. To bring the State also as an aggrieved party is to place in its hands a powerful weapon of oppression which a vindictive executive will make use of with impunity, specially against its opponents in public life and in the Press. The officials will form a "club" to help each other against the "outsider". Those who want to dodge the law will be able to do so by setting up dummy Editors but the responsible section of the Press will be handicapped in its work. With the huge plethora of public servants in the Welfare State—ranging from the Rashtrapati to the gardener in his Estate and the village chowkidar —it would be difficult for anyone to see when and where he would come under the mischief of the special law.

With the new provision, the essential preliminary examination on oath of the aggrieved person is done away with. Even if Section 202 had been amended, as was suggested by the Press Commission, in its majority view, the preliminary examination of the aggrieved or defamed person would not have been mandatory but there was at least the power in the Magistrate to do so. But now he cannot be examined. He need not also be compulsorily required to get into the witness box for, in some cases, the prosecution might be able to contend that "best evidence" had been produced as per requirements of the Evidence Act even though the aggrieved Officer had not been called a witness.

In the case of the President, Vice-President, Governor or Rajpramukh, they have to be examined on Commission. In U.K., if King George V on a similar occasion was willing to go into the witness box, I see no reason why in a Republican India, these exalted persons should not go into the witness box.

I strongly feel that in any event the protection proposed under Section 198-B should be confined at the most to the President, Vice-President, Governor or Rajpramukh of a State and should not be extended to Ministers who are objects of daily controversy and to public servants who are legion in number.

Further, sub-section (4) of clause 25 wherein a Court of Session takes cognizance of an offence under sub-section (1) within six months from the date of commission of the alleged offence, should be amended as "within three months". Why should a journal await six months to be "guillotined". Let the authorities be prompt wherein the character of their Officials or public servants is publicly arraigned. Three weeks are sufficient to fire an Editor or newspaperman!

JOACHIM ALVA.

NEW DELHI,
The 3rd September, 1954.

Bill No. 20B of 1954

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL, 1954

(AS AMENDED BY THE JOINT COMMITTEE)

(Words underlined or side-lined indicate the amendments suggested by the Committee; asterisks indicate omissions)

A

BILL

further to amend the Code of Criminal Procedure, 1898.

BE it enacted by Parliament in the Fifth Year of the Republic of India as follows:—

1. Short title, commencement and savings.—(*1*) This Act may be called the Code of Criminal Procedure (Amendment) Act, 1954.

(*2*) It shall come into force on such date or dates as the Central Government may appoint, and different dates may be appointed for different States:

Provided that—

(*a*) nothing in section 30, section 145, section 146, section 207A or section 251A of the Code of Criminal Procedure, 1898 (V of 1898) (hereinafter referred to as the principal Act), as amended by this Act, shall apply to, or affect, any inquiry, trial or other proceeding which, on the date of such commencement, is pending before any Court; and every such inquiry, trial or other proceeding shall be continued and disposed of as if this Act had not been passed;

(*b*) nothing in section 408 or section 409 of the principal Act as amended by this Act shall apply to, or affect, any appeal which, on the date of such commencement, is pending before the District Magistrate or any Magistrate of the first class empowered by the State Government to hear such appeals; and every such appeal shall, notwithstanding the repeal of section 407 of the principal Act, be heard and disposed of as if this Act had not been passed;

(c) nothing in this Act shall affect any trial which has begun before a Court of Session either by jury or with the aid of assessors and is pending on the date of such commencement; and every such trial shall be continued and disposed of as if this Act had not been passed.

2. Amendment of section 4, Act V of 1898.—In section 4 of the principal Act, in clause (*w*) of sub-section (*1*), for the words "transportation or imprisonment for a term exceeding six months", the words "imprisonment for life or imprisonment for a term exceeding one year" shall be substituted.

3. Amendment of section 9, Act V of 1898.—For sub-section (*2*) of section 9 of the principal Act, the following sub-section shall be substituted, namely:—

"(*2*) The State Government may, by general or special order in the Official Gazette, direct at what place or places the Court of Session shall ordinarily hold its sitting; but if, in any particular case, the Court of Session is of opinion that it will tend to the general convenience of the parties and witnesses to hold its sitting at any other place in the sessions division, it may, with the consent of the prosecution and the accused, sit at that place for the disposal of the case or the examination of any witness or witnesses therein".

4. Amendment of section 14, Act V of 1898.—In sub-section (*1*) of section 14 of the principal Act, after the words "any person", the words "who holds or has held any judicial post under the Union or a State or possesses such other qualifications as may, in consultation with the High Court, be specified in this behalf by the State Government by notification in the Official Gazette" shall be inserted.

5. Amendment of section 29B, Act V of 1898.—In section 29B of the principal Act, for the word "transportation", the word "imprisonment" shall be substituted.

6. Substitution of new section for section 30 in Act V of 1898.—For section 30 of the principal Act, the following section shall be substituted, namely:—

"30. *Offences punishable with imprisonment not exceeding seven years.*—* * * Notwithstanding anything contained in section 28 or section 29, the State Government may, in consultation with the High Court, invest any District Magistrate, Presidency Magistrate, or * * * Magistrate of the first class who has, for not less than ten years, exercised as a Magistrate powers not inferior to those of a Magistrate of the first class with power to try as a Magistrate all offences not punishable with death or with imprisonment for life or with imprisonment for a term exceeding seven years".

7. Amendment of section 31, Act V of 1898.—In sub-section (*3*) of section 31 of the principal Act, for the words "of transportation for a term exceeding seven years or of imprisonment for a term exceeding seven years", the words "of imprisonment for life or of imprisonment for a term exceeding ten years" shall be substituted.

8. Amendment of section 32, Act V of 1898.—In sub-section (*1*) of section 32 of the principal Act,—

(*i*) in clause (*a*), for the words "one thousand", the words "two thousand" shall be substituted;

(*ii*) in clause (*b*), for the words "two hundred", the words "five hundred" shall be substituted;

(*iii*) in clause (*c*), for the word "fifty", the words "one hundred" shall be substituted.

9. Amendment of section 34, Act V of 1898.—In section 34 of the principal Act, for the words "transportation for a term exceeding seven years", the words "imprisonment for life" shall be substituted.

10. Amendment of section 35, Act V of 1898.—In sub-section (*1*) of section 35 of the principal Act, the words "or transportation" shall be omitted.

11. Amendment of section 45, Act V of 1898.—In sub-section (*1*) of section 45 of the principal Act, after the words "management of that land", the words and brackets "and every member of a village panchayat (where such panchayat, by whatever name called, is constituted under any law for the time being in force)" shall be inserted.

12. Amendment of section 46, Act V of 1898.—In sub-section (*3*) of section 46 of the principal Act, for the word "transportation", the word "imprisonment" shall be substituted.

13. Amendment of section 47, Act V of 1898.—In section 47 of the principal Act, for the words "the person residing", the words "any person residing" shall be substituted.

14. Amendment of section 90, Act V of 1898.—In section 90 of the principal Act, the words "or assessor" shall be omitted.

15. Amendment of section 103, Act V of 1898.—In sub-section (*3*) and sub-section (*4*) of section 103 of the principal Act, the words "at his request" shall be omitted.

16. Amendment of section 107, Act V of 1898.—For sub-section (*2*) of section 107 of the principal Act, the following sub-section shall be substituted, namely:—

"(*2*) Proceedings under this section may be taken before any Magistrate empowered to proceed under sub-section (*1*) when either the place where the breach of the peace or disturbance is apprehended is within the local limits of such Magistrate's jurisdiction or there is within such limits a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such limits."

17. Amendment of section 117, Act V of 1898.—For sub-section (*2*) of section 117 of the principal Act, the following sub-section shall be inserted, namely:—

"(*2*) Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trials and recording evidence in summons cases."

18. Amendment of section 145, Act V of 1898.—In section 145 of the principal Act,—

(*a*) to sub-section (*1*), the words "and further requiring them to put in such documents, or to adduce, by putting in affidavits, the evidence of such persons, as they rely upon in support of such claims" shall be added;

(*b*) for sub-section (*4*), the following sub-section shall be substituted, namely:—

"(*4*) The Magistrate shall then, without reference to the merits or the claims of any of such parties to a right to possess the subject of dispute, peruse the statements, documents and affidavits, if any, so put in, hear the parties and conclude the inquiry, as far as may be practicable, within a period of two months from the date of the appearance of the parties before him and, if possible, decide the question whether any and which of the parties was at the date of the order before-mentioned in such possession of the subject:

Provided that the Magistrate may, if he so thinks fit, summon and examine any person whose affidavit has been put in as to the facts contained therein:

Provided further that, if it appears to the Magistrate that any party has within two months next before the date of such order been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date:

Provided also that, if the Magistrate considers the case one of emergency, he may at any time attach the subject of dispute, pending his decision under this section.";

(*c*) in sub-section (*6*), for the words "first proviso" wherever they occur, the words "second proviso" shall be substituted.

19. Amendment of section 146, Act V of 1898.—In section 146 of the principal Act, for sub-section (*1*), the following sub-sections shall be substituted, namely:—

"(*1*) If the Magistrate is of opinion that none of the parties was then in such possession, or is unable to decide as to which of them was then in such possession, of the subject of dispute, he may attach it, and draw up a statement of the facts of the case and forward the record of the proceeding to a Civil Court of competent jurisdiction to decide the question whether any and which of the parties was in possession of the subject of dispute at the date of the order as explained in sub-section (*4*) of section 145; and he shall direct the parties to appear before the Civil Court on a date to be fixed by him:

Provided that the District Magistrate or the Magistrate who has attached the subject of dispute may withdraw the attachment at any time, if he is satisfied that there is no longer any likelihood of a breach of the peace in regard to the subject of dispute.

(*1A*) On receipt of any such reference, the Civil Court shall peruse the evidence on record and take such further evidence as may be produced by the parties respectively, consider the effect of all such evidence, and after hearing the parties, decide the question of possession so referred to it.

(*1B*) The Civil Court shall, as far as may be practicable, within a period of three months from the date of the appearance of the parties before it, conclude the inquiry and transmit its finding together with the record of the proceeding to the Magistrate by whom the reference was made; and the Magistrate shall, on receipt thereof, proceed to dispose of the proceeding under section 145 in conformity with the decision of the Civil Court.

(*1C*) The costs, if any, consequent on a reference for the decision of the Civil Court, shall be costs in the proceedings under this section.

(*1D*) No appeal shall lie from any finding of the Civil Court given on a reference under this section nor shall any review or revision of any such finding be allowed:

Provided that nothing in this sub-section shall debar any person from suing to establish his title to the property, the subject of dispute, and to recover possession thereof."

20. Amendment of section 147, Act V of 1898.—In section 147 of the principal Act,—

(*a*) in sub-section (*1*), for the words and figures "in the manner provided in section 145, and the provisions of that section shall, as far as may be, be applicable in the case of such inquiry", the words "in the manner hereinafter provided" shall be substituted;

(*b*) after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) The Magistrate shall then peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them respectively, consider the effect of such evidence, take such further evidence, if any, as he thinks necessary and, if possible, decide whether such right exists and the provisions of section 145 shall, as far as may be, be applicable in the case of such inquiry."

21. Amendment of section 160, Act V of 1898.—To section 160 of the principal Act, the following proviso shall be added, namely:—

"Provided that no male person under the age of fifteen years or woman shall be required to attend at any place other than the place in which such male person or woman resides."

* * * * * *

22. Substitution of new section for section 162 in Act V of 1898.—For section 162 of the principal Act, the following section shall be substituted, namely:—

"162. *Statements to police not to be signed; use of statements in evidence.*—(*1*) No statement made by any person to a police

officer in the course of an investigation under this Chapter shall, if reduced into writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose (save as hereinafter provided) at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (I of 1872); and when any part of such statement is so used by the accused, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(*2*) Nothing in this section shall be deemed to apply to any statement falling within the provisions of section 32, clause (*1*), of the Indian Evidence Act, 1872 (I of 1872), or to affect the provisions of section 27 of that Act."

* * * * *

23. Amendment of section 173, Act V of 1898.—In section 173 of the principal Act, for sub-section (*4*), the following sub-sections shall be substituted, namely:—

"(*4*) After forwarding a report under this section, the officer in charge of the police station shall, before the commencement of the inquiry or trial, furnish or cause to be furnished to the accused, free of cost, a copy of the report forwarded under sub-section (*1*) and of the first information report recorded under section 154 and of all other documents or relevant extracts thereof, on which the prosecution proposes to rely, including the statements and confessions, if any, recorded under section 164 and the statements recorded under sub-section (*3*) of section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(5) Notwithstanding anything contained in sub-section (*4*), if the police officer is of opinion that any part of any statement recorded under sub-section (*3*) of section 161 is not relevant to the subject-matter of the inquiry or trial or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interests, he shall exclude such part from the copy of the statement furnished to the accused and in such a case, he shall make a report to the Magistrate stating his reasons for excluding such part:

Provided that at the commencement of the inquiry or trial, the Magistrate shall, after perusing the part so excluded and considering the report of the police officer, pass such orders as he thinks fit and if he so directs, a copy of the part so excluded or such portion thereof, as he thinks proper, shall be furnished to the accused."

24. Amendment of section 196A, Act V of 1898.—In clause (*2*) of section 196A of the principal Act, for the word "transportation", the words "imprisonment for life" shall be substituted.

* * * * *

25. Insertion of new section 198B in Act V of 1898.—After section 198A of the principal Act, the following section shall be inserted, namely:—

"198B. *Prosecution for defamation against public servants in respect of their conduct in the discharge of public functions.*—(*1*) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (Act XLV of 1860) is alleged to have been committed against the President, or the Vice-President, or the Governor or Rajpramukh of a State, or a Minister, or any other public servant employed in connection with the affairs of the Union or of a State, in respect of his conduct in the discharge of his public functions, a Court of Session may take cognizance of such offence, without the accused being committed to it for trial, upon a complaint in writing made by the Public Prosecutor.

(*2*) Every such complaint shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

(*3*) No complaint under sub-section (*1*) shall be made by the Public Prosecutor except with the previous sanction,—

(*a*) in the case of the President or the Vice-President or the Governor or Rajpramukh of a State, of any Secretary to the Government authorised by him in this behalf;

(*b*) in the case of a Minister of the Central Government or of a State Government, of the Secretary to the Council of Ministers, if any, or of any Secretary to the Government authorised in this behalf by the Government concerned;

(*c*) in the case of any other public servant employed in connection with the affairs of the Union or of a State, of the officer or authority competent to remove him from his office.

(*4*) No Court of Session shall take cognizance of an offence under sub-section (*1*), unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

(*5*) When the Court of Session takes cognizance of an offence under sub-section (*1*), then, notwithstanding anything contained in this Code, the Court of Session shall try the case without a jury and in trying the case, shall follow the procedure prescribed for the trial of warrant cases by Magistrates.

(*6*) For the purposes of this section, the expression "Court of Session" includes the High Courts at Calcutta and Madras in the exercise of their original criminal jurisdiction.

(*7*) Nothing in this section shall be deemed to be in derogation of the right of the person aggrieved under section 198".

26. Amendment of section 200, Act V of 1898.—In section 200 of the principal Act, for the words "examine the complainant upon oath, and the substance of the examination shall be reduced to writing and shall be signed by the complainant", the words "examine the complainant and the witnesses present, if any, upon oath and the substance of the examination shall be reduced to writing and shall be signed by the complainant and the witnesses" shall be substituted.

27. Amendment of section 203, Act V of 1898.—In section 203 of the principal Act, after the words "of the complainant", the words "and the witnesses" shall be inserted.

28. Amendment of section 204, Act V of 1898.—In section 204 of the principal Act, after sub-section (*1*), the following sub-sections shall be inserted, namely:—

"(*1A*) No summons or warrant shall be issued against the accused under sub-section (*1*) until a list of the prosecution witnesses has been filed.

(*1B*) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (*1*) shall be accompanied by a copy of such complaint."

29. Substitution of new sections for section 207 in Act V of 1898.—For section 207 of the principal Act, the following sections shall be substituted, namely:—

"207. *Procedure in inquiries preparatory to commitment.*—In every inquiry before a Magistrate where the case is triable exclusively by a Court of Session or High Court, or, in the opinion of the Magistrate, ought to be tried by such Court, the Magistrate shall,—

(*a*) in any proceeding instituted on a police report, follow the procedure specified in section 207A; and

(*b*) in any other proceeding, follow the procedure specified in the other provisions of this Chapter.

207A. *Procedure to be adopted in proceedings instituted on police report.*—(*1*) When, in any proceeding instituted on a police report, the Magistrate receives the report forwarded under section 173, he shall, for the purpose of holding an inquiry under this section, fix a date which shall be a date not later than fourteen days from the date of the receipt of the report, unless the Magistrate, for reasons to be recorded, fixes any later date.

(*2*) If, at any time before such date, the officer conducting the prosecution applies to the Magistrate to issue a process to compel the attendance of any witness or the production of any document or thing, the Magistrate shall issue such process unless, for reasons to be recorded, he deems it unnecessary to do so.

(*3*) At the commencement of the inquiry, the Magistrate shall, when the accused appears or is brought before him, satisfy himself that the documents referred to in section 173 have been

furnished to the accused and if he finds that the accused has not been furnished with such documents or any of them, he shall cause the same to be so furnished.

(*4*) The Magistrate shall then proceed to record the statements of the persons, if any, who may be produced by the prosecution as witnesses to the actual commission of the offence alleged; and if the Magistrate is of opinion that it is necessary in the interests of justice to record the statements of any one or more of the other witnesses for the prosecution, he may record such statements also:

Provided that no statement shall be recorded under this sub-section of any person whose statement has already been recorded under section 164.

(*5*) The accused shall not be at liberty to put questions to any such witness; but nothing in this section shall be deemed to preclude the Magistrate from putting such questions to the witness as he thinks necessary.

(*6*) When the statements, if any, have been recorded under sub-section (*4*) and the Magistrate has considered all the documents referred to in section 173 and has, if necessary, examined the accused, and given the prosecution and the accused an opportunity of being heard, such Magistrate shall, if he is of opinion that such statements and documents disclose no grounds for committing the accused person for trial, record his reasons and discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly.

(*7*) When, upon such statements being recorded, such documents being considered, such examination (if any) being made and the prosecution and the accused being given an opportunity of being heard, the Magistrate is of opinion that the accused should be committed for trial, he shall frame a charge under his hand, declaring with what offence the accused is charged.

(*8*) As soon as such charge has been framed, it shall be read and explained to the accused and a copy thereof shall be given to him free of cost.

(*9*) The accused shall be required at once to give in, orally or in writing, a list of the persons, if any, whom he wishes to be summoned to give evidence on his trial:

Provided that the Magistrate may, in his discretion, allow the accused to give in his list or any further list of witnesses at a subsequent time; and, where the accused is committed for trial before the High Court, nothing in this sub-section shall be deemed to preclude the accused from giving, at any time before his trial, to the Clerk of the State a further list of the persons whom he wishes to be summoned to give evidence on such trial.

(*10*) When the accused, on being required to give in a list under sub-section (*9*), has declined to do so, or when he has given in such list, the Magistrate may make an order committing the accused for trial by the High Court or the Court of Session, as the case may be, and shall also record briefly the reasons for such commitment.

(*11*) When the accused has given in any list of witnesses under sub-section (*9*) and has been committed for trial, the Magistrate shall summon the witnesses included in the list to appear before the Court to which the accused has been committed:

Provided that where the accused has been committed to the High Court, the Magistrate may, in his discretion, leave such witnesses to be summoned by the Clerk of the State and such witnesses may be summoned accordingly:

Provided also that if the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice, the Magistrate may require the accused to satisfy him that there are reasonable grounds for believing that the evidence of such witness is material, and if he is not so satisfied, may refuse to summon the witness (recording his reasons for such refusal), or may before summoning him require such sum to be deposited as such Magistrate thinks necessary to defray the expense of obtaining the attendance of the witness and all other proper expenses.

(*12*) Witnesses for the prosecution, whose attendance before the Court of Session or High Court is necessary and who appear before the Magistrate, shall execute before him bonds binding themselves to be in attendance when called upon by the Court of Session or High Court to give evidence.

(*13*) If any witness refuses to attend before the Court of Session or High Court, or execute the bond above directed, the Magistrate may detain him in custody until he executes such bond or until his attendance at the Court of Session or High Court is required, when the Magistrate shall send him in custody to the Court of Session or High Court as the case may be.

(*14*) When the accused is committed for trial, the Magistrate shall issue an order to such person as may be appointed by the State Government in this behalf, notifying the commitment, and stating the offence in the same form as the charge; and shall send the charge, the record of the inquiry and any weapon or other thing which is to be produced in evidence, to the Court of Session or where the commitment is made to the High Court, to the Clerk of the State or other officer appointed in this behalf by the High Court.

(*15*) When the commitment is made to the High Court and any part of the record is not in English, an English translation of such part shall be forwarded with the record.

(*16*) Until and during the trial, the Magistrate shall, subject to the provisions of this Code regarding the taking of bail, commit the accused by warrant to custody.

(*17*) Notwithstanding anything contained in this Code, an inquiry under this section shall not be postponed or adjourned merely by reason of the fact that any witness whose statement is to be recorded under sub-section (*4*) is absent or that any one or more of the accused is or are absent, unless the Magistrate, for

reasons to be recorded, otherwise directs, and the inquiry shall not, in any case, be postponed or adjourned more than once."

30. Amendment of section 208, Act V of 1898.—In sub-section (*1*) of section 208 of the principal Act, for the words "The Magistrate shall", the words "In any proceeding instituted otherwise than on a police report, the Magistrate shall" shall be substituted.

31. Amendment of section 209, Act V of 1898.—In sub-section (*1*) of section 209 of the principal Act, the words "for the purpose of enabling him to explain any circumstances appearing in the evidence against him" shall be omitted.

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32. Amendment of section 227, Act V of 1898.—In sub-section (*1*) of section 227 of the principal Act,—

(*i*) after the words "in the case of trials", the words "by jury" shall be inserted;

(*ii*) the words "or the opinions of the assessors are expressed" shall be omitted.

33. Amendment of section 247, Act V of 1898.—In section 247 of the principal Act, for the proviso, the following proviso shall be substituted, namely:—

"Provided that where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance, and proceed with the case."

34. Amendment of section 250, Act V of 1898.—In sub-section (*2*) of section 250 of the principal Act, for the words "one hundred rupees or, if the Magistrate is a Magistrate of the third class, not exceeding fifty rupees", the words "one-half of the amount of fine he is empowered to impose" shall be substituted.

35. Substitution of new sections for section 251 in Act V of 1898.—For section 251 of the principal Act, the following sections shall be substituted, namely:—

"251. *Procedure in warrant cases.*—In the trial of warrant cases by Magistrates, the Magistrate shall,—

(*a*) in any case instituted on a police report, follow the procedure specified in section 251A; and

(*b*) in any other case, follow the procedure specified in the other provisions of this Chapter.

251A. *Procedure to be adopted in cases instituted on police report.*—(*1*) When, in any case instituted on a police report, the accused appears or is brought before a Magistrate at the commencement of the trial, such Magistrate shall satisfy himself that the documents referred to in section 173 have been furnished to the accused, and if he finds that the accused has not been furnished with such documents or any of them, he shall cause them to be so furnished.

(*2*) If, upon consideration of all the documents referred to in section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge him.

(3) If, upon such documents being considered, such examination, if any, being made and the prosecution and the accused being given an opportunity of being heard, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(4) The charge shall then be read and explained to the accused and he shall be asked whether he is guilty or claims to be tried.

(5) If the accused pleads guilty, the Magistrate shall record the plea and may, in his discretion, convict him thereon.

(6) If the accused refuses to plead, or does not plead, or claims to be tried, the Magistrate shall fix a date for the examination of witnesses.

(7) On the date so fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution.

(8) The accused shall then be called upon to enter upon his defence and produce his evidence; and if the accused puts in any written statement, the Magistrate shall file it with the record.

(9) If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness on his behalf (other than a witness already examined) for the purpose of examination or the production of any document or other thing, the Magistrate shall issue such process, unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay, or for defeating the ends of justice and such ground shall be recorded by him in writing.

(10) The Magistrate may, before summoning any witness on such application under sub-section (1), require that his reasonable expenses incurred in attending for the purpose of the trial be deposited in court.

(11) If, in any case under this section in which a charge has been framed, the Magistrate finds the accused not guilty, he shall record an order of acquittal.

(12) Where in any case under this section, the Magistrate does not proceed in accordance with the provisions of section 349 or section 562, he shall, if he finds the accused guilty, pass sentence upon him according to law.

(13) In a case where a previous conviction is charged under the provisions of section 221, sub-section (7), and the accused does not admit that he has been previously convicted as alleged in the charge, the Magistrate may, after he has convicted the said accused under sub-section (5) or sub-section (12), take evidence in respect of the alleged previous conviction, and shall record a finding thereon."

36. Amendment of section 252, Act V of 1898.—In sub-section (*1*) of section 252 of the principal Act, for the words "When the accused appears", the words "In any case instituted otherwise than on a police report, when the accused appears" shall be substituted.

* * * * * *

37. Amendment of section 260, Act V of 1898.—In sub-section (*1*) of section 260 of the principal Act,—

(*a*) for the word "transportation", the words "imprisonment for life" shall be substituted;

(*b*) for the words "fifty rupees" wherever they occur, the words "two hundred rupees" shall be substituted.

38. Substitution of new section for section 264 in Act V of 1898.—For section 264 of the principal Act, the following section shall be substituted, namely:—

"264. *Record in appealable cases.*—In every case tried summarily by a Magistrate or Bench in which an appeal lies, such Magistrate or Bench shall record the substance of the evidence and also the particulars mentioned in section 263 and shall, before passing any sentence, record a judgment in the case."

39. Substitution of new section for section 268 in Act V of 1898.—For section 268 of the principal Act, the following section shall be substituted, namely:—

"268. *Trials before Court of Session.*—All trials before a Court of Session shall be either by jury or by the Judge himself."

40. Amendment of section 269, Act V of 1898.—In section 269 of the principal Act,—

(*a*) in sub-section (*3*), for the words "by the Court of Session, with the aid of jurors or assessors", the words "by the Judge himself" shall be substituted;

(*b*) after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*4*) When, in respect of a trial in which the accused is charged with an offence triable by jury, it appears to the High Court, on an application made to it or otherwise, that having regard to the volume or complexity of the evidence in the case, the trial is not likely to be concluded within two weeks from its commencement, or that the case would involve consideration of evidence of a highly technical nature, which renders it undesirable that it should be tried by a jury, the High Court may, notwithstanding anything contained in sub-section (*1*), by order, direct that that case shall be tried by the Judge himself without a jury and the Judge shall proceed to try the case accordingly."

* * * * * *

41. Substitution of new section for section 272 in Act V of 1898.—For section 272 of the principal Act, the following section shall be substituted, namely:—

"272. *Refusal to plead or claim to be tried.*—If the accused refuses to, or does not, plead, or if he claims to be tried, the Court shall, in a case triable by jury, proceed to choose jurors

as hereinafter directed and to try the case, but in any other case, the Judge shall proceed to try the case himself:

Provided that, in cases triable by jury, the same jury may, subject to the right of objection hereinafter mentioned, try as many accused persons successively as the Court thinks fit."

42. Amendment of section 274, Act V of 1898.—In sub-section (*2*) of section 274 of the principal Act,—

(*i*) for the word "five", the word "seven" shall be substituted;

(*ii*) in the proviso, for the words "shall consist of not less than seven persons and, if practicable, of nine persons", the words "shall consist, if practicable, of nine persons" shall be substituted.

43. Substitution of new section for section 282 in Act V of 1898.—For section 282 of the principal Act, the following section shall be substituted, namely:—

"282. *Procedure when juror ceases to attend, etc.*—(*1*) If, in the course of a trial by jury at any time before the return of the verdict,—

(*a*) any juror, for any sufficient cause, is prevented from attending the trial on any day, or

(*b*) if any juror absents himself and it is not practicable to enforce his attendance, or

(*c*) if it appears that any juror is unable to understand the language in which the evidence is given or, when such evidence is interpreted, the language in which it is interpreted,

the Court, in any case falling under clause (*a*), may either adjourn the trial or discharge the juror and in any case falling under clause (*b*) or clause (*c*), shall discharge the juror; and in any case where any juror is so discharged, the jury shall be deemed to be reconstituted with the remaining jurors as if the jury had consisted of such persons only from the commencement of the trial and the trial shall proceed before the jury so reconstituted; and notwithstanding anything contained elsewhere in this Act, such trial shall not be invalid by reason only of the fact that the number of persons originally constituting the jury has been reduced.

(*2*) Notwithstanding anything contained in sub-section (*1*), if, in the course of a trial by jury, the number of persons constituting the jury is so reduced that,—

(*a*) when the jury originally consisted of nine persons, it falls below seven, or

(*b*) when the jury originally consisted of seven persons, it falls below five,

the jury shall be discharged and a new jury chosen, and in each of such cases, the trial shall commence anew."

44. Omission of sections 284 and 285 in Act V of 1898.—Section 284 and section 285 of the principal Act shall be omitted.

45. Amendment of section 286, Act V of 1898.—In section 286 of the principal Act, in sub-section (*1*), for the words "When the jurors or assessors have been chosen", the words "In a case triable by jury, when the jurors have been chosen or, in any other case, when the Judge is ready to hear the case" shall be substituted.

* * * * *

46. Amendment of section 287, Act V of 1898.—In section 287 of the principal Act, for the word "duly", the words "if any" shall be substituted.

47. Amendment of section 289, Act V of 1898.—In sub-section (*2*) and sub-section (*3*) of section 289 of the principal Act, for the words "in a case tried with the aid of assessors" wherever they occur, the words "in a case tried by the Judge himself" shall be substituted.

48. Amendment of section 291, Act V of 1898.—In section 291 of the principal Act, after the words "in sections", the figures and letter "207A" shall be inserted.

49. Amendment of section 293, Act V of 1898.—In section 293 of the principal Act, the words "or assessors" wherever they occur shall be omitted.

50. Amendment of section 294, Act V of 1898.—In section 294 of the principal Act, the words "or assessor" shall be omitted.

51. Amendment of section 295, Act V of 1898.—In section 295 of the principal Act, the words "or assessors" shall be omitted.

52. Amendment of section 297, Act V of 1898.—To section 297 of the principal Act, the following words shall be added, namely:—

> "and the charge to the jury shall, wherever practicable, be taken down in shorthand in the language in which it is delivered and a transcript thereof shall form part of the record".

53. Amendment of section 301, Act V of 1898.—In section 301 of the principal Act, after the words "verdict of a majority", the words "or that the jurors are equally divided in opinion" shall be inserted.

54. Amendment of section 302, Act V of 1898.—In section 302 of the principal Act, after the words "although they are not unanimous", the words "or the foreman may inform the Judge that the jurors are still equally divided in opinion" shall be inserted.

55. Amendment of section 307, Act V of 1898.—In section 307 of the principal Act, after sub-section (*1*), the following sub-section shall be inserted, namely:—

> "(*1A*) If in any such case, the jurors are equally divided in opinion on all or any of the charges on which any accused person has been tried, the Judge shall submit the case in respect of such accused person to the High Court recording his opinion on such charge or charges and the grounds of his opinion, and in such case, if the accused is further charged under the provisions of section 310, he shall proceed to try him on such charge as if the verdict of the jury had been one of conviction."

56. Substitution of new sub-head and new section for sub-head H and section 309 in Act V of 1898.—For sub-head H and section 309 of the principal Act, the following shall be substituted, namely:—

"H—*Conclusion of trial in cases tried by the Judge himself*:

309. *Judgment in cases tried by the Judge himself.*—(1) When, in a case tried by the Judge himself, the case for the defence and the prosecutor's reply (if any) are concluded, the Judge shall give a judgment in the case.

(2) If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of section 562, pass sentence on him according to law."

57. Amendment of section 310, Act V of 1898.—In section 310 of the principal Act,—

(*a*) for the words "or with the aid of assessors", the words "or by the Judge himself" shall be substituted;

(*b*) for sub-clause (*ii*) of clause (*a*), the following sub-clause shall be substituted, namely:—

"(*ii*) in the case of a trial by a jury, the jury have delivered their verdict on the charge of the subsequent offence;";

(*c*) in clause (*b*), for the words "held with the aid of assessors", the words "held by the Judge himself" shall be substituted.

58. Amendment of section 319, Act V of 1898.—In section 319 of the principal Act,—

(*a*) the word "male" shall be omitted;

(*b*) the words "or assessors" shall be omitted.

59. Amendment of sub-head K and sections 320, 321, 324, 326, 327, 328, 329, 330, 331, 332 and 339A, Act V of 1898.—In sub-head K and sections 320, 321, 324, 326, 327, 328, 329, 330, 331, 332 and 339A, the words "and assessors", "or assessor,", "or assessors,", "or as an assessor", "or as assessor, as the case may be", "or assessor, as the case may be" and "and trials with the aid of assessors", wherever they occur, shall be omitted.

60. Amendment of section 337, Act V of 1898.—In section 337 of the principal Act,—

(*a*) in sub-section (*1*),—

(*i*) for the words and figures "which may extend to ten years, or any offence punishable under section 211 of the Indian Penal Code with imprisonment which may extend to seven years", the words "which may extend to seven years" shall be substituted;

(*ii*) after the words "the Indian Penal Code, namely, sections", the figures and letter "161, 165, 165A" shall be inserted;

(*b*) after sub-section (*2A*), the following sub-section shall be inserted, namely:—

"(*2B*) In every case where the offence is punishable under section 161 or section 165 or section 165A of the Indian

Penal Code (Act XLV of 1860) or sub-section (2) of section 5 of the Prevention of Corruption Act, 1947 (II of 1947), and where a person has accepted a tender of pardon and has been examined under sub-section (2), then, notwithstanding anything contained in sub-section (2A), a Magistrate shall, without making any further inquiry, send the case for trial to the Court of the Special Judge appointed under the Criminal Law Amendment Act, 1952 (XLVI of 1952).

61. Amendment of section 342, Act V of 1898.—In section 342 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) The Court may, * * * at any stage of any inquiry or trial without previously warning the accused, put such questions to him as the Court considers necessary, and shall, for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence."

(b) for sub-section (4), the following sub-section shall be substituted, namely:—

"(4) No oath shall be administered to the accused when he is examined under sub-section (1)".

62. Insertion of new section 342A in Act V of 1898.—After section 342 of the principal Act, the following section shall be inserted, namely:—

"342A. *Accused person to be competent witness.*—Any person accused of an offence before a Criminal Court shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial:

Provided that—

(a) he shall not be called as a witness except on his own request in writing; or

(b) his failure to give evidence shall not be adverted to or made the subject of any comment by any of the parties or the Court or give rise to any presumption against himself or any person charged together with him at the same trial.

63. Amendment of section 344, Act V of 1898.—In section 344 of the principal Act,—

(a) sub-section (1) shall be re-numbered as sub-section (1A) of that section and the following sub-section shall be inserted as sub-section (1) thereof, namely:—

"(1) In every inquiry or trial, the proceedings shall be held as expeditiously as possible and, in particular, when

the examination of witnesses or the recording of their statements has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined or, as the case may be, their statements have been recorded, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded";

(*b*) in sub-section (*1A*) as so re-numbered, after the proviso, the following further proviso shall be inserted, namely:—

"Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them or recording their statements, except for special reasons to be recorded in writing."

64. Amendment of section 345, Act V of 1898.—In section 345 of the principal Act, for the table next following sub-section (*2*), the following table shall be substituted, namely:—

Offence	Sections of the Indian Penal Code applicable	Persons by whom offence may be compounded
"Voluntarily causing hurt by dangerous weapons or means.	324	The person to whom hurt is caused.
Voluntarily causing grievous hurt . . .	325	Ditto.
Voluntarily causing grievous hurt on grave and sudden provocation.	335	Ditto.
Causing hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	337	Ditto.
Causing grievous hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	338	Ditto.
Wrongfully confining a person for three days or more.	343	The person confined.
Wrongfully confining for 10 or more days. .	344	Ditto.
Wrongfully confining a person in secret .	346	Ditto.
Assault or criminal force in attempting wrongfully to confine a person.	357	The person assaulted or to whom the force was used.
Theft	379	The owner of the property stolen.
Theft by clerk or servant of property in possession of master . . .	381	Ditto.
Dishonest misappropriation of property .	403	The owner of the property misappropriated.

Offence	Sections of the Indian Penal Code applicable	Persons by whom offence may be compounded
Criminal breach of trust	406	The owner of the property in respect of which the breach of trust has been committed.
Criminal breach of trust by a carrier, wharfinger, etc.	407	Ditto.
Criminal breach of trust by a clerk or servant .	408	Ditto.
Cheating	417	The person cheated.
Cheating a person whose interest the offender was bound, by law or by legal contract, to protect.	418	Ditto.
Cheating by personation	419	Ditto.
Cheating and dishonestly inducing delivery of property or the making, alteration or destruction of a valuable security.	420	Ditto.
Fraudulent removal or concealment of property, etc., to prevent distribution among creditors.	421	The creditors who are affected thereby.
Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	422	Ditto.
Fraudulent execution of deed of transfer containing false statement of consideration.	423	The person affected thereby.
Fraudulent removal or concealment of property.	424	The person affected thereby.
Mischief by killing or maiming animal of the value of ten rupees or upwards.	428	The owner of the animal.
Mischief by killing or maiming cattle, etc, of any value or any other animal of the value of fifty rupees or upwards.	429	The owner of the cattle or animal.
Mischief by injury to work of irrigation by wrongfully diverting water when the only loss or damage caused is loss or damage to a private person.	430	The person to whom the loss or damage is caused.
House-trespass to commit an offence (other than theft) punishable with imprisonment.	451	The person in possession of the house trespassed upon.
Using a false trade or property mark . .	482	The person to whom loss or injury is caused by such use.

Offence	Sections of the Indian Penal Code applicable	Persons by whom offence may be compounded
Counterfeiting a trade or property mark used by another.	483	The person whose trade or property mark is counterfeited.
Knowingly selling, or exposing or possessing for sale or for trade or manufacturing purpose, goods marked with a counterfeit trade or property mark.	486	The person whose trade or property-mark is counterfeited.
Marrying again during the life-time of a husband or wife.	494	The husband or wife of the person so marrying.
Uttering words or sounds or making gestures or exhibiting any object intending to insult the modesty of a woman or intruding upon the privacy of a woman.	509	The woman whom it was intended to insult or whose privacy was intruded upon."

65. Amendment of section 350, Act V of 1898.—In sub-section (*1*) of section 350 of the principal Act, for the words "or he may re-summon the witnesses and re-commence the inquiry or trial" and the proviso, the following proviso shall be substituted, namely:—

"Provided that if the succeeding Magistrate is of opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, he may re-summon any such witness and after such further examination, cross-examination and re-examination, if any, as he may permit, the witness shall be discharged".

66. Amendment of section 356, Act V of 1898.—In section 356 of the principal Act,—

(*a*) in sub-section (*1*),—

(*i*) for the words "in the language of the Court by the Magistrate or Sessions Judge", the words "in the language of the Court either by the Magistrate or Sessions Judge with his own hand or from his dictation in open Court" shall be substituted;

(*ii*) for the words "shall be signed by the Magistrate or Sessions Judge", the words "the evidence so taken down shall be signed by the Magistrate or Sessions Judge and shall form part of the record" shall be substituted;

(*b*) in sub-section (*2*), after the words "with his own hand", the words "or cause it to be taken down in writing in that language from his dictation in open Court" shall be inserted;

(*c*) in sub-section (*3*), for the words "In cases in which the evidence is not taken down in writing by the Magistrate or

Sessions Judge", the words "In cases in which the Magistrate or Sessions Judge does not either take down the evidence with his own hand or cause it to be taken down in writing from his dictation in open Court" shall be substituted.

67. Amendment of section 367, Act V of 1898.—For sub-section (5) of section 367 of the principal Act, the following sub-section shall be substituted, namely:—

"(5) In trials by jury, the Court need not write a judgment, but the Court of Session shall record the heads of the charge to the jury:

Provided that it shall not be necessary to record such heads of the charge in cases where the charge has been delivered in English and taken down in shorthand."

68. Amendment of section 368, Act V of 1898.—Sub-section (2) of section 368 of the principal Act shall be omitted.

69. Amendment of section 371, Act V of 1898.—After sub-section (3) of section 371 of the principal Act, the following sub-section shall be inserted, namely:—

"(4) When the accused is sentenced to imprisonment, then, without prejudice to the provisions of sub-section (1) or sub-section (2), a copy of the finding and sentence shall, as soon as may be after the delivery of the judgment, be given to the accused free of cost".

70. Amendment of section 375, Act V of 1898.—In sub-section (2) of section 375 of the principal Act, the words "or assessors" shall be omitted.

71. Amendment of section 376, Act V of 1898.—In section 376 of the principal Act, the words "whether tried with the aid of assessors or by jury" shall be omitted.

72. Amendment of section 382, Act V of 1898.—In section 382 of the principal Act, for the word "transportation", the word "imprisonment" shall be substituted.

73. Amendment of section 383, Act V of 1898.—In section 383 of the principal Act, for the word "transportation", the words "imprisonment for life" shall be substituted.

74. Insertion of new section 387A in Act V of 1898.—After section 387 of the principal Act, the following section shall be inserted, namely:—

"387A. *Warrant for levy of fine issued by a Court in Jammu and Kashmir.*—Notwithstanding anything contained in this Code or in any other law for the time being in force, when an offender has been sentenced to pay a fine by a Criminal Court in the State of Jammu and Kashmir and the Court passing the sentence issues a warrant to the Collector of a District in the territories to which this Code extends authorising him to realise the amount by execution according to civil process against the movable or the

immovable property, or both, of the defaulter, such warrant shall be deemed to be a warrant issued under clause (*b*) of sub-section (*1*) of section 386 by a Court in the territories to which this Code extends and the provisions of sub-section (*3*) of the said section as to the execution of such warrant shall apply accordingly."

75. Amendment of section 393, Act V of 1898.—In section 393 of the principal Act, in clause (*b*), for the word "transportation", the words "imprisonment for life" shall be substituted.

76. Amendment of section 396, Act V of 1898.—In section 396 of the principal Act,—

(*a*) in sub-section (*1*),—

(*i*) after the words "of death", the words "imprisonment for life" shall be inserted;

(*ii*) the words "or transportation" shall be omitted;

(*b*) in sub-section (*3*), the words "or transportation, as the case may be" shall be omitted;

(*c*) in the *Explanation*, clause (*a*) shall be omitted.

77. Substitution of new section for section 397 in Act V of 1898.—For section 397 of the principal Act, the following section shall be substituted, namely:—

"397. *Sentence on offender already sentenced for another offence.*—(*1*) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence:

Provided that where a person who has been sentenced to imprisonment by an order under section 123 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

(*2*) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence."

78. Amendment of section 398, Act V of 1898.—In sub-section (*2*) of section 398 of the principal Act,—

(*a*) the words "or to a sentence of transportation" shall be omitted;

(*b*) the words "or transportation" shall be omitted.

79. Amendment of section 401, Act V of 1898.—To sub-section (*6*) of section 401 of the principal Act, the following proviso shall be added, namely:—

"Provided that in the case of any sentence (other than a sentence of fine or whipping) passed on a male person above the age

of eighteen years, no such petition by the person sentenced or by any other person on his behalf shall be entertained, unless the person sentenced is in jail, and—

(*a*) where such petition is made by the person sentenced, it is presented through the officer in charge of the jail; or

(*b*) where such petition is made by any other person, it contains a declaration that the person sentenced is in jail."

80. Amendment of section 402, Act V of 1898.—In sub-section (*1*) of section 402 of the principal Act, for the word "transportation", the words "imprisonment for life" shall be substituted.

81. Amendment of section 406, Act V of 1898.—In section 406 of the principal Act,—

(*a*) the first proviso shall be omitted;

(*b*) in the second proviso, the word "further" shall be omitted.

82. Omission of section 407 in Act V of 1898.—Section 407 of the principal Act shall be omitted.

83. Amendment of section 408, Act V of 1898.—In section 408 of the principal Act,—

(*a*) for the words "other Magistrate of the first class", the words "any other Magistrate" shall be substituted;

(*b*) for the words "by a Magistrate of the first class", the words "by any Magistrate" shall be substituted;

(*c*) in the proviso, in clause (*b*), the words "or any sentence of transportation" shall be omitted.

84. Substitution of new section for section 409 in Act V of 1898.—For section 409 of the principal Act, the following section shall be substituted, namely:—

"409. *Appeals to Courts of Session how heard.*—(*1*) Subject to the provisions of this section, an appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional Sessions Judge or an Assistant Sessions Judge:

Provided that no such appeal shall be heard by an Assistant Sessions Judge unless the appeal is of a person convicted on a trial held by any Magistrate of second or third class.

(*2*) An Additional Sessions Judge or an Assistant Sessions Judge shall hear only such appeals as the State Government may, by general or special order, direct or as the Sessions Judge of the division may make over to him."

85. Substitution of new section for section 417 in Act V of 1898.—For section 417 of the principal Act, the following section shall be substituted, namely:—

"417. *Appeal in case of acquittal.*—(*1*) Subject to the provisions of sub-section (*5*), the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (XXXV of 1946), the Central Government may also direct the Public Prosecutor to present an appeal to the High Court from the order of acquittal.

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

(4) No application under sub-section (3) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order of acquittal.

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

86. Amendment of section 423, Act V of 1898.—In section 423 of the principal Act, after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) Where an appeal from a conviction lies to the High Court, it may enhance the sentence, notwithstanding anything inconsistent therewith contained in clause (b) of sub-section (1):

Provided that the sentence shall not be so enhanced, unless the accused has had an opportunity of showing cause against such enhancement."

87. Amendment of section 426, Act V of 1898.—In section 426 of the principal Act,—

(a) in sub-section (2A), for the words "accused of a non-bailable offence", the words "convicted of a non-bailable offence" shall be substituted;

(b) in sub-section (3), for the word "transportation", the words "imprisonment for life" shall be substituted.

88. Amendment of section 428, Act V of 1898.—In sub-section (3) of section 428 of the principal Act, the words "or assessors" shall be omitted.

* * * * *

89. Amendment of section 465, Act V of 1898.—In sub-section (1) of section 465 of the principal Act, the words "with the aid of assessors" shall be omitted.

90. Insertion of new section 479A in Act V of 1898.—After section 479 of the principal Act, the following section shall be inserted, namely:—

"479A. *Procedure in certain cases of false evidence.*—(1) Notwithstanding anything contained in sections 476 to 479 inclusive, when any Civil, Revenue or Criminal Court is of opinion

that any person appearing before it as a witness has intentionally given false evidence in any stage of the judicial proceeding or has intentionally fabricated false evidence for the purpose of being used in any stage of the judicial proceedings, and that, for the eradication of the evils of perjury and fabrication of false evidence and in the interests of justice, it is expedient that such witness should be prosecuted for the offence which appears to have been committed by him, the Court shall, at the time of the delivery of the judgment or final order disposing of such proceeding, record a finding to that effect stating its reasons therefor and shall, without making any further inquiry, make a complaint thereof in writing signed by the presiding officer of the Court setting forth the evidence which, in the opinion of the Court, is false or fabricated and forward the same to a Magistrate of the first class having jurisdiction, and may, if the accused is present before the Court, take sufficient security for his appearance before such Magistrate and may bind over any person to appear and give evidence before such Magistrate:

Provided that where the Court making the complaint is a High Court, the complaint may be signed by such officer of the Court as the Court may appoint.

Explanation.—For the purposes of this sub-section, a Presidency Magistrate shall be deemed to be a Magistrate of the first class.

(*2*) Such Magistrate shall thereupon proceed according to law and as if upon complaint made under section 200.

(*3*) No appeal shall lie from any finding recorded and complaint made under sub-section (*1*).

(*4*) Where, in any case, a complaint has been made under sub-section (*1*) and an appeal has been preferred against the decision arrived at in the judicial proceeding out of which the matter has arisen, the hearing of the case before the Magistrate to whom the complaint was forwarded or to whom the case may have been transferred shall be adjourned until such appeal is decided; and the appellate Court, after giving the person against whom the complaint has been made an opportunity of being heard, may, if it so thinks fit, make an order directing the withdrawal of the complaint; and a copy of such order shall be sent to the Magistrate before whom the hearing of the case is pending.

(*5*) In any case where an appeal has been preferred from any decision of a Civil, Revenue or Criminal Court but no complaint has been made under sub-section (*1*), the power conferred on such Civil, Revenue or Criminal Court under the said subsection may be exercised by the appellate Court; and where the appellate Court makes such complaint, the provisions of sub-section (*1*) shall apply accordingly, but no such order shall be made, without giving the person affected thereby an opportunity of being heard.

(*6*) No proceedings shall be taken under sections 476 to 479 inclusive for the prosecution of a person for giving or fabricating false evidence, if in respect of such a person proceedings may be taken under this section.

91. Insertion of new section 485A, in Act V of 1898.—After section 485 of the principal Act, the following section shall be inserted, namely:—

* * * * * *

"485A. *Summary procedure for punishment for non-attendance by a witness in obedience to summons.*—(*1*) If any witness being summoned to appear before a Criminal Court is legally bound to appear at a certain place and time in obedience to the summons and without just excuse neglects or refuses to attend at that place or time or departs from the place where he has to attend before the time at which it is lawful for him to depart, and the Court before which the witness is to appear is satisfied that it is expedient in the interests of justice that such witness should be tried summarily, the Court may take cognizance of the offence and after giving the offender an opportunity of showing cause why he should not be punished under this section, sentence him * * * * * * to fine not exceeding one hundred rupees. * *

(*2*) In every such case * * * * the Court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials in which an appeal lies."

92. Amendment of section 486, Act V of 1898.—In sub-section (*1*) of section 486 of the principal Act, after the word and figures "section 485", the words, figures and letter "or section 485A" **shall be inserted.

93. Amendment of section 488, Act V of 1898.—In sub-section (*1*) of section 488 of the principal Act, for the words "one hundred rupees", the words "five hundred rupees" shall be substituted.

94. Amendment of section 497, Act V of 1898.—In section 497 of the principal Act,—

(*a*) in sub-section (*1*), for the word "transportation", the word "imprisonment" shall be substituted;

(b) after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*3A*) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs."

95. Amendment of section 498, Act V of 1898.—Section 498 of the principal Act shall be renumbered as sub-section (*1*) thereof and after sub-section (*1*) as so re-numbered, the following sub-section shall be inserted, namely:—

"(*2*) A High Court or Court of Session may cause any person who has been admitted to bail under sub-section (*1*) to be arrested and may commit him to custody."

96. Amendment of section 499, Act V of 1898.—In section 499 of the principal Act, after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(*3*) For the purpose of determining whether the sureties are sufficient, the Court may, if it so thinks fit, accept affidavits in proof of the facts contained therein relating to the sufficiency of the sureties or may make such further inquiry as it deems necessary."

97. Amendment of section 503, Act V of 1898.—In section 503 of the principal Act,—

(*a*) in sub-section (*1*), for the words "District Magistrate or Presidency Magistrate", the words "or any Magistrate" shall be substituted;

(*b*) to the said sub-section, the following proviso shall be added, namely:—

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

(*c*) sub-section (*2*) shall be omitted.

98. Amendment of section 505, Act V of 1898.—In sub-section (*1*) of section 505 of the principal Act, the words "of the first class" shall be omitted.

99. Amendment of section 510, Act V of 1898.—Section 510 of the principal Act shall be re-numbered as sub-section (*1*) thereof, and—

(*a*) in sub-section (*1*) as so re-numbered, after the words "Examiner to Government", the words "or the Chief Inspector of Explosives or the Director of Finger Print Bureau or an officer of the Mint" shall be inserted;

(*b*) after sub-section (*1*) as so re-numbered, the following sub-section shall be inserted, namely:—

"(*2*) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any such person as to the subject-matter of his report."

100. Insertion of new section 510A in Act V of 1898.—After section 510 of the principal Act, the following section shall be inserted, namely:—

"510A. *Evidence on affidavits.*—(*1*) The evidence of any person whose evidence is of a formal character may be given by affidavit and may, subject to all just exceptions, be read in evidence in any inquiry, trial or other proceeding under this Code.

(*2*) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any such person as to the facts contained in his affidavit."

101. Amendment of section 512, Act V of 1898.—In sub-section (*2*) of section 512 of the principal Act, for the word "transportation", the words "imprisonment for life" shall be substituted.

102. Amendment of section 516A, Act V of 1898.—In section 516A of the principal Act, after the words "speedy or natural decay", the words "or if it is otherwise expedient so to do, the Court" shall be inserted.

103. Amendment of section 526, Act V of 1898.—After sub-section (*1*) of section 526 of the principal Act, the following sub-section shall be inserted, namely:—

"(*1A*) Notwithstanding anything contained in sub-section (*1*), no application shall lie to the High Court for the exercise of its powers under the said sub-section for transferring any case from one Criminal Court to another Criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him."

104. Amendment of section 528, Act V of 1898.—In section 528 of the principal Act,—

(*a*) in sub-section (*1*), for the words "any case" wherever they occur, the words "any case or appeal" shall be substituted;

(*b*) in sub-section (*1B*), for the words, brackets, figures and letter "recalls a case under sub-section (*1*) or recalls a case or appeal under sub-section (*1A*)", the words, brackets, figures and letter "recalls a case or appeal under sub-section (*1*) or sub-section (*1A*)" shall be substituted;

(*c*) after sub-section (*1B*), the following sub-section shall be inserted, namely:—

"(*1C*) Any Sessions Judge, on an application made to him in this behalf, may, if he is of opinion that it is expedient for the ends of justice, order that any particular case be transferred from one Criminal Court to another Criminal Court in the same sessions division".

105. Substitution of new section for section 536 in Act V of 1898.—For section 536 of the principal Act, the following section shall be substituted, namely:—

"536. *Trial without jury of offences triable by jury.*—If an offence triable by a jury is tried without a jury, the trial shall not on that ground only be invalid, unless the objection is taken before the Court proceeds to record evidence in the case".

106. Amendment of section 537, Act V of 1898.—In section 537 of the principal Act,—

(*i*) in clause (*a*), the word "charge" shall be omitted;

(*ii*) after clause (*a*), the following clause shall be inserted, namely:—

"(*b*) of any error, omission or irregularity in the charge, including any misjoinder of charges, or";

(*iii*) in clause (*c*), the words "or assessors" shall be omitted.

107. Substitution of new sections for section 539A in Act V of 1898.—For section 539A of the principal Act, the following sections shall be substituted, namely:—

539A "~~593A~~. *Affidavit in proof of conduct of public servant.*—(1) When any application is made to any Court in the course of any inquiry, trial or other proceeding under this Code, and allegations are made therein respecting any public servant, the applicant may give evidence of the facts alleged in the application by affidavit, and the Court may, if it thinks fit, order that evidence relating to such facts be so given.

(2) Affidavits under this section shall be confined to, and shall state separately, such facts as the deponent is able to prove from his own knowledge and such facts as he has reasonable ground to believe to be true, and in the latter case, the deponent shall clearly state the grounds of such belief.

539AA. *Authorities before whom affidavits may be sworn.*—(1) An affidavit to be used before any Court other than a High Court under section 510A or section 539A may be sworn or affirmed in the manner prescribed in section 539 or before any Magistrate.

(2) The Court may order any scandalous and irrelevant matter in the affidavit to be struck out or amended".

108. Amendment of section 539B, Act V of 1898.—In sub-section (2) of section 539B of the principal Act, in the proviso,—

(*i*) the words "or with the aid of assessors" shall be omitted;

(*ii*) the words "or assessors" shall be omitted.

109. Amendment of section 540A, Act V of 1898.—For sub-section (1) of section 540A of the principal Act, the following sub-section shall be substituted, namely:—

"(1) At any stage of an inquiry or trial under this Code, if the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before the Court is not necessary in the interests of justice, the Judge or Magistrate may, if the accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused."

110. Amendment of section 545, Act V of 1898.—In sub-section (1) of section 545 of the principal Act,—

(*i*) for the words "a sentence of which fine forms a part", the words and brackets "a sentence (including a sentence of death) of which fine forms a part" shall be substituted;

(*ii*) after clause (*b*), the following clause shall be substituted, namely:—

"(*bb*) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying com-

pensation to the persons who are, under the Fatal Accidents Act, 1855 (XIII of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death."

111. Insertion of new section 555A in Act V of 1898.—After section 555 of the principal Act, the following section shall be inserted, namely:—

"555A. *Power of High Court to make rules in respect of petition writers.*—(*1*) Every High Court may, from time to time, and with the previous sanction of the State Government, make rules—

(*a*) as to the persons who may be permitted to act as petition writers in the Criminal Courts subordinate to it;

(*b*) regulating the issue of licence to such persons, the conduct of business by them, and the scale of fees to be charged by them; and

(*c*) providing a penalty for a contravention of any of the rules so made and determining the authority by which such contravention may be investigated and the penalties imposed:

Provided that the rules made under this section shall not be inconsistent with this Code or any other law in force for the time being.

(*2*) All rules made under this section shall be published in the Official Gazette."

112. Amendment of section 562, Act V of 1898.—In sub-section (*1*) of section 562 of the principal Act, for the words "transportation for life", the words "imprisonment for life" shall be substituted.

113. Amendment of section 565, Act V of 1898.—In sub-section (*1*) of section 565 of the principal Act, the words "transportation or" shall be omitted.

114. Amendment of Schedule II to Act V of 1898.—In Schedule II to the principal Act,—

(*a*) for the entries relating to section 500, section 501 and section 502, the following entries shall be substituted, namely:—

1	2	3	4	5	6	7	8
"500	(*a*) Defamation against the President or the Vice-President or the Governor or Rajpramukh of a State or a Minister or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions.	Shall not arrest without warrant.	Warrant	Bailable.	Compoundable with the permission of the Court before which the prosecution is pending.	Simple imprisonment for two years or fine or both.	Court of Session.
	(*b*) Defamation in any other case.	Ditto.	Ditto.	Ditto.	Compoundable.	Ditto.	Court of Session, Presidency Magistrate or Magistrate of the first class.
501	(*a*) Printing or engraving matter knowing it to be defamatory against the President or the Vice-President or the Governor or Rajpramukh of a State or a Minister or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions.	Ditto.	Ditto.	Ditto.	Compoundable with the permission of the Court before which the prosecution is pending.	Ditto.	Court of Session.

1	2	3	4	5	6	7	8
	(*b*) Printing or engraving matter knowing it to be defamatory, in any other case.	Shall not arrest without warrant.	Warrant	Bailable.	Compoundable.	Simple imprisonment for two years or fine or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
502	(*a*) Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter against the President or the Vice-President or the Governor or Rajpramukh of a State or a Minister or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions.	Ditto.	Ditto.	Ditto.	Compoundable with the permission of the Court before which the prosecution is pending.	Ditto.	Court of Session.
	(*b*) Sale of printed or engraved substance containing defamatory matter knowing it to contain such matter, in any other case.	Ditto.	Ditto.	Ditto.	Compoundable.	Ditto.	Court of Session, Presidency Magistrate or Magistrate of the first class."

(*b*) in the entries relating to sections 161, 162, 163, 164 and 165, in the 3rd column, for the words "Shall not arrest without warrant" wherever they occur, the words "May arrest without warrant" shall be substituted;

(*c*) in the entries relating to sections 344, 379, 381, 406, 407, 408, 421, 422, 423, 424, 428 and 429, in the 6th column, for the words "Not compoundable" wherever they occur, the words "Compoundable when permission is given by the Court before which the prosecution is pending" shall be substituted;

(*d*) in the 2nd column and 7th column,—

(*i*) for the words, "transportation for life" wherever they occur, the words "imprisonment for life" shall be substituted;

(*ii*) any reference to transportation for any term or to transportation for any shorter term shall be omitted.

(*iii*) for the word "transportation" wherever it occures, if it means transportation for life, the words "imprisonment for life" shall be substituted; and the word "transportation" wherever it occurs, if it means transportation for any shorter term shall be omitted.

115. Amendment of Schedule V to Act V of 1898.—In Schedule V to the principal Act,—

(*a*) in Form XXXII, the words "and Assessors", wherever they occur shall be omitted;

(*b*) in Form XXXIII, the words "Assessors or" and the words "and Assessor" shall be omitted;

(*c*) in Form XXXVI,—

(*i*) for the words "transportation for life", the words "imprisonment for life" shall be substituted;

(*ii*) for the word "transportation", the words "imprisonment for life" shall be substituted.

116. Amendment of Act XLV of 1860, Act X of 1873 and Act IX of 1908.—The Indian Penal Code (Act XLV of 1860), the Indian Oaths Act, 1873 (X of 1873) and the Indian Limitation Act, 1908 (IX of 1908) shall be amended in the manner specified in the Schedule.

"THE SCHEDULE

(*See* section 116)

A. AMENDMENTS TO THE INDIAN PENAL CODE (ACT XLV OF 1860)

1. In section 53, for the words "Secondly,—Transportation" the words "Secondly,—Imprisonment for life" shall be substituted.

2. After section 53, the following section shall be inserted, namely:—

"53A. *Construction of references to transportation.*—(*1*) Subject to the provisions of sub-section (*2*) and sub-section (*3*), any reference to "transportation for life" in any other law for the

time being in force or in any instrument or order having effect by virtue of any such law or of any enactment repealed shall be construed as a reference to "imprisonment for life".

(2) In every case in which a sentence of transportation for a term has been passed before the commencement of the Criminal Procedure Code (Amendment) Act, 1954, the offender shall be dealt with in the same manner as if sentenced to rigorous imprisonment for the same term.

(3) Any reference to transportation for a term or to transportation for any shorter term (by whatever name called) in any other law for the time being in force shall be deemed to have been omitted.

(4) Any reference to "transportation" in any other law for the time being in force shall,—

(a) if the expression means transportation for life, be construed as a reference to imprisonment for life;

(b) if the expression means transportation for any shorter term, be deemed to have been omitted."

3. In section 55 and section 57, for the word "transportation" wherever it occurs, the word "imprisonment" shall be substituted.

4. Section 58 and section 59 shall be omitted.

5. In section 75, section 115, section 118 and section 119 for the words "transportation for life" wherever they occur, the words "imprisonment for life", shall be substituted.

6. In sub-section (1) of section 120B, for the word "transportation", the words "imprisonment for life" shall be substituted.

7. In section 121, for the words "transportation for life", the words "imprisonment for life" shall be substituted.

8. In section 121A, for the words "transportation for life or any shorter term", the words "imprisonment for life" shall be substituted.

9. In section 122, for the words "transportation for life", the words "imprisonment for life" shall be substituted.

10. In section 124A, for the words "transportation for life or any shorter term", the words "imprisonment for life" shall be substituted.

11. In section 125, section 128, section 130, section 131, section 132, section 194, for the words "transportation for life", the words "imprisonment for life" shall be substituted.

12. In section 195, for the words "transportation for life" and "such transportation" wherever they occur, the words "imprisonment for life" shall be substituted.

* * * * *

13. In section 201, section 211, section 212,section 213, section 214, section 216 and section 221 for the words "transportation for life" wherever they occur, the words "imprisonment for life" shall be substituted.

14. In section 222 and section 225,—

(*i*) for the words "transportation for life" wherever they occur, the words "imprisonment for life" shall be substituted;

(*ii*) the word "transportation" shall be omitted.

15. Section 226 shall be omitted.

16. In section 232, section 238, section 255, section 302, section 303, section 304, section 305, section 307, section 311, section 313, section 314, section 326, section 329, section 364, section 371, section 376, section 377, section 388, section 389, section 394, section 395, section 396, section 400, section 409, section 412, section 413, section 436, section 438, section 449, section 450, section 459, section 460, section 467, section 472, section 474, section 475, section 477, section 489A, section 489B and section 489D, for the words "transportation for life" wherever they occur, the words "imprisonment for life" shall be substituted.

17. In section 506, for the word "transportation", the words "imprisonment for life" shall be substituted.

18. In section 511,—

(*i*) for the word "transportation" where it occurs for the first time, the words "imprisonment for life" shall be substituted;

(*ii*) for the words "transportation or imprisonment of any description provided for the offence, for a term of transportation or imprisonment which may extend to one-half of the longest term provided for that offence", the following words shall be substituted:—

"imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence".

B. AMENDMENT TO THE INDIAN OATHS ACT, 1873 (X OF 1873)

In section 5, after the words "oath or affirmation to the accused person", the words "unless he is examined as a witness for the defence" shall be inserted.

C. AMENDMENT TO THE INDIAN LIMITATION ACT, 1908 (IX OF 1908)

In the Third Division of the First Schedule, in article 157, for the entry in the second column, the entry "three months" shall be substituted.

APPENDIX I

MINUTES OF MEETINGS OF THE JOINT COMMITTEE ON THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL, 1954

I

First Meeting

The First Meeting of the Joint Committee on the Code of Criminal Procedure (Amendment) Bill, 1954, was held on Monday, the 12th July, 1954, at 4 P.M. in Committee Room No. 63, Parliament House, New Delhi.

2. The following were present:

MEMBERS

Lok Sabha

1. Shri Narahar Vishnu Gadgil—*Chairman.*
2. Shri Ganesh Sadashiv Altekar.
3. Shri Lokenath Mishra.
4. Shri Radha Charan Sharma.
5. Shri Shankargauda Veeranagauda Patil.
6. Shri Tek Chand.
7. Shri Nemi Chandra Kasliwal.
8. Shri K. Periaswami Gounder.
9. Shri C. R. Basappa.
10. Shri Jhulan Sinha.
11. Shri Ahmed Mohiuddin.
12. Shri Kailash Pati Sinha.
13. Shri C. P. Matthen.
14. Shri Satyendra Narayan Sinha.
15. Shri Basanta Kumar Das.
16. Shri Rohini Kumar Chaudhuri.
17. Shri Raghubir Sahai.
18. Shri Raghunath Singh.
19. Shri Ganpati Ram.
20. Shri Syed Ahmed.
21. Shri Radha Raman.
22. Shri K. M. Vallatharas.
23. Shri Sadhan Chandra Gupta.
24. Shri Shankar Shantaram More.
25. Sardar Hukam Singh.

26. Shri Bhawani Singh.
27. Dr. Lanka Sundaram.
28. Shri Rayasam Seshagiri Rao.
29. Shri N. R. M. Swamy.
30. Dr. Kailas Nath Katju.

Council of States

31. Shri T. S. Pattabiraman.
32. Shri Barkat Ullah Khan.
33. Shri Sumat Prasad.
34. Shri J. S. Bisht.
35. Diwan Chaman Lall.
36. Shri P. T. Leuva.
37. Shri K. B. Lall.
38. Shri P. Sundarayya.
39. Shri M. Roufique.

Shri B. N. Datar, *Deputy Minister for Home Affairs,* was also present.

Shri A. V. Pai—*Secretary, Ministry of Home Affairs.*

Shri R. S. Sarkar—*Additional Draftsman, Ministry of Law.*

Shri N. N. Mallya—*Deputy Secretary, Ministry of Home Affairs.*

SECRETARIAT

Shri A. L. Rai—*Under Secretary.*

3. The Committee considered the question of taking evidence of associations and bodies on the provisions of the Bill and decided that in the course of their examination of the Bill, as and when they came across any specific point on which it was considered desirable to take evidence, associations etc., would be invited to appear before the Committee. The Committee were against taking evidence on the principles and provisions of the Bill as a whole since the Government had given it the widest possible publicity and obtained opinion upon it from all sections of the public.

4. The Committee then decided to take up clause by clause consideration of the Bill from their next meeting. The Minister for Home Affairs promised to supply each Member of the Committee with a copy of the Code of Criminal Procedure, 1898, for his use in connection with the work of the Joint Committee.

5. The Committee adjourned at 5 P.M. to meet again at 4 P.M. on the 13th July, 1954.

II

Second Meeting

The Second Meeting of the Joint Committee on the Code of Criminal Procedure (Amendment) Bill, 1954, was held on Tuesday, the 13th July, 1954, at 4 P.M. in Committee Room No. 63, Parliament House, New Delhi.

2. The following were present:

MEMBERS

Lok Sabha

1. Shri Narahar Vishnu Gadgil—*Chairman.*
2. Shri Lokenath Mishra.
3. Shri Radha Charan Sharma.
4. Shri Shankargauda Veeranagauda Patil.
5. Shri Tek Chand.
6. Shri Nemi Chandra Kasliwal.
7. Shri K. Periaswami Gounder.
8. Shri C. R. Basappa.
9. Shri Jhulan Sinha.
10. Shri Ahmed Mohiuddin.
11. Shri Kailash Pati Sinha.
12. Shri C. P. Matthen.
13. Shri Satyendra Narayan Sinha.
14. Shri Basanta Kumar Das.
15. Shri Rohini Kumar Chaudhuri.
16. Shri Raghubir Sahai.
17. Shri Raghunath Singh.
18. Shri Ganpati Ram.
19. Shri Syed Ahmed.
20. Shri Radha Raman.
21. Shri C. Madhao Reddi.
22. Shri K. M. Vallatharas.
23. Shri Sadhan Chandra Gupta.
24. Shri Shankar Shantaram More.
25. Sardar Hukam Singh.
26. Shri Bhawani Singh.
27. Dr. Lanka Sundaram.
28. Shri N. R. M. Swamy.
29. Dr. Kailas Nath Katju.

26. Shri Bhawani Singh.
27. Dr. Lanka Sundaram.
28. Shri Rayasam Seshagiri Rao.
29. Shri N. R. M. Swamy.
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34. Shri J. S. Bisht.
35. Diwan Chaman Lall.
36. Shri P. T. Leuva.
37. Shri K. B. Lall.
38. Shri P. Sundarayya.
39. Shri M. Roufique.

Shri B. N. Datar, *Deputy Minister for Home Affairs,* was also present.

Shri A. V. Pai—*Secretary, Ministry of Home Affairs.*

Shri R. S. Sarkar—*Additional Draftsman, Ministry of Law.*

Shri N. N. Mallya—*Deputy Secretary, Ministry of Home Affairs.*

SECRETARIAT

Shri A. L. Rai—*Under Secretary.*

3. The Committee considered the question of taking evidence of associations and bodies on the provisions of the Bill and decided that in the course of their examination of the Bill, as and when they came across any specific point on which it was considered desirable to take evidence, associations etc., would be invited to appear before the Committee. The Committee were against taking evidence on the principles and provisions of the Bill as a whole since the Government had given it the widest possible publicity and obtained opinion upon it from all sections of the public.

4. The Committee then decided to take up clause by clause consideration of the Bill from their next meeting. The Minister for Home Affairs promised to supply each Member of the Committee with a copy of the Code of Criminal Procedure, 1898, for his use in connection with the work of the Joint Committee.

5. The Committee adjourned at 5 P.M. to meet again at 4 P.M. on the 13th July, 1954.

30. Shri K. Madhava Menon.
31. Shri T. S. Pattabiraman.
32. Shri Biswanath Das.
33. Shri Sumat Prasad.
34. Shri J. S. Bisht.
35. Shri Gopikrishna Vijaivargiya.
36. Diwan Chaman Lall.
37. Shri P. T. Leuva.
38. Shri K. B. Lall.
39. Shri Bhaskara Rao.
40. Shri P. Sundarayya.
41. Shri M. Roufique.

Shri B. N. Datar, *Deputy Minister for Home Affairs*, was also present.

Shri R. S. Sarkar—*Additional Draftsman, Ministry of Law.*

Shri N. N. Mallya—*Deputy Secretary, Ministry of Home Affairs.*

SECRETARIAT

Shri A. L. Rai—*Under Secretary.*

3. The Committee took up consideration of the Bill clause by clause.

4. *Clause 2.*—Some members were of the opinion that trivial and serious offences should be defined in the Bill and the term of imprisonment awarded for such offences should not be treated as a criterion for classifying them as a summons or a warrant case. Others were of the view that by enacting this clause civil liberties will be jeopardised as in summary trials all the evidence is not recorded.

The Minister for Home Affairs stated that the procedure prescribed for the summons trials will be extended to 27 more offences under the I.P.C. for which punishment for one year or less could be awarded. The trial was a simple and speedy one. If it was proposed to make any amendment in the procedure of a summons case it could be done by amending the relevant section.

The clause was put to the vote and was adopted without any amendment.

5. *Clause 3.*—Opinions were expressed to the effect that competent legal assistance might not be available to an accused in an out of the way place. It would also involve financial strain on him Wherever there was only one Sessions Judge his absence on tour would mean delay in disposal of pending cases and work hardship on the accused. Moreover, for reasons of security the trial might be held at the headquarters.

The Minister for Home Affairs stated that it was an enabling amendment and there was no finality about it. It is left to the discretion of the Sessions Judge to change the venue according to the

II

Second Meeting

The Second Meeting of the Joint Committee on the Code of Criminal Procedure (Amendment) Bill, 1954, was held on Tuesday, the 13th July, 1954, at 4 P.M. in Committee Room No. 63, Parliament House, New Delhi.

2. The following were present:

MEMBERS

Lok Sabha

1. Shri Narahar Vishnu Gadgil—*Chairman.*
2. Shri Lokenath Mishra.
3. Shri Radha Charan Sharma.
4. Shri Shankargauda Veeranagauda Patil.
5. Shri Tek Chand.
6. Shri Nemi Chandra Kasliwal.
7. Shri K. Periaswami Gounder.
8. Shri C. R. Basappa.
9. Shri Jhulan Sinha.
10. Shri Ahmed Mohiuddin.
11. Shri Kailash Pati Sinha.
12. Shri C. P. Matthen.
13. Shri Satyendra Narayan Sinha.
14. Shri Basanta Kumar Das.
15. Shri Rohini Kumar Chaudhuri.
16. Shri Raghubir Sahai.
17. Shri Raghunath Singh.
18. Shri Ganpati Ram.
19. Shri Syed Ahmed.
20. Shri Radha Raman.
21. Shri C. Madhao Reddi.
22. Shri K. M. Vallatharas.
23. Shri Sadhan Chandra Gupta.
24. Shri Shankar Shantaram More.
25. Sardar Hukam Singh.
26. Shri Bhawani Singh.
27. Dr. Lanka Sundaram.
28. Shri N. R. M. Swamy.
29. Dr. Kailas Nath Katju.

general convenience of parties and witnesses and for the purpose of a fair trial.

The principle underlying the clause was put to the vote and was adopted.

The Committee postponed further consideration of the clauses to the next meeting.

6. The Committee adjourned at 6 P.M. to meet again at 3 P.M. on Wednesday, the 14th July, 1954.

Third Meeting

The Third Meeting of the Joint Committee on the Code of Criminal Procedure (Amendment) Bill, 1954, was held on Wednesday, the 14th July, 1954, at 3 P.M. in Committee Room No. 63, Parliament House, New Delhi.

2. The following were present:

MEMBERS

Lok Sabha

1. Shri Narahar Vishnu Gadgil—*Chairman.*
2. Shri Lokenath Mishra.
3. Shri Radha Charan Sharma.
4. Shri Shankargauda Veeranagauda Patil.
5. Shri Tek Chand.
6. Shri Nemi Chandra Kasliwal.
7. Shri K. Periaswami Gounder.
8. Shri C. R. Basappa.
9. Shri Jhulan Sinha.
10. Shri Ahmed Mohiuddin.
11. Shri Kailash Pati Sinha.
12. Shri C. P. Matthen.
13. Shri Satyendra Narayan Sinha.
14. Shri Basanta Kumar Das.
15. Shri Rohini Kumar Chaudhuri.
16. Shri Raghubir Sahai.
17. Shri Raghunath Singh.
18. Shri Ganpati Ram.
19. Shri Syed Ahmed.
20. Shri Radha Raman.
21. Shri C. Madhao Reddi.
22. Shri K. M. Vallatharas.
23. Shri Sadhan Chandra Gupta.
24. Shri Shankar Shantaram More.
25. Sardar Hukam Singh.
26. Dr. Lanka Sundaram.
27. Shri Rayasam Seshagiri Rao.
28. Shri N. R. M. Swamy.
29. Dr. Kailas Nath Katju.

30. Shri K. Madhava Menon.
31. Shri T. S. Pattabiraman.
32. Shri Biswanath Das.
33. Shri J. S. Bisht.
34. Shri Gopikrishna Vijaivargiya.
35. Diwan Chaman Lall.
36. Shri P. T. Leuva.
37. Shri K. B. Lall.
38. Shri Bhaskara Rao.
39. Shri P. Sundarayya.
40. Shri M. Roufique.

Shri B. N. Datar, *Deputy Minister for Home Affairs,* was also present.

Shri R. S. Sarkar—*Additional Draftsman, Ministry of Law.*

Shri N. N. Mallya—*Deputy Secretary, Ministry of Home Affairs.*

SECRETARIAT

Shri A. L. Rai—*Under Secretary.*

3. *Clause 3.*—The following revised clause 3 was placed before the Committee:

"Amendment of section 9, Act V of 1898.—For sub-section (2) of section 9 of the principal Act, the following sub-section shall be substituted, namely:—

'(2) The State Government may, by general or special order in the Official Gazette, direct at what place or places the Court of Session shall ordinarily hold its sitting; but if, in any particular case, the Court of Session is of opinion that it will tend to the general convenience of the parties and witnesses to hold its sitting at any other place in the sessions division, it may, with the consent of the prosecution and the accused, sit for the disposal of that case or examination of any witness or witnesses therein at that place.'"

The following points were raised by the members during the discussions:—

(i) It would not be possible to obtain the consent of the prosecution as well as of the accused to holding a trial outside the headquarters.

(ii) Parties have no *locus standi.* It should be within the sole discretion of the Sessions Judge.

(iii) Consent of the prosecution was not necessary.

(iv) It should be done at the instance of the accused.

The Minister for Home Affairs explained that the clause had been revised according to the general opinion expressed at the last meeting of the Committee. The consent of the prosecution was also necessary as they had to arrange for the custody of the accused and procurement of witnesses.

The proposition that the consent of the accused may only be obtained for changing the venue of the court was put to vote and was lost by a majority. The proposal that the consent of the prosecution as well as the accused ought to be obtained was put to the vote and was carried by a large majority. The revised clause moved by the Government was adopted without alteration.

4. *Clause 4.*—The following suggestions were made:—

(1) Qualifications for Honorary Magistrates ought to be provided in the Code.

(2) They may be left to the High Courts.

(3) They may be prescribed by the Central Government.

(4) Appointment be made by the State Government in consultation with the High Court.

(5) Minimum qualifications may be laid down.

(6) Legal qualifications were essential.

(7) The system may be abolished.

It was explained by the Minister for Home Affairs that it was a permissible provision which could be taken advantage of by the States at their discretion. The choice and qualification of a Magistrate may be left to the State Governments who were conversant with the local conditions and were answerable to the State Legislatures. Correct appreciation of evidence did not require legal qualifications.

The proposition whether the institution of Honorary Magistrates be retained or not was put to vote and accepted by a majority.

The question that the qualifications be laid by statute was also put to vote and lost. The suggestion that the rules regarding qualifications be prescribed by High Court was also put to vote and lost. The question that rules for qualification of Honorary Magistrates be prescribed by the State Government in consultation with the High Court was put to vote and was accepted.

The Draftsman was directed to amend the clause accordingly.

5. *Clause 5.*—Discussion on this clause was held over.

6. *Clause 6.*—The following suggestions were made:—

(1) Reasons for extension of Section 30 to the whole of India are not stated.

(2) The extension of this section will deprive the accused of a right of trial by jury where it exists today.

(3) It was evolved as a measure of suppression.

(4) Persons with a very short service are promoted as District Magistrates at present, and a qualification ought to be laid down, which should be satisfied before they are invested with this power.

(5) Whether it was *ultra vires* of the Constitution in view of Supreme Court Judgment *State of West Bengal* v. *Anwar Ali Sarkar* (1952 S.C.R. 284).

(6) The provision regarding length of service of a Magistrate before such investure in Part C States may be reduced from 10 to 7 years.

7. The discussion had not concluded when the Committee adjourned at 6 P.M. to meet again on Thursday, the 15th July, 1954, at 3 P.M.

IV

Fourth Meeting

The Fourth Meeting of the Joint Committee on the Code of Criminal Procedure (Amendment) Bill, 1954, was held on Thursday, the 15th July, 1954, at 3 P.M. in Committee Room No. 63, Parliament House.

2. The following were present:

MEMBERS

Lok Sabha

1. Shri Narahar Vishnu Gadgil—*Chairman*
2. Shri Ganesh Sadashiv Altekar
3. Shri Lokenath Mishra
4. Shri Shankargauda Veeranagauda Patil
5. Shri Tek Chand
6. Shri Nemi Chandra Kasliwal
7. Shri K. Periaswami Gounder
8. Shri C. R. Basappa
9. Shri Jhulan Sinha
10. Shri Ahmed Mohiuddin
11. Shri Kailash Pati Sinha
12. Shri C. P. Matthen
13. Shri Satyendra Narayan Sinha
14. Shri Resham Lal Jangde
15. Shri Basanta Kumar Das
16. Shri Rohini Kumar Chaudhuri
17. Shri Raghubir Sahai
18. Shri Raghunath Singh
19. Shri Ganpati Ram
20. Shri Syed Ahmed
21. Shri Radha Raman
22. Shri K. M. Vallatharas
23. Shri Sadhan Chandra Gupta
24. Shri Shankar Shantaram More
25. Sardar Hukam Singh
26. Dr. Lanka Sundaram
27. Shri N. R. M. Swamy
28. Dr. Kailas Nath Katju.

Council of States

29. Shri K. Madhava Menon
30. Shri T. S. Pattabiraman

31. Shri Biswanath Das
32. Shri Sumat Prasad
33. Shri J. S. Bisht
34. Shri Gopikrishna Vijaivargiya
35. Diwan Chaman Lall
36. Shri P. T. Leuva
37. Shri K. B. Lall
38. Shri Bhaskara Rao
39. Shri P. Sundarayya
40. Shri M. Roufique.

Shri B. N. Datar, *Deputy Minister for Home Affairs,* was also present.

Shri R. S. Sarkar—*Additional Draftsman, Ministry of Law.*

Shri N. N. Mallya—*Deputy Secretary, Ministry of Home Affairs.*

SECRETARIAT

Shri A. L. Rai—*Under Secretary.*

3. The Committee resumed clause by clause consideration of the Bill.

4. *Clause* 6.—The following further suggestions were made:

(1) The presiding officer ought to be of the status of an Additional Sessions Judge.

(2) The Magistrate ought to be invested with powers after consultation with the High Court.

(3) The punitive powers may be enhanced from seven years to ten years or more so that they may be able to award a suitable punishment during trial in case an offence is found to be of a more serious nature.

The Minister for Home Affairs explained to the Committee that this procedure had been found to be working satisfactorily in some parts of India and it was intended to extend it to the whole of India for the purposes of uniformity and quicker dispensation of justice.

The proposal that the Magistrates should be invested with the powers under this section in consultation with the High Court was put to the vote and accepted by a majority.

The suggestion that the District Magistrate, Presidency Magistrate and a Magistrate of the First Class ought to have been a Magistrate of the First Class for not less than ten years before conferring such powers was also put to the vote and accepted by a majority.

The Draftsman was asked to amend the clause accordingly.

5. *Clause* 7.—The following points were made:

(1) An Assistant Sessions Judge who has worked on the civil side during his service cannot cope with new powers on the criminal side.

(2) In fact an Assistant Sessions Judge's powers ought to be curtailed rather than enhanced.

(3) An Assistant Sessions Judge ought to have at least five years experience on criminal side before he is empowered to try criminal cases.

The Minister for Home Affairs explained that the enhancement of the power of Assistant Sessions Judges will relieve the congestion of work pending with the Sessions Judges and result in speedy trials.

The clause was adopted without an amendment after being put to vote.

6. *Clause* 8.—The following points were brought out during the discussions:

(1) There was no ground for increasing the powers of inexperienced magistrates.

(2) Solitary confinement ought to be abolished.

(3) Whipping should be done away with.

(4) There should be an attempt at the reformation of the accused rather than mere punishment.

(5) Whipping may be confined to offences like bribery, blackmarketing etc.

The Deputy Minister for Home Affairs explained that the question of abolition of whipping as a punishment had been taken up with the States, as there were about 25 to 30 provincial Acts which prescribed it. It was, however, resorted to very rarely. The Government will take a decision after consulting all the State Governments.

As regards solitary confinement it was stated that a Bill amending the Indian Penal Code will be placed soon before the House. That would be the proper time for dealing with this punishment.

As regards fines, it was pointed out that the value of money having fallen the amounts of the fines had to be correspondingly increased and several State laws provided for heavier fines.

The Committee being strongly of the view that the punishments of whipping and solitary confinement ought to be abolished desired it to be recorded that this decision is to be recommended in the Report.

The clause was put to the vote and adopted without an amendment.

7. *Clauses* 9, 10, 11 *and* 12.—These clauses were adopted without any amendment.

8. *Clause* 13.—It was suggested that there was no justification for shifting the duty of allowing free ingress to any police officer so far cast on the owner to any other person residing in the place.

The clause was adopted without an amendment.

9. *Clause* 14.—This clause was adopted without an amendment.

10. *Clause* 15.—The discussion on this clause had not concluded when the Committee adjourned at 6 P.M. to meet again on Friday the 16th July, 1954, at 9 A.M.

V

Fifth Meeting

The Fifth Meeting of the Joint Committee on the Code of Criminal Procedure (Amendment) Bill, 1954, was held on Friday, the 16th July, 1954, at 9 A.M. in Committee Room No. 63, Parliament House, New Delhi.

2. The following were present:

MEMBERS

Lok Sabha

1. Shri Narahar Vishnu Gadgil—*Chairman.*
2. Shri Ganesh Sadashiv Altekar.
3. Shri Lokenath Mishra.
4. Shri Radha Charan Sharma.
5. Shri Shankargauda Veeranagauda Patil.
6. Shri Tek Chand.
7. Shri Nemi Chandra Kasliwal.
8. Shri K. Periaswami Gounder.
9. Shri C. R. Basappa.
10. Shri Jhulan Sinha.
11. Shri Ahmed Mohiuddin.
12. Shri Kailash Pati Sinha.
13. Shri C. P. Matthen.
14. Shri Satyendra Narayan Sinha.
15. Shri Resham Lal Jangde.
16. Shri Basanta Kumar Das.
17. Shri Rohini Kumar Chaudhuri.
18. Shri Raghubir Sahai.
19. Shri Raghunath Singh.
20. Shri Ganpati Ram.
21. Shri Syed Ahmed.
22. Shri Radha Raman.
23. Shri C. Madhao Reddi.
24. Shri K. M. Vallatharas.
25. Shri Sadhan Chandra Gupta.
26. Shri Shankar Shantaram More.
27. Sardar Hukam Singh.
28. Shri Bhawani Singh.
29. Dr. Lanka Sundaram.

30. Shri Rayasam Seshagiri Rao.
31. Shri N. R. M. Swamy.
32. Dr. Kailas Nath Katju.

Council of States

33. Shri K. Madhava Menon.
34. Shri T. S. Pattabiraman.
35. Shri Barkat Ullah Khan.
36. Shri Biswanath Das.
37. Shri J. S. Bisht.
38. Shri Gopikrishna Vijaivargiya.
39. Shri P. T. Leuva.
40. Shri K. B. Lall.
41. Shri Bhaskara Rao.
42. Shri P. Sundarayya.
43. Shri M. Roufique.

Shri B. N. Datar, *Deputy Minister for Home Affairs,* was also present.

Shri R. S. Sarkar—*Additional Draftsman, Ministry of Law.*

Shri N. N. Mallya—*Deputy Secretary, Ministry of Home Affairs.*

SECRETARIAT

Shri A. L. Rai—*Under Secretary.*

3. *Clause 15.*—The Committee resumed consideration of clause 15. The following suggestions were made:

(i) Powers of the Sub-divisional Magistrates and Magistrates of the First-Class are being extended beyond the local limits of their jurisdiction.

(ii) It may lead to harassment of persons who may be enforced to appear before a Magistrate at a distant place from their homes.

(iii) Civil liberties may be jeopardized and provision may be abused for harassing political opponents. This provision intends to set the clock 70 years back.

(iv) Casual visit to a place may bring a person within the purview of this clause.

(v) In Sections 108, 109 and 110 which deal with graver offences, the words "within the local limits of his jurisdiction" are being retained while in a minor offence the jurisdiction of a Magistrate is being extended.

The Minister for Home Affairs explained that the Presidency Magistrates and District Magistrates can exercise this power beyond the limits of their districts. This power was being extended to First-Class Magistrates so as to relieve the former for other multifarious duties which had been increased in a welfare State. It would also lead to an expeditious disposal of the work. The peace of the

country was indivisible and the scope of Section 107 was not being enlarged.

The clause was adopted without an amendment after being put to vote.

4. *Clause 16.*—It was suggested that the extension of the procedure prescribed for summons cases to the proceedings relating to security for keeping the peace or security for good behaviour was not justified but the case was for curtailment of summary proceedings. The Committee felt that the procedure prescribed for conducting trials in summons cases was an expeditious one and had worked satisfactorily.

The clause was adopted without an amendment after having been put to the vote.

5. *Clause* 17, 18 *and* 19.—The following points were made out:

(i) Proposed provision would facilitate unscrupulous people to deprive honest persons of their property forcing the latter to seek remedy in civil courts.

(ii) The rightful owner of property may be kept out of possession till the decision of a civil suit.

(iii) It contemplates attachment of property without allowing a hearing to a party who is in its possession.

(iv) The attachment of property should not take place till a decision has been given by a Civil Court.

(v) The Magistrate ought to be allowed to decide the question of possession as Civil Court proceedings were costly.

(vi) Sections 145 to 148 may be omitted.

(vii) The operation of present sections has been satisfactory and they have stood the test of time and may not be amended.

The Minister for Home Affairs stated that the amendment had been suggested with two objects in view:

(i) Magistrates were not accustomed to decide cases of civil nature and therefore question of possession should be left to Civil Courts; and

(ii) To expedite disposal of such cases where dispute is likely to cause a breach of peace. The remedy ought to be a speedy and a summary one without a right of appeal.

The following points were also suggested for the Committee's consideration:

(i) The procedure for dealing with the case of breach of peace.

(ii) The mode of maintenance of property during the proceedings.

(iii) Expeditious disposal of the case.

(iv) Method of dealing with forcible or wrongful possession.

The views were divided on these issues but the members felt that the Government ought to put forward an amended clause on the lines suggested by Minister for Home Affairs.

6. The discussion on these clauses had not concluded when the Committee adjourned at 1 P.M. to meet again on Saturday, the 17th July, 1954, at 9 A.M.

VI

Sixth Meeting

The Sixth Meeting of the Joint Committee on the Code of Criminal Procedure (Amendment) Bill, 1954, was held on Saturday, the 17th July, 1954, at 9 A.M. in Committee Room No. 63, Parliament House.

2. The following were present:

MEMBERS

Lok Sabha

1. Shri Narahar Vishnu Gadgil—*Chairman.*
2. Shri Ganesh Sadashiv Altekar.
3. Shri Lokenath Mishra.
4. Shri Radha Charan Sharma.
5. Shri Shankargauda Veeranagauda Patil.
6. Shri Tek Chand.
7. Shri Nemi Chandra Kasliwal.
8. Shri K. Periaswami Gounder.
9. Shri C. R. Basappa.
10. Shri Jhulan Sinha.
11. Shri Ahmed Mohiuddin.
12. Shri Kailash Pati Sinha.
13. Shri C. P. Matthen.
14. Shri Satyendra Narayan Sinha.
15. Shri Resham Lal Jangde.
16. Shri Basanta Kumar Das.
17. Shri Rohini Kumar Chaudhuri.
18. Shri Raghubir Sahai.
19. Shri Raghunath Singh.
20. Shri Ganpati Ram.
21. Shri Syed Ahmed.
22. Shri Radha Raman.
23. Shri C. Madhao Reddi.
24. Shri Sadhan Chandra Gupta.
25. Shri Shankar Shantaram More.
26. Shri Bhawani Singh.
27. Dr. Lanka Sundaram.
28. Shri N. R. M. Swamy.
29. Dr. Kailas Nath Katju.

30. Shri K. Madhava Menon.
31. Shri T. S. Pattabiraman.
32. Shri Barkat Ullah Khan.
33. Shri Biswanath Das.
34. Shri Sumat Prasad.
35. Shri J. S. Bisht.
36. Shri Gopikrishna Vijaivargiya.
37. Shri P. T. Leuva.
38. Shri K. B. Lall.
39. Shri Bhaskara Rao.
40. Shri M. Roufique.

Shri B. N. Datar, *Deputy Minister for Home Affairs,* was also present.

Shri R. S. Sarkar—*Additional Draftsman, Ministry of Law.*

Shri N. N. Mallya—*Deputy Secretary, Ministry of Home Affairs.*

SECRETARIAT

Shri A. L. Rai—*Under Secretary.*

3. The Committee decided that the consideration of clauses 17, 18 and 19 shall be resumed on the 19th July, 1954, so that the notices of amendments that had been received in the morning may be circulated to the members for study.

4. *Clauses 20, 21, 22 and 23.*—Consideration of clauses 20 to 23 was taken up together as they were inter-connected.

5. The Minister of Home Affairs elucidated the scope of the clauses during the discussion.

6. The following suggestions were made:—

(1) The recording of evidence by a Magistrate will amount to pinning down a witness to a statement, which he will be obliged to repeat throughout the trial, although, a false one may have been made by him in the beginning out of sheer fear of the police.

(2) The voluntary character of such statements is questionable as they would be made *ex-parte i.e.* in the absence of the accused and his counsel.

(3) Second Class Magistrates who are amenable to police influence will be empowered to record such statements.

(4) Copies of the diaries and documents accompanying the chalan be supplied free of cost to the accused.

(5) The police ought to give to the court an inventory of all the documents and of statements recorded by it. The police ought not to be allowed to supplement that list so that the accused's case may not be prejudiced during a trial.

(6) The statements will be available to the accused as well as the prosecution for the purposes of corroboration or contradiction of witnesses at the trial.

(7) Some restriction ought to be placed on the use of such statements *e.g.* not to be used for corroboration against the accused notwithstanding the provisions of Section 151 of the Indian Evidence Act.

(8) The work of the magistracy will be increased.

(9) The statements of eye-witnesses may only be recorded.

(10) This procedure may be made applicable to cases triable by Sessions Court.

(11) In Section 161 after the words 'police officer' the words 'not below the rank of a Sub-Inspector' may be added.

(12) The Police Department ought to have a separate investigating branch who should lay more stress on scientific investigation.

(13) It may be indicated as to who will supply copies of documents to the accused, whether the police or the Magistrate. The latter may be preferred.

7. The consideration of these clauses had not ended when the Committee adjourned at 1 P.M. to meet again on the 19th July, 1954, at 9 A.M.

VII

Seventh Meeting

The Seventh Meeting of the Joint Committee on the Code of Criminal Procedure (Amendment) Bill, 1954, was held on Monday, the 19th July, 1954, at 9 A.M. in Committee Room No. 63, Parliament House, New Delhi.

2. The following were present:

MEMBERS

Lok Sabha

1. Shri Narahar Vishnu Gadgil—*Chairman.*
2. Shri Ganesh Sadashiv Altekar.
3. Shri Joachim Alva.
4. Shri Lokenath Mishra.
5. Shri Radha Charan Sharma.
6. Shri Shankargauda Veeranagauda Patil.
7. Shri Nemi Chandra Kasliwal.
8. Shri K. Periaswami Gounder.
9. Shri C. R. Basappa.
10. Shri Jhulan Sinha.
11. Shri Ahmed Mohiuddin.
12. Shri Kailash Pati Sinha.
13. Shri C. P. Matthen.
14. Shri Satyendra Narayan Sinha.
15. Shri Resham Lal Jangde.
16. Shri Basanta Kumar Das.
17. Shri Rohini Kumar Chaudhuri.
18. Shri Raghubir Sahai.
19. Shri Raghunath Singh.
20. Shri Ganpati Ram.
21. Shri Syed Ahmed.
22. Shri C. Madhao Reddi.
23. Shri Sadhan Chandra Gupta.
24. Shri Shankar Shantaram More.
25. Sardar Hukam Singh.
26. Shri Bhawani Singh.
27. Dr. Lanka Sundaram.
28. Shri Rayasam Seshagiri Rao.

29. Shri N. R. M. Swamy.
30. Dr. Kailas Nath Katju.

Council of States

31. Shri K. Madhava Menon.
32. Shri T. S. Pattabiraman.
33. Shri Barkat Ullah Khan.
34. Shri Biswanath Das.
35. Shri Sumat Prasad.
36. Shri J. S. Bisht.
37. Shri Gopikrishna Vijaivargiya.
38. Shri K. B. Lall.
39. Shri Bhaskara Rao.
40. Shri P. Sundarayya.
41. Shri M. Roufique.

Shri B. N. Datar, *Deputy Minister for Home Affairs*, was also present.

Shri R. S. Sarkar—*Additional Draftsman, Ministry of Law.*

Shri N. N. Mallya—*Deputy Secretary, Ministry of Home Affairs.*

SECRETARIAT

Shri M. Sundar Raj—*Deputy Secretary.*

Shri A. L. Rai—*Under Secretary.*

3. The Committee continued consideration of clauses 20 to 23.

4. The following points were made:—

(1) The police record a statement of a witness in a perfunctory manner which is neither *verbatim* nor exactly a correct record of the statement.

(2) The abolition of Section 162 will do away with the protection enjoyed by the accused against prejudicial use of untruthful statements of witnesses recorded by an overzealous police officer.

(3) If statements are made available to the accused they may be used to win over prosecution witnesses.

(4) The investigations may be conducted by a Magistrate instead of a police officer.

The Committee came to the conclusion that although these clauses had been discussed quite exhaustively it would be better to finalise them after a decision has been taken about commitment proceedings. Accordingly decision on clauses 20 to 23 was held over.

5. *Clauses* 17, 18 *and* 19.—The Committee then took up consideration of clauses 17 to 19, discussion on which had been postponed at an earlier meeting.

The revised clause (Annexure A) and other amendments proposed by members were subjected to a detailed examination.

The Committee came to the conclusion that the various suggestions had been incorporated in the revised draft but directed that the words "within two months as far as possible" shall be inserted in sub-clause (4) after the words "if possible, decide" so that the preliminary enquiry may be expedited.

The Committee directed the Draftsman to incorporate this provision in clause 17 and also make the consequential amendments in clauses 18 and 19 to give effect to it.

6. *Clauses* 24, 26, 27 *and* 28.—Clauses 24, 26, 27 and 28 were adopted without an amendment.

7. *Clause* 29.—Consideration of clause 29 had just commenced when the Committee adjourned at 12-55 P.M. to meet again on the 20th July, 1954, at 9 A.M.

VIII

Eighth Meeting

The Eighth Meeting of the Joint Committee on the Code of Criminal Procedure (Amendment) Bill, 1954, was held on Tuesday, the 20th July, 1954, at 9 A.M. in Committee Room No. 63, Parliament House, New Delhi.

2. The following were present:

MEMBERS

Lok Sabha

1. Shri Narhar Vishnu Gadgil—*Chairman.*
2. Shri Joachim Alva.
3. Shri Lokenath Mishra.
4. Shri Radha Charan Sharma.
5. Shri Shankargauda Veeranagauda Patil.
6. Shri Nemi Chandra Kasliwal.
7. Shri K. Periaswami Gounder.
8. Shri Ganesh Sadashiv Altekar.
9. Shri C. R. Basappa.
10. Shri Jhulan Sinha.
11. Shri Ahmed Mohiuddin.
12. Shri C. P. Matthen.
13. Shri Satyendra Narayan Sinha.
14. Shri Resham Lal Jangde.
15. Shri Basanta Kumar Das.
16. Shri Rohini Kumar Chaudhuri.
17. Shri Raghubir Sahai.
18. Shri Raghunath Singh.
19. Shri Ganpati Ram.
20. Shri Syed Ahmed.
21. Shri C. Madhao Reddi.
22. Shri Sadhan Chandra Gupta.
23. Shri Shankar Shantaram More.
24. Sardar Hukam Singh.
25. Shri Bhawani Singh.
26. Dr. Lanka Sundaram.
27. Shri Rayasam Seshagiri Rao.
28. Shri N. R. M. Swamy.
29. Dr. Kailas Nath Katju.

30. Shri K. Madhava Menon.
31. Shri T. S. Pattabiraman.
32. Shri Barkat Ullah Khan.
33. Shri Biswanath Das.
34. Shri Sumat Prasad.
35. Shri J. S. Bisht.
36. Shri Gopikrishna Vijaivargiya.
37. Shri K. B. Lall.
38. Shri Bhaskara Rao.
39. Shri P. Sundarayya.

Shri B. N. Datar, *Deputy Minister for Home Affairs,* was also present.

Shri R. S. Sarkar—*Additional Draftsman, Ministry of Law.*

Shri N. N. Mallya—*Deputy Secretary, Ministry of Home Affairs.*

SECRETARIAT

Shri A. L. Rai—*Under Secretary.*

3. *Clauses* 29, 30, 31 *and* 32.—The Committee commenced consideration of clauses 29 to 32.

The following suggestions were made:—

(1) The accused will not have a proper notice of the case that he will have to meet by perusal of the copies of the police diary as they are not detailed.

(2) The valuable right of the accused to cross-examine prosecution witnesses will be lost.

(3) The Magistrate is not empowered under clause 29(2) to discharge an accused.

(4) Invidious distinction has been made about summoning witnesses for trial by the High Courts and the Sessions Court.

(5) Charge-sheets ought to be more detailed.

(6) Regional languages ought to be introduced in the Courts.

(7) The right of a Magistrate to examine an accused under clause 29(2) seems contrary to the provision of Article 20(3) of the Constitution.

(8) A very small percentage of accused are at present discharged during the commitment proceedings while by adoption of the new procedure an innocent accused has greater chances of being acquitted early.

(9) Magistrate may take down the statements of formal witnesses *e.g.,* Chemical Examiner, or examination of witnesses may be conducted in a court of a Magistrate while cross-examination may be reserved for a Sessions trial.

(10) Instead of commitment proceedings, a Sessions Judge may decide in the first instance with the help of the counsel of an accused as to whether he will hold the trial himself or remit the case to a Magistrate.

(11) Differences in procedure in the cases of police challans and private complaints should be abolished.

(12) A public defender should be appointed for all sessions cases.

(13) Cases are delayed due to police failing to investigate cases expeditiously or failing to produce witnesses early.

(14) Divulgence of the names of the defence witnesses will make it possible for prosecution witnesses to deny their presence at the scene of occurrence.

As the Indian Federation of Working Journalists was to tender evidence on clauses 25, 96 and 112 on the 21st July, 1954, further discussion on these clauses was adjourned.

4. Principles underlying clauses 25, 96 and 112 were discussed.

The following view-points were expressed:—

(1) It is the paramount duty of the State to punish corrupt public officers and protect the innocent ones against defamation.

(2) Public must have confidence in them.

(3) Some authority besides the public servant concerned ought to be empowered to initiate proceedings.

(4) Preliminary enquiry may be conducted to ascertain true facts.

(5) Defamation against the President, the Governor and the Rajpramukh only may be made a cognizable offence.

(6) A Private Secretary of the President, the Governor, or the Rajpramukh as the case may be, may be empowered to lodge a complaint but they may be available for cross-examination.

(7) This will stifle even legitimate criticism.

5. The Committee then adjourned at 1 P.M. to meet again on the 21st July, 1954, at 9 A.M.

IX.

Ninth Meeting

The Ninth Meeting of the Joint Committee on the Code of Criminal Procedure (Amendment) Bill, 1954, was held on Wednesday, the 21st July, 1954, at 9 A.M. in Committee Room No. 63, Parliament House, New Delhi.

2. The following were present:

MEMBERS

Lok Sabha

1. Shri Narahar Vishnu Gadgil—*Chairman*
2. Shri Ganesh Sadashiv Altekar
3. Shri Joachim Alva
4. Shri Lokenath Mishra
5. Shri Radha Charan Sharma
6. Shri Shankargauda Veeranagauda Patil
7. Shri Tek Chand
8. Shri Nemi Chandra Kasliwal
9. Shri K. Periaswami Gounder
10. Shri C. R. Basappa
11. Shri Jhulan Sinha
12. Shri Ahmed Mohiuddin
13. Shri Kailash Pati Sinha
14. Shri C. P. Matthen
15. Shri Satyendra Narayan Sinha
16. Shri Resham Lal Jangde
17. Shri Basanta Kumar Das
18. Shri Rohini Kumar Chaudhuri
19. Shri Raghubir Sahai
20. Shri Raghunath Singh
21. Shri Ganpati Ram
22. Shri Syed Ahmed
23. Shri Radha Raman
24. Shri Sadhan Chandra Gupta
25. Shri Shankar Shantaram More
26. Sardar Hukam Singh
27. Shri Bhawani Singh
28. Dr. Lanka Sundaram
29. Shri N. R. M. Swamy
30. Dr. Kailas Nath Katju.

Council of States

31. Shri K. Madhava Menon
32. Shri T. S. Pattabiraman
33. Shri Biswanath Das
34. Shri Sumat Prasad
35. Shri J. S. Bisht
36. Shri Gopikrishna Vijaivargiya
37. Shri K. B. Lall
38. Shri Bhaskara Rao
39. Shri P. Sundarayya
40. Shri M. Roufique.

Shri B. N. Datar, *Deputy Minister for Home Affairs,* was also present.

Shri R. S. Sarkar *Additional Draftsman, Ministry of Law.*

Shri N. N. Mallya—*Deputy Secretary, Ministry of Home Affairs.*

SECRETARIAT

Shri A. L. Rai—*Under Secretary.*

3. The Committee heard the evidence tendered by the representatives of the Indian Federation of Working Journalists.

4. *Verbatim* record of evidence tendered by the representatives of the Federation was taken down. A portion of the evidence was not recorded as the representatives desired that it should be treated as confidential matter.

5. After the tendering of evidence was over at 11-10 A.M., the Committee decided that before questions were put to the representatives of the Federation, copies of the tendered evidence should be circulated to the Members to decide whether the evidence was sufficient or not. The Committee also decided that the representatives of the Federation should provisionally be called to appear before the Committee on the 29th July, 1954 at 9 A.M.

6. Some of the members suggested that as the representatives of the Federation made certain proposals in connection with the law of defamation, the Government should, in the first instance, bring forward any amendments that they might like to propose regarding this matter and then the Committee will decide whether any further changes are necessary.

The Home Minister stated that this matter would be considered, but in the meantime Members should study the extracts from the Report of the Press Commission (Section VII—Law of Defamation) which had been circulated to the members at the meeting, and consider whether an alternative agency for starting prosecution on a specific charge should be introduced or not.

In this connection another suggestion was made by members that the difference between libel and slander should be borne in mind,

and the person defamed should be the first person to be called to the witness box.

Another proposal made was that in the case of a public servant alleged to be defamed, his superior officer shall be deemed to be the aggrieved person.

7. The Chairman then requested the members of the Committee to treat the extracts from the Report of the Press Commission circulated to them as strictly confidential and not to divulge the contents of the Report while putting questions to the witnesses.

8. *Clauses* 29, 30, 31 *and* 32.—The Committee then resumed consideration of these clauses.

The following points were made by the members :

(i) In cases where a certain number of witnesses were present, but the police produced only some of them, the accused should be allowed to produce the remaining witnesses.

(ii) It should be considered whether the papers furnished to the accused will be of judicial value or not.

(iii) A machinery should be provided for scrutinising the police report before the case goes to a Sessions Court. This power should be given to a Magistrate or to a Public Prosecutor.

(iv) In cases of grave offences like murder etc., there should be speedy commitment proceedings.

(v) Statements may continue to be recorded under section 164 of the principal Act for about 4 years, and it may be noted how such cases are treated in the Supreme Court, before any action is taken in this respect.

(vi) The opinion of Justice S. R. Das of the Supreme Court recorded in Volume C, page 334 of the Opinions on the Bill stating that if the committing Magistrate is to exercise his judgment properly the High Courts should interfere less with the decisions of the committing Magistrates under Sections 209 and 213(2) of the Criminal Procedure Code should be borne in mind.

9. The discussion on these clauses had not concluded when the Committee adjourned at 1 P.M. to meet again at 9 A.M. on the 22nd July, 1954.

X

Tenth Meeting

The Tenth Meeting of the Joint Committee on the Code of Criminal Procedure (Amendment) Bill, 1954, was held on Thursday, the 22nd July, 1954, at 9 A.M. in Committee Room No. 63, Parliament House, New Delhi.

2. The following were present:

MEMBERS

Lok Sabha

1. Shri Narahar Vishnu Gadgil—*Chairman*
2. Shri Ganesh Sadashiv Altekar
3. Shri Joachim Alva
4. Shri Lokenath Mishra
5. Shri Radha Charan Sharma
6. Shri Shankargauda Veeranagauda Patil
7. Shri Tek Chand
8. Shri Nemi Chandra Kasliwal
9. Shri K. Periaswami Gounder
10. Shri Jhulan Sinha
11. Shri Ahmed Mohiuddin
12. Shri Kailash Pati Sinha
13. Shri C. P. Matthen
14. Shri Resham Lal Jangde
15. Shri Basanta Kumar Das
16. Shri Rohini Kumar Chaudhuri
17. Shri Raghubir Sahai
18. Shri Raghunath Singh
19. Shri Ganpati Ram
20. Shri Syed Ahmed
21. Shri Radha Raman
22. Shri Sadhan Chandra Gupta
23. Shri Shankar Shantaram More
24. Sardar Hukam Singh
25. Shri Bhawani Singh
26. Dr. Lanka Sundaram
27. Shri N. R. M. Swamy
28. Dr. Kailas Nath Katju.

Council of States

29. Shri K. Madhava Menon
30. Shri T. S. Pattabiraman
31. Shri Barkat Ullah Khan
32. Shri Biswanath Das
33. Shri Sumat Prasad
34. Shri J. S. Bisht
35. Shri Gopikrishna Vijaivargiya
36. Shri K. B. Lall
37. Shri Bhaskara Rao
38. Shri P. Sundarayya.

Shri B. N. Datar, *Deputy Minister for Home Affairs,* was also present.

Shri R. S. Sarkar—*Additional Draftsman, Ministry of Law.*

Shri N. N. Mallya—*Deputy Secretary, Ministry of Home Affairs.*

SECRETARIAT

Shri A. L. Rai—*Under Secretary.*

3. *Clauses* 29, 30, 31 *and* 32.—The Committee resumed consideration of these clauses. The various points of view expressed by the Members were as follows:—

(1) Provision should be made to indemnify a person who is unjustly sentenced or wrongfully deprived of his liberty by being held in custody or in confinement on lines of the existing provision in the Criminal Procedure of Yugoslavia. The compensation ought to be made payable against an unjust action of the police.

(2) As in Yugoslavia, a definite period should be fixed for remanding of an accused in custody. The magistrate should summon the accused within seven days after the charge-sheet is put before the court and within another seven days all other proceedings should be completed.

(3) The sessions trial should end within three months.

(The Home Minister stated in this connection that the intention is that there should be speedy sessions trial—investigation should be completed within a month and the trial should be completed within another month.)

(4) The Magistrates lack courage to discharge the accused during commitment proceedings.

(5) Intervention by the Magistrate should be more real and he should be assisted in sifting the evidence by a Public Prosecutor.

(6) Delays occur in the commitment proceedings but these can be remedied by—

(i) reducing the number of cases to be tried by a Magistrate;

.(ii) omitting the unnecessary witnesses;

(iii) reducing the number of cases triable by a Sessions Court and giving more powers to the Magistrates.

(7) If it is proposed to do away with the commitment proceedings, trial by jury should be abolished and the Public Prosecutor should be allowed to submit cases direct to the Sessions Court.

(8) Distinction between a private complaint and a police complaint should remain. The police make thorough investigation and make available all the details. That is not possible in the case of private complaints.

(9) Even under the existing procedure it is possible to end sessions trial within two months if it is laid down that within seven days of the recording of the F.I.R. the case should be put before the Magistrate.

4. The Minister for Home Affairs stated that he agreed that the Magistrate should have the power to discharge an accused if he is satisfied with the case.

He also agreed that a procedure might be adopted by which the material witnesses who have to be examined under section 164, might be examined by that very Magistrate before whom the case was to be taken up under clause 29 and there might not be any cross-examination of witnesses but only recording of their statements.

A suggestion that complainant and the witnesses might be informed about the date of the trial was also approved.

5. The following issues relating to clause 29 were then put one by one to the vote and carried by a large majority:

(1) Whether commitment proceedings should be abolished.

(2) Whether commitment proceedings are to be abolished in all cases, taking into consideration the views of the Minister of Home Affairs as already expressed.

(3) Difference between private complaint and police complaint should be removed.

The issues relating to this clause which were acceptable to the Minister of Home Affairs were not put to the vote.

An alternative proposal suggesting that every summons case should go to a Sessions trial; only material witnesses should be examined and the remainder examined by affidavit; the accused should be allowed to cross-examine the witnesses; and the Magistrate in commitment proceedings should only frame a charge and while discharging the accused should give reasons—was also put to the vote but was lost by a majority.

It was agreed that a revised draft amendment of clause 29 on the lines of the discussions and conclusions arrived at will be brought before the committee by the Government for consideration.

6. The Committee then adjourned at 12-30 P.M. to meet again on Wednesday, the 28th July, 1954, at 9 A.M.

XI

Eleventh Meeting

The Eleventh Meeting of the Joint Committee on the Code of Criminal Procedure (Amendment) Bill, 1954, was held on Wednesday, the 28th July, 1954, at 9 A.M. in Committee Room No. 63, Parliament House, New Delhi.

2. The following were present:

MEMBERS

Lok Sabha

1. Shri Narahar Vishnu Gadgil—*Chairman.*
2. Shri Ganesh Sadashiv Altekar.
3. Shri Lokenath Mishra
4. Shri Radha Charan Sharma
5. Shri Tek Chand
6. Shri Nemi Chandra Kasliwal
7. Shri Jhulan Sinha.
8. Shri Kailash Pati Sinha.
9. Shri Basanta Kumar Das
10. Shri Rohini Kumar Chaudhuri
11. Shri Raghubir Sahai
12. Shri Raghunath Singh
13. Shri Ganpati Ram
14. Shri Syed Ahmed
15. Shri Radha Raman
16. Shri Sadhan Chandra Gupta.
17. Shri Shankar Shantaram More
18. Sardar Hukam Singh
19. Dr. Lanka Sundaram
20. Dr. Kailas Nath Katju.

Council of States

21. Shri K. Madhava Menon
22. Shri T. S. Pattabiraman
23. Shri Biswanath Das
24. Shri Sumat Prasad
25. Shri J. S. Bisht.
26. Diwan Chaman Lall
27. Shri P. T. Leuva
28. Shri K. B. Lall

29. Shri S. D. Misra
30. Shri Bhaskara Rao
31. Shri P. Sundarayya
32. Shri M. Roufique

Shri B. N. Datar, *Deputy Minister for Home Affairs,* was also present.

Shri R. S. Sarkar—*Additional Draftsman, Ministry of Law.*

Shri N. N. Mallya—*Deputy Secretary, Ministry of Home Affairs.*

SECRETARIAT

Shri A. L. Rai—*Under Secretary.*

3. The Committee considered the revised draft of clause 29 (Annexure B) circulated to members by the Government. The Minister for Home Affairs explained the proposal contained in it at the outset and during discussion the following suggestions were made:

(1) The definition of a material witness as given in the explanation to sub-clause (2) is restrictive. It should be either illustrative or exhaustive.

(2) The officer conducting the prosecution is given the discretion to produce those witnesses whom he considers material. This should be the function of the Magistrate.

(3) The proviso to sub-clause (2) should be deleted and the material witnesses whose statements were recorded under Sec. 164 should also be examined by the Magistrate.

(4) In sub-clause (3) the restriction placed on the accused's cross-examining witnesses is uncalled for and should be removed as it is against the provisions of Sec. 208(2) of the Code of Criminal Procedure.

(5) In sub-clause (4) the words "if necessary" should be deleted.

(6) The statements recorded by a Magistrate under Sec. 164 cannot be treated as evidence and in case the statements of all the material witnesses are recorded under that section the Magistrate will not have any substantive evidence under clause 29 to discharge the accused or to commit him to a Court of Session.

(7) In sub-clause (6) provision should be made for the free supply of all relevant documents to the accused besides the charges framed against him.

(8) In sub-clause (8) the distinction between the commitment procedure to be adopted by a Magistrate and a Presidency Magistrate should be abolished.

(9) The power of refusal to summon a witness vested in the Magistrate may be given to the Court of Session.

(10) In sub-clause (16) the words "any witness" should be substituted by the words "any one witness".

4. The sub-clauses of clause 29 were put to the vote one by one and accepted subject to the following decision:

(1) *Sub-clause* (2).—The Magistrate may be given the discretion to summon and examine any witness mentioned in the police case diary. The explanation may be made illustrative instead of exhaustive.

(2) *Sub-clause* (3).—If possible the accused may be vested with the powers to ask or suggest questions to be put to the prosecution witnesses.

(3) *Sub-clause* (8).—Distinction between the commitment procedure to be adopted by a Magistrate and a Presidency Magistrate may be done away with, if possible.

(4) *Sub-clause* (16).—May be examined whether a Magistrate can be empowered to postpone an enquiry.

(5) A time limit of fourteen days may be fixed for completion of the proceedings by the Magistrate. The Draftsman was directed to revise the draft clause after incorporating the above suggestions, as far as practicable.

5. *Clause* 22.—The Government did not wish to move this clause and the Committee agreed to its deletion.

6. *Clauses* 20, 21 *and* 23.—Consideration on clauses 20, 21 and 23 was postponed.

7. In view of the fact that the representatives of the Indian Federation of Working Journalists were to be cross-examined by the Committee on Thursday, the 29th July, 1954, the Minister for Home Affairs explained the view point of the Government with regard to clauses 25, 96 and 112. They intended to accept the report of the Press Commission as far as possible and provide for a complaint being lodged in case of defamation of the President, Governor or Rajpramukh by a person authorised by them and in the case of Ministers by the Secretary to the Cabinet or by a Secretary to the Government so authorised in this behalf by the Government concerned and, in the case of defamation of a public servant by the officer defamed, by his superior Officer or by a Secretary to Government so authorised. A preliminary Government enquiry conducted in the case of slander was also being considered.

8. The Committee then adjourned at 12-15 P.M. to meet again on Thursday, the 29th July, 1954, at 9 A.M.

XII

Twelfth Meeting

The Twelfth Meeting of the Joint Committee on the Code of Criminal Procedure (Amendment) Bill, 1954, was held on Thursday, the 29th July, 1954, at 9 A.M. in Committee Room No. 63, Parliament House, New Delhi.

2. The following were present:

MEMBERS

Lok Sabha

1. Shri Narahar Vishnu Gadgil—*Chairman*
2. Shri Ganesh Sadashiv Altekar
3. Shri Joachim Alva
4. Shri Lokenath Mishra
5. Shri Radha Charan Sharma
6. Shri Tek Chand
7. Shri Nemi Chandra Kasliwal
8. Shri Jhulan Sinha
9. Shri Kailash Pati Sinha
10. Shri Basanta Kumar Das
11. Shri Rohini Kumar Chaudhuri
12. Shri Raghubir Sahai
13. Shri Raghunath Singh
14. Shri Ganpati Ram
15. Shri Syed Ahmed
16. Shri Radha Raman
17. Shri Sadhan Chandra Gupta
18. Shri Shankar Shantaram More
19. Sardar Hukam Singh
20. Shri Bhawani Singh
21. Dr. Lanka Sundaram
22. Dr. Kailas Nath Katju

Council of States

23. Shri Biswanath Das
24. Shri Sumat Prasad
25. Shri J. S. Bisht
26. Diwan Chaman Lall
27. Shri P. T. Leuva
28. Shri S. D. Misra

29. Shri S. N. Dwivedy
30. Shri Bhaskara Rao
31. Shri P. Sundarayya
32. Shri M. Roufique

Shri B. N. Datar, *Deputy Minister for Home Affairs,* was also present.

Shri R. S. Sarkar—*Additional Draftsman, Ministry of Law.*

Shri N. N. Mallya—*Deputy Secretary, Ministry of Home Affairs.*

SECRETARIAT

Shri A. L. Rai—*Under Secretary.*

3. The Committee examined the representatives of the Indian Federation of Working Journalists, New Delhi.

4. A *verbatim* record of the evidence tendered was taken down.

5. The Committee adjourned at 1 P.M. to meet again at 9 A.M. on Friday, the 30th July, 1954.

XIII

Thirteenth Meeting

The Thirteenth Meeting of the Joint Committee on the Code of Criminal Procedure (Amendment) Bill, 1954, was held on the 30th July, 1954, at 9 A.M. in Committee Room No. 63, Parliament House, New Delhi.

2. The following were present:

MEMBERS

Lok Sabha

1. Shri Narahar Vishnu Gadgil—*Chairman*
2. Shri Ganesh Sadashiv Altekar
3. Shri Joachim Alva
4. Shri Lokenath Mishra
5. Shri Radha Charan Sharma
6. Shri Tek Chand
7. Shri Nemi Chandra Kasliwal
8. Shri Jhulan Sinha
9. Shri Ahmed Mohiuddin
10. Shri Kailash Pati Sinha
11. Shri Resham Lal Jangde
12. Shri Basanta Kumar Das
13. Shri Rohini Kumar Chaudhuri
14. Shri Raghubir Sahai
15. Shri Raghunath Singh
16. Shri Ganpati Ram
17. Shri Syed Ahmed
18. Shri Radha Raman
19. Shri Sadhan Chandra Gupta
20. Shri Shankar Shantaram More
21. Shri Bhawani Singh
22. Dr. Lanka Sundaram
23. Shri Rayasam Seshagiri Rao
24. Dr. Kailas Nath Katju

Council of States

25. Shri Biswanath Das
26. Shri Sumat Prasad
27. Shri J. S. Bisht
28. Diwan Chaman Lall
29. Shri P. T. Leuva

30. Shri K. B. Lall
31. Shri S. D. Misra
32. Shri S. N. Dwivedy
33. Shri Bhaskara Rao
34. Shri P. Sundarayya

Shri B. N. Datar, *Deputy Minister for Home Affairs,* was also present.

Shri R. S. Sarkar—*Additional Draftsman, Ministry of Law.*

Shri N. N. Mallya—*Deputy Secretary, Ministry of Home Affairs.*

SECRETARIAT

Shri A. L. Rai—*Under Secretary.*

3. *Clauses* 20, 21 *and* 23.—Clauses 20, 21 and 23 which had been considered by the Committee on the 17th and 19th July, 1954 were taken up again for discussion.

The Committee agreed to the insertion of new sub-section (4) to section 161 of the principal Act.

The Committee also came to the conclusion that the modern tendency to remove all barriers against admissibility of statements should be applied to the statements of witnesses made to the police during investigation which should be made available to the prosecution as well as the defence for the purposes of contradiction at the trial.

The question of insertion of new sub-section (5) to section 161 of the principal Act was dropped in view of the decision taken by the Committee regarding clause 29.

Clause 20 was adopted subject to the above-mentioned remarks.

In view of the fact that the salient provisions of Section 162 had been provided in clauses 20 and 23, the Committee came to the conclusion that Section 162 ought to be omitted.

Clause 21 was adopted.

The Draftsman was directed to make the necessary provision in the light of discussions and recast these clauses, if necessary.

4. Thereafter the Committee took up consideration of clause 30 which was adopted without amendment.

5. *Clause* 31.—It was suggested that the omission of the words "for the purpose of enabling him to explain any circumstances appearing in the evidence against him" could lead to the cross-examination of an accused by a Magistrate which might result in filling up the lacuna in the prosecution evidence. The Committee came to the conclusion that there was no force in this argument as an accused could refuse to answer any question and that the Magistrate ought to be empowered to ascertain the correct position by questioning the accused where necessary in the interests of fair and expeditious justice.

6. *Clause* 32.—In view of decision taken by the Committee regarding clause 29, it was decided that clause 32 may be omitted.

7. *Clause* 33.—The Committee also took up with this clause the consideration of the Code of Criminal Procedure (Amendment) Bill, 1952, by Shri S. V. Ramaswamy in accordance with the directions of the House contained in the motion which referred the Government Bill to the Committee. The Committee came to the conclusion that the system of assessors had outlived its utility as the Presiding Officers were not foreigners any more. There was controversial opinion about the continuance of the jury system and it was thought advisable to leave the matter to the discretion of the States as provided in the Government Bill. Consequently Shri Ramaswamy's Bill was superfluous.

Clause 33 was adopted without amendment.

8. *Clauses* 34 *and* 35.—Clauses 34 and 35 were adopted without amendment.

9. The Committee adjourned at 12-45 P.M. to meet again on the 31st July, 1954, at 9 A.M.

XIV

Fourteenth Meeting

The Fourteenth Meeting of the Joint Committee on the Code of Criminal Procedure (Amendment) Bill, 1954, was held on the 31st July, 1954, at 9 A.M. in Committee Room No. 63, Parliament House, New Delhi.

2. The following were present:

MEMBERS

Lok Sabha

1. Shri Narahar Vishnu Gadgil—*Chairman*
2. Shri Ganesh Sadashiv Altekar
3. Shri Lokenath Mishra
4. Shri Radha Charan Sharma
5. Shri Tek Chand
6. Shri Nemi Chandra Kasliwal
7. Shri C. R. Basappa
8. Shri Jhulan Sinha
9. Shri Ahmed Mohiuddin
10. Shri Kailash Pati Sinha
11. Shri Resham Lal Jangde
12. Shri Basanta Kumar Das
13. Shri Rohini Kumar Chaudhuri
14. Shri Raghubir Sahai
15. Shri Raghunath Singh
16. Shri Ganpati Ram
17. Shri Syed Ahmed
18. Shri Radha Raman
19. Shri Sadhan Chandra Gupta
20. Shri Shankar Shantaram More
21. Dr. Kailas Nath Katju

Council of States

22. Shri Biswanath Das
23. Shri J. S. Bisht
24. Shri Gopikrishna Vijaivargiya
25. Shri P. T. Leuva
26. Shri S. D. Misra
27. Shri S. N. Dwivedy

28. Shri Bhaskara Rao

29. Shri P. Sundarayya

Shri B. N. Datar, *Deputy Minister for Home Affairs,* was also present.

Shri R. S. Sarkar—*Additional Draftsman, Ministry of Law.*

Shri N. N. Mallya—*Deputy Secretary, Ministry of Home Affairs.*

SECRETARIAT

Shri A. L. Rai—*Under Secretary.*

3. *Clauses* 36, 37 *and* 38.—The Committee took up consideration of Clauses 36 to 38. The following suggestions were made:

(1) The just right of an accused to cross-examine prosecution witnesses twice is attempted to be taken away by giving the Courts discretion in the matter of allowing a second cross-examination.

(2) The new procedure ought to be developed. A draft charge might be framed by the public prosecutor in the beginning and a copy of it may be given to the accused.

(3) The accused should have the right of cross-examination after all the prosecution witnesses have been examined.

(4) The accused will only be able to know the case after the charge has been framed against him and so he may be given the right to cross-examine after that.

(5) The first date should be for ascertaining that the copies of all the relevant statements have been supplied to the accused. Thereafter, prosecution witnesses should be examined and cross-examined and then the statement of the accused should be taken down and last of all, the defence.

(6) The accused should have the option to cross-examine at any stage.

(7) In clause 36 the words "for reasons to be recorded in writing" might be deleted.

(8) In case the Magistrate refuses to allow further cross-examination of a prosecution witness the accused would make it a point to go to an Appellate Court for redress. Therefore, it should not be left to the discretion of a Magistrate.

The Committee felt that after the police challan has been put in the Court and the accused has been supplied with the copies of all the papers, a charge-sheet should be framed and read over to the accused and his pleas recorded. In the next hearing the witnesses ought to be examined and cross-examined as in a sessions case. Thus there would be one cross-examination after the charge has been framed, while the right of the accused to recall the witnesses for further cross-examination in case of an alteration in the charge-sheet will remain under Section 231 of the Code of Criminal Procedure. The Committee also felt that the police report ought to be comprehensive.

When this was put to the vote, the Committee agreed that the clauses may be re-drafted in accordance with the above decision.

4. *Clauses* 39, 40 *and* 41.—Clauses 39 to 41 were adopted without amendment.

5. *Clause* 42.—The following suggestions were made:

(1) The power to order a trial by a Judge alone instead of its being held with the help of a jury ought to be vested in the Sessions Judge.

(2) An exemption might be allowed where there are more than ten accused.

(3) Exemption should only be permissible in highly technical cases.

(4) The word "and" may be substituted by the word "or" in the words "having regard to the volume and complexity of the evidence" so that exemption may be permissible when the evidence is either voluminous or complex.

The Committee felt that exemption from jury trial should be permissible when the trial is likely to last for a period in excess of two weeks rather than one week as contemplated in the clause.

The Draftsman was directed to carry out the necessary amendment.

6. *Clause* 43.—The clause was not moved by the Government and was omitted.

7. *Clauses* 44, 45, 46 *and* 47.—Clauses 44 to 47 were adopted without amendment.

8. *Clause* 48.—Sub-clause (b) of clause 48 was not moved by the Government as it did not fit in in Section 286. It was omitted.

Clause 48 was adopted subject to the above mentioned omission.

9. *Clauses* 49, 50, 51, 52, 53, 54, 55, 56, 57 *and* 58.—Clauses 49 to 58 were adopted without amendment.

10. The Committee adjourned at 12-55 P.M. to meet again on Monday, the 2nd August, 1954, at 9 A.M.

XV

Fifteenth Meeting

The Fifteenth Meeting of the Joint Committee on the Code of Criminal Procedure (Amendment) Bill, 1954, was held on Monday, the 2nd August, 1954, at 9 A.M. in Committee Room No. 63, Parliament House, New Delhi.

2. The following were present:

MEMBERS

Lok Sabha

1. Shri Narahar Vishnu Gadgil—*Chairman.*
2. Shri Ganesh Sadashiv Altekar.
3. Shri Lokenath Mishra.
4. Shri Radha Charan Sharma.
5. Shri Nemi Chandra Kasliwal.
6. Shri K. Periaswami Gounder.
7. Shri C. R. Basappa.
8. Shri Jhulan Sinha.
9. Shri Ahmed Mohiuddin.
10. Shri Kailash Pati Sinha.
11. Shri Resham Lal Jangde.
12. Shri Basanta Kumar Das.
13. Shri Rohini Kumar Chaudhuri.
14. Shri Raghubir Sahai.
15. Shri Ganpati Ram.
16. Shri Syed Ahmed.
17. Shri Radha Raman.
18. Shri Sadhan Chandra Gupta.
19. Shri Shankar Shantaram More.
20. Shri Bhawani Singh.
21. Dr. Lanka Sundaram.
22. Shri Rayasam Seshagiri Rao.
23. Dr. Kailas Nath Katju.

Council of States

24. Shri Barkat Ullah Khan.
25. Shri Biswanath Das.
26. Shri Sumat Prasad.
27. Shri J. S. Bisht.
28. Shri Gopikrishna Vijaivargiya.

29. Shri P. T. Leuva.
30. Shri S. D. Misra.
31. Shri S. N. Dwivedy.
32. Shri Bhaskara Rao.
33. Shri M. Roufique.

Shri B. N. Datar, *Deputy Minister for Home Affairs,* was also present.

Shri R. S. Sarkar—*Additional Draftsman, Ministry of Law.*

Shri N. N. Mallya—*Deputy Secretary, Ministry of Home Affairs.*

SECRETARIAT

Shri A. L. Rai—*Under Secretary.*

3. *Clause* 20.—The Committee agreed that Clause 20 as originally adopted may be omitted from the Bill as it had been inserted as the opening sentence of revised clause 21.

4. *Clause* 21.—Revised clause 21 (Annexure 'C') drafted according to the decision of the Committee taken on the 30th July, 1954, was adopted without amendment.

5. *Clause* 23.—The revised clause (Annexure 'D') drafted in accordance with the decision of the Committee taken on the 30th July, 1954, was considered. The words "recorded under sub-section (3) of section 161" were added after the words "any such statement" to make it specific and the words "not essential to the interests of justice and is" were added after the words "the accused is".

The revised clause 23, as amended above, was adopted.

6. *Clauses* 59, 60, 61 *and* 62.—Clauses 59 to 62 were adopted without amendment.

7. *Clauses* 63 *and* 64.—The following suggestions were made:

(1) The provisions for allowing an illiterate accused to appear for examination on oath according to English law will work to his disadvantage.

(2) When an accused is represented by an advocate or has put in a written statement covering the points dealt with in the evidence against him, the Court should not be allowed to question him.

(3) An overzealous Magistrate may misuse the provision, and cross-examine the accused which would be against the provisions of Art. 20(3) of the Constitution of India.

(4) The words "either on its own motion or on the suggestion of the prosecution or the defence" may be omitted.

(5) Sec. 342 of the Burma Act XIII of 1945 may be adopted (Annexure 'E').

The Committee was of the view that the Court ought to be empowered to ask questions without specifying that it could do so at the instance of the prosecution or the defence as it could always be helped by either of them. Therefore, the words in clause 63

"either on its own motion or on the suggestion of the prosecution or the defence" were redundant, and were directed to be deleted.

The Committee decided by a vote that the accused should be called to give evidence as a witness only when he makes such a request in writing. The Draftsman was directed that the words "in writing" may be added after the word "request" in proviso 'a' of clause 64.

The clause was adopted as amended.

8. *Clause* 65.—The Committee felt that specific provision should be made in this clause for conducting a trial from day to day unless there were good reasons to the contrary for its postponement, so that the expenditure and period of criminal trial may be reduced substantially.

The Draftsman was directed to amend the clause accordingly.

9. *Clauses* 66, 67 *and* 68.—Clauses 66 to 68 were adopted without amendment.

10. *Clause* 69.—The provision in this clause for a Sessions Judge to 'record the heads of the charges to the jury' separately when *verbatim* record of evidence was to be kept seemed redundant as a High Court would like to examine the evidence itself rather than the heads of the charges. The Draftsman was directed to examine this point.

11. *Clauses* 70, 71, 72, 73, 74, 75, 76, 77, 78, 79 *and* 80.— Clauses 70 to 80 were adopted without amendment.

12. *Clause* 81.—It was suggested that a distinction should not be made in favour of females permitting them to apply for a remission of sentence without going to jail.

The Committee felt that it was a salutary provision and that Government should be given the discretion to entertain a petition for the suspension or remission of a sentence from a woman even when she was out of jail so that she may avoid the rigours of a prison life. The clause was adopted without amendment.

13. *Clauses* 82, 83, 84 *and* 85.—Clauses 82 to 85 were adopted without amendment.

14. *Clause* 86.—The proviso of the clause appeared to be cumbersome and the Draftsman was directed to recast it.

15. The Committee adjourned at 12-25 P.M. to meet again on Tuesday, the 3rd August, 1954, at 9 A.M.

XVI

Sixteenth Meeting

The Sixteenth Meeting of the Joint Committee on the Code of Criminal Procedure (Amendment) Bill, 1954, was held on Tuesday, the 3rd August, 1954, at 9 A.M. in Committee Room No. 63, Parliament House, New Delhi.

2. The following were present:

MEMBERS

Lok Sabha

1. Shri Narahar Vishnu Gadgil—*Chairman.*
2. Shri Lokenath Mishra.
3. Shri Radha Charan Sharma.
4. Shri Nemi Chandra Kasliwal.
5. Shri K. Perriaswami Gounder.
6. Shri C. R. Basappa.
7. Shri Jhulou Sinha.
8. Shri Ahmed Mohiuddin.
9. Shri Kailash Pati Sinha.
10. Shri Resham Lal Jangde.
11. Shri Basanta Kumar Das.
12. Shri Rohini Kumar Chaudhuri.
13. Shri Raghubir Sahai.
14. Shri Ganpati Ram.
15. Shri Syed Ahmed.
16. Shri C. Madhao Reddi.
17. Shri Sadhan Chandra Gupta.
18. Shri Shankar Shantaram More.
19. Shri Bhawani Singh.
20. Dr. Lanka Sundaram.
21. Shri Rayasam Seshagiri Rao.
22. Dr. Kailas Nath Katju.

Council of States

23. Shri Sumat Prasad.
24. Shri J. S. Bisht.
25. Shri Gopikrishna Vijaivargiya.
26. Shri P. T. Leuva.
27. Shri K. B. Lall.
28. Shri S. D. Misra.

29. Shri S. N. Dwivedy.

30. Shri Bhaskara Rao.

31. Shri Barkat Ullah Khan.

Shri B. N. Datar, *Deputy Minister for Home Affairs,* was also present.

Shri R. S. Sarker—*Additional Draftsman, Ministry of Law.*

Shri N. N. Mallya—*Deputy Secretary, Ministry of Home Affairs.*

SECRETARIAT

Shri A. L. Rai—*Under Secretary.*

3. *Clause* 87.—The Committee was of the view that the proviso in this clause was unnecessary as once an appeal of a complainant has been admitted by the High Court, there could be no justification for awarding compensation against him even if the appeal was frivolous or vexatious. The Committee, therefore, decided that the proviso to this clause may be deleted.

The Committee also felt that there should be a prescribed period within which an appeal should be preferred and decided that a limitation of 60 days should be provided.

The Committee further felt that in case an appeal of a complainant was rejected by a High Court, the Government should be debarred from presenting an appeal to the High Court in the same case.

The Draftsman was directed to amend the clause according to the above decisions.

4. *Clause* 88.—The Government moved the following amendment to sub-clause (a) of this clause:

> "(a) In sub-clause (2) (a), for the words 'accused of a non-bailable offence' the words 'convicted of a non-bailable offence' shall be substituted."

The Committee felt that the words "any person other than a person convicted of a non-bailable offence" could appropriately be described by the words "any person convicted of a bailable offence" and directed the Draftsman to consider this point.

5. *Clause* 89.—Clause 89 was adopted without amendment.

6. *Clause* 90.—The Committee was of the view that the omission of the words "correctness, legality or propriety" in Sec. 435 will amount to restricting a revision to a point of law only. It felt that for the ends of justice the High Court should be allowed to retain the revisionary powers on grounds of impropriety or incorrectness of judgment of a subordinate Court. Therefore, the Committee was of the view that Sec. 435 should be allowed to stand as it is. Clause 90 was omitted in the Bill.

7. *Clause* 91.—Clause 91 was admitted without amendment.

XVI

Sixteenth Meeting

The Sixteenth Meeting of the Joint Committee on the Code of Criminal Procedure (Amendment) Bill, 1954, was held on Tuesday, the 3rd August, 1954, at 9 A.M. in Committee Room No. 63, Parliament House, New Delhi.

2. The following were present:

MEMBERS

Lok Sabha

1. Shri Narahar Vishnu Gadgil—*Chairman.*
2. Shri Lokenath Mishra.
3. Shri Radha Charan Sharma.
4. Shri Nemi Chandra Kasliwal.
5. Shri K. Perriaswami Gounder.
6. Shri C. Rajasappa.
7. Shri Jhulou Sinha.
8. Shri Ahmed Mohiuddin.
9. Shri Kailash Pati Sinha.
10. Shri Resham Lal Jangde.
11. Shri Basanta Kumar Das.
12. Shri Rohini Kumar Chaudhuri.
13. Shri Raghubir Sahai.
14. Shri Ganpati Ram.
15. Shri Syed Ahmed.
16. Shri C. Madhao Reddi.
17. Shri Sadhan Chandra Gupta.
18. Shri Shankar Shantaram More.
19. Shri Bhawani Singh.
20. Dr. Lanka Sundaram.
21. Shri Rayasam Seshagiri Rao.
22. Dr. Kailas Nath Katju.

Council of States

23. Shri Sumat Prasad.
24. Shri J. S. Bisht.
25. Shri Gopikrishna Vijaivargiya.
26. Shri P. T. Leuva.
27. Shri K. B. Lall.
28. Shri S. D. Misra.

29. Shri S. N. Dwivedy.

30. Shri Bhaskara Rao.

31. Shri Barkat Ullah Khan.

Shri B. N. Datar, *Deputy Minister for Home Affairs,* was also present.

Shri R. S. Sarker—*Additional Draftsman, Ministry of Law.*

Shri N. N. Mallya—*Deputy Secretary, Ministry of Home Affairs.*

SECRETARIAT

Shri A. L. Rai—*Under Secretary.*

3. *Clause* 87.—The Committee was of the view that the proviso in this clause was unnecessary as once an appeal of a complainant has been admitted by the High Court, there could be no justification for awarding compensation against him even if the appeal was frivolous or vexatious. The Committee, therefore, decided that the proviso to this clause may be deleted.

The Committee also felt that there should be a prescribed period within which an appeal should be preferred and decided that a limitation of 60 days should be provided.

The Committee further felt that in case an appeal of a complainant was rejected by a High Court, the Government should be debarred from presenting an appeal to the High Court in the same case.

The Draftsman was directed to amend the clause according to the above decisions.

4. *Clause* 88.—The Government moved the following amendment to sub-clause (a) of this clause:

> "(a) In sub-clause (2) (a), for the words 'accused of a non-bailable offence' the words 'convicted of a non-bailable offence' shall be substituted."

The Committee felt that the words "any person other than a person convicted of a non-bailable offence" could appropriately be described by the words "any person convicted of a bailable offence" and directed the Draftsman to consider this point.

5. *Clause* 89.—Clause 89 was adopted without amendment.

6. *Clause* 90.—The Committee was of the view that the omission of the words "correctness, legality or propriety" in Sec. 435 will amount to restricting a revision to a point of law only. It felt that for the ends of justice the High Court should be allowed to retain the revisionary powers on grounds of impropriety or incorrectness of judgment of a subordinate Court. Therefore, the Committee was of the view that Sec. 435 should be allowed to stand as it is. Clause 90 was omitted in the Bill.

7. *Clause* 91.—Clause 91 was admitted without amendment.

8. *Clause* 92.—The following suggestions were made:

(1) The summons are often not delivered to witnesses and the process-servers make a false report. Therefore, non-attendance should not be punished.

(2) The procedure should not be a summary one.

(3) Persons will be deterred from appearing as witnesses if this clause is passed.

(4) The words "given false evidence in relation to any matter which affects the credibility or veracity of a witness" should be substituted by the words "given false evidence on a point or points which materially affects the decision of the case."

(5) In case the evidence of a witness who has been committed for perjury by a trial court is accepted as correct by a Higher Court an anomalous situation will arise.

(6) The parties as well as the Courts may be allowed to file a complaint under this clause.

The Committee decided that a provision should be made for taking action against a witness when the court has recommended so in its judgment and has also quoted material facts which constitute false evidence, after the time for appeal is over.

As regards 485(b), the Committee felt that punishment for non-attendance by a witness in obedience to a summons should be confined to a fine only as the offence is not so serious as to warrant its being made punishable by imprisonment.

The Draftsman was directed to make necessary changes in this clause according to the above decisions.

9. *Clause* 93.—Clause 93 was adopted omitting the words "or Sec. 485(A)" in view of the decision taken with regard to clause 92. The Draftsman was directed to make the necessary changes in the clause to that effect.

10. *Clause* 94.—Clause 94 was adopted without amendment.

11. *Clause* 95.—The Committee felt that the prescribed time of six weeks, after which a person accused of a non-bailable offence has to be released on bail in case the trial is not completed within that period was rather short, as in serious offences like robbery and dacoity a trial cannot be completed within that time. They felt that it should be two months. The Committee also decided that it should be specified in the clause that this period will start from the date on which the recording of evidence is commenced.

12. *Clause* 96.—The Committee approved of the clause providing that the President, the Governor or the Rajpramukh, shall be examined through a Commission. The Committee thought that this exemption should also be extended to the Vice-President. The Draftsman was directed to incorporate the necessary change in the clause.

13. *Clause* 97.—Clause 97 was adopted without amendment.

14. *Clause* 98.—The Committee felt that the extension of provision of Sec. 510 to the Director of Finger Print Bureau should be subject to his compulsory attendance in Court, if desired by an accused.

15. *Clause* 99.—The clause was adopted subject to a provision that in sub-sec. (2) of Sec. 510A on the application of an accused the Court shall be bound to summon a person who has given evidence on affidavit. The Draftsman was asked to make the necessary change.

16. *Clauses* 100 *and* 101.—Clauses 100 and 101 were adopted without amendment.

17. *Clause* 102.—It was suggested that in the city of Bombay and probably in other presidency towns transfer applications were preferred to the Presidency Magistrate instead of Session Judge. The Draftsman was asked to examine this point.

18. *Clause* 103.—The clause was adopted without amendment.

19. *Clause* 104.—The Committee felt that an objection to a trial without jury of offences triable by jury should be taken before the commencement of the trial rather than before the recording of the finding by a court as provided in the clause. The Draftsman was asked to make the necessary change.

20. *Clause* 105.—Clause 105 was adopted subject to the provision that the Draftsman may improve its language, if possible.

21. *Clauses* 106 *and* 107.—Clauses 106 and 107 were adopted without amendment.

22. *Clause* 108.—The Committee was of the view that under Sec. 540A the presence of an accused 'before the court' was a condition precedent before an order dispensing with his attendance during further proceeding could be passed by a court (*See* AIR 1938 Lah. 216).

The Draftsman was directed to consider the amendments of the section for removing this difficulty.

23. *Clauses* 109, 110, 111.—Clauses 109 to 111 were adopted without amendment.

24. *Clause* 112.—Discussion on sub-clauses (a) and (b) was postponed while sub-clauses (c) and (d) were adopted without amendment.

25. *Clauses* 113, 114 *and the Schedule*.—Clauses 113, 114 and the Schedule were adopted without amendment.

26. The Committee directed the Draftsman to provide a note on the words "imprisonment for life" which were proposed to be substituted for the words "transportation for life".

27. The Committee adjourned at 11-30 A.M. to meet again on Thursday, the 5th of August, 1954 at 9 A.M.

XVII

Seventeenth Meeting

The Seventeenth Meeting of the Joint Committee on the Code of Criminal Procedure (Amendment) Bill, 1954 was held on Thursday, the 5th August, 1954, at 9 A.M. in Committee Room No. 63, Parliament House, New Delhi.

2. The following were present:

MEMBERS

Lok Sabha

1. Shri Narahar Vishnu Gadgil—*Chairman.*
2. Shri Lokenath Mishra.
3. Shri Radha Charan Sharma.
4. Shri Tek Chand.
5. Shri Nemi Chandra Kasliwal.
6. Shri K. Periaswami Gounder.
7. Shri C. R. Basappa.
8. Shri Jhulan Singh.
9. Shri Ahmed Mohiuddin.
10. Shri Kailash Pati Sinha.
11. Shri Resham Lal Jangde.
12. Shri Basanta Kumar Das.
13. Shri Raghubir Sahai.
14. Shri Raghunath Singh.
15. Shri Ganpati Ram.
16. Shri Syed Ahmed.
17. Shri C. Madhao Reddi.
18. Shri Sadhan Chandra Gupta.
19. Shri Shankar Shantaram More.
20. Sardar Hukam Singh.
21. Shri Bhawani Singh.
22. Dr. Lanka Sundaram.
23. Shri Rayasam Seshagiri Rao.
24. Shri N. R. M. Swamy.
25. Dr. Kailas Nath Katju.

Council of States

26. Shri Sumat Prasad.
27. Shri J. S. Bisht.
28. Shri Gopikrishna Vijaivargiya.

29. Shri P. T. Leuva.
30. Shri K. B. Lall.
31. Shri S. D. Misra.
32. Shri S. N. Dwivedy.
33. Shri Bhaskara Rao.
34. Shri M. Roufique.

Shri B. N. Datar, *Deputy Minister for Home Affairs*, was also present.

Shri R. S. Sarkar—*Additional Draftsman, Ministry of Law.*

Shri N. N. Mallya—*Deputy Secretary, Ministry of Home Affairs.*

SECRETARIAT

Shri A. L. Rai, *Under Secretary.*

3. *Revised Clause* 29.—A revised draft of clause 29 (Annexure F) was placed before the Committee. This clause as originally framed had been considered by the Committee on the 22nd July, 1954 (Para. 5 of Minutes dated the 22nd July, 1954), and in accordance with the directions then given a revised clause 29 was placed before the Committee on the 28th July, 1954. The Committee again suggested certain further modifications therein (Para. 4 of Minutes dated the 28th July, 1954).

The clause as now drafted was adopted by the Committee without further amendment.

4. *Revised Clauses* 36 *and* 37.—In accordance with the decision taken by the Committee on the 31st July, 1954 (Para. 3 of Minutes dated the 31st July, 1954), a revised draft of clauses 36 and 37 (Annexure G) in place of Clauses 36, 37 and 38 was placed before the Committee. The following suggestions were made thereon:

(1) There should not be two different types of procedure for warrant cases.

(2) An accused should not be asked to pay the expenses of a witness under sub-clause (10) of clause 36.

(3) The right of cross-examination may be provided explicitly.

(4) The three provisions that exist in sub-clause (2) may be included in sub-clause (3) or the words 'upon such documents being considered and such examination, if any, being made,' be omitted.

(5) In sub-clause (7) the word 'so' may be inserted after the words "On the date".

The Committee was of the view that the clause had been revised in accordance with their decision. The provision for payment of expenses by the accused was similar to the one contained in sub-section (2) of Sec. 257, and examination of witnesses included their cross-examination.

5. *Clause* 25.—Revised clause 25 (Annexure H) circulated by the Government was considered by the Committee. The following suggestions were made:

(1) There should be a provision for an apology and for the compounding of an offence.

(2) Provision for examination of the person defamed ought to be made.

(3) Provision for payment of compensation in frivolous and vexatious cases may be made.

(4) A written permission of the Government should be obtained by a Public Prosecutor before filing a complaint.

(5) A departmental enquiry should be held before a complaint is lodged by the Public Prosecutor.

(6) Vice-President should be included in the list.

(7) In sub-clause (3)(c) for the words 'of some other public servant to whom he is subordinate' the words, 'by an officer or authority competent to remove him from his office' may be added,

(8) This procedure may apply to defamation and not slander.

The Committee felt that the revised draft of clause 25 was in accordance with their previous expressed views and no distinction existed or was intended to be made between libel and slander. However, the matter can be reconsidered if desired by the Committee.

The Committee felt that the Vice-President should be included in sub-clause (1) of proposed section 198B.

The Committee also felt that the offence ought to be made compoundable with the permission of the court so that this provision may be applied in appropriate cases.

The Committee decided that for filing a complaint a limitation of six months ought to be provided so that the threat of prosecution does not subsist for ever.

The Committee also decided that in sub-clause 3(c) for the words, "of some other public servant to whom he is subordinate", some suitable substitution like the words "by an officer or authority competent to remove him from his office" may be made.

The question whether costs should be paid to an accused on acquittal was put to vote. On votes being equally divided the Chairman cast his vote for the *status quo, i.e.,* an accused on acquittal shall not be entitled to costs.

The Draftsman was directed to incorporate the above decisions of the Committee in revised clause 25.

6. The Committee decided to take up consideration of the remaining provisions of the Code of Criminal Procedure, 1898, which had not been amended by this Bill, at their next meeting.

7. The Committee adjourned at 12-25 P.M. to meet again at 9 A.M. on Friday, the 6th August, 1954.

XVIII

Eighteenth Meeting

The Eighteenth Meeting of the Joint Committee on the Code of Criminal Procedure (Amendment) Bill, 1954, was held on Friday, the 6th August, 1954, at 9 A.M. in Committee Room No. 63, Parliament House, New Delhi.

2. The following were present:

MEMBERS

Lok Sabha

1. Shri Narahar Vishnu Gadgil—*Chairman.*
2. Shri Lokenath Mishra.
3. Shri Radha Charan Sharma.
4. Shri Shankargauda Veeranagauda Patil.
5. Shri Tek Chand.
6. Shri Nemi Chandra Kasliwal.
7. Shri K. Periaswami Gounder.
8. Shri C. R. Basappa.
9. Shri Jhulan Sinha.
10. Shri Ahmed Mohiuddin.
11. Shri Kailash Pati Sinha.
12. Shri Resham Lal Jangde.
13. Shri Basanta Kumar Das.
14. Shri Raghubir Sahai.
15. Shri Raghunath Singh.
16. Shri Ganpati Ram.
17. Shri Syed Ahmed.
18. Shri Radha Raman.
19. Shri C. Madhao Reddi.
20. Shri Sadhan Chandra Gupta.
21. Shri Shankar Shantaram More.
22. Sardar Hukam Singh.
23. Shri Bhawani Singh.
24. Shri N. R. M. Swamy.
25. Dr. Kailas Nath Katju.

Council of States

26. Shri Barkat Ullah Khan.
27. Shri Sumat Prasad.
28. Shri J. S. Bisht.

29. Shri Gopikrishna Vijaivargiya.
30. Shri P. T. Leuva.
31. Shri K. B. Lall.
32. Shri S. D. Misra.
33. Shri S. N. Dwivedy.
34. Shri Bhaskara Rao.
35. Shri P. Sundarayya.
36. Shri M. Roufique.

Shri B. N. Datar, *Deputy Minister for Home Affairs*, was also present.

Shri R. S. Sarkar—*Additional Draftsman, Ministry of Law.*
Shri N. N. Mallya—*Deputy Secretary, Ministry of Home Affairs.*

SECRETARIAT

Shri A. L. Rai, *Under Secretary.*

3. The Government had circulated (Annexure I) a gist of proposals received for amendment of Sections 68, 103, 160, 288, 337, 345, 417, 419, 422, 423, 497, 499, 545 and 562 (1A) of the Code of Criminal Procedure, 1898. These had not been dealt with in the Bill. The Committee considered them and the following decisions were recorded.

4. *Section* 68: The Committee accepted the principle embodied in the suggestion and decided that in warrant cases also these copies should be supplied to the accused. The words "or police charge-sheets" were considered unnecessary.

5. *Section* 103: The principle underlying the suggestion was accepted.

6. *Section* 160: The Committee felt that this exemption from attendance before a police officer should not only be granted to women who are not accustomed to appear in public but should be extended to all females and males who are under the age of 15.

7. *Section* 288: The Committee was not prepared to accept the suggestion that all statements of witnesses recorded under Section 164 should be brought within the purview of this Section as it would deny justice to the accused. The proposal was rejected.

8. *Section* 337: The suggestion was accepted.

9. *Section* 345: The Committee pointed out that the offences under Sections 428 and 429 of the Indian Penal Code had already been made compoundable with the permission of the court under clause 66. Therefore these were omitted while the suggestions with regard to the other sections of the Indian Penal Code were accepted.

10. *Section* 417: The suggestion was accepted.

11. *Section* 419: This suggestion was not considered by the Committee.

12. *Section* 422: The Committee was of the view that a notice of appeal should be served on the accused personally and the words 'notice be given to the accused' should not be substituted by the

words notice to be served upon the accused'. Therefore the suggestion was not accepted by the Committee.

13. *Section* 423: The suggestion contained in the first para. of the proposal was accepted while the suggestion in the second para. for providing an appeal on facts and law under sec. 423(2) was rejected.

14. *Sections* 497, 499, 545: The suggestions were accepted.

15. *Section* 562(1A): The suggestion for the extension of the provisions under this section to all offences which were punishable for a maximum period of two years was not acceptable to the Committee. The proposal was dropped.

16. The Draftsman was directed to place before the Committee proper amendments to these sections in accordance with their above decisions.

17. The Committee adjourned at 12-20 P.M. to meet again at 9 A.M. on Saturday, the 7th August, 1954.

XIX

Nineteenth Meeting

The Nineteenth Meeting of the Joint Committee on the Code of Criminal Procedure (Amendment) Bill, 1954, was held on Saturday, the 7th August, 1954, at 9 A.M. in Committee Room No. 63, Parliament House, New Delhi.

2. The following were present:

MEMBERS

Lok Sabha

1. Shri Narahar Vishnu Gadgil —*Chairman.*
2. Shri Lokenath Mishra.
3. Shri Radha Charan Sharma.
4. Shri Shankargauda Veeranagauda Patil.
5. Shri Nemi Chandra Kasliwal.
6. Shri K. Periaswami Gounder.
7. Shri C. R. Basappa.
8. Shri Jhulan Sinha.
9. Shri Kailash Pati Sinha.
10. Shri Basanta Kumar Das.
11. Shri Raghubir Sahai.
12. Shri Raghunath Singh.
13. Shri Ganpati Ram.
14. Shri Syed Ahmed.
15. Shri Radha Raman.
16. Shri C. Madhao Reddi.
17. Shri Sadhan Chandra Gupta.
18. Shri Shankar Shantaram More.
19. Shri Bhawani Singh.
20. Dr. Lanka Sundaram.
21. Shri N. R. M. Swamy.
22. Dr. Kailas Nath Katju.

Council of States

23. Shri J. S. Bisht.
24. Shri Gopikrishna Vijaivargiya.
25. Shri P. T. Leuva.
26. Shri K. B. Lall.
27. Shri S. D. Misra.
28. Shri S. N. Dwivedy.

29. Shri Bhaskara Rao.

30. Shri P. Sundarayya.

31. Shri M. Roufique.

Shri B. N. Datar, *Deputy Minister for Home Affairs*, was also present.

Shri R. S. Sarkar—*Additional Draftsman, Ministry of Law.*

Shri N. N. Mallya—*Deputy Secretary, Ministry of Home Affairs.*

SECRETARIAT

Shri A. L. Rai—*Under Secretary.*

3. At the outset the Committee decided that a saving clause should be provided in the Bill so that pending cases may be excluded from the provisions of this Bill.

4. The Committee then took up consideration of the amendments to the various sections of the principal Act other than those covered by the amending Bill of which notice had been given by the members, as well as further proposals received by the Government from the members of the public. It was suggested that in view of the public and expert opinion on these not having been obtained it would be very difficult for the Committee to consider them especially as many of them raised important issues. After some discussion, the Committee decided that they would make a recommendation in their Report to the House on the following lines:

> Many amendments and suggestions relating to certain sections of the principal Act other than those covered by the amending Bill were submitted to the Committee. As some of these raised important issues and opportunity for eliciting public opinion had not yet been given the Committee were of the view that these should be taken up for consideration after circulating them for public opinion. They therefore recommend that all such amendments may be referred to the Government who will obtain the opinion of the public thereon and then bring before the House another suitable amending Bill to the Criminal Procedure Code within one year.

5. The Committee directed that only summary of the evidence tendered before the Joint Committee by the representatives of the Indian Federation of Working Journalists should be presented to the House.

6. The Committee then adjourned at 10-40 A.M. to meet again at 4 P.M. on Tuesday, the 24th August, 1954.

XX

The Twentieth Meeting of the Joint Committee on the Code of Criminal Procedure (Amendment) Bill, 1954 was held on Tuesday, the 24th August, 1954, at 4 P.M. in Committee Room No. 62, Parliament House, New Delhi.

2. The following were present:

MEMBERS

Lok Sabha

1. Shri Narahar Vishnu Gadgil—*Chairman.*
2. Shri Lokenath Mishra.
3. Shri Radha Charan Sharma.
4. Shri Tek Chand.
5. Shri Nemi Chandra Kasliwal.
6. Shri K. Periaswami Gounder.
7. Shri C. R. Basappa.
8. Shri Jhulan Sinha.
9. Shri Ahmed Mohiuddin.
10. Shri Resham Lal Jangde.
11. Shri Basanta Kumar Das.
12. Shri Rohini Kumar Chaudhuri.
13. Shri Raghubir Sahai.
14. Shri Raghunath Singh.
15. Shri Ganpati Ram.
16. Shri Syed Ahmed.
17. Shri Radha Raman.
18. Shri C. Madhao Reddi.
19. Shri Sadhan Chandra Gupta.
20. Shri Shankar Shantaram More.
21. Sardar Hukam Singh.
22. Shri Bhawani Singh.
23. Dr. Lanka Sundaram.
24. Dr. Kailas Nath Katju.

Rajya Sabha

25. Shri T. S. Pattabiraman.
26. Shri Barkat Ullah Khan.
27. Shri J. S. Bisht.
28. Shri Gopikrishna Vijaivargiya.
29. Shri P. T. Leuva.

30. Shri S. D. Misra.

31. Shri S. N. Dwivedy.

32. Shri P. Sundarayya.

33. Shri M. Roufique.

Shri B. N. Datar, *Deputy Minister of Home Affairs,* was also present.

Shri R. S. Sarkar—*Additional Draftsman, Ministry of Law.*

Shri N. N. Mallya—*Deputy Secretary, Ministry of Home Affairs.*

SECRETARIAT

Shri M. Sundar Raj—*Deputy Secretary.*

Shri A. L. Rai—*Under Secretary.*

3. The consideration of the draft Report which was due to be taken up at the day's meeting was deferred to Friday, the 27th August, 1954, as it was the general desire of the members of the Committee that more time should be given for a comprehensive study of the Report.

4. The Chairman was authorised by the Committee to move in the House for extension of time for presentation of the Report by a week. It was also decided that the Report should be presented to the House on Friday, the 3rd September, 1954, and that Minutes of Dissent, if any, to the Report should be sent to the Secretariat by 6 P.M. on Wednesday, the 1st of September, 1954.

5. The Committee adjourned at 4-30 P.M. to meet again at 4 P.M. on Friday, the 27th August, 1954.

XXI

Twenty-first Meeting

The Twenty-first Meeting of the Joint Committee on the Code of Criminal Procedure (Amendment) Bill, 1954, was held on Friday, the 27th August, 1954, at 4 P.M. in the Central Hall of Parliament House, New Delhi.

2. The following were present:

MEMBERS

Lok Sabha

1. Shri Narahar Vishnu Gadgil—*Chairman.*
2. Shri Joachim Alva
3. Shri Lokenath Mishra
4. Shri Radha Charan Sharma
5. Shri Tek Chand
6. Shri Nemi Chandra Kasliwal
7. Shri K. Periaswami Gounder
8. Shri C. R. Basappa
9. Shri Jhulan Sinha
10. Shri Ahmed Mohiuddin
11. Shri Resham Lal Jangde
12. Shri Raghubir Sahai
13. Shri Raghunath Singh
14. Shri Syed Ahmed
15. Shri Radha Raman
16. Shri Sadhan Chandra Gupta
17. Shri Shankar Shantaram More
18. Sardar Hukam Singh
19. Shri Bhawani Singh
20. Dr. Lanka Sundaram
21. Dr. Kailas Nath Katju

Rajya Sabha

22. Shri T. S. Pattabiraman
23. Shri J. S. Bisht
24. Shri Gopikrishna Vijaivargiya
25. Shri P. T. Leuva
26. Shri S. N. Dwivedy
27. Shri P. Sundarayya
28. Shri M. Roufique

Shri B. N. Datar, *Deputy Minister for Home Affairs*, was also present.

Shri R. S. Sarkar—*Additional Draftsman, Ministry of Law.*

Shri N. N. Mallya—*Deputy Secretary, Ministry of Home Affairs.*

SECRETARIAT

Shri M. Sundar Raj—*Deputy Secretary.*

Shri A. L. Rai—*Under Secretary.*

3. The Bill as amended was adopted by the Joint Committee.

4. The Committee took up consideration of the draft Report and after some discussion adopted the Report with slight modifications.

5. On a point of procedure being raised as to whether a Member could refer to materials contained in documents circulated to the members of the Committee in their Minutes of Dissent or during the debate in the House, the Chairman ruled that except for documents marked "Secret" the members could refer to any materials in their Minutes of Dissent or in their speeches in the House. With regard to documents marked "Secret" the members could use the arguments contained therein but the names of persons, or authorities should not be quoted.

6. It was decided that the Report of the Committee be presented to the House on the 3rd September, 1954 and Minutes of Dissent if any, to be handed over by Members upto 6 P.M. on Wednesday, the 1st September, 1954.

7. The Committee then adjourned at 4-45 P.M.

ANNEXURE A

Clause 17

17. By Dr. Kailas Nath Katju:—

In pages 3-4,—

for clause 17, *substitute*—

"17. *Amendment of section* 145, *Act V of* 1898.—In section 145 of the principal Act,—

(a) to sub-section (1), the following shall be added, namely:—

"to produce all documentary evidence and to give, by affidavit, all other evidence in support of their claims."

(b) for sub-section (4), the following sub-section shall be substituted, namely:—

"(4) The Magistrate shall then, without reference to the merits or the claims of any of such parties to a right to possess the subject of dispute, peruse the statements, documentary evidence and affidavits so put in, hear the parties and, if possible, decide the question whether any and which of the parties was at the date of the order before mentioned in such possession of the subject:

Provided that the Magistrate may, if he so thinks fit, summon and examine any person whose affidavit has been put in, as to the facts contained therein:

Provided further that, if it appears to the Magistrate that any party has within two months next before the date of such order been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date:

Provided also that, if the Magistrate considers the case one of emergency, he may at any time attach the subject of dispute, pending his decision under this section.";

17A. *Amendment of section* 146, *Act V of* 1898.—In section 146 of the principal Act, for sub-section (1), the following sub-sections shall be substituted, namely:—

"(1) If the Magistrate is of opinion that none of the parties was then in such possession, or is unable to decide as to which of them was then in such possession of the subject of dispute, he may attach it, and draw a statement of the facts of the case and forward the record of the proceeding to a civil court of competent jurisdiction to decide the question whether any and which of the parties was in possession of the subject of dispute at the date of the order as explained

in sub-section (4) of section 145; and he shall direct the parties to appear before the civil court on a date to be fixed by him:

Provided that the District Magistrate or the Magistrate who has attached the subject of dispute may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of a breach of the peace in regard to the subject of dispute.

(1A) On receipt of any such reference, the civil court shall peruse the evidence on record and take such further evidence as may be produced by the parties respectively, consider the effect of all such evidence, and after hearing the parties, it shall decide the question of possession so referred to it.

(1B) The civil court shall as far as may be practicable, within a period of three months from the date of the appearance of the parties before it, conclude the inquiry and transmit its finding together with the record of the proceeding to the Magistrate by whom the reference was made; and the Magistrate shall, on receipt thereof, proceed to dispose of the proceeding under section 145 in conformity with the decision of the civil court.

(1C) The costs, if any, consequent on a reference for the decision of the civil court shall be costs in the proceedings under this section.

(1D) No appeal shall lie from any finding of the civil court given on a reference under this section nor shall any review or revision of any such finding be allowed:

Provided that nothing in this sub-section shall debar any person from suing to establish his title to the property, the subject of dispute, and to recover possession thereof."

ANNEXURE B

Ministry of Home Affairs

Revised draft of clause 29 (Sec. 207A & consequential amendments

20. The proposed sub-section (5) to Section 161 shall be omitted.

22. Clause 22 shall be omitted.

29. In clause 29, for section 207A, the following section shall be substituted:—

"207. *Procedure to be adopted in proceedings instituted on Police report.*—(1) In a proceeding instituted on a police report, the Magistrate shall, when the accused appears or is brought before him, satisfy himself that the documents referred to in section 173 have been furnished to the accused, and if he finds that the accused has not been furnished with such documents or any of them, he shall cause the same to be so furnished.

(2) The Magistrate shall then proceed to record the statements of such witnesses only as may be produced in support of the prosecution and whose evidence is, in the opinion of the officer conducting the prosecution, material to the case:

Provided that no statement shall be recorded under this sub-section of any person whose statement has already been recorded under section 164.

Explanation.—For the purposes of this sub-section, the evidence of a witness shall be deemed to be material, if he professes to have witnessed the commission of the offence by the accused.

(3) The accused shall not be at liberty to cross-examine any such witness; but nothing in this section shall be deemed to preclude the Magistrate from putting such questions to the witness as he thinks necessary.

(4) When the statements referred to in sub-section (2) have been recorded and the Magistrate has considered all the documents accompanying the report forwarded under section 173 and has, if necessary, examined the accused, and after giving the prosecution and the accused an opportunity of being heard, such Magistrate shall, if he finds that there is no evidence for committing the accused person for trial, record his reasons and discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate in which case he shall proceed accordingly.

(5) When, upon such statements being recorded, such documents being considered and such examination (if any) being made, the Magistrate is of opinion that the accused should be committed for trial, he shall frame a charge under his hand, declaring with what offence the accused is charged.

(6) As soon as such charge has been framed, it shall be read and explained to the accused and a copy thereof shall be given to him free of cost.

(7) The accused shall be required at once to give in, orally or in writing, a list of the persons, if any, whom he wishes to be summoned to give evidence on his trial:

Provided that the Magistrate may, in his discretion, allow the accused to give in his list or any further list of witnesses at a subsequent time; and, where the accused is committed for trial before the High Court, nothing in this sub-section shall be deemed to preclude the accused from giving, at any time before his trial, to the Clerk of the State a further list of the persons whom he wishes to be summoned to give evidence on such trial.

(8) When the accused, on being required to give in a list under sub-section (7) has declined to do so, or when he has given in such list, the Magistrate may make an order committing the accused for trial by the High Court or the Court of Session, as the case may be, and unless the Magistrate is a Presidency Magistrate, shall also record briefly the reasons for such commitment.

(9) When the accused has given in any list of witnesses under sub-section (7) and has been committed for trial, the Magistrate shall summon the witnesses included in the list to appear before the Court to which the accused has been committed:

Provided that where the accused has been committed to the High Court, the Magistrate may, in his discretion, leave such witnesses to be summoned by the Clerk of the State and such witnesses may be summoned accordingly:

Provided also that if the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice, the Magistrate may require the accused to satisfy him that there are reasonable grounds for believing that the evidence of such witness is material, and if he is not so satisfied, may refuse to summon the witness (recording his reasons for such refusal), or may before summoning him require such sum to be deposited as such Magistrate thinks necessary to defray the expense of obtaining the attendance of the witness and all other proper expenses.

(10) Witnesses for the prosecution, whose attendance before the Court of Session or High Court is necessary and who appear before the Magistrate, shall execute before him bonds binding themselves to be in attendance when called upon by the Court of Session or High Court to give evidence.

(11) If any witness refuses to attend before the Court of Session or High Court, or execute the bond above directed, the Magistrate may detain him in custody until he executes such bond or until his attendance at the Court of Session or High Court is required, when the Magistrate shall send him in custody to the Court of Session or High Court, as the case may be.

(12) When the accused is committed for trial, the Magistrate shall issue an order to such person as may be appointed by the State Government in this behalf, notifying the commitment, and stating

the offence in the same form as the charge; and shall send the charge, the record of the inquiry and any weapon or other thing which is to be produced in evidence, to the Court of Session or, where the commitment is made to the High Court, to the Clerk of the State or other officer appointed in this behalf by the High Court.

(13) When the commitment is made to the High Court and any part of the record is not in English, an English translation of such part shall be forwarded with the record.

(14) Until and during the trial, the Magistrate shall subject to the provisions of this Code regarding the taking of bail, commit the accused by warrant, to custody.

(15) If the officer conducting the prosecution applies to the Magistrate, at any time before the date fixed for recording statements under sub-section (2), to issue a process to compel the attendance of any witness or the production of any document or thing, the Magistrate shall issue such process unless, for reasons to be recorded, he deems it unnecessary to do so.

(16) Notwithstanding anything contained in this Code, no inquiry under this section shall be postponed or adjourned merely by reason of the fact that any witness for the prosecution is absent or that any one or more of the accused is or are absent.

ANNEXURE C

Ministry of Home Affairs

Revised Draft of clauses 20 *and* 21 (*Sections* 161 & 162)

Clause 20. This clause shall be omitted.

Clause 21. For clause 21, the following clause be substituted:—

"21. *Substitution of new section for Section* 162 *in Act V of* 1898.—For Section 162 of the Principal Act, the following section shall be substituted, namely,—

(1) No statement made by any person to a police officer in the course of any investigation under this chapter shall, if reduced into writing, be signed by the person making it, nor shall any such statement or any record thereof, whether in a Police diary or otherwise, or any part of such statement or record, be used for any purpose (save as hereinafter provided) at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872. When any part of such statement is so used by the accused, any part thereof may also be used in the re-examination of such witnesses, but for the purpose only of explaining any matter referred to in his cross-examination."

(2) Nothing in this Section shall be deemed to apply to any statement falling within the provisions of Section 32, clause (1), of the Indian Evidence Act, 1872, or to affect the provisions of Section 27 of that Act."

ANNEXURE D

Ministry of Home Affairs

Revised Draft of clause 23 (*Sec.* 173)

23. *Amendment of Section* 173, *Act V of* 1898.—In section 173 of the Principal Act, for sub-section (4), the following sub-sections shall be substituted, namely—

"(4) After forwarding a report under this section, the officer in charge of the Police Station shall, before the commencement of the inquiry or trial, furnish or cause to be furnished to the accused free of cost a copy of the report forwarded under sub-section (1) and of the first information report recorded under section 154 and of all other documents or relevant extracts thereof, on which the prosecution proposes to rely, including the statements and confessions, if any, recorded under section 164 and the statements recorded under sub-section (3) of section 161 of all persons whom the prosecution proposes to examine as its witnesses.

(5) Notwithstanding anything contained in sub-section (4), if the police officer is of opinion that any part of any such statement recorded under sub-section (3) of section 161 will not be relevant to the subject-matter of the inquiry or trial or that its disclosure to the accused is not essential to the interests of justice and is inexpedient in the public interests, he shall exclude such part from the copy of the statement furnished to the accused and in such a case, he shall make a report to the Magistrate stating his reasons for excluding such part:

Provided that at the commencement of the inquiry or trial, the Magistrate shall, after perusing the part so excluded and considering the report of the Police officer pass such orders as he thinks fit and if he so directs, a copy of the part so excluded or such part thereof as he thinks proper, shall be furnished to the accused."

ANNEXURE E

"342. (1) Every person accused of an offence shall be a competent witness on his own behalf in any inquiry into or trial of the said offence, whether the person so accused is accused solely or jointly with any other person or persons, and his evidence may be used against any person or persons tried jointly with him; provided as follows:

(a) the accused shall not be examined as a witness except at his own desire;

(b) before giving evidence the accused shall be warned by the Court that he is not bound to give evidence, and that if does so his evidence may be used against him and against any person or persons tried jointly with him;

(c) the failure of the accused to give evidence shall not be made the subject of any comment by the prosecution, but the Court and the jury (if any) may draw such inference therefrom as it thinks just;

(d) the accused shall not be asked in cross-examination, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that wherewith he is then charged, or is of bad character, unless—

(i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged, or

(ii) he has personally or by his pleader asked questions of the witnesses for the prosecution with a view to establish his own good character; or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputation on the character of the witness for the prosecution; or

(iii) he has in his evidence made statements against any other person tried jointly with him;

(e) no prosecution for the offence of giving false evidence shall be instituted against the accused, except with the sanction of the High Court.

(2) (i) Notwithstanding anything contained in sub-section (1) for the purpose of enabling the accused to explain any circumstances appearing in evidence against him the Court may, at any stage of any inquiry or trial without previously warning the accused put such questions to him as the Court considers necessary, and shall, when the accused declines to give evidence on his own behalf, for the purpose aforesaid question him generally on the case after the witnesses for prosecution have been examined and before he is called on for his defence.

(ii) The answers given by the accused to the questions put to him under the provisions of clause (i) may be taken into consideration in such inquiry or trial.

(iii) The accused shall not render himself liable to punishment by refusing to answer any questions put to him under clause (i) or by giving false answers to them; but the Court and the jury (if any) may draw such inference from such refusal or answer as it thinks just.

(iv) No oath shall be administered to the accused in connection with any examination under this sub-section.

(3) The deposition (if any) of the accused recorded under sub-section (1) and the answers given by him to the questions put to him under sub-section (2), clause (i), may be put in evidence for or against him in any offence which such deposition or such answers may tend to show he has committed."

"29. In clause 29, for section 207A, the following section shall be substituted, namely:—

207A. *Procedure to be adopted in proceedings instituted on police report.*—(1) In a proceeding instituted on a police report, when the Magistrate receives the report forwarded under section 173, he shall, for the purpose of holding an inquiry under this section, fix a date which shall be a date not later than fourteen days from the date of the receipt of the report, unless the Magistrate, for reasons to be recorded, fixes any later date.

(2) If, at any time before such date, the officer conducting the prosecution applies to the Magistrate to issue a process to compel the attendance of any witness or the production of any document or thing, the Magistrate shall issue such process unless, for reasons to be recorded, he deems it unnecessary to do so.

(3) At the commencement of the inquiry, the Magistrate shall, when the accused appears or is brought before him, satisfy himself that the documents referred to in section 173 have been furnished to the accused and if he finds that the accused has not been furnished with such documents or any of them, he shall cause the same to be so furnished.

(4) The Magistrate shall then proceed to record the statement of the persons, if any, who may be produced by the prosecution as witnesses to the actual commission of the offence alleged; and if the Magistrate is of opinion that it is necessary in the interests of justice to record the statements of any one or more of the other witnesses for the prosecution, he may record such statements also:

Provided that no statement shall be recorded under this sub-section of any person whose statement has already been recorded under section 164.

(5) The accused shall not be at liberty to put questions to any such witness; but nothing in this section shall be deemed to preclude the Magistrate from putting such questions to the witness as he thinks necessary.

(6) When the statements, if any, have been recorded under sub-section (4) and the Magistrate has considered all the documents referred to in section 173 and has, if necessary, examined the accused, and given the prosecution and the accused an opportunity of being heard, such Magistrate shall, if he is of opinion that such statements and documents disclose no grounds for committing the accused person for trial, record his reasons and discharge him, unless it appears to the Magistrate that such persons should be tried before himself or some other Magistrate in which case he shall proceed accordingly.

(7) When, upon such statements being recorded, such documents being considered and such examination (if any) being made, the

Magistrate is of opinion that the accused should be committed for trial, he shall frame a charge under his hand, declaring with what offence the accused is charged.

(8) As soon as such charge has been framed, it shall be read and explained to the accused and a copy thereof shall be given to him free of cost.

(9) The accused shall be required at once to give in, orally or in writing a list of the persons, if any, whom he wishes to be summoned to give evidence on his trial:

Provided that the Magistrate may, in his discretion, allow the accused to give in his list or any further list of witnesses at a subsequent time; and, where the accused is committed for trial before the High Court, nothing in this sub-section shall be deemed to preclude the accused from giving, at any time before his trial, to the Clerk of the State a further list of the persons whom he wishes to be summoned to give evidence on such trial.

(10) When the accused, on being required to give in a list under sub-section (9), has declined to do so, or when he has given in such list, the Magistrate may make an order committing the accused for trial by the High Court or the Court of Session, as the case may be, and shall also record briefly the reasons for such commitment.

(11) When the accused has given in any list of witnesses under sub-section (9) and has been committed for trial, the Magistrate shall summon the witnesses included in the list to appear before the Court to which the accused has been committed:

Provided that where the accused has been committed to the High Court, the Magistrate may, in his discretion, leave such witnesses to be summoned by the Clerk of the State and such witnesses may be summoned accordingly:

Provided also that if the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice, the Magistrate may require the accused to satisfy him that there are reasonable grounds for believing that the evidence of such witness is material, and if he is not so satisfied, may refuse to summon the witness recording his reasons for such refusal, or may before summoning him require such sum to be deposited as such Magistrate thinks necessary to defray the expense of obtaining the attendance of the witness and all other proper expenses.

(12) Witnesses for the prosecution, whose attendance before the Court of Session or High Court is necessary and who appear before the Magistrate, shall execute before him bonds binding themselves to be in attendance when called upon by the Court of Session or High Court to give evidence.

(13) If any witness refuses to attend before the Court of Session or High Court, or execute the bond above directed, the Magistrate may detain him in custody until he executes such bond or until his attendance at the Court of Session or High Court is required, when the Magistrate shall send him in custody to the Court of Session or High Court, as the case may be.

(14) When the accused is committed for trial, the Magistrate shall issue an order to such person as may be appointed by the State Government in this behalf, notifying the commitment, and stating the offence in the same form as the charge; and shall send the charge, the record of the inquiry and any weapon or other thing which is to be produced in evidence, to the Court of Session or where the commitment is made to the High Court, to the Clerk of the State or other officer appointed in this behalf by the High Court.

(15) When the commitment is made to the High Court and any part of the record is not in English, an English translation of such part shall be forwarded with the record.

(16) Until and during the trial, the Magistrate shall, subject to the provisions of this Code regarding the taking of bail, commit the accused by warrant, to custody.

(17) Notwithstanding anything contained in this Code, an inquiry under this section shall not be postponed or adjourned merely by reason of the fact that any witness whose statement is to be recorded under sub-section (4) is absent or that any one or more of the accused is or are absent, unless the Magistrate, for reasons to be recorded, otherwise directs; and the inquiry shall, in no case, be postponed or adjourned more than once.".

"*Clauses* 36, 37 *and* 38.—For clauses 36, 37 and 38, the following clauses shall be substituted:—

36. *Substitution of new sections for section* 251 *in Act V of* 1898.—For section 251 of the principal Act, the following sections shall be substituted, namely:—

251. *Procedure in warrant cases.*—In the trial of warrant cases by Magistrates, the Magistrate shall,

(a) in any case instituted on a police report, follow the procedure specified in section 251A; and

(b) in any other case, follow the procedure specified in the other provisions of this Chapter.

251A. *Procedure to be adopted in cases instituted on police report.*—(1) In every case instituted on a police report, at the commencement of the trial, the Magistrate shall, when the accused appears or is brought before him, satisfy himself that the documents referred to in section 173 have been furnished to the accused, and if he finds that the accused has not been furnished with such documents or any of them, he shall cause them to be so furnished.

(2) If, upon consideration of all the documents referred to in section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge him.

(3) If, upon such documents being considered and such examination, if any, being made, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(4) The charge shall then be read and explained to the accused and he shall be asked whether he is guilty or claims to be tried.

(5) If the accused pleads guilty, the Magistrate shall record the plea and may, in his discretion, convict him thereon.

(6) If the accused refuses to plead, or does not plead, or claims to be tried, the Magistrate shall fix a date for the examination of witnesses.

(7) On the date fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution.

(8) The accused shall then be called upon to enter upon his defence and produce his evidence; and if the accused puts in any written statement, the Magistrate shall file it with the record.

(9) If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness on his behalf (other than a witness already examined) for the purpose of examination or the production of any document or other thing, the Magistrate shall issue such process, unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing.

(10) The Magistrate may, before summoning any witness on such application under sub-section (9), require that his reasonable expenses incurred in attending for the purpose of the trial be deposited in court.

(11) If in any case under this section in which a charge has been framed, the Magistrate finds the accused not guilty, he shall record an order of acquittal.

(12) Where in any case under this section, the Magistrate does not proceed in accordance with the provisions of section 349 or section 562, he shall, if he finds the accused guilty, pass sentence upon him according to law.

(13) In a case where a previous conviction is charged under the provisions of section 221, sub-section (7), and the accused does not admit that he has been previously convicted as alleged in the charge, the Magistrate may, after he has convicted the said accused under sub-section (5) or sub-section (12), take evidence in respect of the alleged previous conviction, and shall record a finding thereon.

37. *Amendment of section* 252, *Act V of* 1898.—In sub-section (1) of Section 252 of the principal Act, for the words "When the accused appears" the words "In any case instituted otherwise than on a police report, when the accused appears" shall be substituted."

ANNEXURE H

"25. For clause 25, the following clause be substituted:—

25. *Insertion of new section in Act V of* 1898.—After section 198A of the principal Act, the following section shall be inserted, namely:—

198B. *Prosecution for defamation against public servants in respect of their conduct in the discharge of public functions.*—(1) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (Act XLV of 1860) is alleged to have been committed against the President or the Governor or Rajpramukh of a State or a Ministry or any other public servant in respect of his conduct in the discharge of his public functions, a Court of Session may take cognizance of such offence, without the accused being committed to it for trial, upon a complaint in writing made by the Public Prosecutor.

(2) Every such complaint shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

(3) No complaint under sub-section (1) shall be made by the Public Prosecutor except with the previous sanction,—

(a) in the case of the President or the Governor or Rajpramukh of a State, of any person authorised by him in this behalf;

(b) in the case of a Minister of the Central Government or of a State Government, of the Secretary to the Council of Ministers, if any, or of any Secretary to the Government authorised in this behalf by the Government concerned;

(c) in the case of any other public servant employed in connection with the affairs of the Union or of a State, of some other public servant to whom he is subordinate or of any Secretary to the Government authorised in this behalf by the Government concerned.

(4) When the Court of Session takes cognizance of an offence under sub-section (1), then, notwithstanding anything contained in this Code, the Court of Session shall try the case without a jury and in trying the case, shall follow the procedure prescribed for the trial of warrant cases by Magistrates.

(5) For the purposes of this section, the expression "Court of Session" includes the High Court at Calcutta in the exercise of its original criminal jurisdiction.

(6) Nothing in this section shall be deemed to be in derogation of the right of the person aggrieved under section 198.

112. In clause 112, in sub-clause (a), in the entry relating to section 500, in the 3rd column, for the words "May arrest without warrant", the words "shall not arrest without warrant" shall be substituted."

ANNEXURE I

Further proposals to amend the Criminal Procedure Code

Of the proposals made in the list (already circulated to the Members of the Committee) Government are prepared to consider the following:—

(12) Section 68.—*Service of summons*—The summons should be accompanied by a copy of the accusation, private complaint or copy of the F.I.R. It will put the accused on enquiry even from the outset and facilitate speedy trial and avoid unnecessary adjournments. (T. S. Ramamurti, Advocate, Tirupur).

(16) Section 103.—*Supply of search list to person searched*—At present the Police need give a list of articles seized to the person from whose possession they were seized only *at his request*—It is difficult for the person searched to prove that he made such request. —The Public Prosecutor, Guntur, has suggested that such a copy of the search list should, therefore, be for the purpose supplied to the person searched and its acknowledgment obtained. Shri Abir Dayal Misra, M.P., has also suggested such a provision.

Court to pay expenses

(29) Section 160.—Mr. S. M. [illegible] provides the awarding of compensation by the Court, suggests that in the case of a woman not accustomed to go out in public, she should be examined during investigation in her own home. He also suggests that reasonable expenses should be paid by the Court recoverable from the accused. The section specifies that the expenses summoned by a Police Officer making investigation in any place under this section, should be paid in advance. People in general are very unwilling to incur enmity of accused persons by giving evidence against them. This unwillingness is enhanced by the omission to pay even their out-of-pocket expenses.

(50) Section 288.—*Admissibility of evidence given at preliminary inquiry*—(a) Evidence of a witness given at the preliminary inquiry is admissible under this section—It is suggested that statements of witnesses recorded under section 164 may be included and the words "duly recorded in the presence of the accused under Chapter XVIII" omitted.

(52) Section 337.—(a) *Tender of pardon to accomplices*—The Government of Madhya Pradesh are of opinion that the scope of Section 337 should be enlarged to include all cases which are punishable with imprisonment which may extend to 7 years—Even at present some offences punishable with seven years are covered by Section 337 and there would be no serious miscarriage of justice if the suggestion is accepted.

(b) By Section 5 of the Criminal Law Amendment Act of 1952 the power to grant pardon was extended to cases of offences under Sections 161, 165 and 165A of the I.P.C. The application of the provision of this section was limited for a period of two years commencing from 28th July, 1952. The provision is useful and the I.G., S.P.E., considers that it should be extended for a further period.

(55) Section 345.—*Compounding of offences*—Government are agreeable to the following offences being made compoundable.

Section 381: Theft by servant of master's property.

Section 423: Fraudulent execution of deed of transfer containing a false statement of consideration.

Section 424: Fraudulent removal or concealment of property, of himself, or any other person or assisting in the doing so.

Section 428: Mischief by killing, poisoning, etc. animals of the value of Rs. 10 or upwards.

Section 429: Mischief by killing, poisoning, etc., animals of the value of Rs. 50 or upwards.

(61) Section 417.—*Appeal on behalf of Government in case of acquittal*—The I.G., S.P.E., has suggested that Section 417 of the Code may be amended empowering the Central Government to file appeals against acquittals as it has been noticed that State Governments have in certain cases been reluctant to do so in spite of advice to that effect from the Central Government.

(62) Section 419 provides that the petition of appeal shall be reasonably sufficient taken by a copy of the judgment or *order* alleged to have been an am*pealed* against, the nature of the heads of charge. Sub-sect Patil, Jury a copy of the order or by a copy of words "appealed or except with the accusation contain that after the the order sheet of the case of the Presidestigation conviction" may be added. He further suggests that in case of any person appeals to the following proviso "provided that in case the investigation filed with appeal the appellant shall file the copy of the judgment or order within such time as the court may allow".

(65) Section 422.—*Notice of appeal*—Under this section in cases of appeals the Appellate Court shall cause a notice to be given to the accused of the time and place at which such appeal will be heard —The Conference of Inspectors-General, Police, have pointed out that in the absence of anything definite to the contrary, the provision is interpreted to mean that the notice must be *served personally* —In practice it is found that the accused successfully evade such service of the notice—It is, therefore, suggested that the words "given to" may be substituted by the words "served upon", in para. 2 of the Section.

(66) Section 423.—*Powers of Appellate Court in disposing of appeals*—According to the interpretation placed upon this Section, a High Court in an appeal from a conviction cannot alter the conviction nor at the same time, in exercise of its revisional powers, enhance the sentence—The consequence has been miscarriage of justice in several cases in which there has been no appeal by Government— There is no reason why a High Court should not be competent to exercise the power of Section 426 of altering a conviction and at the same time, to exercise its revisional power of enhancing the sentence —Justice Desai of the Allahabad High Court suggests that suitable amendment to this effect may be made.

The Council of Western India Advocates, Bombay, further suggest that the Section may be amended by providing for an appeal on facts and law—under Sec. 423(2). As it stands at present, the verdict

of Jury cannot be altered or reversed unless there is a misdirection or non-direction in the charge of the Judge to the Jury—Section 423 should be deleted so that the Appellate Court can interfere with a verdict of the Jury as in other cases—this is necessary to meet a possible perversity on the part of or tampering with the jurors.

(77) Section 497.—*Bail*—(a) Shri N. S. Jain, M.P., suggests that in sub-clause 5 of the section 497 the words "or under Section 498 Cr. P. C." may be added after the words "under this section".

It has been held by various High Courts that a Sessions Judge who has enlarged an accused person on bail in exercise of his powers under Sec. 498 cannot subsequently cancel it and even the High Court can do it only under its inherent powers under section 561(A) —The necessity for cancellation of bail by the authority empowered to grant it cannot be overlooked—It is suggested that this may be done by a suitable amendment.

(78) Section 499.—*Bond of accused and sureties*—Shri N. S. Jain, M.P., suggests that it may be provided in the section that the court may when determining the sufficiency of a surety, receive or accept an affidavit as evidence of facts for the purpose of its provisional acceptance.

(84) Section 545.—*Power of Court to pay expenses or compensation out of fine*—This Section provides the awarding of compensation for any loss or injury caused by the offence, when substantial compensation is, in the opinion of the Court recoverable by such person in a Civil Court. Section 546 specifies that the amount so provided shall be taken into consideration in a subsequent civil suit—The Section is not being freely or properly used by Courts—Where death is the result of homicide and the heirs of the deceased are deprived of their livelihood by the act of the accused, it is but proper that the Court which adjudges his guilt should also award compensation to the heirs taking into consideration the needs and status of the heirs and the capacity of the accused to pay as well—This will once for all settle the claim without the need for a further claim in a civil court causing needless worry and expense to both sides particularly when a Sessions Judge who is the Chief Civil Judge of the District, is deciding the criminal case—Similarly in cases under Section 304(A) also where death is the result of rashness or negligence of the offender, appropriate compensation should be awarded to the heirs by the Court—The Section may be specifically amended to that effect.

(86) Section 562(1A).—*Conviction and release with admonition*—The power to admonish under Sec. 562(1A) should be given in case of offences punishable for not more than two years whether under the I.P.C. or under any other Act.

APPENDIX II

Summary of the evidence tendered before the Joint Committee on the Code of Criminal Procedure (Amendment) Bill, 1954, on the 21st and 29th July, 1954 at 9A.M. in Parliament House, New Delhi.

WITNESSES

(1) Shri K. Rama Rao.	On behalf of—
(2) Shri C. Raghavan.	Indian Federation of Working
(3) Shri S. A. Sastri.	Journalists.
(4) *Shri J. P. Chaturvedi.	

*On the 21st July, 1954 only.

The representatives of the Indian Federation of Working Journalists made out the following points in the course of their evidence before the Committee on the 21st July, 1954:—

(1) Clauses 25, 96 and 112 of the Code of Criminal Procedure (Amendment) Bill, 1954, are irrelevant, superfluous, unconstitutional, unpopular, undemocratic, politically dangerous and inopportune, legally reactionary and destructive of the liberty of the press and freedom of discussion.

(2) The proposed clauses will prevent light being thrown on any shady dealings, on the part of the officers of the administration and the press will be practically smothered. Public servants will become less and less open to public criticism. While it is the prerogative of the press to clash with the bureaucracy where it is wrong, these clauses will gag free expression of opinion.

A procedural change is attempted under the new clauses. Libel against public servants is sought to be made a substantive offence against the State instead of being merely a personal offence, action on which can be taken only under Section 499, I.P.C. Loyalty to the State has been confused with loyalty to the officers of the State.

(3) There are already enough provisions in the present law to vindicate the honour of a public servant. Government can order an enquiry under the Commission of Enquiry Act. A reform of this kind would be in place if the law of libel is comprehensively reformed and connected changes made in the I. P. C.

(4) The proposed reform negates the principle of equality of all citizens in the eyes of the law by creating the public

servants as a privileged class distinct from others and introducing the principle of administrative justice. In democracy even the President or the Ministers as public servants, cannot claim greater privileges than other citizens. The topmost officials in England resort only to the law courts in the case of libel. Even the British bureaucracy in India never thought of such measures.

(5) The modern State has its ramifications in all spheres of activity so that the Press cannot criticise any particular fields without encountering authority and inviting action under these clauses.

(6) The cumulative effect of a trial under defamation will be the prevention of the honest journalist from doing his duty to the country. There is no provision to pay damages to the journalist who is ultimately acquitted of the charges.

(7) There is the danger of a newspaper proprietor, egged on by the police, trying to prevent an editor from giving expression to honest and fearless criticism.

(8) These clauses upset the balance of the Section in the Indian Penal Code on 'defamation'. The offence of libel is compoundable, bailable but not cognisable. Now it is sought to be made cognisable. In effect, cognisability of the offence makes preventive action by the police possible.

(9) The following should be introduced as new section 198A:—

"No criminal prosecution shall be commenced against any proprietor, publisher, editor or any person responsible for the publication of a newspaper for any libel published therein without the order of a judge in chambers at the court of sessions or of the High Court of Judicature in the Presidency Towns, as the case may be, being first had and obtained.

Such applications shall be made on notice to the person accused who shall have an opportunity of being heard against such an application".

(10) For initiating proceedings in a defamation case, the consent of the party concerned should be taken. In the case of an aggrieved Minister, there should be a Cabinet decision. In the case of an official, his own consent is enough. The accused should get the right of going into the witness box.

(11) It is an established fact that "administration" does not mean those who are in charge of it.

In England Lord Campbell's Act as amended provided that the permission of a judge in Chambers should be taken and the accused shall be given an opportunity to appear before the judge so that he can say whether there can be a prosecution or not, and there is no appeal against

the judge's decision. In England no action can be taken for publishing reports of defamatory speeches made in the House or outside unless malice was proved or the person who has been defamed had sent in a correction which had not been incorporated. It is not so in India.

(12) Trial for defamation proceedings will usually ruin the paper though the editor may be acquitted in the end.

Exposures which were made in the Press some years back regarding maladministration in the Hirakud Dam Project and the Damodar Valley Project, which were later on found to be true on an investigation by the Public Accounts Committee and upon which Government took remedial action to set right the defects pointed out, will no longer be possible if the new clauses are enacted.

(13) Yellow journalism flourished only because the responsible newspapers did not do their duty to the public, being afraid to indulge even in legitimate criticism where it was due.

2. The representatives of the Federation made out the following further points in the course of their evidence before the Committee on the 29th July, 1954:—

(1) The introduction of a magisterial enquiry at an intermediate stage amounts more or less to a cognisability of the case, and will not serve any public interest. The press will have less interest in exposing cases if a preliminary magisterial enquiry at an intermediate stage is introduced. Journalists do not have much confidence in magisterial enquiries.

(2) There is no need for amending the present law even if the suggestions of the Press Commission regarding code of defamation are accepted, as Government have sufficient powers even now in their executive capacity. If the proposals contemplated in the Bill are accepted a person who could otherwise have been a helpful witness in a case would find himself in the position of an accused.

(3) In France the law compels an aggrieved Government servant to resort to a criminal court for relief. This rule should also be followed in India.

(4) It is preferable to have the procedure laid down under section 194 of Cr.P.C. for the Advocate General to make an application instead of a superior officer preferring a complaint.

(5) Defamation must not be changed from a private affair into a public affair whether the expenses are borne by the Government both for the prosecution and defence or not.

(6) Any sort of protection given to a Minister or other Government officials as contemplated in the Schedule of the Bill is totally wrong. There is, however, no objection

to the safeguarding of the position of the Rajpramukh or Governor. If a Minister desires to sue, he may do so as a private complainant, and in extraordinary cases section 194 of the Code can always be resorted to.

(7) Trial by jury is welcome in cases when newspapermen are hauled up for defamation of public servants.

(8) In respect of complaints that occur in a district, the permission of the District and the Sessions Judge in Chamber should be taken; in the Presidency towns, the permission of a Judge in Chamber of the Judicature of the High Court should be taken. The provisions which deprive a defamed person to institute a criminal complaint without seeking the prior permission of any one should be modified so that instead of the decision being left to the Magistrate, permission should be sought from the Sessions Judge in Chamber after a hearing of the other party.

(9) The cost of litigation is high. It is, therefore, difficult for an ordinary citizen to file a complaint. The cost of litigation should be reduced.

(10) There is great apprehension that the purpose for which a law is enacted by the Legislature will be lost sight of by the executive when applying it.

(11) Attempt is being made in the Bill to make the allegation of corruption cognizable and not the act of corruption, which is totally wrong.

(12) If section 202 is applied to defamation cases, the present position will be much altered. The person libelled must go to a court of law on his own initiative. When the State intervenes with its resources and apparatus, it becomes an unequal fight.

(13) The law of libel in this country requires to be overhauled. The law should be brought into line with the English Act of 1952.

(14) A magisterial enquiry is an executive process which is bound to be partial to Government servants. A sessions case is, however, a judicial process which can be relied upon for impartiality.

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