

DR. 4 OF 1965

MALAYSIA

ORDERED BY THE HOUSE TO BE PRINTED—9TH AUGUST, 1965

Second

DEWAN RA'AYAT
(HOUSE OF REPRESENTATIVES)

**REPORT OF THE
SELECT COMMITTEE ON THE
CRIMINAL PROCEDURE CODE
(AMENDMENT) BILL, 1965**

(Second Session)

DI-CHETAK DI-JABATAN CHETAK KERAJAAN
OLEH THOR BENG CHONG, A.M.N., PENCHETAK KERAJAAN
KUALA LUMPUR

1965

EXTRACT FROM VOTES AND PROCEEDINGS OF 3RD JUNE, 1965

"Criminal Procedure Code (Amendment) Bill—read a second time. Bill referred to a Select Committee under the Chairmanship of the Minister of Home Affairs; the Committee to consist of such members as may be nominated by the Committee of Selection."

EXTRACT FROM FIRST REPORT OF THE COMMITTEE OF SELECTION (SECOND SESSION)

"The Committee met on the 4th June, 1965, and appointed the following to be members of the Sessional and Special Select Committee of the House:

SPECIAL SELECT COMMITTEE ON THE CRIMINAL PROCEDURE CODE (AMENDMENT) BILL

Enche' Abdul Rahman bin Ya'kub

Enche' Mohd. Zahir bin Ismail

Dr Awang bin Hassan

Enche' S. Y. Chan

Dato' Ganie Gilong

Enche' E. W. Barker

Enche' S. P. Seenivasagam

Enche' Abu Bakar bin Hamzah.

REPORT ON THE SELECT COMMITTEE ON THE CRIMINAL PROCEDURE CODE (AMENDMENT) BILL

The Select Committee on the Criminal Procedure Code (Amendment) Bill begs leave to submit the following Report:

1. The Committee met on Thursday, 22nd July, 1965.
2. Its first task was that of deciding what were the scope of its functions and powers and the manner in which it should carry out the responsibilities entrusted to it by the House.
3. So far as the scope and powers of the Committee are concerned, the provisions of the Standing Orders of the House are quite clear. The relevant Standing Orders—Nos. 83 (2), 83 (4) and 55 (1)—read as follows:

“83. (2) A Select Committee shall have power to send for persons, documents or papers and shall have leave to report its opinion and observations, together with the minutes of evidence taken before it to the House.”

“83. (4) The deliberations of a Select Committee shall be confined to the matter referred to it by the House and any extension or limitation thereof made by the House, and, in the case of a Select Committee on a Bill, to the Bill committed to it and relevant amendments.”

“55. (1) Any Committee to which a Bill is committed shall not debate the principle of the Bill but only its details.”

4. It may be recalled here that the motion for second reading of the Criminal Procedure Code (Amendment) Bill was moved by the Hon'ble the Minister for Home Affairs and Justice at the sitting of the House on the 3rd June, 1965, and agreed to without any debate. This means, in effect, that the principle of the Bill had been accepted by the House. The Bill was then committed to a Select Committee under the chairmanship of the Hon'ble Minister for Home Affairs and Justice. Taking these facts into consideration—that the House had endorsed the principle of the Bill by giving it a second reading, and that the Bill had only been committed to the Select Committee after it had received its second reading—it is clear that it is competent for the Committee to consider only the details of the Bill.

Moreover, any amendment which the Committee proposes to the Bill must be compatible with its principles. The Committee may not consider any amendments which would negative the principle of the Bill.

5. The Committee understands that the Government regards the Criminal Procedure Code (Amendment) Bill as a non-political piece of legislation which should be fully debated and on which it is desirable that public opinion should be given the fullest opportunity to express itself in the interests of justice. Hence the Government's decision to remit the Bill to the Select Committee for consideration, a decision which had been made in the belief and expectation that the merits and principles of the measure would receive thorough and critical examination at the hands of the Committee.

6. From the discussion of the Committee on this point, the fact emerged that all members of the Committee who were present at the meeting had accepted appointment to the Select Committee in the belief that the Committee would have an absolutely free hand to do as they considered fit on the Bill. For the reasons stated in para. 4 above, it now appears out of the question that the Select Committee can now carry out the functions and responsibilities which were envisaged for it by all parties concerned. The Committee could of course still carry out the limited functions required of it under the Standing

Orders, but members were unanimously of the opinion that there would be no point in carrying on, particularly so in the light of the Government's readiness to have the Bill withdrawn and resubmitted to the House at a future date.

7. There is no provision in the Standing Orders setting out the procedure whereby a Bill which has been committed to a Select Committee may be withdrawn, and it has therefore been necessary for the Committee to have recourse to the practice of the United Kingdom House of Commons. The relevant procedure is to be found in Erskine May's "Parliamentary Practice", 17th Edition, at pages 668 and 684, as follows:

"Inability of Select Committees to decide against Bills—A Select Committee to which a bill has been committed has no power to put an end to the bill, though a committee has negatived all the clauses and the preamble of a bill, and made a special report to that effect to the House. Where a Committee has been of the opinion that a bill should not be further proceeded with, it has made a special report to that effect, and reported the bills, without amendment, to the House."

"If, however, circumstances arise which, in the opinion of the member in charge of a bill, render it unexpedient to proceed further with the consideration of the bill, he may be allowed to move, 'That the Committee do not proceed further with the consideration of the bill. If the motion is agreed to, the bill is reported to the House, without amendment, or with such amendments as the Committee has made, together with a special report setting out the facts'."

8. The motion "That the Committee do not proceed further with the consideration of the Bill" was duly moved by the Hon'ble Minister of Home Affairs and Justice and was unanimously agreed to.

Therefore in order to enable a Select Committee to consider the merits and principles of the Bill at a future date, the Committee unanimously recommends that the Bill be withdrawn by the Minister in charge of the Bill under S.O. 62 and, if the Government so wishes, it may be reintroduced and committed to a Select Committee after it has been given its First Reading.

DATO' DR ISMAIL BIN ABDUL RAHMAN
(Chairman)

ENCHE' ABDUL RAHMAN BIN YA'KUB

ENCHE' MOHD. ZAHIR BIN ISMAIL

DR AWANG BIN HASSAN

ENCHE' S. Y. CHAN

DATU GANIE GILONG

ENCHE' E. W. BARKER

ENCHE' S. P. SEENIVASAGAM

ENCHE' ABU BAKAR BIN HAMZAH.

DEWAN RA'AYAT

(HOUSE OF REPRESENTATIVES)

MINUTES OF MEETING OF SELECT COMMITTEE ON
THE CRIMINAL PROCEDURE CODE (AMENDMENT)
BILL HELD ON 22ND JULY, 1965, AT 10 A.M.

PRESENT:

1. The Minister of Home Affairs and Justice (Dato' Dr Ismail bin Abdul Rahman) (*Chairman*).
2. Enche' Mohd. Zahir bin Ismail.
3. Dr Awang bin Hassan.
4. Enche' S. Y. Chan.
5. Enche' E. W. Barker.
6. Enche' Abu Bakar bin Hamzah.

ABSENT:

The Minister of Land and Mines (Enche' Abdul Rahman bin Ya'kub).
Datu Ganie Gilong.
Enche' S. P. Seenivasagam.

IN ATTENDANCE:

The Attorney-General (Enche' Abdul Kadir bin Yusof).
Mr D. B. W. Good, Commissioner of Law Revision.
Clerk of the House of Representatives (Tuan Sheikh Abdullah bin Sheikh Abu Bakar).
Deputy Clerk of Parliament (Enche' Lim Joo Keng).

The Committee deliberated.

Motion moved and unanimously agreed to:

"That the Committee do not proceed further with the consideration of the Bill." (*Chairman*).

Meeting adjourned at 10.40 a.m.

(Verbatim record of meeting attached).

VERBATIM RECORD OF MEETING

Mr Chairman: Gentlemen, I think we can now proceed with the meeting. Although the Honourable Enche' S. P. Seenivasagam had advised that he would be coming he has not turned up—we have waited now for 15 minutes. (*Time—10.15 a.m.*).

I think you have received the agenda for today's meeting, but before we go into it, I would like to make a statement on the powers of the Committee on which I would like Members to give their opinions. I feel that it is better we know what the powers are, because this will solve a lot of difficulties later on if at the initial stage we spell out our powers.

I would like first of all to state the powers as embodied in our Standing Rules and Orders and also as quotations spelt out in *Erskine May*, which as you know is the Bible of all parliaments. I would like to say that the object of the Select Committee procedure may be ascertained from Standing Orders 50 (3) and 52—to enable persons to be heard (in person or by counsel) who claim that their individual rights or interest will be prejudicially affected if the law outlined in the Bill is brought into force.

S.O. 55 (1) provides that any Committee to which a Bill is committed shall not debate the principle of the Bill but only its details; but S.O. 83 (2) empowers a Select Committee to report its opinions and observations, together with the minutes of evidence taken before it, to the House.

It is difficult to see how a Select Committee can discharge its functions of hearing evidence from persons claiming that their rights and interests are affected, and reporting to the House its opinions and observations, without going into the merits of the Bill and, therefore, considering its principles.

S.O. 100 provides that Commonwealth Parliamentary procedure shall be followed so far as it is not inconsistent with Standing Orders. The relevant U.K. parliamentary procedure will be found in *Erskine May*, 16th Edition, at pages 525, 527, 568, 643 and 644 as follows:

“Page 525—

‘If it should be necessary, before the second reading of a Bill, to make considerable changes in its provisions, such changes can only be made, at this stage, by discharging the order for the second reading and withdrawing the Bill.’

Page 527—

‘In Committee the details of a measure are the primary object of consideration, and alterations in its provisions are proposed. But amendment must be compatible with the principle of the Bill which the House is taken to have affirmed on second reading. Hence an amendment which destroys the principle of a Bill, for instance, is out of order.’

Page 568—

‘A Commons Bill reported from a Select Committee is normally recommitted to a Committee of the whole House.’

Page 643—

‘A Select Committee may report that it is not expedient to proceed further with a Bill. This is usually acquiesced in, but the Bill may be recommitted. A Select Committee of the Lords has reported that it has not proceeded to the task of amending a Bill, and the Bill has thereupon been committed to a Committee of the whole House.’

Page 644—

‘When a bill which has not been read a second time is referred to a Select Committee, the Committee does not go through the Bill clause by clause, but enquires into the merits of the Bill.’

In our Parliament there is no provision for committal to a Select Committee before the bill has been read a second time—you will see that under S.O. 54, but there would seem to be no inconsistency in adopting the procedure mentioned by *Erskine May* at page 525 or 644.

Here, I would like to refresh Honourable Members’ memory again. Page 525 says, “If it should be necessary, before the second reading of a Bill to make considerable changes in its provisions, such changes can only be made,

at this stage, by discharging the order for the second reading and withdrawing the Bill", and page 644 says, "When a Bill which has not been read a second time is referred to a Select Committee, the Committee does not go through the Bill clause by clause, but enquires into the merits of the Bill." In short, reading the Standing Orders of the Dewan Ra'ayat with the U.K. parliamentary procedure outlined by Erskine May (applicable by virtue of S.O. 100) the position seems to be:

What we have got to decide today is, this Bill has been read a second time, and the principles of the Bill have been debated in the second reading; so, by committing the Bill after the second reading in accordance with our Standing Rules and Orders, the only thing that this Committee could do is to go into the details of the Bill but cannot make recommendations on the principles of the Bill which have already been approved by the House at the second reading.

So, I would like to have Honourable Members' opinions.

(NOTE—The above was explained briefly to Enche' Abu Bakar in Malay).

Enche' Mohd. Zahir: What I am going to say is that during the last Parliament meeting, when we read the Bill a second time, the Parliament did not debate on the principles of the Bill at all. It was sent to a Select Committee straightaway—I think.

Chairman: I think you are quite correct. However, the fact remains that the Bill has been read a second time. What I am putting to you now is our powers as enunciated in the Standing Orders and also in Erskine May's parliamentary practice. Our powers after a Bill has received the second reading and the principles debated are limited. We can only consider the details, and that is what I want observations on. If I remember correctly some Honourable Members spoke.

Enche' Mohd. Zahir: None spoke.

Enche' Chan Seong Yoon: I think you enunciated at that time that in any case the Bill was going to a Select Committee and the second reading of the Bill was passed.

Enche' Mohd. Zahir: Members will say that they have been deprived of the debate on the principles of the Bill.

Chairman: That is why I want to hear your opinion. This is the first time when we have gone to a Select Committee.

Let me refresh my memory. (Dr Ismail referred to his speech in Parliament and read out, "Since the Bill was published, certain amendments have been received and there have been comments made questioning the desirability of some of the amendments proposed. It is, therefore, considered appropriate that at the proper stage of the Bill it will be moved by me that the Bill be examined by a Select Committee".)

From that statement of mine it does not mean that I did not want the principles of the Bill to be debated in the House*. If Members feel that the principles would have to be debated in this Committee, we can try to find a way. What I want to know today is the opinion of every Member present here, because this is very important.

* Note by the Clerk of the House:

The Motion for the 2nd Reading was in fact proposed for debate by Mr Speaker and the question was put to the House only when it was clear that no Member wished to speak.

Enche' Mohd. Zahir: I feel that Members of Parliament were thinking that after the Bill had been passed by the Select Committee, they would have an opportunity of debating the principles.

Chairman: I do not think they can. But they can debate on the adoption of the Select Committee's report, which will not make recommendations on the principles. They can debate only on the details. What do you feel—the power given is restricted?

Enche' Mohd. Zahir: Yes.

Chairman: You more or less agreed to serve on Committee under a misunderstanding?

Enche' Mohd. Zahir: We were under a different understanding.

Dr Awang: I was under the impression that the principles of the Bill had not been debated yet.

Enche' Abu Bakar: Saya juga. I do not know whether the House will be having an opportunity to debate on the principles, the right to debate.

Chairman: No right.

Enche' Abu Bakar: Every Member was expecting a debate on the principles.

Enche' E. W. Barker: I was under the impression that the Bill was read the first time. Aren't bills read for the first time and sent to a Select Committee? I came here under that impression.

Enche' Chan Seong Yoon: I feel that the only important change, if any, in principle is doing away with P.E. I feel that most of the people would be in agreement with this new change of policy. However, I feel that the policy of doing away with P.E. should have been debated.

Chairman: Well, gentlemen. I can see the consensus of opinion here. It remains for me to formally move (withdrawal of the Bill), since you are in agreement that there should be a debate on principles.

I would like to say that this is the first time we have gone to Select Committee and I feel that it is important that the Select Committee should be given the opportunity to discuss the Bill if Members of the Committee feel that they were entitled to do when they agreed to serve on the Committee. Evidently there is a misunderstanding of our Standing Rules and Orders. I must admit myself that I was under the same impression. I have spoken with the Attorney-General.

The object of this Bill is non-controversial and non-political. The Government's interest in this Bill is justice, and the Government wants this Bill to be fully debated and it wants the opinion of the public, so that when the Bill is passed by Parliament nobody can complain that the Bill has been rushed through.

This is the first time we have gone to Select Committee and we cannot blame anybody for it. So, I think it is better that we do not proceed with the Select Committee until we are provided with the powers which we previously thought we had. It is, I think, best for Government to withdraw the Bill and introduce it again, and then when the Bill is being introduced the Government will move that the Bill be sent to Select Committee after the first reading. If it is sent to Select Committee after the first reading, we can use Erskine May's practice.

Although it is not spelt out here that the Bill can be referred to a Select Committee after the first reading—it is silent on that—we can make use of Erskine May's procedure in our Parliament.

Since according to our Standing Orders, the power to do this is to say that the Bill should not be proceeded with—and it should come from the Chairman, I formally move that the Committee do not proceed with the consideration of the Bill.

My motion is now open to debate.

Enche' E. W. Barker: If I could be of assistance. The Bill has now been sent to us. I think we have to make a report to Parliament saying that we did not proceed with the Bill.

Chairman: Yes.

Enche' E. W. Barker: Once the Government has the report, it is up to Government to proceed or withdraw.

Chairman: We have given the reason for inclusion in our report. This is the first time that a Bill has gone to a Select Committee and all sides agree—nobody is to be blamed for this—that this should have been done after the first reading. Since this has been done after the second reading, the Committee has only power to consider the details and, therefore, it does not serve the object of sending the Bill to Select Committee for it to be considered thoroughly.

Question put and agreed to *nemine contradicente*.

Meeting adjourned at 10.40 a.m.