[Shri Satya Narayan Sinha.]

undertakings given during the sessions shown against each: —

(i) Statement No. Ill—Eighth Session, 1954.

(ii) Statement No. VII—Seventh Session, 1954.

(iii) Statement No. XIII—Sixth Session, 1954.

(iv) Statement No. XVI—Fifth Session, 1953.

(v) Supplementary Statement No. XVI—Fourth Session, 1953.

(vi) Supplementary Statement No, XXI—Third Session, 1953.

(vii) Statement No. XVII—Second Session, 1952.

*[See* Appendix IX, Annexure Nos. 132 to 138 for items (i) to (vii) above.]

## THE NEGOTIABLE INSTRUMENTS (AMENDMENT) BILL, 1955

THE MINISTER FOR REVENUE AND CIVIL EXPENDITURE (SHRI M. C. SHAH) : I beg to move for leave to introduce a Bill further to amend the Negotiable Instruments Act, 1881.

MR. CHAIRMAN: The question is:

"That leave be granted to introduce a Bill further to amend the Negotiable Instruments Act, 1881."

The motion was adopted.

SHRI M. C. SHAH: Sir, I introduce the Bill.

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

SHRI B. M. GUPTE (Bombay): Sir, Dr. Katju has taken a great interest in this measure and it is a matter for gratification that his long labours are now nearing fruition. No doubt the Select Committee also did its job well and the Bill is considerably improved. Nevertheless the opinion has been expressed in this House by many Members and in the other House also that the measure has not achieved appreciable success in its avowed object, namely, simplifying the procedure, so that the dispensation of justice may be more speedy. I share that opinion. It is correct because we find that only in the matter of committal proceedings and warrant cases, on police reports, there has been some shortening of procedure. Moreover some warrant cases will now be turned into summons cases. But on the whole, this will make no appreciable impression on the situation. But I do not blame the Government or the Select Committee for this result. I share the opinion of the Members who are of the view that the Bill has not achieved considerable success but I do not share their disappointment. And this is because I never pitched my expectations to the extent they did. I realised from the beginning and I have always held that simplification of the laws of our country is not so easy. The affairs of the world have become so complex and we have become so accustomed to the complicated pattern of administration of justice that it is now too late in the day to think of a simple, rough and ready sort of justice. Those days are gone, gone beyond recall. We cannot think of that sort of justice today. Therefore if trials have to be speeded up then there must be other methods, not simplification of tha procedure and we cannot expect too-much in that line. I do believe that trials can be speeded up if all the parties concerned play their part well, the judges, the magistrates, the lawyers and the parties, and if more magistrates are appointed. In this connection I stress the important point which has been emphasised in this Bill, namely, the appointment of honorary magistrates. I do hold that more magistrates have to be appointed and there is no reason therefore why honorary magistrates'

services should not be availed of. There is widespread distrust, there is widespread prejudice against these honorary magistrates and in my State the system has been abolished altogether as far as trial is concerned. Some honorary magistrates are appointed only for the purpose of attestation and they are not entrusted with judicial trials. But I do not see why that should be so as far as a democratic State is concerned, or for that matter as far as any modern State is concerned. The modern State has grown enormously in its sphere of activity and its activities are growing very rapidly. They are taking so many things on themselves that supplementary activities on the part of the people are necessary and especially so in a democratic country. We see that much of secondary education is being carried on by private effort and we want more private schools. We want private hospitals; we want private dispensaries. We also welcome honorary services of physicians and honorary services of surgeons, and then there is a frantic call for *shramdan,* a frantic call for *buddhidan* and *sampattidan.* I do not therefore see why the services of a class of persons who are prepared *to* place their experience and their knowledge of the law at the service of the community free should not be availed of. I think it is quite proper. It is in the interests of the community. Moreover as I said in the case of a democratic country, if the people are allowed to take part in the administration and not merely vote at an interval of four or five years then it ' is a better democracy. Therefore I do not see why their services should not be availed of—the services of honorary magistrates. Of course there is that prejudice against that system because the system was abused in the former regime and it was used as a patronage only to the flatterers and supporters of the then Government and it was done without reference to the qualifications or the integrity <-of the persons concerned. But simply because it happened like that, then we should not condemn the system as such and therefore I am glad of this emphasis that is placed on this point in the Bill. Moreover, in this case the Select Committee has improved the provision by insisting that the High Court shall be consulted in the matter of framing the regulations about qualifications. I, therefore, do support this provision and I hope that the States, at least my State which has abolished this kind of system, will be resurrecting it. If a proper number of magistrates are appointed, there is no reason why there should not be speedier trials. Then in saying that the Bill has failed in its avowed object, I do not mean to say that the entire labour has been wasted. The truth of the matter is that every piece of legislation has to be brushed up after a lapse of some years—has to be streamlined and, therefore, the Code has been streamlined and in the course of the streamlining many improvements have been made. I do not propose to refer to them all. I agree with them and, therefore, it is not necessary to enumerate them.

I will refer to only one. I am glad that the Select Committee, though it has not entirely dropped it, has made one provision quite innocuous. Had it remained there, I think it would have entailed great hardship and perhaps denied justice to the accused. Dr. Katju seemed to think that as far as possible the Sessions trial should be held in the village which was the scene of the occurrence of the crime. I do not mean to say entirely but he seemed to be considerably influenced by the thought that people were led to perjury simply because they were divorced from their surroundings; the fellow villagers were not near them and, therefore, they were emboldened to tell a lie. I think that this is not a fact, because as far as I can see the experience of all lawyers is this. Even for simple cases under section 323 or section 504 of the Indian Penal Code, generally all the elders of the

[Shri B. M. Gupte.] village come to the Court either as parties or as witnesses or as mediators and if the case is more sensational, perhaps most of the adult men and women go to the Court. And in the case of a murder trial, the sensation is such that perhaps the people from the surrounding villages also come there. So, if the Court does not go to the village, the villager goes to the Court. And, therefore, there is no point in saying that if the trial were taken to the village, there would be no perjury. In my opinion, the malady goes deeper. There are other causes of course, but perhaps the factions in the villages account for these. There is no collective opinion of the village as such to condemn the lie. If one faction condemns it, there is the other faction to applaud it and there need be no fear on this account. Therefore, taking the trial to the village is not the solution. And now, of course, it has been made innocuous, because the consent of the accused and the prosecution is insisted upon and I am quite sure that that consent will not be available and practically this provision will remain a dead letter. I am glad of that.

Then, I need not refer to other matters about which I agree. About the points of difference of opinion, T will mention only two important ones. First of all, the most controversial point about the defamation of public servants. I would have been more glad if this provision had not come; but at the same time I appreciate the motive behind it. The motive is not to terrorise the press, but the motive is to ensure purity of the administration. If the public servants are to be required to vindicate their honour in a Court of Law, then the difficulties about this matter should be removed. Therefore, Dr. Katju insisted that in order to remove one of those difficulties, the offence should be made cognizable, so that there should be some preliminary investigation ana the collection of evidence, etc. But two difficulties were mentioned. One was about the collection of evidence. In making the offence cognizable, the idea was not that the person, the journalist should be arrested without, a warrant. The idea was that the police should collect all material, collect all evidence before the trial and that was quite laudable. But at the same time another difficulty was there. The Press Commission had mentioned that many States made the grievance that the public servants were afraid to go to a Court of Law because there was what was called mud-slinging cross-examination. Now, I find that these difficulties are still there; none of these difficulties has been provided for in this present provision. According to what the Press Commission had Suggested there would have been at least a preliminary enquiry, though not an investigation by the police. But in the present provision that has now come before us, there is no preliminary enquiry or investigation at all. So, I do not see how Government's; purpose is served. They wanted the collection of material by the police before any steps were taken. But apart from that, in my opinion,, the other objection about mud-slinging cross-examination was more serious, and there is no provision for that. That difficulty has not been removed. The Press Commission had quoted a case from Patna and they had suggested that an explanation should be added to "defamation" definition under section 499, so that there should be no< mud-slinging. Every person had a reputation to lose and, therefore, there should be no mud-slinging cross-examination. I do not find any provision to that effect. This Bill contains some suggestions about the amendments of the Indian Penal Code, but there is no reference to this suggestion at all. I, therefore, take it that the Government has decided not to make this amendment; and if this amendment is not made, then there is this apprehension, about

the mud-slinging cross-examination. And if you have not removed it, then what the Government themselves said would be a deterrent still remains. I really cannot understand the attitude of the Government. You have taken the odium of bringing forward this unpopular measure and yet do not go the whole hog md you allow things to remain in a manner which will not satisfy the public servants. I would, therefore, prefer, I would request the Government to drop the matter altogether instead of having it in this truncated form. That is the first suggestion I have to make as far as the difference of opinion is concerned.

There is another important provision, namely, one for making the accused a competent witness in his own trial. Of course, the proviso is added that if he does not offer himself as a witness, no adverse inference should be drawn against him. But I doubt the efficacy of this proviso, because in my opinion the psychological factor is bound to be there. I have made enquiries in regard to this in England where such provision has been in operation and I understand that the jury is influenced if the accused does not offer himself as a witness. Psychologically you cannot prevent that result and, therefore, I am not in favour of this. Of course, if nobody starts this practice, if no accused comes forward, then the law will remain a dead letter, but once some accused come forward, and some do not then the adverse inference would be drawn by persons who are not trained judges. Moreover, there is another point also. I see that the accused is allowed to give evidence in disproof of the charge against him, or against a co-accused. I do not see why this limitation should be there. There are many cases when the accused might say: "I have not done this. The other fellow has done it." He would charge the other co-accused. Of course, what the evidentiary value of this accusation would be, it is for the Judge to decide. But .1 do not. see why he should be prevented from saying this? Once you give him the opportunity to give evidence, why should he be prevented and allowed to give evidence only in defence of the co-accused? He is not allowed to say fully what he has to say. I have not framed any amendment because I have experienced the futility of giving amendments in this House when the Bill comes from the other House, because the Government has always been very reluctant to accept them in such cases. Therefore, the better method I have found is to appeal to tine Minister. If it appeals to him, then naturally he will frame the amendment in its proper form; otherwise, it is useless expending one's energy over the accurate wording.

SHRI H. C. DASAPPA: Sir, I do not think that the hon. Minister will take up such an attitude.

SHRI B. M. GUPTE: All the same, there is no objection to making that suggestion even without drafting an amendment. I suggest, therefore, that, as far as possible, the wording should be so changed that the accused might be able to give his full story. And it should not matter if that story implicates the other accused. With these words, Sir, I commend this measure to the acceptance of this House.

SHRI S. MAHANTY (Orissa): Mr. Deputy Chairman, I am well aware of my own limitation, so far as this particular Bill is concerned, because I feel that only those who have got some practical knowledge of the working of the Criminal Procedure Code, will be in a better position to offer their remarks on the provision of the Bill. So, Sir, if I have ventured to speak on this Bill, I must speak as a layman, and I will try to put forward the layman's point of view, so far as clause 25 is concerned. I will confine my observations only to clause 25 of this Bill, which provides for the procedure of prosecution in case of defamation of public servants.

Sir, I consider that this is yet another piece of measure which It

[Shri S. Mahanty.] directed towards restricting the frontiers of the freedom of the press. No one suggests that the press enjoys absolute freedom. In fact, every freedom is relative, and so far as the freedom of the press is concerned, it is also restricted, it is also relative. The legislative abridgment of the fundamental freedom of the press in respect of defamation has received well-recognised approbation. Therefore, no one should try to confuse the issue by bringing in the irrelevant argument that clause 25 should be defended, because the press should not be given that kind of freedom to defame or to make character assassination of public servants. In fact, the Indian Constitution, article 19, also recognises that so far as defamation is concerned, the press has to work under certain restrictions. Therefore, the question here is not about defamation. But the question here is about the procedure of prosecution for defamation. Sir, I venture to think that it is almost naive and specious to argue on the abundance of yellow press in India, where much mud-slinging is practised and where defamatory publications are found against public officials who are quite innocent and who cannot acquit themselves of the defamations made. I yield to none in my anxiety that our press should rid itself of vulgar sensationalism or deliberate defamation, with a *mala fide* intent. But, having said so I think that the Government's case seems to be very much overdrawn, and the Government is trying to justify the incorporation of this clause 25 in the Statute Book for reasons about which they cannot satisfy the public opinion in this country.

SHRI B. K. P. SINHA: Your speech will now be extensively reported.

SHRI S. MAHANTY: Why do you grudge it?

Well, Sir, I have defended many undefended causes. And on this occasion I will defend the cause of the yellow press. Now, what is there about the yellow press? So many references have been made to the yellow press, even though the I Press Commission says that if there J is any kind of yellow press in this [ country, it is very restricted and it is very microscopic in its extent.

Now, Sir, the first thing to be analysed is this. What is wrong about the word 'yellow'? With all respect to my friends, who wear a white-cap, I may say that the term 'white-cap' has got a very bad meaning. The Chambers's Twentieth Century Dictionary defines 'white-cap' as "a member of a self-constituted vigilance committee who, under the guise of purifying the morals of the community, deal violently with persons of whom they disapprove." But, Sir, I am not going to accept that kind of a definition of 'white-cap', because in India, the white-cap is associated with all that has been sublime, with all that has been noble, and with all that has been idealistic. It is a pity that 'yellow', another colour, which is always associated with divinity and with noble values according to the Indian schemes, should have been associated with all that is sordid and with all that is perverse, as for example, yellow fever, yellow flag, and so on and so forth. Therefore, what I am trying to point out is that it is a very irrational attitude to go by definitions without examining the content. Now, the Indian Press Commission, even in spite of their voluminous report and their unqualified condemnation of the yellow press, have not cared to analyse the sources of inspiration of the yellow press, as the Royal Press Commission of the United Kingdom did. Therefore, for the yellow press, we have to go to the findings of the Royal Press Commission of the United Kingdom. Now the Royal Press Commission of U.K. says that there are two motives which inspire the yellow press. One is sensationalism, and the other is a mala *fide* purpose, maybe, for blackmailing, or for defaming a person without any rhyme or reason. Sir, I am reading out from paragraph 496 of the U.K. Press Commission's Report. Why I am quoting the findings of the U.K. Royal Press Commission in this context is because of the fact that the press in U.K. has got a certain stan-

dard, a certain sense of values, which has not yet been approximated by the Press in any other country. It should be borne out from the fact that during the last great World War, when every journalist, all over the world, had to work under a kind of censorship imposed by the Government, in the United Kingdom, there was no censor ship imposed by the Government. It was purely voluntary. This only indi cates the sense of responsibility which actuates the journalists in U.K. in their professional activities. Now, in that country where the sense of jour nalistic value is at such a height .....

MR. DEPUTY CHAIRMAN: Mr. Mahanty, we are not dealing with the Press Commission's Report now. And "there is no mention of Yellow Press here in the Bill.

SHRI S. MAHANTY: I refer to the speech of the hon. Deputy Home Minister and so many other stalwart supporters of this measure, who have made copious reference to Yellow Press.

MR. DEPUTY CHAIRMAN: We are only concerned with the procedure to be followed. The Press Commission's Report is coming up for discussion. You will then have full opportunity "to say these things.

SHRI V. K. DHAGE: Sir, what he is referring to is the question .....

MR. DEPUTY CHAIRMAN: I know what he is referring to.

I suggest you need not digress on the definition of 'Yellow Press' now. And besides, I may inform you that there are 15 names before me. So please confine yourself to the clauses of the Bill.

SHRI S. MAHANTY: I am very grateful to you for your suggestion, Sir. Yellow Press is not my theme, but simply I was making a refer ence .....

MR. DEPUTY CHAIRMAN: Make it your theme when the Press Commission's Report comes to be taken up.

SHRI S. MAHANTY: Why I was making this copious reference to the Yellow Press was because of the fact that the whole case of the Government has been based on this fact. They say "Look here, there is a kind of sordid yellow press which is defaming Ministers, public servants, and so on and so forth." And I am not going to put up with that kind of argument. That is the gravamen of the charge of the Government against the Yellow Press. I therefore thought that it would be better if one tackles this question of Yellow Press boldly. If you object to it, 1 will .....

MR. DEPUTY CHAIRMAN: It is only incidentally relevant; it is not the main thing.

SHRI S. MAHANTY: Thank you, Sir. What I was saying before I was interrupted was that even in the U.K., where the press has set such a noble standard—of course it is my opinion; according to me it has a noble standard—sensationalism and all the elements of the yellow press are found even in the national papers. It is not in the stray weekly papers which are published in some backstreets of some metropolitan town.

SHRI KANHAIYALAL D. VAIDYA (Madhya Bharat): May I know what is the National Press?

SHRI S. MAHANTY: I am sorry I cannot undertake the hon. Member's education on the floor of this House. You had better read the U.K. Royal Press Commission's report. In paragraph 496 of their report, they say:

> "The triviality and sensationalism which we have criticised in previous paragraphs are principally apparent in the national popular papers with a mass circulation."

Papers with a mass circulation carry love stories of princesses of Buckingham Palace. Sensationalism there is in plenty in the English Press. Yet in that country they do not bring in any such measure as is contemplated in clause 25 here.

SHRI KANHAIYALAL D. VAIDYA: We are discussing the Indian Press here, not the U.K. Press.

MR. DEPUTY CHAIRMAN: Order, order.

SHRI S. MAHANTY; NOW reference has been made to article 24 of our Constitution which guarantees equality before law. What is equality before law? No High Court nor even the Supreme Court have so far made a clear examination- of the content of the term 'equality before law'. Of course I speak subject to my own limited knowledge. So far no commentator has written on the concept, the extent and the scope of the term 'equality before law'. Therefore for a proper connotation of 'equality before law' one has to go back to those eminent jurists of the United Kingdom who have expounded equality before law. Now, in this context, I will refer to a book by Mr. C. K. Allen. He was Professor of Jurisprudence in Oxford University. In that book 'Bureaucracy Triumphant' which hon. Members will do well to find and read in the Library upstairs, a whole chapter has been devoted to the concept of equality before law, and this authority, in the course of his examination of 'equality before law' has relied on another and greater authority, Dicey, of hallowed memory among the jurists not only of India but also outside. The two aspects of the rule of law, according to Prof. Dicey, are the following:—(1) Every man is responsible for his acts, whatever his position in society. Any individual servant of the Crown must answer for any wrong he has done as an individual. (2) There is only one system of justice available to or against all or any of His Majesty's subjects. There are no special courts; there are no special procedures exclusively to members of the executive. The Crown itself and all servants of the Crown are justiciable if at all in the ordinary courts under the ordinary law of the land.

In France it was only Napoleon who sought to give certain special privileges to his officers. The reasons are well known. I am aware of the fact that there are chapters in the Criminal Procedure Code as well as in the Indian Penal Code, where the public servants are entitled to certain safeguards, but the limited question before us is to examine whether we want to maintain the *status quo;* the position as it is handed down to us from the imperialist regime, and expand itsr frontiers or introduce some radical change. Now, under section 198 of the Criminal Procedure Code there are only four types of persons who are exempted from appearing before a Magistrate, making a complaint and standing cross-examination. They are, firstly a purdah woman, secondly a lunatic or an idiot, thirdly a sick or infirm person and lastly a minor. I wonder what has happened in this Welfare State of India that a Minister should be equated with a *purdah* woman, and a public official should be equated with a lunatic or' a sick or infirm person. Section 198 of the Criminal Procedure Code says:

> "No Court shall take cognizance of an offence falling under Chapter XIX or Chapter XXI of the Indian Penal Code or under sections 493 to 496 of the same Code, except upon a complaint made by some person aggrieved by such offence:
>
> Provided that, where the person^, so aggrieved is a woman who, according to the customs and manners of the country, ought not to be compelled to appear in public, or where such person is under the age of eighteen years or is an idiot or lunatic, or is from sickness or-infirmity unable to make a complaint, some other person may, with the leave of the Court, make a complaint on his or her behalf."

SHRI K. S. HEGDE (Madras): A. little knowledge is a dangerous thing. There are many other sections there.

SHRI S. MAHANTY: I would like to be enlightened as to why in a Welfare State a Minister should be equated with a *purdah* woman and why a public official should be equated with a lunatic. Why should a public official who is expected to be thick-skinned:

get agitated at any suggestion of being cross-examined? I hope Mr. Hegde, for whose legal knowledge I have got great respect, will enlighten me on this limited issue. I am not a lawyer. I hope he will convince the House as tc why a Minister should be on a par with a *purdah* woman. Now there was a very wholesome procedure.....

SHRI H. C. DASAPPA: It is not only Ministers but it is all public servants. You need not make specific reference to Ministers only. It is for all public servants.

SHRI S. MAHANTY: I am very grateful to you. If you want to extend the scope, why the Ministers should be equated with lunatics, I don't see.

MR. DEPUTY CHAIRMAN: Order, order, Mr. Mahanty. There are other exceptions also. They are not equated with lunatics or with *purdah* women.

SHRI S. MAHANTY: The Ministers are going to be any way bracketed with purdah women, or lunatics or idiots and minors and the infirm and the sick. This is not a very glorious com pany to keep.....

MR. DEPUTY CHAIRMAN: Separate company altogether.

SHRI S. MAHANTY: But all grouped together.

MR. DEPUTY CHAIRMAN: That is what you want to impute but it is not so actually.

SHRI S. MAHANTY: It is a matter of opinion and it is bound to vary from person to person. The question is that the background of the Criminal Procedure Code which was drafted in 1898 has to be borne in mind. At that time there was foreign imperialist rule which was ruling this country and it was ruling through its public servants who were completely removed from the aspirations and from the hopes of the country at large. At that time the British Government in spite of all the safeguards which it had provided for public servants in the Criminal Procedure Code and in the Indian Penal Code, did not think it fit to exempt them from the obligations of appearing before a Magistrate for instance, filing a complaint and standing on cross-examination on oath. Now a lot of things have been said about the Press Commission. The Press Commission in para. 432 says:

> "When they do file such a suit or prosecution they are subjected to cross-examination which is aimed at throwing more mud on the reputation of these persons, and even if there is no truth in the allegations which are suggested in the cross-examinations, some of the mud sticks."

The procedure so far was, the Magistrate had first to test whether you have a fame which has been defamed by the publication. No fame is low enough not to be defamed by a kind of sinister or defamatory publication . but there cannot be any generalizing statement that everyone has a standard of fame. When we say 'fame', the cinema actress has a different kind of fame; the author has a different kind of fame; the musician has a different kind of fame. The fame in discharging public duty also is a different kind of fame. This House is-well aware as to how many scandals have been exposed on the floor of the House in which public servants were implicated. Beginning from Whisky scandal, Fertilizer scandal, Jeep-scandal—and what a galaxy of scandals we find which have been exposed on the floor of the House,— most of those scandals were first exposed or revealed in the press which you are now pleased to call—the "Yellow Press."

SHRI B. K. P. SINHA: I challenge-that.

SHRI S. MAHANTY: I will also challenge the hon. Member to show in which other paper—daily paper—these allegations were published. Never. The Modi Industries Scandal which was discussed on the floor of this-

[Shri S. Mahanty.] House last year was suppressed to a certain extent in the daily papers according to the Press Commission's report.

SHRI K. S. HEGDE: Why are you afraid of proving it?

SHRI S. MAHANTY: I am not afraid; it is only the Government which is afraid; therefore you are shielding your officials.

SHRI K. S. HEGDE: Nobody is shielding.

SHRI S. MAHANTY: The only small matter that I was trying to point out was that all these scandals which have been subsequently proved to be correct were originally published in the papers which we now call Yellow Press. Therefore I am afraid for this that personal vices in the public services will be now driven underground and therefrom emerges my concern. Also the Government has tried to defend clause 25 by a reference to the Press Commission's recommendations in this regard. With all respect I will say that it is not fair to say that the Press Commission has recommended so because (he minority opinion of the Press Commission also have observed in the following manner:

> "In our view there is no case for discrimination in favour of public servants in the matter. The State Governments have exaggerated the extent of defamation of public servants which is prevalent and the difficulty of public servants taking action for defamation."

Before I come to the merits claimed by the Government, I will underline this observation of the Press Commission pointed out in this minority opinion.

Coming to the merits of clause 25, if I have tried to follow the hon. Deputy Minister correctly, there are two merits of this clause 25 according to Government. Number one is that before this, many public officials who were defamed did not go to law courts to acquit themselves of the charges made. Now by this clause 25 a public servant will be forced to go to courts because his senior officer will make recommendation for prosecution and the public prosecutor will go and file a complaint. So according to the Gov ernment they are now forcing the delinquent officers to go and face the charges, in a defamation case. The second merit, according to the Gov ernment, is that before the magistrate took cognizance of the case, they had to examine the complainant on oath and that scared away many of the public servants from appearing before a magistrate and filing a complaint because in the cross-examination some mud stuck—that is the phrase which has been used by the Government. I don't see what harm is there. In the first place it is a very wholesome procedure that before you file a com plaint, I have every right to test whether you have any fame which has been defamed or not. As for example, if an engineer makes an illegal profit of Rs. 1 lakh in one previous case and though in the subsequent case there may not be direct proofs to prove that in the second instance also he has swallowed another Rs. 5 lakhs, then certainly the Magistrate will say "In view of your past, you had no fame in discharging your public duty and therefore there has been no defama tion." He might so hold it. There fore the wholesome procedure was there that first the quantum of fame which has been defamed was tested by a cross-examination. Now by obviat ing that .....

SHRI H. C. DASAPPA: That has not been obviated. I don't know where my hon. friend finds any such provision as to eliminate cross-examination of a servant.

MR. DEPUTY CHAIRMAN: Mr. Mathur has already taken one hour and you forty minutes. There are fifteen more Members to speak.

SHRI S. MAHANTY: Sir, freedom of speech is very necessary and more important than freedom of the press.

It is the very basis of democracy. If our public servants are going to be treated like purdah ladies, I don't know in which corner we are to look to for protection.

SHRI JASPAT ROY KAPOOR: Will the hon. Member please enlighten as to where it is that they will be treated as *purdah* ladies? Because public servants will have to come in the witness box.

SHRI S. MAHANTY: They will come in the witness box at a subsequent stage but the procedure which has been laid down is that the public prosecutor will go and file a complaint without any cross-examination.

SHRI H. C. DASAPPA: There will be no cross-examination at that stage at all.

SHRI S. MAHANTY: Exactly.

MR. DEPUTY CHAIRMAN: Even in ordinary cases there will not be any cross-examination when a complaint is filed.

SHRI S. MAHANTY: When a complaint is filed, the public official who has been defamed has to state on oath before a magistrate.

MR. DEPUTY CHAIRMAN: As to the truth of the petition; he is not cross-examined.

SHRI S. MAHANTY: At that time a cross-examination cannot be avoided.

MR. DEPUTY CHAIRMAN: Nobody can cross-examine him.

SHRI S. MAHANTY: As the law is, the public officer will make a statement on oath. When it is amended, the public prosecutor on his behalf will file a statement. There will be no oath.

MR. DEPUTY CHAIRMAN: Yes.

SHRI S. MAHANTY: That makes a great deal of difference.

MR. DEPUTY CHAIRMAN: But the petition is verified.

SHRI K. S. HEGDE: You are under a mistaken impression.

SHRI S. MAHANTY: What I am[1] saying is that the official will not have to make any statement on oath Therefore, I venture to think as *u* layman—because to be a lawyer is not a very great virtue.....

SHRI H. C. DASAPPA: Obviously.

SHRI S. MAHANTY: ..... and so speaking as a layman, I venture to think that if this clause 25 in this form is accepted, it will indeed affect .....

MR. DEPUTY CHAIRMAN: The only difference, Mr. Mahanty, is this, that instead of the complainant himself coming and filing the petition in the court, the public prosecutor will do it. Even in that case the complainant could not be cross-examined at this stage. It is only at the trial stage that he can be cross-examined. That has been provided for.

SHRI S. MAHANTY: That is exactly what I am saying, Sir. As I have already said.....

MR. DEPUTY CHAIRMAN: I hope I am correct.

SHRI H. C. DASAPPA: Perfectly right.

SHRI S. MAHANTY: When a statement is made on oath, Sir, the public servant is very careful of the accuracy of the statement that he makes.

MR. DEPUTY CHAIRMAN: I know all the statement that he makes is: "I swear to the truth of the allegations". That is all the statement that he makes, and he is not cross-examined.

SHRI S. MAHANTY: If the allegations in the complaint petition are false, he can be hauled up because false verification is an offence. Who will make that kind of a verification?

MR. DEPUTY CHAIRMAN: He must make the verification. It is only to be filed by the public prosecutor.

SHRI S. MAHANTY: I am much grateful to you for that enlightenment, but what I am saying is that what you liave been pleased to point out is not •contained in clause 25.

MR. DEPUTY CHAIRMAN: It is not "necessary to be contained there.

SHRI S. MAHANTY: Then where will it be contained? All petitions tiled in the court must be verified.

MR. DEPUTY CHAIRMAN: Instead <of the complainant himself coming and filing it in the court, the public prosecutor will be authorised to file the petition. That is all the difference.

SHRI S. MAHANTY: But, Sir, that makes a very great difference and that is what I am trying to point out. I say this because by that process a private offence will now be given the status of an offence against the State, though he may be a private individual. Also, it is not for the spoken word but for the written word—for libel—that against the man who gives something in writing will be arrayed the State machinery, the whole State, with its influence and money and so on and so forth. If really it is such an innocuous thing, that instead of the official defamed doing it, the public prosecutor will be filing the petition, then what was the necessity for raising this kind of a hornets' nest over this simple matter ? I submit, Sir, that this is not a simple matter as is being suggested. It is really a matter of grave consequence, consequences which will ultimately result in driving underground the vices that we find today abounding among public servants and among certain Ministers, though with honourable exceptions. Therefore, I venture to think that this clause 25 should be thoroughly scrapped and the original position should be restored, in view of the fact that neither the Government has oeen aole to make a convincing case, nor does this innovation stand the test of any kind of a rationalistic scrutiny.

MR. DEPUTY CHAIRMAN: Mr. "Dasappa. Before the hon. Member begins, I would request all hon. Members not to take more than fifteen to twenty minutes.

SHRI H. C. DASAPPA (Mysore): Sir, I shall try to be as brief as possible. But sometimes when there are provocations such as those my hon. friend there has given, it is rather difficult to restrain oneself, if for nothing else, at least to state the facts as they are so that there may be no misconceptions. Anyway, Sir, I am grateful to you and I shall be as brief as possible.

Sir, this Bill again has created the impression in my mind and I think in the minds of many of the hon. Members that piecemeal legislation like this is not desirable because of its repercussions on other enactments. It becomes necessary to consider this Bill along with the Indian Evidence Act, the Indian Penal Code and also the procedure in Civil Law. This Bill, no doubt, is a very salutary Bill which has been brought forward by the hon. Dr. Katju in the first instance, and now by my hon. friend Shri Datar. But I cannot get away from the impression that it would have been exceedingly good if a high power law Commission as has been suggested in certain quarters was constituted to go into this whole question of the Criminal Procedure Code, the Indian Penal Code and the Evidence Act and the Civil Procedure Code, to see how far we could simplify the procedure with regard to both the criminal and the civil law. I say this, Sir, because I take it that the idea that motivated the Government to bring this Bill is to secure speedy and cheap justice to the people in the land. If that was the main and most important objective before the Government, then I am rather doubtful if this Bill is going to confer this benefit. While some of the provisions do not in the first place make the procedure easy and cheap, there are some provisions which even conduce to further delay and even greater expense. There are a few provisions like that, though I do not say that the majority of them lead to such a result.

Sir, by and large, I must say that the Bill contains a good many very salutary provisions. I do not think it is necessary for me to enumerate all the very salutary and very good provisions of this Bill my hon. friend Mr. Bisht has shown them. I would only like to deal with certain provisions which I believe call for comment, and also answer certain points which have been raised by certain of the critics here in this House.

I would first of all take up clause 22. I must hurry through, for otherwise I would not have enough time to deal with many of these topics. This clause relates to statements made before the police and the uses to which it could be put by the prosecution during the conduct of the trial. Sir, much has been said about the kind of police that we have and Mr. Mathur the other day referred to this subject at length and even quoted the opinion of Justice Mahajan and others. I am afraid I cannot disagree with the critics in this regard. As things stand today, -with the kind of investigation officers that we bave got and the amount of illiteracy and ignorance that prevails and also, what is even more important, the kind of party system that prevails in most of our villages, I cannot be sure that the investigation is always carried on in a very fair way and ttie evidence that is recorded or the summary of the evidence that is recorded by the police is always correct. I - would only take a few instances which have come to my knowledge. In the year 1939 when some of us were touring in a part of the State of Mysore in connection with the freedom movement and the struggle for responsible government, we were asked not to make speeches in the Kolar Gold Field area. A few miles from that particular area at Swarnakup-pam we were practically waylaid by the police and we were asked that -we should not go in or in any case that we should not make speeches in that area. Then we said, all of us including one who is now a Cabinet Minister at the Centre here and another, an hon. Member of Parliament sitting on the same bench as myself, that we were there just to study the situation as we did not know the situation and after studying it on the spot, we would decide what to do. There was a tea party which we wanted to attend and we also wanted to know the local situation.

1 P.M.

They spirited us all away to a far off place. I thought we would only be put in some other place, removed from the Kolar Gold Fields area and allowed to pursue our tour programme as was originally scheduled but much to my dismay and to the dismay of my friends, a charge sheet was placed before the Magistrate to the effect that we were asked not to make speeches and that we refused to desist from making speeches and that we were intent upon making a speech. Now, Sir, this was a terrific shock to me because I knew some of the police officers but never thought that they could fabricate a case like this. It was no use defending because it would not be accepted. We made a statement which of course was not accepted. We were imprisoned and it was followed by a more severe action by way of debarring us from practising. That is a different thing and I need not go into that. I will proceed to another case.

MR. DEPUTY CHAIRMAN: You may continue at 2-30 P.M.

## MESSAGE FROM THE LOK SABHA

### THE CONSTITUTION (FOURTH AMENDMENT) BILL, 1955

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

"In accordance with tne provisions of Rule 133 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose herewith a copy of the Constitution (Fourth Amendment) Bill, 1955, which has been passed by Lok