meaning that my friend, Mr. Ghose, has given to it. The thing was very simple and it conveyed only one meaning.

MR. CHAIRMAN: That is all right. Next.

PAPERS LAID ON THE TABLE

PRESIDENT'S ACTS *re* ANDHRA

THE DEPUTY MINISTER FOR HOME AFFAIRS (SHRI B. N. DATAR): Sir, I lay on the Table a copy of each of the following President's Acts, under sub-section (3) of section 3 of the Andhra State Legislature (Delegation of Powers) Act, 1954:

(i) The Madras Entertainments Tax (Andhra Amendment) Act, 1955 (No. 2 of 1955). [Placed in Library. *See* No. S-140/55.]

(ii) The Andhra Requisitioning of Buildings (Amendment) Act, 1955 No. 3 of 1955. [Placed in Library. *See* No. S-141/55.]

(iii) The Andhra Cinemas (Regulation) Act, 1955 (No. 4 of 1955). [Placed in Library. *See* No. S-142/55.]

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

THE DEPUTY MINISTER FOR HOME AFFAIRS (SHRI B. N. DATAR): Mr. Chairman, we have had a fairly detailed general discussion on the Criminal Procedure Code (Amendment) Bill, and I am obliged to the House for the general agreement on the new provisions except in respect of certain matters about which there is some controversy. Secondly, my task has been lightened by the fact that the prime author of this Bill, Dr. Katju, had kindly intervened in this Debate and had explained a number of points on which enlightenment was necessary. I am also happy that some Members of this House very kindly pointed out certain other features of the Bill to which I purposely did not make a reference, because I wanted to cut short my speech to the extent that was necessary.

A number of points have been raised, and I should like to be as brief as possible in making a reference to some of them. My hon. friend, Dr. Kunzru, made reference to three or four points and I should like to reply to those points first before I come to the other controversial points. He made reference to the fact that I did not refer to the summons procedure and that we were trying to enlarge the scope of summons procedure. So far as that point is concerned, I should like to point out very briefly that under the present scheme of the Code of Criminal Procedure, according to the present definition, a summons case is one where the punishment for the offence is below six months. All other cases are warrant cases. Now, under the present scheme, there are 76 offences which are summons cases, and there are 299 cases which are warrant cases. In the amendment all that has been proposed is to raise the limit of the punishment in summons cases from six months to one year. As a result of this, all that has been done is that we have added a small number of offences, twenty-six in number, to the list of 76 offences which are now summons cases. That is all that has been done, and you will find that 277 cases do remain and continue as warrant cases.

Secondly, we have tried to simplify the warrant case procedure also to the extent possible. Between warrant cases and summons cases there are only two broad distinctions: One is there is no charge framed, and the other is that in the case of warrant cases there are a number of opportunities for cross-examination. As the House is aware, we have tried to curtail these occasions on which cross-

examination is indulged in to the great inconvenience and hardship of the witnesses Therefore you will find that the difference between warrant cases and summons cases has been brought down All that has been done is only the enlargement of the summons cases by just including 26 more offences Therefore, there is nothing to complain of so far as this new amendment is concerned It will also be noted that except for framing a charge, it has not been made out by any hon Member that any injustice or hardship is caused, so far as the summons cases procedure is concerned Therefore, I would point out to this House that all that we have done is entirely of a very modest character and therefore there is nothing objectionable, so far as the proposed amendment with regard to the enlargement of the scope of summons cases is concerned

Then it was contended by my hon friend, Dr Kunzru, that so far as appeals against acquittals are concerned, there was, according to him, a very large number of appeals especially in Uttar Pradesh I have got certain figures before me and I would point out to the House that the number is not large

SHRI H N KUNZRU (Uttar Pradesh) What is the number? I have got my figures from the report of the High Court on the Administration of Justice in Uttar Pradesh

SHRI B N DATAR The total number of criminal cases even in States of ordinary size, is about 2 lakhs, and out of such a large number of cases, there is a right of appeal given to the Government, but the Government have been using this power extremely rarely, and only in respect of a very small number of cases have they filed any appeal I might point out to the hon Member that an appeal can be filed by Government against an order of acquittal in respect of not only murder cases but also of other cases I have got before me the report on the Administration of Criminal Justice in the State of Bombay for the year 1953 In that year for the whole State of Bombay the total number of criminal cases heard was 14,23,693 Of these, 2,67,970 persons were acquitted In respect of these, it will be found that only 119 appeals had been filed in the Bombay High Court by the Bombay Government

SHRI H C MATHUR (Rajasthan): May I know whether the figures given by the hon Minister are in respect of cognizable cases?

SHRI B N DATAR In respect of all cases

SHRI H C MATHUR How can we have any idea then? Is it proposed that the Government can file an appeal even in respect of cases in which they are not concerned?

SHRI B N DATAR I would explain if the hon Member would please allow me Even in private complaints, where there is acquittal either by a Magistrate or by a Sessions Judge, the right of filing an appeal vests only in the Government Therefore, it will be seen that the figure I have quoted for appeals is in respect of the 2 lakh odd cases I would submit that, if only 119 appeals had been filed involving only 259 persons, out of 2 lakh odd acquittals, the number of appeals is extremely small

SHRI H N KUNZRU Can the hon Minister give the number of cognizable cases and the number of acquittals in them?

SHRI B N DATAR I shall try to give it I will give it when the clause by clause consideration is taken up

So far as this question is concerned, my submission to the House is that all that we have done is that there is no right of appeal against every acquittal as a matter of course

It is open to the Government to exercise the discretion and file an appeal in a proper case but so far as the private person who has been aggrieved is concerned all that we have done is that a right of appeal is not given as a matter of course He has to

[Shri B. N. Datar].

approach the High Court and file an application for leave to appeal and if that leave is granted, then only can the appeal be heard. That is, you will find that we have placed certain hurdles even in respect of acquittals so far as the private party is concerned and therefore there is nothing wrong. Sometimes what happens is.....

DR. W. S. BARLINGAY: (Madhya Pradesh): He can file a petition for revision.

SHRI B. N. DATAR: So far as acquittal is concerned, there are different judgements. I would not like to go into the technicalities of it. Some High Courts hold that the revision lies against acquittals. There are other High Courts who hold that no revision lies at all.

SHRI H. P. SAKSENA: (Uttar Pradesh): Will this process make justice easy, quick and simple?

SHRI B. N. DATAR: What is required is this. On some occasions there are acquittals. It is likely that in respect of certain technical matters the High Court might take a different view and would look at it from a substantial justice point of view and the High Court might come to a conclusion that a man who has been acquitted ought to have been convicted. That is the reason why this right of a limited nature has been given under certain circumstances. Therefore there is nothing alarming so far as the appeals against acquittals are concerned.

SHRI H. C. MATHUR: May I know if the hon. Minister disputes the figures quoted by Dr. Kunzru?

SHRI B. N. DATAR: I say that I have the figures so far as murder class is concerned from U.P. Not all the figures but so far as murder class is concerned. It will be found as follows: I shall quote the figures from U.P. Analysis of persons accused of offences affecting lives in the year 1950: In 1950 there were 8,610 persons who had been acquitted and 3,452 persons had been convicted. Then out of these, it will be found that even in U.P. there were only 102 appeals against acquittals—not more, and it has been made clear in the report for the corresponding year that 102 included also some cases brought over from the previous year. Therefore it will be found that even in U.P.—I shall try to check up the very particular year to which my hon. friend has made a reference but even in U.P. the number is not very large, taking into account only the cases of offences affecting human life. Therefore my submission is that even in this case what has been done is not very extraordinary nor is it in any way unusual. The next point I would go to would be the use of statement before police for contradiction by prosecution. So far as this question is concerned, the matter was very hotly debated here as also in the other House. All that has now been done is just as it is open to the accused—the right has been made clear even under the ordinary law of evidence—it is open to a party either in a civil or criminal case to cross-examine a witness with regard to his previous statement. Now it will be understood very clearly that what has been meant is about a previous statement—not necessarily a written statement nor a sworn statement. Under these circumstances what has now been attempted is this. There might be cases where a witness whose statement has been recorded by the police may be tampered with and may like to make a statement which is entirely contradictory to the one that he had already made.

SHRI K. S. HEGDE: How are you going to make a distinction between the witness being tampered with or police having got up a false record?

SHRI B. N. DATAR: All these things I was pointing out and had my hon. friend waited for a minute,

I would have explained the whole position In such cases what is done or what is provided for is that he has to approach the court and the court might allow the prosecution to cross-examine their own witnesses for the purpose of contradiction Now when there is a contradiction or when for example the witness states that the statement was false or that the state ment was taken under coercion, it will be found that under the Indian Evidence Act that previous statement will not go in unless the person who has taken down the report or statement is put into the witness box In other words, the investigating officer has to be examined and it is open to the other party, the defence to take all contentions and to cross-examine him very severely on the question as to whether the statement was voluntary or whether it was false or it was taken under coercion Therefore it will be found that in all such cases without the examination on oath or without putting the investigation officer into the witness box, that statement under the Indian Evidence Act would not go in and will not be admissible and the defence has an opportunity of testing the veracity or otherwise or the spontaneous nature or otherwise of the statement There fore a safeguard is already there and all that has been done is that an opportunity of a limited nature has been allowed There is nothing so far as the fear that has been expressed by some Members is concerned

Then I would pass on to section 30 Now so far as this is concerned, there appear to be certain misconceptions So far as this House is concerned, generally some people were absolutely against the jury system Now if we are against the jury sys tem then in that case the point cannot be urged that merely because in certain cases not all, in only a few Sessions trials and not in all—inasmuch as the jury trial is there, therefore an accused is likely to be prejudiced if his case is tried when it is of a serious nature before a magistrate under section 30 It will also be noted that under section 30 all that is provided for is a provision of an enabling nature-- it does not mean that in all cases he has to try these cases Now secondly, we should always take into account these circumstances that there are Sessions cases which can be tried by an Assistant Sessions Judge or an Additional Sessions Judge and secondly, similar cases, though here we have laid down a limited period of 7 years in place of 10 so far as punishment is concerned, such cases can be tried by a magistrate under section 30 provided he has 10 years of experience as a first-class magistrate Therefore I would request this House to note that an Assistance Judge or Additional Sessions Judge stands on the same footing as a magistrate of first class with 10 years experience. There is nothing to choose between the one or the other and no prejudice should be caused In fact in a number of States, even in some of the Part A States, this provision was in use Actually it has been used in a number of Part A States Therefore if the Advocate General of a particular State Government in consultation with the High Court comes to the conclusion that section 30 magistrates should be appointed, there ought to be no reason why such an enabling provision should not be made applicable in a particular State.

Then I would come to the very hot question of defamation of ministers and public servants So far as this is concerned, I am happy that some hon Members not all have opposed it—have understood the particular purpose that the Government have in view and I was extremely sorry that my friend Dr Kane stated that a certain protection was being granted to ministers and public servants It is entirely a wrong approach No protection has been granted and no special caste or class is being created All that is being done is only to make t possible for the government, in the interests of the purity or vindication of the administration to have recourse to the right to file a comp aint So far as the minister or a

[Shri B. N. Datar.]

public servant is concerned, what are the advantages that he is granted? That is my straight question to the hon. Members of this House. Now, according to the provision which we have accepted in the Lok Sabha, such a defamed person has to be put into the witness box. That provision is already there. Therefore, all the objections based on the assumption that this is an attempt not to put the officer in the witness box, or to keep him from the witness box, have absolutely no substance at all. All that you can say is that the right to complaint has been given to the Government and not to the defamed person. But so far as the defamed person is concerned, he stands on the same footing. As I pointed out in my opening speech, there may be cases where the defamation is likely to be true, and such a defamed person may not like to start the proceedings by filing an ordinary complaint for defamation. In such a case, Government do desire that proceedings should be started. And then, if the defamed officer has been rightly defamed, in the sense that he is found guilty, then naturally the only course open to Government would be to ask him to pay damages to the other party. Also he has to be removed from service. On the other hand, if the defamation is only a case of blackmail, then in the interest of proper government, in the interest of protection of the honour of the government servant in particular and of Government in general, it is necessary to start proceedings. We ought to understand that it is open to people to make all sorts of criticisms and so before people make any such criticisms, they ought to be careful and they should see if they have got justification for the criticisms.

Then an hon. friend here contended that the right of defence would be adversely affected. I say, that would not be affected at all, because the provisions in the Indian Penal Code regarding the circumstances, public interest and public welfare etc. still remain, and all the provisions of the Criminal Procedure Code still remain and the liability to go to the witness box also remains. If all these circumstances are taken into account, it will be found that there is absolutely nothing to show that any attempt has been made to discriminate citizen and citizen

SHRI H. C. DASAPPA: Am I to understand, Sir that a complaint can be lodged by the public prosecutor on the sanction of the Government or the Secretary, even though the person defamed does not want a complaint to be lodged?

SHRI B. N. DATAR: It is perfectly possible. What the hon. Member suggested is perfectly possible. In fact, we have contemplated such cases and the Press Commission have also stated that there may be cases where the person defamed is not willing to go and file a complaint. In such cases also Government do desire to have such a right.

SHRI H. N. KUNZRU (Uttar Pradesh): When the government asks the officer concerned to vindicate his position, can he refuse to do so?

SHRI B. N. DATAR: There might be all sorts of cases. Ordinarily what Government would do in such cases is to make a preliminary enquiry. Some hon. friends suggested that Government would immediately pass on instructions or sanction to the public prosecutor to start the proceedings. That is not the case. Government would, first of all, find out what the facts are. Government would also take from the officer concerned his own explanation, if any. What Dr. Kunzru means to ask is: If for example a public officer is asked to file a complaint and if he does not file it, then have not the Government other powers? True, Government have other powers. But Government do desire that in the interest of the restoration of public confidence, the best course would be not merely to compel him to file the complaint, but to take the prosecution itself in its own hands; so that there is a distinction between a reluctant complainant and a public

complainant like the Government, where they want to see that justice is fully vindicated Therefore, when such cases do arise it ought to be in the interest of the public to have such a complaint filed after all enquiries have been duly made.

SHRI J. S BISHT May I request clarification on one point? The position as stated by the hon Deputy Minister may be all right But when the Government makes these enquiries and comes to the conclusion that a case should be filed and then files the suit, and then if it is found to be frivolous and false, why is that man to be compelled to pay? Why not the Government pay? Once the Government has started the prosecution by exercising its own judgment it becomes the responsibility of the Government and it should pay the compensation, because it has been taken from those private hands.

SHRI B. N. DATAR: So far as this provision is concerned, it was not one originally sponsored by the Government I shall explain the position, in the course of the discussions in the Joint Select Committee

SHRI J S BISHT Not the Select Committee, but the Lok Sabha.

SHRI B N DATAR Yes, in the Lok Sabha the contention was this In such a defamation case if the accused is not found guilty, then it means that what has been stated against the defamed person is true, and if it is true, then naturally the man must be punished

SHRI K S HEGDE Conviction without trial

SHRI B N DATAR No, then notice should be given in all such cases notice should be issued

SHRI J S BISHT Is Government prepared to incorporate such a provision in respect of all such cases?

SHRI B N. DATAR I may answer by pointing out that if it is found on technical grounds the accused gets off, then in that case, the cost would naturally be borne by the Government and there would be no question of such a real complainant, the *de facto* complainant or the defamed officer paying the cost But there might be circumstances and we have to understand the thing very clearly, where the so-called defamation is a fact and where what has been stated has been borne out by the evidence in the case, there in the ultimate analysis, the man who does the wrong has to be punished for that wrong Therefore it was thought by the Lok Sabha that in such cases, notice should be issued to the person It is not as if compensation would be awarded as a matter of course The notice would be issued to him and if he is able to satisfy that in spite of the acquittal, there is nothing wrong so far as he is concerned, it will be open to him, if he did not file the complaint, when the Government had filed the complaint and if the complaint is not true, when it is frivolous, to say that he ought not to be made liable for paying compensation and

SHRI H. C DASAPPA: May I ask if

SHRI B N. DATAR. Let me just finish my sentence and then the hon. Member can put his question In such a case the Magistrate or the courts will not in any way order compensation against the man at all

SHRI H C DASAPPA If the public servant shriks lodging the complaint, will it not obviously give rise to the presumption that the defamation is true? And is it not open to Government to take action against him, without driving him to the court and making him liable to pay cost to the accused?

AN HON MEMBER It is a very simple thing.

SHRI H. C. DASAPPA: Without his knowledge it may be filed and he will be saddled with the cost.

SHRI B. N. DATAR: He will not be saddled with the cost unless the court comes to the conclusion that he has been a liar, that he has been a corrupt man or he has been a man guilty of misconduct.

SHRI H. C. DASAPPA: But he is not responsible for the filing of the complaint.

SHRI B. N. DATAR: It is immaterial; whoever is responsible for the prosecution, the officer concerned is responsible for the truth of the defamation; that point has to be understood.

SHRI H. N. KUNZRU: Will the Government.....

SHRI R. U. AGNIBHOJ (Madhya Pradesh): Will not the Government take any departmental action against the officer?

MR. CHAIRMAN: One at a time. Yes, Dr. Kunzru.

SHRI H. N. KUNZRU: The Deputy Minister said that there was a difference between an unwilling complainant and the Government being the prosecutor. Will he be good enough to explain the difference?

SHRI B. N. DATAR: I may point out such cases and the Press Commission has also pointed them out. I do not want to repeat what has been stated there; but there may be cases where the public servant may not like to file the complaint himself, for a variety of reasons. One reason may be his own guilty conscience. Another reason may be his own general nervousness. After all, human nature has got to be understood. After all, in some cases there might be an element of guilt here and there. Some people are not prepared to face the cross-examination or to file the complaint themselves. Therefore, in all these cases, the Government if they come to the conclusion that the allegations made are of such an important character, of such a grave character that if the allegations are not met, if the defamation is not pursued to its logical end, then the confidence of the people in the Government itself would be shaken—for after all that particular officer is part of the government machinery and the acts complained of are public acts—then in such a case, in order to restore the confidence of the public, it may be necessary for the Government to ask the public prosecutor to file a complaint.

Now, merely because he is unwilling it does not mean that he is guilty in all cases. There might be number of circumstances. That is the reason why I pointed out that the Government should have a right. Therefore, there is nothing wrong in that.

DR. P. V. KANE: In clause 5, you have given powers to the Sessions Court not to examine the guilty party Why not omit that part? There should be no such thing. The man must come into the witness box.

SHRI B. N. DATAR: I need not go into the details at this stage but inasmuch as this question has been raised, I would answer it. The House must understand that we are dealing with only written libel, libel in its proper sense, not with slander. So far as slander or oral defamation is concerned, we have accepted a rule and an amendment suggested in the other House. Therefore, cases of slander are not governed by this power of the Government at all. It is only the case of libel that we have thought it not necessary to call the person into the witness box. There might be cases where there might be correspondence between the man and the defamed person and from the nature of the defence that might be disclosed, it may become unnecessary to put him into the witness box. It is only for such cases that a judicial discretion has been left to the Magistrate or the Court. Ultimately, we have to depend upon the judicial discretion of the Court and, therefore, only in excep-

tional cases, for purposes of meeting such a case, where defamation is absolutely clear, beyond doubt, that we have inserted this provision

DR P V KANE Clear to whom?

SHRI B N DATAR Clear to the Judge, not to me or to any other person but to the Judge

DR P V KANE But you take away the right of the accused to have his adversary cross-examination.

SHRI B N DATAR In that case, the Court will not allow him not to come into the witness box The court will compel the attendance of the defamed person in all such cases That is the reason why, Sir, this question has to be left to the Court and it should be understood very clearly, Sir, that the Government have no desire to keep the man from the witness box He would ordinarily go into witness box but if the Court is satisfied on the evidence put out that his examination on oath is not necessary then in that case, in an extreme case, not even one in a hundred, the court may dispense with his examination Therefore, my submission is that there ought to be no misunderstanding so far as the fundamental object of the Government in making this amendment is concerned It should be understood that there is no question of any discrimination at all

In the course of the debate, certain hon Members made a reference to certain articles of the Constitution, in particular article 14 So far as that question is concerned, we have before us the views of the Supreme Court also

SHRI JASPAT ROY KAPOOR May I seek one clarification? If the complaint is filed not by the Government but by the person defamed and if it is found that it is false and frivolous then the person who is defamed can be fined by the Magistrate only to the extent of Rs 100 but if the Government files a complaint and if it is found that it is false and frivolous then the fine is to be to the extent of Rs 1,000 If the man files the complaint then the fine is only Rs 100 whereas if Government files the complaint the fine is to the extent of Rs 1,000 Why is it so? By fine I mean compensation

SHRI B N DATAR The power is wider because in such cases there might be the gravity of the offence committed and it does not mean that in all cases the man would be fined Rs 1,000 That is the highest extent of the Magisterial powers

SHRI R U AGNIBHOJ Once a defamed person is made to pay compensation if the case fails then what would be the position of the public servant? Would he be precluded from all departmental action and other prosecution? Whether the action should be considered as sufficient punishment is the point

SHRI B N DATAR I may point out to the hon Member that we are dealing here with prosecution Whenever there is a prosecution and a conviction, especially on the merits of the offence, then in all such cases, Government would take immediate action and the man is immediately dismissed.

SHRI K S HEGDE Could you prosecute him again?

SHRI B N DATAR No question of prosecution at all, there are departmental proceedings and, of course, there is also the prosecution

SHRI K MADHAVA MENON. Why not prosecution, Sir? Supposing the man is charged with having accepted bribe, why not he be prosecuted?

SHRI B N DATAR There is no difficulty at all.

SHRI K S HEGDE He has been already convicted and fined Could he be convicted again?

SHRI R U AGNIBHOJ Yes.

SHRI B. N. DATAR: I need not enter into the niceties of these cases. Let us leave it to the Magistrates and the Government. In all such cases, I would point out that if the facts turn out to be true and that the action of the man was or amounted to misconduct then Government would immediately remove him from service. That is the minimum that can be done by Government and as pointed out by an hon. Member, Government might consider in a particular case whether a prosecution of the defamed person is not or will not be warranted by the facts of the particular case. That depends upon the various circumstances.

I was pointing out one fact, namely that the present provision does not, in the first place, amount to discrimination, and secondly, Sir, such a discrimination or classification is perfectly warranted by the Constitution itself. I would invite the attention of this House to the fact that it has been very clearly stated in a judgment of the Supreme Court that such a difference in procedure would not offend against article 14 of the Constitution. Article 14 says that there should be equality before the law; it does not mean absolute equality before the law. It really means right to equal treatment in similar circumstances. It has been observed by the Supreme Court in the case of Chiranjit Lal as follows: "Article 14 does not prevent the State from adjusting its legislation to differences in situation or classification in that action but it does require that the classification is not arbitrary". In this case, what Government have done is to take a power to themselves to file a complaint through their legal officers in a proper case but based on a real and substantial difference having a reasonable relation to the subject of the particular legislation. Therefore, in this particular case, this question has to be approached not from the point of view of a personal defamation but the administration itself is, by such defamation, brought into disrepute. If the defamation is correct then the man has to be removed from the Government machinery but if it is found that the defamation was absolutely false then, in that case, the man who has defamed the Government officer has to be punished and he has to be brought to book.

SHRI JASPAT ROY KAPOOR: May I know why the right of appeal has not been given to a person against whom an order for compensation is passed by the Sessions Judge? This power is given to him if he were to file a complaint in his personal capacity.

SHRI B. N. DATAR: We shall consider that question when the clause by clause consideration comes in; otherwise, this will go on *ad infinitum*.

Some fear was expressed by some friends and they expressed the view that even an optional right to go into the witness box should not be given to an accused. The reason that was urged was this. In a case where an accused does not go into the witness box, we have made a provision that no adverse inference should be drawn against him while, as a matter of fact, if the accused does not go into the witness box then this omission might weigh in the minds of the Judge or the jury in a particular case. Now, as against this, you will kindly understand, Sir, that generally offences are committed in a secret manner; they have to be committed in a secret manner. They are generally done in such a way that there would be no other person present at all and that is the reason, Sir, why Government has to find out how an offence has been committed and if, for example, in a particular case it is the accused who alone, by going into the witness box and making a sworn testimony, can satisfy certain circumstances which are apparently against him, then why should this right be denied to the accused? It may kindly be noted, Sir, that in all such cases, if the accused goes into the witness box

and if he gives certain explanation, if he points out certain elucidations which are of a perfectly reasonable nature, then, as against the evidence of the prosecution in which there are a number of witnesses who have gone into the witness box we have also here the sworn testimony of an accused who is the best person to speak and if for example he gives a satisfactory explanation, that is bound to have a greater evidentiary value so far as his own case is concerned, and I may point out to this House. Sir, that in cases where this practice is allowed, there are a number of cases where the accused has been acquitted on account of a satisfactory explanation given by the accused Now under the present code there is no oath administered to him He can say whatever he pleases, and when the statement is not subject to oath or sworn testimony, then in that case there might be a tendency that whatever he has stated is an interested statement, it is an admission in his own favour and therefore the court may not attach sufficient importance to the present examination of the accused without the oath But if, for example, it is sanctified by oath, it has greater evidentiary value therefore in a proper case But it would be found, Sir, that the hands of the court are also tied down He is to make an application His consent has to be in writing and even oral consent by the lawyer will not be sufficient at all In other words, certain safeguards have been laid down and therefore if after going into all these circumstances the accused does desire to go into the witness box, there ought to be no objection at all

Then, Sir, so far as jury trials are concerned we have got the views Some views are in favour of jury trials In other cases it is contended that the jury are corrupt, that the jury are approachable and that in India we have not taken those safeguards which are usually followed in other countries

Now my submission is that the system of trial by jury has been confined only to a very few places In the State of Bombay it will be found it is confined to Bombay town and about five or six districts only, not all In Madras, if I remember correctly, it is only in Madras town and no where in the State of Madras that this trial is in vogue There are however certain States where the jury trial has not been a failure as it apparently has been in certain other States For example, in Bengal the experience is not so bad as in other States In all such cases it would be best to leave the matter to the State Governments If the State Governments do desire as the U P Government have already desired and have abolished this system, then it should be open to them But so far as the views of the Central Government are concerned, we are of the view that the jury trial is a very important right given to the public for being associated with the administration of criminal justice and as in respect of a jury trial the jury of the jurers are the judges of fact If other circumstances are proper, this right should be extended especially in those territories where the State Governments desire that this right should continue Therefore, Sir we have no desire to take away this particular right of the various State Governments

Then, Sir, in respect of the disputes over movable property one particular objection was made It was stated that if a case were referred to the civil court in respect of certain points, then in that case it might lead to prolongation of the proceeding itself Now certain provisions have been laid down for avoiding all such delays and it would also be noted, Sir, that ordinarily it is the magistrate who will go into the question but it must be admitted that especially when there are complicated questions even about possession—it is not merely the question about title that is complicated but in some cases the question of possession, as to the person who has been in pos-

[Shri B N Datar]

session is more complicated and when such questions arise in the course of a dispute under section 145—then in that case as between a criminal court and a civil court, a civil court would be in a better position because it is their everyday duty to adjudicate upon all such complicated questions Therefore all that has been provided for is to make it open to the magistrate, when there is a complicated question, to make a reference to a civil court and to have his finding And then it will be noted, Sir, the moment the finding has been received, the order has to be in accordance with this finding It was contended Why should not a civil court pass final orders? Now the proceeding has been initiated before a magistrate and in addition to this the magistrate has also to take into account the question as to whether there is a breach of the peace In other words there are certain questions which are entirely peculiar to him and therefore the final order has only to be passed by a magistrate and not by a court But in order to make the finding of the civil court binding, it has been stated that the final order so far as the question of possession is concerned should be in accordance with the finding of the civil judge

Then my friend, Mr Mathur, raised the question of summary trial and he challenged me to find out figures from Delhi as to how many summary cases were being summarily disposed of, in other words his contention was that even summary trials took long to be disposed of Now that is not correct at all I have got the figures of summary cases as on 31st March,1955 On this date Sir there were in all 3,566 pending cases on the file and I would give the break up of those cases Number of cases pending for more than a year—55 Out of 35,566 cases only 55 were there which were pending for more than one year Number of cases pending for more than six months—266 Number of cases pending for more than three months—942 Number of cases pending for more than two months—1,104 Number of cases pending for more than one month—1,088 Cases less than one month old—111 Therefore if these figures are taken into account they would clearly show that summary cases are tried summarily in the sense that according to the provision these cases are disposed of as expeditiously as possible, and therefore the contention that summary cases took long, took years together, as it was contended, is entirely incorrect Therefore you will find that what we have done is that we have added a few more offences to the cases that would be tried summarily and certain safeguards have been laid down whenever there are appeals to be filed Whenever the cases are open to appeal then a certain procedure has to be followed, a certain record has to be kept in order to enable the appeal court to find out whether the order was correct, whether the sentence was proper, and therefore, Sir, it will be found that this particular procedure is quite correct

Then a number of other points also were incidentally raised So far as the Law Commission was concerned, my friend, Dr Katju, has made a reference to it It was contended by some hon Members that this Bill should be withdrawn Now I would point out to this House that this Bill has received the very anxious attention of the Government for more than two years. And secondly, Sir, we have before us a volume of public opinion from all quarters which has been placed in your hands in four bulky volumes Now what would a Law Commission do? We have taken all these into account The Joint Select Committee sat for more than one month and therefore when all this material is available and when we are in the last stages, it would be entirely wrong, it would be waste of public money and time if what we have done has to be entirely undone And secondly, Sir, you would have found that on a number of points it has been admitted that there has been an

improvement and the general opinion, except in respect of certain controversial points, is that the present Bill will go a great way. It is not our claim that it will go the full way but it will go a great way in improving the tone of administration and in making trials as expeditious as possible. Law Commissions might come there. They might consider other objections. They might consider other questions also. And if, for example, law commissions or any private bodies or associations do suggest certain other provisions then Government will take them into account and might bring an amending Bill again. But so far as the present provisions are concerned, Sir, on the whole it would be found that they are satisfactory, that they will reach the aim that we have in view, though according to us we have accepted a number of concessions and it is because we do desire to carry the Houses, both the Houses of Parliament with us as far as possible. Under the circumstances, Sir, I need not take any further time of yours and I submit that the Bill be taken into consideration.

MR. CHAIRMAN: The question is:

"That the Bill further to amend the Code of Criminal Procedure 1898, as passed by the Lok Sabha, be taken into consideration".

The motion was adopted.

MR. CHAIRMAN: Now we shall take up clause by clause consideration of the Bill. Clause 2. There are amendments. The first amendment stands in the name of some Members of that section of the House. They are not here. Therefore that amendment falls through.

What about you, Mr. Kapoor? Are you moving yours?

SHRI JASPAT ROY KAPOOR: I am not moving but I would like to have the view of the hon. Minister on the subject. All that I have to submit is that now that the procedure in warrant cases is going to be very much shortened there is not going to be much difference between a warrant case and a summons case and so perhaps there is no necessity now to increase the orbit of summons cases.

SHRI B. N. DATAR: I should like to point out that there are a few points of difference between a summons case and a warrant case and though the warrant case procedure has been simplified to a certain extent, still it is better to have this distinction for the time being.

MR. CHAIRMAN: I have received a representation from some Members of the House that they would like to attend the funeral of Shri Devi Datt Pant, an hon. Member of the Lok Sabha, who passed away yesterday. We all deplore his tragic death. It was very sad and unfortunate. So we will not sit for the lunch hour. We will adjuorn at one o'clock and meet again at three.

[MR. DEPUTY CHAIRMAN in the Chair.]

MR. DEPUTY CHAIRMAN: So there is no amendment.

SHRI H. P. SAKSENA: Why, has Mr. Kapoor withdrawn his amendment?

MR. DEPUTY CHAIRMAN: He has not moved at all.

The question is:

"That clause 2 stand part of the Bill".

The Motion was adopted.

Clause 2, was added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 3. Mr. Bhupesh Gupta is not here and Mr. Tamta is also not here.

SHRI H C DASAPPA Sir, I move

6 "That at page 1, lines 22—23, for the words 'with the consent of', the words 'after hearing objections, if any, of' be substituted"

MR DEPUTY CHAIRMAN Clause 3 and Mr Dasappa's amendment are open for discussion

SHRI H C DASAPPA Mr Deputy Chairman, my amendment is to the effect that where a court of sessions desires to sit at or nearabout the place of occurrence, it would be undoubtedly desirable to consult both the Prosecution and the accused I entirely agree with the hon ex-Home Minister, Dr Katju, that very often it serves the ends of justice better to have the trial conducted at or nearabout the place of occurrence It has vast advantages I do not deny it in the least Quite apart from the question of convenience to parties and witnesses it possibly helps also to get at the truth They could even inspect the spot of occurrence but what the present clause says is that such a transference of the venue of trial could only be done with the consent of the prosecution and the accused Now, it means that they must consent and generally it is not only one person who is hauled up as accused but it will be more than one person and sometimes there will be quite a large number What this enjoins on the court is that even if any one of the accused objects, the venue cannot be changed however desirable it may be from the point of view of the court, from the point of view of the prosecution or from the point of view of the other accused Therefore my amendment is that instead of the words "with the consent of" we shall have the words "after hearing objections, if any, of" I think this is a matter where the discretion should be left with the court and undoubtedly the convenience of the prosecution as well as the accused should also be taken into consideration Let all those points be taken into consideration but let the court have the discretion to decide after hearing the objections, if any I think the purpose which the hon the Deputy Minister has in view will be served more by my amendment than with the clause as it is And I hope the hon Minister will kindly agree to this

SHRI B N DATAR I sympathise with the mover of this amendment

SHRI H C DASAPPA But I am sympathising with you now

MR DEPUTY CHAIRMAN It is mutual

SHRI B N DATAR In spite of this sympathy I would point out that the view that he has taken was the view of the Government In the amendment that we had moved in the Bill as it was presented to the Lok Sabha, we had stated that the court of sessions may if it is of opinion after giving the prosecution and the accused an opportunity of being heard decide for itself but in the other House it was contended that this right would be exercised in a way which might not be favourable to the accused or to the prosecution

SHRI K S HEGDE The Select Committee itself has stated that

SHRI B N DATAR Under the circumstances it would not be proper on my part to go back to the original position After all the accused and the prosecution are the two parties whose views have to be taken into account Therefore I would like this matter to remain as it is

SHRI H C DASAPPA In that case I do not want to press it

*Amendment No 6 was by leave, withdrawn

MR DEPUTY CHAIRMAN The question is

"That clause 3 stand part of the Bill

The motion was adopted.

Clause 3 was added to the Bill

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*For text of amendment *vide* col 5455 *supra*

MR DEPUTY CHAIRMAN Clause 4

SHRI JASPAT ROY KAPOOR. Sir, I move

9 "That at page 2 lines 4—5 for the words 'in consultation with the High Court', the words in agreement with the High Court' be substituted

MR DEPUTY CHAIRMAN Clause 4 and amendment No 9 are open for discussion

SHRI JASPAT ROY KAPOOR Sir, clause 4 of the Bill is certainly an improvement on the existing state of affairs so far as the appointment of honorary magistrates is concerned Hereafter only such persons will be appointed as honorary magistrates as have experience of judicial work or such other persons as may possess such qualifications as may be prescribed by the local government, and before prescribing the qualifications the local government shall consult the High Court It is all right as far as it goes, but I think it would be much better and it will be in keeping with the dignity of the High Court that nothing should be done by the State Government which is at variance with the views of the High Court Whatever qualification may be suggested to be prescribed by the High Court, they should be accepted by the State Government because in a matter like this, the view of the High Court should prevail, and it does appear to me that it would not be in keeping with the dignity of the High Court that once they are consulted in the matter their view should be rejected by the State Government Courtesy demands that its view should be accepted Either the State Government may not consult the High Court at all or if they consider it desirable to consult the High Court as I think they should, be, then the views of the High Court should prevail

SHRI B N DATAR Sir, I may point out to the hon Member that the word "consultation" is a word which is usually used And I might also point out to the hon Member that the Government always respects the views of the High Courts Only in exceptional cases they depart from the advice given by the High Courts Here the question that has to be considered is the prescribing of qualifications for honorary Magistrates And naturally the High Court's views will always weigh with the Government I might assure the hon Member that there is no desire to depart from the advice given by the High Courts These are the usual words and the usual words may be kept, but I would give this assurance that we would always respect the views of High Courts

MR DEPUTY CHAIRMAN Do you press your amendment?

SHRI JASPAT ROY KAPOOR· No, Sir

*Amendment No 9 was, by leave, withdrawn

MR DEPUTY CHAIRMAN The question is

'That clause 4 stand part of the Bill."

The motion was adopted

Clause 4 was added to the Bill

Clause 5 was added to the Bill

MR DEPUTY CHAIRMAN We shall now take up clause 6 of the Bill.

SHRI JASPAT ROY KAPOOR Sir, I move

11 "That at page 2, lines 15—16, for the words 'in consultation with the High Court' the words 'in agreement with the High Court' be substituted "

SHRI K S HEGDE Sir, I move:

12 "That at page 2, line 16, the words 'Districts Magistrate' be deleted."

*For text of amendment, *vide* col. 5457 *supra*.

SHRI H C DASAPPA Sir, I move:

13 "That at page 2, lines 18—19, the words 'or with imprisonment for life' be deleted"

MR DEPUTY CHAIRMAN Clause 6 and the amendments are open for discussion

SHRI JASPAT ROY KAPOOR Sir, I have already spoken on my amendment No 9 The same remarks apply here also

SHRI K S HEGDE Sir, I was only suggesting the deletion of the words "District Magistrate" because the 'District Magistrates" can be of very little experience We know at present there are many District Magistrates not having had many years of experience

SHRI J S BISHT Then they will not be granted judicial powers The proviso is there which makes it clear that he must have at least ten years experience, if I understand it correctly

SHRI K S HEGDE The District Magistrate acts quite independently

SHRI B N DATAR The proviso says 'Provided that no District Magistrate unless he has, for not less than ten years, exercised as a Magistrate powers not inferior to those of a magistrate of the first class"

SHRI K S HEGDE Sir, in that case I withdraw I am sorry

SHRI H C DASAPPA Sir, mine is an amendment which, I think is non-controversial I am only thinking of the text of the clause Here it says "all offences not punishable with death or with imprisonment for life or with imprisonment for a term exceeding seven years" In section 30 there is a reference to the offences—it states as follows all offences not punishable with death or with imprisonment for life or with imprisonment for a term exceeding seven years—I really am unable to understand why there should be this reference to "or with imprisonment for life" This other clause "or with imprisonment for a term exceeding seven years" will suffice.

SHRI J. S BISHT That is for transportation for life

SHRI H C DASAPPA I understand. Transportation is dead and gone. And, therefore, when you say that "offence punishable with imprisonment for a term not exceeding seven years is triable", why should you also say that it should not be an offence punishable with imprisonment for life? It is not only redundant, but almost absurd You will not say, for instance, punishment with death, or with imprisonment for life or with imprisonment for ten years, or nine years, etc Why have a term like that when the term exceeding seven years will comprehend all higher sentences? (*Interruption*) The Law is that imprisonment for life is a longer term than imprisonment for seven years and once you say 'for a term exceeding seven years', it includes 'imprisonment for life' also I think, Sir, it is a drafting mistake and it ought to be accepted Otherwise, it is absolutely redundant and meaningless

SHRI B N DATAR I may point out to the hon Member, Sir, that what was done was this There were certain exceptions One was death sentence The other was transportation for life, and then imprisonment These are the three categories of cases which were dealt with Now, what was done was that the first two were accepted. So far as the wording 'life imprisonment' is concerned it was for 'transportation for life' The word 'imprisonment' has been used in this connection in place of 'transportation' Therefore, one was 'death' and the other was 'imprisonment for life' There are certain offences which are punished with this Therefore, those two categories were specifically accepted And in respect of imprisonment for seven years, this was the limit that was put down So, there is nothing wrong substantially and nothing absurd.

MR. DEPUTY CHAIRMAN: He has understood.

SHRI H. C. DASAPPA: Now, categories two and three are combined into one.

SHRI J. S. BISHT: No, no. 'Transportation for life' has been substituted by 'imprisonment for life'.

SHRI H. C. DASAPPA: My friend does not understand that 'transportation' has been done away with. What are retained are only 'death' and 'imprisonment'.

SHRI J. S. BISHT: But the form of punishment is retained.

MR. DEPUTY CHAIRMAN: The dictionary meaning according to him is all right but in the Penal Code there are certain offences.....

SHRI H. C. DASAPPA: Sir, I want a categorical answer. This kind of argument is of no use. I want the hon. Minister to tell me whether 'offences punishable with imprisonment for seven years and more' will not also include 'imprisonment for life'?

SHRI J. S. BISHT: No, no. That is a category by itself.

SHRI H. C. DASAPPA: Sir, if you will allow me to explain.....

MR. DEPUTY CHAIRMAN: Mr. Dasappa, you cannot have another argument. You have finished your speech and the hon. Minister has already answered.

SHRI H. C. DASAPPA: Sir, I want an answer. Let the answer go down on record that 'offence punishable with a term exceeding seven years' does not include 'punishable with imprisonment for life'.

SHRI J. S. BISHT: Sir, may I draw his attention to this Schedule, in this very Bill? In that "transportation for life" has been construed as a reference to "imprisonment for life".

MR. DEPUTY CHAIRMAN: Now, Mr. Jaspat Roy Kapoor, what about your amendment?

SHRI JASPAT ROY KAPOOR: If the hon. Minister is not disposed to accept it, it has to be withdrawn.

*Amendment No. 11 was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: What about Mr. Hegde's amendment?

SECRETARY: He is not here, Sir.

MR. DEPUTY CHAIRMAN: I have to put it to vote.

The question is:

12. "That at page 2, line 16, the words 'District Magistrate' be deleted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: Mr. Dasappa, do you press your amendment?

SHRI H. C. DASAPPA: Yes, Sir.

MR. DEPUTY CHAIRMAN: The question is:

13. "That at page 2, lines 18-19, the words 'or with imprisonment for life' be deleted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 6 stand part of the Bill."

The motion was adopted.

Clause 6 was added to the Bill.

MR. DEPUTY CHAIRMAN: Now, clause 7. There are amendments. Mr. Bhupesh Gupta and his friends are not here. Mr. Jaspat Roy Kapoor, do you move your amendment?

*For text of amendment, *vide* col. 5458 supra.

SHRI JASPAT ROY KAPOOR: Yes, Sir. I move:

16. "That at page 2, line 30, for the words 'ten years', the words 'seven years' be substituted.

MR. DEPUTY CHAIRMAN: Clause 7 and the amendment are open for discussion.

SHRI JASPAT ROY KAPOOR: Sir, the purpose of clause 7 is to enhance the powers of the Assistant Sessions Judge. He is hereafter according to this clause to be empowered to pass a sentence of imprisonment up to ten years. This I consider is not desirable.

SHRI J. S. BISHT: Section 30 also says seven years, so you want to bring this clause on the same footing?

SHRI JASPAT ROY KAPOOR: Yes. As my hon. friend, Mr. Bisht, has just said, in section 30, Magistrates are empowered to pass an order of sentence of imprisonment up to seven years and he asked whether I would like to place the Assistant Sessions Judge on the same level as Magistrates in section 30. If I had my way, Sir, I would have placed the Assistant Sessions Judges on a level lower than the section-30 Magistrates, so far as this particular point is concerned, for the reason that a Magistrate would be vested with section 30 powers only after he has had an experience of ten years in trying criminal cases. So far as the Assistant Sessions Judges are concerned, when they are promoted to the office of the Assistant Sessions Judges, they have absolutely no experience of criminal work. Until that day, they have experience only of civil cases. They act as munsifs or subjudges, and thereafter they are appointed as Assistant Sessions Judges, with absolutely no background and no experience of criminal cases. To give them the power of passing an order of imprisonment up to the extent of ten years would not appear to be a desirable thing. I could very well agree with a provision that an Assistant Sessions Judge, after he has acted as such for, say, three or four years, may be given this power of passing a sentence of imprisonment up to ten years, but to vest him with this power on the very first day when he is appointed as an Assistant Sessions Judge would be very unfair to the accused. It is a very serious matter, Sir, and I hope the hon. Minister would give a very serious consideration to this subject and decide as to whether a person of absolutely raw experience or no experience of having tried criminal cases should be vested with such big powers. Sir, there is some such thing as the atmosphere of criminal cases, and the traditions and conventions of criminal courts have to be imbibed by an officer presiding over a criminal court before he is given such big powers. That is all that I have to submit, and I urge upon the hon. Minister in all seriousness to give his serious consideration to it.

SHRI B. N. DATAR: Sir, we have considered this question very seriously, and there is no difficulty on that score at all. This has not been put in a casual way. It will kindly be understood, Sir, that an Assistant Judge is not appointed unless he has been working as a Magistrate for a number of years.

SHRI JASPAT ROY KAPOOR: It is not so. It may be the practice in some States. But in the other States, the Assistant Sessions Judges are promoted from the posts of Sub-Judges.

SHRI P. S. RAJAGOPAL NAIDU: I have seen, Sir, Assistant Judges being appointed from amongst the persons who had been acting only as District Munsifs, doing civil work. For the first time, they are appointed as Assistant Sessions Judges and. ....

SHRI B. N. DATAR: That was the original system. Now that system has gone.

SHRI H. P. SAKSENA: You are in my opinion, thinking of the Civil Judges who do both civil and criminal

work If you use that word, the meaning will be clear.

SHRI B. N. DATAR: Sir, here two points may kindly be noted. One is that in most of the States, we have got the separation of judiciary from the executive. Therefore, we have got Judicial Magistrates. And secondly, there are also Civil Judges-*cum*-Magistrates. That means, they have the experience of civil work, as also of criminal work. And then, so far as the appointments of Assistant Judges are concerned, there are two ways in which these appointments are made. Sir, one is by direct recruitment, in which case, lawyers of sufficient experience in criminal work are appointed. And secondly, the Magistrates or the Civil Judges are also appointed. That means, they have got certain experience. Now this clause has been put in.... .(*Interruption*).. ... for the purpose of enabling the Sessions Judge to transfer more cases to the Assistant Judges. Then, Sir, it will also be understood that all the cases in respect of offences involving punishment up to ten years' imprisonment are not automatically transferred by the Sessions Judge to a new, or, what has been stated, a raw Assistant Sessions Judge. He starts with simple cases of a sessions character, and then, gradually, the Sessions Judge gives him more and more cases.

SHRI K. S. HEGDE: I do not know, Sir, whether you are actually correct. In fact, it is done by rotation—No. 1, No. 2, and so on and so forth.

SHRI P. S. RAJAGOPAL NAIDU: Except, murder cases, cases arising under 302, all other cases are ....

SHRI B. N. DATAR: So far as the murder cases are concerned, they are either tried by the Sessions Judge.. ... (*Interruption.*) Now a Magistrate has to try some other cases; he has to use his own previous experience, and then only will these cases come in. And ultimately, Sir, the difference between 7 years and 10 years is not very material

SHRI JASPAT ROY KAPOOR: Is there no difference between 7 years and 10 years? Whether a man has to live in jail for 7 years or for 10 years makes no difference!

SHRI B. N. DATAR: But, Sir, ten years is the maximum sentence. In every case, the man is not convicted to a sentence of 10 years. That is the highest punishment, and offences are of a cognate nature.

MR. DEPUTY CHAIRMAN: Mr. Kapoor, do you wish to press your amendment?

SHRI JASPAT ROY KAPOOR: I insist on its acceptance by the House. I press it very hard.

MR. DEPUTY CHAIRMAN: The question is:

16. "That at page 2, line 30, for the words 'ten years', the words 'seven years' be substituted."

The motion was declared negatived.

SHRI P. S. RAJAGOPAL NAIDU: Division, Sir.

MR. DEPUTY CHAIRMAN: (*After taking a count*) Ayes—10; Noes—12.

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 7 stand part of the Bill."

The motion was adopted.

Clause 7 was added to the Bill.

MR. DEPUTY CHAIRMAN: We now come to clause 8. The hon. Members, in whose names the amendments stand, are not here.

Clause 8 was added to the Bill.

MR. DEPUTY CHAIRMAN: Then we come to clause 9. There is one amendment. But none of the hon. Members concerned is here.

Clause 9 was added to the Bill.

MR. DEPUTY CHAIRMAN: With regard to clauses 10 to 12, there are no amendments.

Clauses 10 to 12 were added to the Bill.

MR. DEPUTY CHAIRMAN: Now, we take up clause 13. The hon. Members concerned with the amendment are not here.

Clause 13 was added to the Bill.

Clauses 14 to 17 were added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 18. There is one amendment.

SHRI H. C. DASAPPA: Sir, I move:

28. "That at page 3, line 39, after the words 'so put in' the words 'examine and' be inserted."

MR. DEPUTY CHAIRMAN: The clause and the amendment are now open for discussion.

SHRI H. C. DASAPPA: I think that the amendment I have sugested is a very simple and non-controversial one and can be accepted provided, of course, my hon. friend takes a reasonable view in the matter. This is an enquiry under section 145. Here certain improvements are suggested in order to expedite the enquiry. This is what it says:

"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, etc."

My point is that in addition to the question of hearing, it is very desirable that he should examine the parties and then hear the parties.

MR. DEPUTY CHAIRMAN: The proviso is there.

SHRI H. C. DASAPPA: "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." My submission is that the natural inclination in such cases would be not to take the trouble of examining the parties.

MR. DEPUTY CHAIRMAN: Why not?

SHRI H. C. DASAPPA: It would be better if the examination is made obligatory on the part of the presiding Magistrate. Why can he not examine and then dispose of? I am not referring to witnesses by any means. I am only referring to the examination of the parties. That ought to be done by any Magistrate before he can come to any decision whatsoever. I think it would be better if my hon. friend accepts this amendment.

SHRI B. N. DATAR: I cannot accept the amendment, because as you have rightly pointed out, the proviso makes it quite clear that it would be open to any Magistrate to call any person for examination. Now, the difficulty that my friend has pointed out will be met by understanding the words 'any person'. This includes the complainant or the parties in the proceeding. It is open to the Magistrate under the proviso to call any person for examination, and we should not make it necessary, as a matter of rule, for the Magistrate to examine the parties.

SHRI H. C. DASAPPA: I would like to withdraw the amendment.

*Amendment No. 28 was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

*For text of amendment, *vide* col. 5467 *supra*.

"That clause 18 stand part of the Bill."

The motion was adopted.

Clause 18 was added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 19. There are a few amendments. No. 29 is ruled out as being negative.

SHRI H. C. DASAPPA: Sir, I move:

30. "That at page 4, lines 22-23, the words 'and he shall direct the parties to appear before the Civil Court on a date to be fixed by him' be deleted."

31. "That at page 4, at the end of line 33, after the word 'it' the words 'within a period of three months from the date of receipt of the record of the proceeding by it or as soon thereafter as possible and award costs in its discretion' be added."

MR. DEPUTY CHAIRMAN: The clause and the amendments are now open for discussion.

SHRI H. C. DASAPPA: I think this is one of the vexed new clauses, which has been very greatly debated upon. There has been a fairly large body of opinion that it would have been better if the provision had been left severely alone as it was, and this process of shunting the case and the parties from one court to another will not only make for greater delay and inconvenience but it would also mean greater cost to the parties, the two things that the Government want to avoid. This has been fairly brought out in the course of the general discussion but in any case in view of the fact that this is not possible, I would suggest certain amendments which would be very helpful. Here it is stated in lines 22-23 that the Magistrate shall direct the parties to appear before the Civil Court on a date to be fixed by him. My amendment is that these words should be deleted. The papers may be transferred to the Civil Court and the Civil Court will issue summons when it is convenient to the Civil Court. It is rather extraordinary that the Magistrate should direct the parties to appear before a Civil Court on a certain date. It may be that that date may be most inconvenient to the Civil Court or parties and why should the parties be put to the inconvenience of going to the Civil Court and then having the case postponed to some other date? Let the parties appear before a Civil Court on a date convenient to the Civil Court. I think both propriety and convenience alike dictate that this a reasonable course.

Then, I have suggested that at the end of line 33 the following words be added:

"within a period of three months from the date of receipt of the record of the proceeding by it or as soon thereafter as possible, and award costs in its discretion".

(1A) says:

"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."

The question of period is introduced in (1B). The proper form would be to transfer the period to (1A). That would read better. The question of cost also has been included in my amendment. What appears in (1C) has been brought forth here. This is more or less a verbal change, which makes for better drafting of the clause.

SHRI B. N. DATAR: I am not prepared to accept the amendments. The Magistrate only directs the parties to appear before the Civil Court on a date to be fixed by him, and there are general powers of adjournment provided in the Code of Civil Procedure and therefore, if in particular cases the parties are not ready or the witnesses are not ready, or if there are any other valid

[Shri B. N. Datar.]

reasons, then under their powers for giving adjournment, the Civil Court can grant as short an adjournment as possible.

SHRI K. S. HEGDE: Supposing a Magistrate or a Judge is not able to finish the work within the stated time, does he become *functus officio* at the end of the stated time?

SHRI B. N. DATAR: The words "as far as may be practicable" are here, and he will not become *functus officio* unless he gives his findings or returns the papers back. The words "as far as may be practicable" have been introduced here only for that purpose.

1 P.M.

So the jurisdiction continues under the Civil Code also subject to the limitation of three months.

MR. DEPUTY CHAIRMAN: Do you press the amendments, Mr Dasappa?

SHRI H C. DASAPPA: As I said, these are all verbal amendments. I would not press them.

*Amendments Nos. 30 and 31 were, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 19 stand part of the Bill."

The motion was adopted.

Clause 19 was added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 20.

SHRI H. C. DASAPPA: I beg to move:

35. "That at page 5, line 14, the words 'if possible' be deleted."

MR. DEPUTY CHAIRMAN: The clause and the amendment are open for discussion Are you prepared to accept the amendment, Mr. Datar?

SHRI B. N. DATAR: At 3 we shall look into it.

MR. DEPUTY CHAIRMAN: The House will meet from 3 to 6 in the afternoon to make good for the loss of time

The House stands adjourned till 3 P.M.

The House then adjourned for lunch at two minutes past one of the clock.

3 P.M

The House re-assembled after lunch at three of the clock, MR. DEPUTY CHAIRMAN in the Chair.

MR. DEPUTY CHAIRMAN: Yes, Mr. Datar, what do you say to the amendment to clause 20?

SHRI B. N. DATAR: Sir, I feel that it is not necessary to have such an amendment and the words "if possible" may be allowed to remain in the clause, so as to leave it to the magistrate either to decide the case himself or to leave it to the civil court in a proper case.

MR. DEPUTY CHAIRMAN: Mr. Dasappa is not here. I shall put the amendment to vote.

The question is:

35. "That at page 5, line 14, the words 'if possible' be deleted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 20 stand part of the Bill."

The motion was adopted.

Clause 20 was added to the Bill.

MR. DEPUTY CHAIRMAN: Now we come to clause 21 and I find there are no amendments to that clause.

Clause 21 was added to the Bill.

MR. DEPUTY CHAIRMAN: I find that there are some amendments to clause 22.

*For text of amendment, *vide* col. 5469 *supra*.

SHRI K. S. HEGDE: Sir, I move:

36. "That at page 5, lines 35 to 48 be deleted."

SHRI ABDUR REZZAK KHAN (West Bengal): Sir, I move:

37. "That at page 5, lines 38-39, the words 'and with the permission of the Court, by the prosecution,' be deleted."

MR. DEPUTY CHAIRMAN: The clause and the amendments are now open for discussion.

SHRI K. S. HEGDE: Sir, by and large, I am a very ardent supporter of this measure, but I am afraid that this fair measure has to a large extent been sullied by the second portion of clause 22. It is true that in certain countries, including England, statements made before the police are taken as evidence, both as substantial evidence as well as for the purpose of contradiction. But right from the very beginning for very good reasons, the framers of the Code thought that such a clause should not be incorporated in the Code here. To be frank, there was not the necessary faith in the police to accept their record of statement as being truly and correctly made. There was also the reason that witnesses giving evidence in the atmosphere in which evidence is given and the place where they give evidence usually were such that it could not be given much evidentiary value and it is for that reason that it was incorporated in section 162 as it now stands, that no statement made to the police officer shall be used for any purpose except for the purposes enunciated in that section 162 itself. And conditions have not in the least changed now. Probably the hon. Deputy Minister might say, "We must have a little more faith in the police." Sir, that is true, and I am one of those who believe that faith begets faith. But I have to submit that conditions are such that the giving of all the power that is contemplated under this measure is likely to work out grievously to the illiterate people. I shall only illustrate this by citing one recent example to show how exactly the matter is working.

Only a few days back there was a murder in a particular village. The first information was lodged by the brother of the particular party and in the first information, apart from the five accused who are now convicted about four other names were mentioned—as accused 1 to 4—as parties who had a hand in the murder. But unfortunately for the first informant and probably for the police also, the first accused happened to be in one of the important clubs, playing cards among some gentlemen, including the municipal chairman of the particular city. Immediately this accused put in a petition before the A.S.P.—a fairly new recruit to the I.P.S.,—who was investigating the matter, saying that he was in such and such a place with such and such persons—and he gave a list of the names of those persons—and that he could enquire into the question and see for himself if the person was there or not. Actually he was far away from the place where the occurrence had taken place. But what exactly happened? The police officer absolutely refused to investigate the defence version and they examined such of the witnesses as were favourable to the informant and their statements were recorded. Information from a very reliable source came to me and I passed it on to the A.S.P. But the A.S.P.'s explanation was that if he accepted it, he would get no assistance from the other side, that no one on the prosecution side would help the case. "If I do not include accused 1 to 4," he said, "I will not have any assistance from the prosecution side". I immediately took up the matter with the I.G., Police and he was pleased to withdraw it from the police and place it in the hands of the C.I.D. The D.S.P., C.I.D. went to the locality and found that the whole case was false, so far as accused 1 to 4 were concerned, and even the 162-Statement was found incorrect, wholly incorrect I will not call it quite false. In fact, the C.I.D. presented an entirely differ

[Shri K. S. Hegde.]

ent case and a learned public prosecutor from Madras had to come to prosecute the case. The case was disposed of only some 25 days back. And remember, it was not a petty official, not a head constable, not even a sub-inspector, but an A.S.P., an officer of the I.P.S. His whole fear was that if he accepted the defence version, he would not get assistance of the prosecution.

Sir, in my experience as a Public Prosecutor, I had an extremely interesting case. In that case one false accused was included and if he was to be excluded, the prosecution party was not willing to assist the prosecution. They would not assist unless this one accused was also implicated in the case. The main obsession of investigating officers is to get a conviction. That is there right through. Of course, I am speaking for honest policemen, not for the dishonest, who are not few but many. Well, at the time of investigation he brought the papers to me and he told me, "I am satisfied that the first accused is an innocent man, but he is implicated in the case." When I asked "Then why institute a case against him?" his reply was, "If I do not do it, I will have no assistance from the prosecution party." There were two factions in the village, one faction was supporting the prosecution and the other was for the defence. But I said, "Nothing doing. Even if there is only one witness, confine it to the person who you think is the guilty person or persons". The man goes to the locality and then sends a report from there to me in writing to say "If I carry out your instructions, I will have absolutely no assistance from the prosecution."

Sir, that is the position. Do not think I am exaggerating any individual or exceptional case. It is a common, daily occurrence. However eminent the lawyers may be, if they have been working on the appellate side or on the civil side, they would not be able to appreciate the depth of demoralisation that exists in the police ranks. It will be no exaggeration if I say that either by the force of circumstances or by the very poor pay that Government is giving to the very high police officers, there is rampant corruption in the police ranks and in my opinion, it would be wholly undesirable to give this very powerful weapon in their hands.

After all, what is the object of this section? The whole idea seems to be to put the witness on the box and then contradict the statement given under section 162.

The idea seems to be to get it as an evidence through the back door. The hon. Minister will excuse me for using this expression. It was more plain in the draft. Originally the present section 162 was to be completely changed but now a provision has been added which says that with the permission of the Court, it may be used under section 145 of the Evidence Act for purposes of contradicting the witness. Would you not, Sir, with your experience as a lawyer, realise the danger? The police officer has yet to come at a later stage. Anyone of us as a judge or magistrate will not be able to say: the statement under section 162 put in our hands is true or false. Naturally, any magistrate or any judge will certainly permit the public prosecutor to contradict the witness with his statement under section 162. Once that is done, the mischief is done and the whole of the statement under section 162 comes into the evidence through the back-door. Any witness will be at peril to deny what he is supposed to have said under section 162. You will kindly appreciate the psychological position. Supposing a villager comes and he is confronted with a statement about which he knows nothing. An officer has recorded this and he is bound to break down under the pressure of the alleged statement supposed to have been given by him at an earlier stage. It would be highly improper. If you kindly read the further portion you will find that mischief does not stop there. Whereas if the accused uses the statement for purposes of contradicting

under section 145 of the Evidence Act, the prosecutor has got a right to use the remaining portion to explain what has been contradicted. That principle, however, is not available to the accused if the prosecutor uses it. If you kindly look at the proposed section 162 you will find that, if any part of such statement is used by the accused, the prosecutor has got a right to explain it by referring to the other parts of the statement recorded under section 162 but if the prosecutor uses it the accused will have no other opportunity of explaining.

SHRI P. T. LEUVA: He gets a copy in advance.

SHRI K. S. HEGDE: My friend probably believes in ignorance. He may have got a copy, but how could he use it?

SHRI P. T. LEUVA: Why not?

SHRI K. S. HEGDE: Under what provision?

SHRI P. T. LEUVA: For contradiction.

SHRI K. S. HEGDE: For contradiction the right is given only to the prosecution. Let my hon. friend read it again.

SHRI P. T. LEUVA: You had better read it again.

SHRI K. S. HEGDE: No statement made by a person before a police officer in the course of the investigation shall be reduced into writing and the accused can use it only as provided for in the proviso. The accused cannot use it for any other purpose than is provided for in the proviso. It is not as if you have got an inherent right for using such evidence under section 145. That right is taken away by the first part of the section but what is given is a limited right as provided in the proviso.

SHRI J. S. BISHT: What more do you want?

(Interruption.)

SHRI H. P. SAKSENA: Sir, Mr. Hegde is between two fires. Kindly save him.

SHRI K. S. HEGDE: I am certainly not as old as my friend Mr. Saksena. I can stand a few more blows.

MR. DEPUTY CHAIRMAN: He is quite stout-hearted enough.

SHRI K. S. HEGDE: Under the present provision, the right is given only for the accused to put it for purposes of contradiction. The prosecutor has no right. Once the accused uses that right the prosecutor automatically gets a right to explain what has been contradicted in the first portion. Supposing the prosecutor uses it for purposes of contradicting it, when does the accused get a chance of explaining? How does he get it? With your knowledge of law, Sir, I am willing to be assisted by you on that point.

SHRI P. S. RAJAGOPAL NAIDU: He has to be declared as hostile.

SHRI J. S. BISHT: Even under the present law, if he is contradicted, the prosecution has a right to explain the facts.

SHRI K. S. HEGDE: My learned friend, in his anxiety to support, does not see or refuses to see the position. What I am asking is this: If the prosecution contradicts the witness, where is the right of the defence to explain it?

SHRI J. S. BISHT: Under what circumstances will the prosecution contradict it?

SHRI K. S. HEGDE: To contradict it, to discredit it.

SHRI J. S. BISHT: What was the right given to the accused up to now?

SHRI K. S. HEGDE: One part of a statement may be used to contradict him; there may be another part which will explain that contradiction. How are we going to use that part?

MR. DEPUTY CHAIRMAN: This only refers to the right of the accused.

SHRI K. S. HEGDE: No, Sir, to both.

SHRI H. C. DASAPPA: Both.

SHRI K. S. HEGDE: Let us go through the provision. In the main section itself, there is no right. The right is only in the proviso. The proviso says, "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 the 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."

SHRI J. S. BISHT: May I suggest that we see the existing section? "..... when any part of such statement is used....."

SHRI K. S. HEGDE: None is so blind as he who refuses to see. The existing section does not give the right of contradiction to the prosecution. That he fails to see.

SHRI J. S. BISHT: That does not give, I accept.

SHRI K. S. HEGDE: The existing section has no relation. The old section gave right only to the accused and the prosecutor had the right of explaining. The proposed section gives the prosecutor a right of explaining the contradiction whereas the right of the accused to explain that contradiction is not there. There may be a lengthy statement under section 162. In one portion there may be contradiction but if one reads the whole of the statement, there may not be any contradiction. The prosecutor will simply take out one part and contradict the witness. How do the other portions come into the evidence at all? That is what I am asking for. You put the prosecutor in a very advantageous position and you are putting the accused in a very difficult position. Under section 145 what is said is that the statement can be used for purposes of contradicting the witness; nothing more, nothing less. What exactly is the purpose, I cannot understand. Is it your idea that this must be a weapon of offence in the hands of the prosecutor? The prosecutor is after all, a human being.

MR. DEPUTY CHAIRMAN: Even here it is said that whether it is used by the accused or by the prosecution it is only for contradiction.

SHRI K. S. HEGDE: For purposes of explaining.

MR. DEPUTY CHAIRMAN: That right is given only to the prosecution.

SHRI K. S. HEGDE: Only to the prosecution. What about the accused?

MR. DEPUTY CHAIRMAN: That is for explaining because he is the prosecution witness.

SHRI K. S. HEGDE: Even if he is a prosecution witness, if he is declared as hostile?

Under section 154, the right is given to a party to call his witness, to put questions in the nature of cross-examination.

MR. DEPUTY CHAIRMAN: But that right is there even now if he is declared as a hostile witness.

SHRI K. S. HEGDE: But now he cannot be contradicted by the prosecutor by the use of 162-statements.

SHRI J. S. BISHT: May I just point out to my hon. friend that the wording in the old section 162 was "..... when any part of such statement is so used". That is all. The wording in the proposed section is "when any part of such statement is so used by the accused". That precaution has been taken here. It cannot be used by the other party. When the accused uses it for contradiction, then only the prosecution can re-examine.

SHRI K. S. HEGDE: May I just read the proposed section for the benefit of my hon. friend? The wording is that it shall not be used for any other purpose but the accused can use it for purposes of contradicting the witness and once the accused uses it, the prosecutor has a right to use the other portion to explain the contradiction. Thus far and no further. To this is added that the prosecutor can also, with the permission of the court, contradict the witness with his statement under section 162. Now, the prosecutor is placed in the position of the accused to contradict his witness which may be a very nominal contradiction, not a real contradiction. If you read the whole statement of the witness, it may not amount to contradiction at all. I want to explain it by referring to the other portion. Have I a right?

SHRI J. S. BISHT: No.

MR. DEPUTY CHAIRMAN: He is not your witness. He is the prosecution witness. You have of course full right to cross-examine him.

SHRI K. S. HEGDE: Now take for example a witness who has been examined in chief, cross-examined by the counsel for the accused, and after that with the permission of the court examined under section 145 of the Indian Evidence Act and the contradictions in the 162-Statement are brought on record. Now the accused will have no right to explain the contradiction with reference to the other portions of the 162-Statement. I cannot imagine such a position.

MR. DEPUTY CHAIRMAN: It will show the prosecution witness in his true colour. The accused has got the full right to cross-examine him.

SHRI K. S. HEGDE: The accused has the right of cross-examination no doubt. Now may I say: A witness comes and says, "I saw A and B at the time of murder at a particular place" but in the latter portion of his statement before the police there is an explanation to say "B was seen running to the place later." Now let us examine it a little. Now the prosecutor puts him a question: "Did you not tell the investigating officer at the time of the investigation that you saw A and B at the time of the murder at the scene" and leaves it at that, what is the inference? It shows that at present he is giving a different story. Now if you try to explain it then the counsel for the accused could put the other portions of the 162-Statement and say, "He has said in the latter portion that he had seen him later, at a late stage." Now have you got that right here?

MR. DEPUTY CHAIRMAN: No. Could you not cross-examine him on that point?

SHRI K. S. HEGDE: With reference to what? If there had been already a cross-examination, then there would be no right of cross-examining him further, with reference to the contradiction, and the entire statement as brought out by the public prosecutor will be taken as evidence. Let us simplify the matter further. Now let us take a concrete case where after the counsel for the accused had cross-examined the witness permission is taken under section 154 of the Evidence Act by the public prosecutor and the supposed contradiction brought in. What can the counsel for the accused do under those circumstances? After I cross-examine the witness I make out a case. Now after I did it the prosecutor takes the permission of the court under this section and contradicts the witness.....

SHRI J. S. BISHT: He destroys his own witness.

SHRI K. S. HEGDE: There is no question of destroying his own witness.

SHRI B. N. DATAR: That is not the procedure so far as cross-examination is concerned.

MR. DEPUTY CHAIRMAN: Let him finish his point first.

SHRI K. S. HEGDE: Possibly the hon. Minister is under the impression

[Shri K. S. Hegde.]

that cross-examination as allowed under section 154 read with section 145 of the Evidence Act is confined to only the initial stage. With the greatest respect to my hon. friend for his legal acumen I may say that it is not so. The cross-examination of a witness or treating of a witness under section 154 as a hostile witness can be done at any stage. Now even after the counsel for the accused has cross-examined him, the public prosecutor can take the permission of the magistrate or the judge to put questions under section 154 of the Evidence Act and once that comes into operation, the mischief is done. This section is capable of a large amount of mischief and it is going to be used against the accused. There can be no doubt about it. It all depends on how you deal with it. If you read the commentary on section 27 of the Evidence Act you will realise the difficulty. It was a new interpretation of section 27 by the Privy Council given some ten years ago. Now prior to that atleast some of the High Courts thought that section 27 was controlled by section 162 of the Criminal Procedure Code. Now immediately the Privy Council gave that decision wherein they admitted evidence under section 27, in every one of the cases we had a confession under section 27 leading to discovery. If only you examine the history of the cases, there was hardly any case of importance where there was no confession under section 27. It was called section 27 confession because the whole thing is manipulated with a view to evade law and the people who are investigating are people who know law. They know how to evade law and the whole of the investigation is done with that purpose in view and if only the proposed section is incorporated in the Code, hereafter there will be apparent contradiction in one place and an explanation at the tail. If the witness does not behave properly, the contradiction will be put and the explanation will not be there. I think, Sir, this is bound to be a very good and very useful tool in the hands of the police. It will be the blackest chapter of this Bill and is likely to be misused to a very large extent. With all respect I bring it to the notice of the hon. Minister and I am sure, for a Bill for which you ought to get the gratitude of the people you are likely to get odium from the people on account of the inclusion of one small provision, which is an unwanted provision and which is not going to be of help in practice, but is going to get you into disrepute.

SHRI BHUPESH GUPTA (West Bengal): Sir, I am in general agreement with the arguments that have been advanced by the previous speaker. I am happy that it is one of the rare occasions on which I find myself in agreement with him. Sir, being an ex-Public Prosecutor he is in a position to state the case lucidly and there is no doubt that he has done it, and the hon. interrupters were not actually making any point except trying to cloud the issue.

Here the main issue, as far as I understand, is how the rights of the accused person in a prosecution stand *vis-a-vis* this particular amendment Sir, we stand for the extension of the rights of the accused. We want that opportunities for proving his case or proving that he is not guilty should be extended, if anything at all. If this particular section in the Criminal Procedure Code were to be amended, it should have been amended with that particular object in view. Now the particular amendment proposed here goes in the opposite direction, and the reasons he has given. Now many of us have been in the accused box a number of times and we know what happens. When a prosecution witness comes—in many cases we find them coming after having been tutored by the Public Prosecutor—I am not talking about public prosecutors like him, but by investigating officers and others, I mean. He believes in big scale tutoring and not perhaps in these small things and therefore I am not talking about him. The witness comes more

or less tutored before the court of law especially in criminal cases, and in criminal cases the investigating authorities are very much interested in securing a conviction. Now, then, he is subjected to cross-examination and, maybe, that in such circumstances which are quite different from the one in which he may have made a statement, he may be compelled to say something which is really true. If the Public Prosecutor conducting that case finds that the witness is going against his case, which at times may be a concocted case, he may try to declare him a hostile witness. And then, in such cases, he may find an opportunity under this amendment, to refer to this particular procedure, refer to a statement which had been made and use it for achieving his end.

That would curtail the rights of the accused person and at the same time it would interfere with free evidence being given in a court of law. We take it that we do not rely on the statements made to the police. We know the circumstances in which such statements are made and therefore these statements have got to be proved and tested in a court of law under certain definite rules of procedure. Therefore he comes here but here we find that an old thing is dug up not in the interests of the accused but at the instance of the prosecution and for declaring the witness who no longer suits its purpose. This is how it actually works. My friend, Mr. Hegde, has given a very relevant example. So many things may happen but the main point is this that the prosecution today can utilise such statements against the accused in order to defend and uphold the prosecution story. Therefore it is most objectionable. Sir, this Bill has been subjected to some amount of scrutiny and criticism by the members of the Bar and also by the Press and I can tell you that this particular amendment has been subjected to very severe criticism by many eminent lawyers in the country. I have also come across criticism made against this in the Press. All these show that there is a great volume of apprehension against this particular amendment. It is not taken readily as some Members in this House would like it to be taken. It is not to be understood in the sense in which some hon. Members, like the lawyer friend sitting behind the Chief Whip, would take it. On the contrary, I find that there is a great amount of resistance to this thing, opposition to this particular amendment and I have no hesitation in saying that—this contains very many black spots—it is one of the blackest spots in the whole Bill that has been presented to us. When we discuss this particular clause we must take into account the background in which prosecutions take place in this country. You will find that the prosecution is left entirely in the hands of the police and the police behave in a particular way. This type of behaviour they have inherited from the British days and I do not think that they have lived down that sort of thing as yet. Therefore if we are to amend such laws, we should see that the prosecution does not get an upper hand but on the contrary the accused has to be put on a firm footing for defending himself against such kind of prosecution.

And what about the witness? As you know, you may be a very good lawyer or a very good judge, but imagine yourself as appearing in a witness box If you look at the whole thing around you, you will feel a little nervous. You know me, I am not a nervous person but once I had an occasion to appear in a witness box. I found the whole bunch of lawyers trying to ask me all sorts of questions. They had been put up by very rich people and there was no lack of enthusiasm among them in directing questions after questions to me whether they were relevant or irrelevant. I felt very nervous all the time, not because I was a nervous person temperamentally or otherwise but because I felt that in trying to answer all those questions I might look a little foolish. This is what happens. Imagine a layman going into a court of law, not knowing anything, very often

[Shri Bhupesh Gupta]

brought there by the police and the investigating authorities; he would be in constant threat of being confronted with certain statements that might have been made in a different set of circumstances to the police, always afraid that they might be saying things which are not to the liking of the pro secution He will be in a state of intimidation all the time. The Public Prosecutor is a frightening figure in a court of law, not very good to look at, whether you look at him from the witness box or from the accused box If the innocent witness has the feeling all the time that he may be challenged on the basis of a certain statement that had been made earlier, he will literally be at breaking point and he will be led into saying more or less things which he does not believe to be true That is how a false story is unfolded as if it is true and the prosecution case gets estab lished Even from the point of view of witnesses and from the point of view of free and unfettered evidence, this is something which is wrong and which should be discarded I do not know why the Government is insisting on this I know that in the other House many lawyers spoke one after another without impressing upon the hon. Minister and his erstwhile colleague who has left the Home to defend the Army.

I know it made no impression whatsoever and I do not know whether it will make any impression now but here is a matter to which thought should be given I do not think that we are going to lose anything I am taking the best view of the case—even if we did not have this amendment made. I therefore think that they should yield in this matter to public opinion and to what the lawyers have said including Mr K S Hegde who has spoken fairly convincingly on this subject

SHRI K S HEGDE: Sir, I will be withdrawing amendment No. 36 Pro bably amendment No 37 would be more useful.

SHRI H. C MATHUR: Mr. Deputy Chairman, I earnestly wish to appeal to the hon the Deputy Minister to seriously consider the implications of this new provision which they propose to make in this clause. Many speakers have, one after another, very strongly opposed and condemned this provision and for very good reasons With a solitary exception here or there, this clause has been opposed by almost each and every speaker not only in this House but also in the other House. When I spoke on this Bill during the general discussion I advanced certain reasons and the one very good reason which I thought was that this clause will operate as a great deterrent against the witnesses coming and telling the truth before the court But the more consideration that I gave to this clause, the more I have thought about it, the more I find that the mischief does not end there. This is a very dangerous provision which is not only unfair to the witness and to the accused but it is very likely to be used to sabotage the whole defence. I would like to explain to the hon the Deputy Minister why I feel that way. Sir, the hon the Deputy Minister must know how the investigation proceeds here The investigating officer does not record only the statements of the prosecution witnesses; he goes and records the statement of almost everyone who is supposed to have knowledge of the crime and he can record also—and he is supposed to record—the statements of those persons who are likely to appear in the defence When a particular incident happens he knows who is the witness who is likely to come forward for the defence He records the statement in his own way and this very statement can be used or can be sabotaged in such a manner that the accused will be finding himself almost helpless That is why I said that the mischief of this provision goes far beyond what we had thought it to be originally. We thought that it would work only as a great deterrent but I feel that this is a dangerous provision in the hands of the prosecution. We

are not merely putting the prosecution and the defence on the same footing by permitting the prosecution to cross-examine in certain circumstances. The defence has got nothing to do with it. During the investigation stage, even if our administrative machinery, even if our police machinery were far better than what it is today, we will not be prepared to give this sort of weapon in the hands of the prosecution. My friend Mr. Hegde advanced certain very good reasons. Previously the position was very different. When the original Bill was before the House, they had completely omitted this provision. When this was brought in first I thought that giving the accused the right to contradict his statements made before the police was a definite improvement. It is an improvement only to that extent but with this addition which has now been made I find that the situation is rendered much more dangerous and far greater mischief can be done. That is why I definitely oppose this provision. It would serve no useful purpose if a number of instances are quoted. Mr. Hedge has quoted a recent case. These instances by themselves do not go too far. It is no use quoting instances after instances. Numerous instances can be given with thousands of prosecutions and investigations going on. It is on the basis of principle that I oppose it. By no principle of jurisprudence can we justify such a provision and I strongly register my opposition to this and I would earnestly appeal to the hon. the Deputy Home Minister to reconsider it.

SHRI H. C. DASAPPA: Mr. Deputy Chairman, I think most of the arguments have already been placed before the House and I would very humbly beg of the Deputy Minister to kindly consider whether in the circumstances of the case it would not be advisable to accept the amendment No. 37. We have been going on fairly well so far in the matter of criminal administration but here we are trying to reverse the gear entirely. Some of the fundamental principles of jurisprudence are sought to be given the go-by.

It has been explained by my friend, Mr. Hegde, that if a man is to be confronted with his earlier statement, it must be a statement which has some sanctity. Apart from the witness, the public must have an assurance that it is a correct recording of the previous statement. If supposing the statement was made before a magistrate on oath, then there is some meaning in even the prosecution employing those statements for the purpose of contradicting the prosecution witnesses. But here nobody can guarantee that the police statement recorded by the investigating officer is a true and correct version of the witness concerned. I want to know whether anybody could guarantee that that is a correct version? Why is it that the Criminal Procedure Code enjoins certain specific procedure with regard to the testimony of any witness? It is recorded as far as possible in his own language, if not, in English or in any other language, but translated to him later on. And then he is called upon to say: "Do you admit it to be correct?" And even mere saying 'read over and admitted as correct' is not enough. The speech must be translated, read over to him and admitted by him to be correct. Is all this fine procedure as a safeguard against any misrepresentation to be thrown to the winds, just because to satisfy the fancies of an investigation? What pass we have come to today I wonder in this year of Grace 1955 that we should throw all these fine principles to the winds and then adopt a provision like this, which to me strikes as extraordinary and going against all the known principles. There are two things. One is that the recording does not guarantee that it is a correct and true rendering of his testimony; the second is that here is the Sword of Damocles hanging over him, if ever he says anything that is different from what has been recorded at the sweet will and pleasure of the investigating officer, there is the punishment of perjury hanging over his head. Do you expect, Sir, any wit-

[Shri H. C Dasappa]

ness in this world to say anything different from what the investigating officer has chosen to record in such circumstances? Does he not run the risk of being prosecuted for perjury? (*Interruptions. Hon. Members.* 'No', 'no')

MR. DEPUTY CHAIRMAN: Periury is against an oath, for breach of an oath.

SHRI H. C. DASAPPA: I am sorry I was thinking of the other thing. He cannot be hauled up for perjury. It is not for this.

SHRI BHUPESH GUPTA: But he can be frowned upon by the Magistrate.

SHRI H. C. DASAPPA: In any case, there is this thing that he runs the risk. Once a witness is treated in the ordinary parlance as hostile and is permitted to be cross-examined by the prosecution itself, what is the respect that attaches to the person? What is the value that attaches to his evidence? The whole thing goes to nothing.

SHRI J. S. BISHT: Then, why should you be afraid of it? That is the whole point.

SHRI H. C DASAPPA: There are two voices. I am asking a simple question wh ch has an obviously simple answer Is there or is there not any difference between a testimony which could be helpful to the accused and a testimony which could be damaged as useless to the accused? I ask my friend, Mr Bisht, who is a very experienced Public Prosecutor to answer that and I also ask my young friend, Mr Leuva. I daresay with all their ability, intelligence, and ingenuity they cannot answer that question differently. There is a world of difference between a testimony which could be damaged as useless for both and a testimony which could be made use of by the accused in his own defence. And yet Mr. Bisht and Mr. Leuva ask me, why have you got objection? Sir, it is to me so simple that it does not require a second reading, this is a thing which should not figure in the Statute. I beg of the hon. Deputy Home Minister to kindly

SHRI P. T. LEUVA: Don't beg, please reason out.

SHRI H. C. DASAPPA: Mr. Leuva is now assuming a role which is much more than that of the Deputy Home Minister or the Chair. Sir, I would beg of the Deputy Home Minister to kindly view this sympathetically.

SHRI H. N. KUNZRU (Uttar Pradesh): Sir, let us consider how the statements of witnesses are recorded by the police. In a criminal case the statement that is recorded by the police is not signed by the witness. Indeed, the witness cannot be required under the Criminal Procedure Code to sign it, beause, I suppose, he is not supposed to be a free agent in his dealings with the police . ..

MR DEPUTY CHAIRMAN: Nor does it get any sanctity if he signs it.

SHRI H. N. KUNZRU: Nor is the statement recorded in his presence. It may be recorded a day, or two days, or three days or a week after the statement was made, by the police officer from memory.

SHRI K S HEGDE There are cases of recording even without examining them.

SHRI H. N. KUNZRU: I agree with my hon friend, Mr Hegde But what happens usually? When statements made by witnesses are recorded, the police officers seeking the lacuna in the statements add certain things to them that would be useful to the police And subsequently

when they find that even the recorded statement would not serve their purpose, they ask the witness, when he appears before the court, to say something more than what has been recorded by the police. Now, in these circumstances, it is perfectly legitimate, it is perfectly right that the accused should be allowed to confront the witness with the statement made by him to the police, in circumstances unfavourable to him, unfavourable to the accused. Now, on what grounds can it be asked that the prosecution should in this matter be placed on a footing of equality with the accused? The police officer may record a statement that was not made to him at all; or may record it with such additions as he thinks will be helpful to the police. Is it right, Sir, that in these circumstances the prosecution should be allowed to confront the witness with a statement that he has not made—at any rate in the form in which it has been recored by the police? I think that it is absolutely wrong that the prosecution should in this matter be given the same right as the accused enjoys. I know, Sir, that the prosecution can be allowed to use a statement of a witness only for the purpose of contradicting him and that, too, with the permission of the Court. But will there be many magistrates who will say 'No' to a request of the police?

SHRI J. S. BISHT: Well, with the separation of the judiciary, what is the difficulty?

SHRI H. N. KUNZRU: My hon. friend is bound to say whatever he can in favour of the Government. Why should he say anything at all? Why should he not leave it to the Deputy Minister to fulfil that task? It cannot in fairness be asked that the prosecution—even with the supposed safeguard mentioned in an earlier speech of his by the Deputy Home Minister—should be allowed to confront a witness with a statement supposed to have been made by him to the police. But there is, however, a point made by the Deputy Home Minister which we have to deal with. He said that we must not suppose that the accused are all innocent persons or just lambs who use no arguments to win over the prosecution witnesses. Now the accused can try the same tricks as the police does without being able to use the pressure that the police can. They do not enjoy the authority that the police does. But if, however, it is felt that the accused have tampered with the prosecution witnesses, have bribed them and won them over to their side, the prosecution can ask the Magistrate to allow them to be treated as hostile witnesses. What is the difficulty in this matter? This is a procedure that is followed now.

SHRI K. S. HEGDE: It is a daily occurrence.

SHRI H. N. KUNZRU: This is a daily occurrence in criminal courts. There seems to be no reason therefore why it should be sought to give the prosecution the same right as is enjoyed by the accused in regard to the use of a statement made by a witness to contradict him. I think, Sir, that this is a very serious matter, and the Government, in the name of simplifying the procedure and providing for quicker justice, is really completely subverting the theory on which our criminal law is based. I therefore strongly oppose clause 22, as it stands, and give my wholehearted support to amendment No. 36, moved by my hon. friend, Mr. Hegde.

SHRI J. S. BISHT: Sir, I may kindly be permitted to say a few words in order to explain the position.

Sir, I am sorry to say that much of the discussion is more or less doctrinaire. Certain hypothetical contingencies are being imagined which are extremely fanciful. For instance, in one breath, they say that all these

[Shri J. S. Bisht.]

police diaries are false, they are made-up, and they are written many days later, and in another breath, they say something else. Well, Sir, if that is so, why should we allow the accused to contradict witnesses? In thousands of cases in the Sessions Courts, the evidence of prosecution witnesses is damaged and the prosecution cases fail.

Now, Sir, my hon. friend, Dr. Kunzru, just now said that it is a very serious matter. In fact, it is a serious matter. That is why the Joint Select Committee spent days over it. Now here I will just refer to the original clause The original clause said that section 162 in the principal Act shall be omitted. That was the original idea. Now, Sir, when this was circulated to all the Courts and the Magistrates in India, what was their opinion? I will just read out one or two opinions.

SHRI H. N. KUNZRU: May I just interrupt the hon. Member? I am not saying that the clause, as it stands now, is worse than the previous clause. It is an improvement on the previous clause, and yet it is undesirable. Dr. Katju wanted to use the statement recorded by the police not merely in order to contradict him, but also for corroborative purposes. The Deputy Home Minister denied this in his earlier speech. But that would have been the result really of the amendment proposed for the deletion of section 162 of the Criminal Procedure Code. That was proposed by Dr. Katju.

SHRI J. S. BISHT: Now, Sir, I will read out the opinion of Mr. K. J. Khambata, Chief Presidency Magistrate, Bombay, which is a very valuable opinion. He is considered to be an expert in criminal law. He states as follows:

"The deletion of section 162 is a very sweeping reform. Section 162 has been the sheet-anchor of the Advocates for the accused during the last hundred years or so during which the section has existed on the Statute Book in one form or another. Although I am generally in favour of proposals which have the effect of doing away with the distrust with which we regard our Police Force, and although I also favour proposals which will have the effect (subject to safeguards) of making admissible, both for examination-in-chief and for cross-examination and by either the Prosecution or the Defence, statements made by persons to Police Officers in the course of the investigation, I am not in favour of the proposal to delete section 162 altogether."

Then, Sir, there is the opinion given by Shri D. S. Mathur, who says:

"I would, therefore, suggest that if section 162 is being amended, it should be so done as to prohibit the use of the statements recorded during the investigation for contradicting the defence witnesses."

Now, Sir, this is the whole point. When the Joint Select Committee was considering it, it was between these two classes of opinions. In other countries, as my hon. friend will admit, the statements recorded by the police are used by it for corroborative purpose, as also for the purpose of contradiction. And in fact, they are used for convicting the accused.

SHRI K. S. HEGDE: That is how, you are arguing.....

SHRI J. S. BISHT: Please don't interrupt me. You have had your say.

Now, Sir, somehow or other, for the last 100 years, a sort of dust has

been created in which the whole police force and everything it does is in suspicion. Everything the police officers do, from A to Z, is in suspicion. Now, Sir, the hon. Deputy Home Minister gave you the figure of 14 lakhs of criminal cases in Bombay. Probably, it might be 50 lakhs for the whole of India. Is it suggested that this machinery of administration is being run by the people who are themselves thugs and cheats? I completely repudiate that statement. There might be one case out of a million where some black sheep may have done something wrong, but that is not the position with regard to every case. I therefore feel, Sir, that there is no other motive behind putting forward this statement excepting this, that is to say, the prosecution today is handicapped because of a very strong defence pressure. As my hon. friend, Mr. Gupta, was trying to say, it is the rich men who engage these big defence counsel. The Public Prosecutor is not a formidable figure. He is a solitary figure, and arrayed against him are a dozen defence counsel. Now what do they do? Money is being dangled about, witnesses are being tampered with, and pressure is being brought to bear. And what is the favourite argument that is used by the defence? It is this: "You have made this statement before the police. The prosecution cannot use it against you." Sir, there is such a thing as human conscience in everybody. A man somehow seems to feel "I have given my statement before a police officer. Why should I state something which is wrong and which is contradictory to that?" What they tell him is this: "You need not worry about it. The Public Prosecutor cannot use it even to contradict you. So you are at full liberty to say anything against your previous statement." Now, Sir, what we want to do is to stop this tampering business. As far as the accused is concerned he is not damaged in the least When the prosecution contradicts its own witness, evidence is completely damaged. That is of no use to the prosecution, because when a witness makes one statement before the police and another statement before the Magistrate, no court is going to convict the accused. So far as the accused is concerned, he is not affected in the least. What we want to prevent is tampering with the evidence. Just as another provision in this very Bill provides against perjury before the court, we want some such provision against perjury before the police. There will no doubt be some difficulty in the beginning, but in the long run, it will be in the interest of everybody, and all the witnesses will speak out the truth every time from beginning to the end.

4 P.M.

SHRI JASPAT ROY KAPOOR (Uttar Pradesh): Sir, I am glad that the hon. Dr. Katju has just entered the House at a very appropriate moment. This Bill is of course his old love and his affection for it still continues. This is one of the most contentious clauses. Perhaps I am wrong in calling it contentious. I should rather say that this is one of the clauses on which there is the greatest amount of agreement, agreement in the sense of opposition to the provision here which authorises the prosecution also to use the previous statements made by witnesses before the police. A good many strong and convincing arguments have already been advanced, and I do not want to take much time of the House by repeating those very arguments. If I venture to lend my support to the amendment, No. 37, it is in the hope and belief that the hon. the Deputy Minister for Home Affairs will be pleased to accept this amendment. I am encouraged to entertain that hope and belief because of the fact that throughout the consideration of this Bill, the Ministers concerned have kept an absolutely open mind.

[Shri Jaspat Roy Kapoor.]

They have accepted many amendments in the Select Committee and also in the Lok Sabha, and I hope and trust that they will continue to have an open mind in this House also and accept the amendments which are so strongly supported by almost everybody in this House. They have so far shown democratic attitude by accepting amendments in the Select Committee and the Lok Sabha and I hope that they will set an example here also, which may be followed by other Minister hereafter by not adopting a stiff attitude.

My hon. friend, Mr. Hegde, has advanced very convincing arguments to the effect that clause 22 now authorises the prosecution to use the statements of the witnesses previously recorded by the police, to its own advantage in a greater measure than can be used by the accused even. My hon. friend, Dr. Kunzru, said that the prosecution and the accused are going to be put on the same level, but in fact it is something worse. The prosecution is going to be placed in a much better position than the accused, because the prosecution now can use the 162-statements not only for the purpose of contradicting the witnesses but also for the purpose of explaining any matter which may come out in the cross-examination of the witnesses whereas the accused can use the 162-statements only for one purpose of contradicting the prosecution. The prosecution can use these statements for two purposes; the accused can use these statements only for one purpose, and therefore, the prosecution is being placed in a much better position than the accused. It is asked. "If the accused has a right to use that statement, why should not the prosecution also be allowed to use it?" The prosecution should not be allowed to use this for the very simple reason that any statement recorded by the police is never falsely recorded by them in favour of the accused.

SHRI J. S. BISHT: Why not?

SHRI JASPAT ROY KAPOOR: My hon. friend, Mr. Bisht, asks, "Why not?" I wonder if it can ever be conceived that the police will record any statement falsely just to make it favourable to the accused. It is something which I cannot conceive of. The police will record statements either correctly or, if the police is unscrupulous and records any statement falsely, it can only be in favour of the prosecution and not the accused. Therefore, it should be open to the accused to contradict the prosecution with his previous statements if that is in favour of the accused, because, the police will never record a statement falsely in favour of the accused. It is only the accused, therefore, who should be permitted to use the 162-statements and not the prosecution. Sir, it is contended by Mr. Bisht that the witnesses would first be treated as hostile and then they will be confronted with their previous statements. There is nothing like that in the clause. It is not necessary that the witnesses should be declared hostile. It may be said that a witness will be confronted with his previous statement only with the permission of the court, but that permission will always and invariably be given. This would be so, not because the Magistrate will be in the hands of the police or the executive, but because the Magistrate would be an honest one acting according to law. If I were to be a Magistrate, I would invariably permit the prosecution to use the 162-statement in order to contradict the witness if authorised by law. If the law allows it, why should not that statement be allowed to be used by the prosecution in order to contradict the witness? It will be only fair. If we put it so in the Bill, it must be considered almost obligatory by the Magistrate to grant such permission

invariably I therefore submit that amendment No 37 should be accepted by the hon the Deputy Minister

SHRI MAHESH SARAN (Bihar): Mr Deputy Chairman, I think this is one of the most useful amendments that is proposed to be put on the Statute Book People who have had experience of the law courts have seen how people with money are tampering with witnesses everyday You are all the time speaking about removing the differences between the poor and the rich, and I tell you that, if you incorporate this amendment, then the rich people who do a lot of mischief, who are corrupt and want to corrupt other people, will not be able to corrupt the witnesses whom they can easily buy My submission is that when the police statement is recorded, that is the time when there is no influence It is only just after the occurrence that that statement is recorded by the police If any defect creeps into this and if the police is not fair, for that other steps should be taken It is absolutely necessary to see that people should not be corrupted by being offered bribes in order to change their statements I know that during the last few years a number of cases have ended in acquittal because people who were accused were moneyed persons and could buy the witnesses Therefore my submission is that, if this clause is put in, that question will be solved Nobody will try to bribe the witnesses because it will be useless So, this new clause will be useful not only for the general administration but it will also make people more honest than heretofore

SHRI P T LEUVA (Bombay) Mr Deputy Chairman, I have to oppose all the amendments which have been proposed to this clause It appears to me that there is a great misconception regarding the scope of section 162 as it stood then and as it stands now after it has emerged from the Lok Sabha Now the argument has been raised that why the prosecution should be allowed to use that statement which has been recorded by the police officers who are corrupt, who are dishonest and who are always likely to go against the accused persons When the question comes regarding the use of the statement by the prosecution, that statement becomes dishonest and the officers become dishonest and the officers are always against the accused but when the statement is to be used by the accused, all sanctity is attached to the statements The statement, when it was recorded by the police officer, when it stood often it accused, must be a genuine and a true statemen recorded by an honest officer—that is the argument on which the proponents of these amendments are building up their case. Really speaking, if you look at the amendments, what is its effect? Under section 162 as it stood before the accused only had the right to contradict a witness with reference to any statement made by him which was reduced in writing and he can utilize it only under section 145 of the Indian Evidence Act. Now Under section 145 of the Evidence Act you can only utilize that statement for cross examining a witness not for corroborating a witness For corroboration, section 157 is there. If the prosecution wants to utilize the statement, the prosecution must come under section 145 of the Indian Evidence Act That shows that the prosecution or the party calling a witness has to contradict a witness not for corroborating The party has to cross-examine its own witness and for that purpose, the party has to seek the permission of the Court under section 154 When will permission be given by the Court to the prosecution? Only when the Court is satisfied that the witness is not telling the truth Only on that ground the Court will grant permission to the prosecution to cross-

[Shri P T Leuva]

examine its own witness Now the moment the prosecution gets the permission, what is the advantage to the prosecution? Friends are arguing that the prosecution is placed in a better position What is it? The prosecution goes to the Court, asks for permission to cross-examine its own witness—for what purpose?—to discredit its own witness, to discredit his evidence in the Court. No prosecutor who is a wise man will go to the court and say "I have brought this witness to the Court. Now I want to damn him and give me permission" Is this an advantage to the prosecution? I don't know. Friends who are great lawyers and who have worked as Public Prosecutors are saying that I cannot understand a lawyer who will come to the Court and say 'give me permission to discredit my own witness' What is the purpose? The moment he asks permiss on

(*Interruptions*)

SHRI BHUPESH GUPTA: He will say, "give me a chance My witness has been tampered with"

SHRI P. T LEUVA: The witness at the time he goes to the police station might give a false version or a true version Nobody knows whether he is telling truth or falsehood but the moment he comes to the Court and if the prosecution finds that the witness is not telling the truth, then he has to apply to the court and say "Please give me permission to cross-examine him" That permission is granted under section 154 and at that stage, only the prosecution gets the right of utilizing the statement which has been recorded under section 162 What advantage is the prosecution getting more than the accused?

SHRI K S HEGDE: Is it the contention that once the witness is treated under section 154, his evidence becomes useless?

SHRI P. T LEUVA: I will say that. Why the accused person asks for a statement—for contradicting the witness The accused cross-examines a witness to bring a contradiction in order to prove that the witness who is giving evidence is unreliable. What is the purpose of cross examining or contradicting? Is it for increasing or enhancing his prestige in the Court? The very purpose of contradicting a witness is to discredit him. Do you mean to suggest that when there is a contradiction brought forward, the Court will say "This man has contradicted his statement and even then he is an honest man and we will rely on his statement"? I cannot understand that....

SHRI K S HEGDE: Read Section 154 and you will understand.

SHRI P T LEUVA: I have read Section 154 It only refers to cross-examination of a witness by a party and he can be allowed to put questions in cross-examination Nothing more or less.

SHRI K S HEGDE Even after that false evidence can be accepted in print.

SHRI P. T. LEUVA: I don't dispute that false evidence may be accepted. False witnesses have been given certificates of giving true evidence. I don't dispute the right of a Court to believe a false witness. What I say is by putting this amendment in the original clause of 162 the law does not give any more right to the prosecution than what is given to the accused already But what is the ground of objecting to this amendment that prosecution should not be given any equal right with the accused? Why do you want to protect the accused everywhere? Are accused the only persons honest in this world, that whatever they say

is true, that you must always ask for the benefit and protection of the guilty persons? Then why have laws? Let everybody commit offences. Why do you say that the complainant when he comes to the Court, must always be looked with suspicion and when he comes to the Court, to give evidence, that you must start with the presumption that they are all dishonest or liars but when an accused comes that he is always presumed to be innocent till he is proved to be guilty? These are presumptions on which we have built up our arguments. But don't remain under that impression that the prosecution or the complainant has no right to be protected. The complainant is a person who is aggrieved and he comes for protection. He does not come to be persecuted there Our outlook has been that whatever you want to do, must be to protect the accused. The only argument against this section 162 has been as proposed in the Bill: why should you give a right to the prosecution which is equivalent to the right of the accused? There is no other logic behind this. It is only because of those persons who have been brought up as lawyers under the old system which we have got today and we have been trained up in that atmosphere and therefore we don't like to change our mind. As a matter of fact when I was in the Select Committee I started as an opponent to this amendment but I considered it and I was the person who supported the amendment in the Select Committee stage that it is desirable.

SHRI K. S. HEGDE: Conversion seems to be easy.....

SHRI P. T. LEUVA: You must be a person who has a responsive mind and who has a responsive attitude of mind . ...

SHRI BHUPESH GUPTA: How is it that your legal practice for a long time could not convince you of something of which you got convinced in the Select Committee?

SHRI P. T. LEUVA: Unfortunately my friend does not know that in the city of Bombay we have a procedure which is different from the Criminal Procedure Code. That is how it comes but I have learnt better law. What I say is that it is not a folly to realize one's mistake. If we stick to a mistake, it is not a sign of virtue. Consistency might be a virtue in some persons. But so far as I am concerned, if I find myself in the wrong, I am prepared to admit my mistake. In the words of Dr. Katju—who is sitting here, I will utilize his well-known phrase—I can give him reasons but I cannot give him understanding. What can I do if he thinks that he is always right .

MR. DEPUTY CHAIRMAN: Please wind up.

(Interruptions.)

SHRI P. T. LEUVA: I will give that credit to Mr. Gupta as well. My only point is so far as section 162 is concerned, and it was considered in the Select Committee at great length, in the Lok Sabha, and it was discussed there and after mature consideration this amendment has been accepted and I don't personally believe that the accused has been put to any disadvantage. The only thing that is done is that the prosecution has been given the right of cross-examining a witness with reference to his previous statement if it is not reduced to writing. If it is that the statement is reduced to writing and signed, then the question does not arise because that can be used as corroboration as well as contradiction under section 157. Therefore what I say is the objection which has been now raised is mainly based on sentiment and not on logical reasons.

SHRI B. N. DATAR: Mr. Deputy Chairman, I have heard very carefully the arguments advanced by the supporters of this amendment. Though I am convinced that there is

[Shri B. N. Datar.]

no substance in the various arguments offered on behalf of the other side, yet out of deference for the views of this House I am prepared to have the matter considered and examined, and I am going to request you, Sir, to hold up the voting on this question till tomorrow. That does not, however, convey a promise one way or the other. But out of deference for the views expressed in this House, I am going to examine the whole matter with a view to seeing whether there is anything.

SHRI K. S. HEGDE : Is it with a view to getting a more favourable House?

SHRI B. N. DATAR: Nothing like that.

SHRI P. T. LEUVA: Why that insinuation?

SHRI B. N. DATAR: This is with a view to seeing whether there is any substance at all in this contention. However, I would like to deal with these arguments today so that you may be able to put the question to vote immediately.

Now, we have got this. ....

SHRI BHUPESH GUPTA: Sir, in that case, I would like to make a submission to the Chair. As this matter is to be held over till tomorrow, the hon. Deputy Minister should not offer any arguments now, because that might prejudice the fair consideration of the question.

SHRI B. N. DATAR: I have not the least objection. I leave it to the Chair.

SHRI J. S. BISHT: You may accept it, Sir.

MR. DEPUTY CHAIRMAN: Then do we hold over clause 22 till tomorrow?

SHRI J. S. BISHT: Yes.

SHRI B. N. DATAR: I have no objection, Sir. That saves me the speech.

MR. DEPUTY CHAIRMAN: Very well then. Further consideration of clause 22 is held over.

We now come to clause 23. The amendment proposed by Mr. Bisht to this clause is a negative one and it cannot be moved

SHRI JASPAT ROY KAPOOR: Sir, I move:

39. That at page 6, line 5, after the word "shall" the words "as soon as may be", be inserted.

I hope I need not make any speech and that the amendment will be accepted by the hon. Deputy Minister.

MR. DEPUTY CHAIRMAN: The clause and amendment are now open for discussion. Mr. Kapoor may say a few words, if he wants to, regarding his amendment.

[THE VICE-CHAIRMAN (SHRI V. K. DHAGE) in the Chair.]

SHRI JASPAT ROY KAPOOR: Very well, Sir. According to clause 23, the accused will be furnished with copies of the 162 Statement and the 164 Statement and very much more than that, before the trial or enquiry begins. Sir, this is something for which we must offer our thanks to the Ministers concerned for it is very important for the accused. But I would very much like to see that there is no loophole in this amending clause to enable the prosecution to delay the furnishing of these copies till the last moment. If these copies are to be of any use to the accused, they should be furnished to him as soon as possible after the report has been submitted by the police to the magistrate. Otherwise it may happen that these documents are given to the accused only perhaps a minute before the trial begins and at that time, it would be very difficult for the accused to make proper use of them.

SHRI H P SAKSENA In that case the accused can make a submission to the court that he received the copies of those documents very late. Why should we interfere in this matter?

SHRI JASPAT ROY KAPOOR. Sir, what will happen thereafter? If there is such a request, the Court will give an adjournment and the case will be postponed, and that is something that we do not want. The whole object of this Bill is to hurry up the trials and their disposals If the accused makes that submission to the court that because the copies of these documents were given to him late and so he could not examine them and therefore, on that ground there is an adjournment, then the very purpose of the Bill will be frustrated It is in the interest of the speedy disposal of cases that I am making this submission If the Deputy Minister is prepared to accept it, well and good, otherwise, of course I will withdraw it

SHRI H C MATHUR (Rajasthan) Sir, I do not think this amendment is required at all As a matter of fact, to regulate such things, there are rules and regulations framed and directions are given It is not necessary to put in the words "as soon as may be" in the clause, and they will convey nothing I do not think this amendment is justified

THE VICE-CHAIRMAN (SHRI V K DHAGE) What is the reply of the Government?

SHRI B N DATAR Sir, this amendment is not necessary at all The existing provision is comprehensive enough

THE VICE CHAIRMAN (SHRI V K DHAGE) Then does the hon Member want to withdraw his amendment?

SHRI JASPAT ROY KAPOOR: Yes, Sir, I request leave of the House to withdraw my amendment

The *amendment was, by leave, withdrawn

THE VICE-CHAIRMAN (SHRI V. K. DHAGE). The question is:

"That clause 23 stand part of the Bill"

The motion was adopted.

Clause 23 was added to the Bill

THE VICE-CHAIRMAN (SHRI V. K DHAGE) We come to clause 24 and there are no amendments to this clause

Clause 24 was added to the Bill.

THE VICE-CHAIRMAN (SHRI V. K DHAGE) Now we come to clause 25 to which there are amendments. No 40 is a negative amendment.

SHRI JASPAT ROY KAPOOR: Sir, I move

41 "That at page 6, lines 40-41, the words and brackets '(other than the offence of defamation by spoken words)' be deleted"

SHRI ABDUR REZZAK KHAN: Sir, I move

42 "That at page 6, lines 42 to 44, the words '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' be deleted"

SHRI K. S HEGDE Sir, with your permission I would like to move only a part of my amendment I move:

44 "That at page 6, line 43, the words 'or a Minister' be deleted"

SHRI ABDUR REZZAK KHAN: Sir, I move·

46 "That at page 6, line 48 for the words 'the Public Prosecutor

*For text of amendment *vide* col 5508 *supra*.

[Shri Abdur Rezzak Khan.]

the words 'the Attorney-General of India or the Advocate-General of a State, as the case may be' be substituted."

47. "That at page 7, for lines 3 to 14, the following be substituted, namely:—

'(3) No complaint under sub-section (1) shall be made by the Attorney-General of India or the Advocate-General of a State except with the previous sanction of the Council of Ministers of the Union or of the State, as the case may be'."

SHRI H. C. DASAPPA: Sir, I move:

48. "That at page 7, for lines 5 to 7, the following be substituted, namely:—

'(a) (i) in the case of the President or the Vice-President, of any Secretary to the Government authorised by the Central Government in this behalf;

(ii) in the case of the Governor or Rajpramukh of a State, of any Secretary to the Government authorised by the State Government concerned in this behalf';"

SHRI J. S. BISHT: Sir, I move:

50A. "That at page 7, line 14, for the words 'Government concerned' the words 'officer or authority competent to remove him from his office' be substituted."

SHRI H. C. DASAPPA: Sir, I move:

51. "That at page 7, after line 14, the following proviso be added, namely:—

'Provided however that before according such sanction the consent of the person against whom the offence is alleged to have been committed is taken by the sanctioning authority for lodging such a complaint.'"

SHRI ABDUR REZZAK KHAN: Sir, I move:

52. "That at page 7, lines 16-17, for the words 'six months' the words 'seven days' be substituted."

SHRI J. S. BISHT: Sir, I move:

53. "That at page 7, lines 24 to 27, the words 'and the person against whom the offence is alleged to have been committed shall, unless the Court of Session, for reasons to be recorded, otherwise directs, be examined as a witness for the prosecution' be deleted."

SHRI ABDUR REZZAK KHAN: Sir, I move:

54. "That at page 7, lines 25-26, the words 'unless the Court of Session, for reasons to be recorded, otherwise directs' be deleted."

SHRI K. S. HEGDE: I do not know if a member of the Select Committee can move an amendment.

THE VICE-CHAIRMAN (SHRI V. K. DHAGE): But I do not know if Shri A. R. Khan was a member of the Select Committee.

SHRI JASPAT ROY KAPOOR: Sir, I move:

55. "That at page 7, line 27, for the words 'a witness' the words 'the first witness' be substituted."

SHRI ABDUR REZZAK KHAN: Sir, I move:

56. "That at page 7, after line 27, the following be inserted, namely:—

'(5A) When any case of which the Court of Session takes cognizance under sub-section (1) does not result in the conviction of the accused, or where a conviction in any such case is set aside by a

superior Court, the Court of Session, or the Superior Court, as the case may be, shall award to the accused such compensation, not below one thousand rupees as such Court may deem just and adequate in view of the expenses and particularly the harassment and trouble suffered by the accused.'"

SHRI J S BISHT: Sir I move:

57 "That at pages 7 and 8, lines 28 to 50 and 1 to 4, respectively, be deleted."

SHRI JASPAT ROY KAPOOR: Sir, with your permission I would like to move my amendment No. 59 in a slightly amended form deleting the words "exceeding fifty rupees". I move:

59 "That at page 7, after line 44, the following be inserted, namely:-

'(7A) The person who has been ordered under sub-section (7) to pay compensation may appeal from the order, in so far as the order relates to the payment of the compensation, as if he had been convicted in a trial held by the Court of Session.

(7B) When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (7A), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has expired, or, if an appeal is presented, before the appeal has been decided and, where such order is made in a case which is not so subject to appeal, the compensation shall not be paid before the expiration of one month from the date of the order' "

SHRI B N DATAR: Sir, I move:

62 "That at page 8, for lines 8 to 9, the following be substituted, namely:—

'(11) The provisions of this section shall be in addition to, and not in derogation of, those of section 198'"

THE VICE-CHAIRMAN (SHRI V. K DHAGE). These amendments and clause 25 are now for discussion.

SHRI BHUPESH GUPTA: Mr. Vice-Chairman, from the number of amendments that have been moved, it is quite clear that this particular clause, as sought to be amended, is a matter of great controversy even in this House. As you know, Sir, the whole matter has been taken serious exception to by the Members of the bar and public opinion at large because certain categories of people are placed on an unequal footing compared to the citizens of the country as far as defamation is concerned. Now, we find that certain changes have been made; spoken words are not covered by this amendment whereas written words fall within the mischief of this clause. The question now here is to consider whether there is any necessity of making a discrimination in favour of certain officials of the administration as far as defamation is concerned. As you will find here in the amendment, the names of the officers are given In the case of the President or the Vice-President, Governor or Rajpramukh of any State, you will find that a large number of officials, public servants—are covered by this and defamation proceedings can be launched in a different way, not in the ordinary way, and they have the advantage in the matter It has also been said here that it will not affect the spoken word. If I make a speech against an officer I am not liable under this altered arrangement, but if my speech is reported in the press the press would be liable because it would then appear in writing and,

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therefore, the press would be held up under this particular clause. We object to this amendment in point of principle We feel that in our country it becomes necessary for the public to criticise the public officials including the highest in the land. The Ministers who are supposed to be elected and the Secretaries of the departments should particularly be subject to public review and public criticism. If anything, they should be given less protection in this matter than they enjoy under the existing law. We are not living in a state of affairs in which you get much criticism against them; on the contrary we find that our press is very often full of praises about them. Nobody in India can say that the Indian press is one which indulges in criticism against the Ministers, fair or foul. On the contrary, it may be said about a large number of influential newspapers in our country that they go out of the way to praise the Ministers and the officials, to publish their photographs, to give all manner of accounts of their movements and all that sort of thing in general, advertising them before the world at large If the press is to be considered guilty, it is guilty of undue importance and praise that they offer to these officials. Therefore, let us not talk as if we are trying to control a scurrilous press or a press which is indulging in unfair criticism. For instance, take all the newspapers in the country, language papers and the English papers. You will find, what? Do you find much criticism against the officers? Do you find criticism against the Ministers? Nothing of that sort. You will, on the contrary, find big speeches of Ministers being reported at length; you will find their photographs, you will find some Minister appearing somewhere. The press will be full of the song of praise about them That is the press today, a large section of the press. Therefore, it should not be said that the press is one which has to be called to account on this score. It is unfair

Then we have got the publications in the country. How many publications are there today which criticise the Government officials? Most of the major publication houses in our country are controlled by rich people who, somehow or other, are connected with the administration or who at any rate depend upon certain patronage being given to them by the administration.

SHRI H. P. SAKSENA: The reason is that there is very little to criticise. That is the reason.

SHRI BHUPESH GUPTA: If you were a Minister, we would not have much to criticise you. You are a lovable man but unfortunately on the wrong bench.

The publication houses and the publication centres in our country are not indulging in criticism of the Ministers, although, to my mind, they can really take up this job of reviewing the activities of the Ministers and the officials, and should publicly criticise them That is our complaint against them; that is the public complaint against them. We find that this law is being amended with a view to shielding them, the officials and the Ministers, much more than they are shielded today. You will say that proceedings will follow, but what happens? The State will be behind such prosecution. You will not have to go to the court of law. Some public prosecutor files an application and the prosecution starts, provided of course, for filing that application he has the sanction of an authority named, the officer named, in that behalf. That is to say, it would be an internal arrangement between the public prosecutor and the authority that would sanction the launching of the prosecution. It would only be a question of some form of an internal arrangement and there

will be no checks and balances. It will not be difficult at all. The very fact that the State intervenes in the person of the public prosecutor gives additional weight to this kind of prosecution and it puts the other party in a disadvantageous position. That must be realised and, therefore, I say that it is absolutely unfair.

May I ask as to why we are being asked to accept this amendment? Why are the Ministers so afraid of criticism? Their honour and fame and everything is very precious and they should protect them. We are also interested in protecting the honour of the truly honourable Ministers, not honourable in the way you use it here. Why should we be interested in defaming them? I cannot see. On the contrary there are Ministers who are liked by some sections of the people, who are not much criticised, whose conduct you may not call in question; but there are other Ministers whose conduct has been called in question by the Members of the Cabinet themselves; otherwise, why these Cabinet changes, atleast some of the changes, sudden changes? There are some officers who have been brought up before the courts of law. Atleast one case is pending against a Secretary to the Government; the appeal case is pending against the Secretary to the Government; there are many other officials against whom very serious charges are made and sometimes some of these are found to be materially valid even by the Ministers so much so that action had to be taken against them departmentally. Such things are happening in our country even under the existing arrangement. If anything, the public should be given a greater chance, freer chance to criticise against the Ministers and the officials—Secretaries and other people. Some categories of officers should not be placed on a higher footing compared to the rest of the citizens. If it is my case or your case, as a Member of Parliament, we do not enjoy any privilege or the advantages given under this clause but if you, per chance, happen to be a Secretary to a department or a Minister or a Deputy Minister and what not, then you get the advantage and the public prosecutor is there to look after your honour and interest. You do not even have to go to a court of law. I have to go; you have to go but the Minister and the officials do not have to go to a court of law. While filing a petition they do not have to appear. All these things would be done by somebody else acting on their behalf. This is very very unfair. I say, Sir, that this whole thing has been conceived with a wrong outlook and I think that some amount of fair public criticism should be there.

Now they ask why the Ministers should not be given the right to protect their honour and fame. I say: have it by all means. Under the existing law you are given those rights; you are put on the same footing as the average citizen. If you think that I have defamed Mr. Datar by making a speech or writing something in an article, the court is open to him and he can go there and file a petition against me and we can have a trial there and see as to who wins or loses. But now if the amendment were to be accepted, he would see that his attorney or the public prosecutor files a case against me. The competent authority would naturally give permission and he won't have to go there at all. This is how the thing will begin. I ask: why are you trying to put yourself in a category higher than that of the average citizen? You have to explain. On the contrary because you are occupying certain responsible positions in the country, because the administration is in your hands, because the position is one of trust, you should make yourself fully open to public criticism. You should not create a situation in which either the press or public men would hesitate

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to say things against you when they feel something should be said against you. We may say sometimes a wrong thing, but the damage caused by this thing will be much heavier than the damage caused otherwise *i.e.* by making an irresponsible or unsubstantiated charge against a Minister. That is what I say. Therefore in the interest of public service, in the interest of our administration, the whole thing seems to be atrocious and unacceptable to all of us. That is what we are saying.

As you know, Sir, today some of the Ministers and others are coming in for some criticism in certain sections of the press, among some sections of the people. They like to see that these things are not taken very far and a kind of intimidation is sought to be created here. That is why I say that the object of this whole amendment is to intimidate the press in the first instance and those other people who dare to criticise our Ministers and officials because when they criticise they will be always under the fear of being landed into a kind of prosecution in which the Government, the other party, would have all the advantages and this is why we say that it is absolutely unfair. We are told about democracy. We are told about so many other things. We are told about a welfare State. We are told Ministers have become the servants of the people. We are told that the Commanders-in-Chief will now be called Chiefs of Staff. We are asked to live like plain and simple people. They wear Gandhi cap. They wear *khaddar*. They claim to be very pure and simple. Why should you then hesitate to make yourself open to the public and leave it to it to say whatever they like as far as you are concerned as an administrator? I can tell you that our countrymen do not believe in scurrilous utterances. They do not believe in defaming people. On the contrary they have been generous in showering so much praise upon you! Therefore do not make that assumption that because people are indulging in some kind of irresponsible criticism this kind of thing is to be incorporated in our Criminal Procedure Code. Therefore we say we are opposed to it.

Sir, for some time past we have been hearing that Ministers do not like criticism about themselves. Some of them are very very touchy about it, and some of them, I know as a journalist, sometimes call pressmen and tell them to go slow, as far as they are concerned, in their criticism. In Bengal it is well known that some of the journalists are called sometimes by Ministers and they are sought to be impressed upon with the suggestion that they should not write anything against them and I am talking about the Congress-minded papers, the newspapers which generally support the Congress. I as a journalist would not of course accept such an invitation and would turn down such suggestions. Now not content with that, not content with the back-door influences that are sought to be exerted on some sections of the pressmen all the time, they are not coming with an amendment with a view to intimidating the rest of the press and because you cannot persuade them, because you cannot exert your undue influence upon them, to do, what you wish them to do, you are trying to blackmail and intimidate them, and this is the gist of the whole amendment of the clause that has been proposed before us. Sir, dignity and other things of the Ministers are important in any civilized Government. I concede that point. But I think their dignity is safest in their keeping and in their public behaviour. Now any officer who behaves well and democratically would not be subjected to criticism. But, Sir, we find it is these very men, not all, some of them who are really blackening their faces, who are really allowing themselves to be defamed

and who are really damaging their prestige and honour and fame, whatever it may be—not the public but they themselves. For those scandals and other things who are responsible? For the jeep scandal, for the fertilizer scandal and for the countless number of scandals in the country whose names are mentioned? How many scandals have we gone into? How many officers have we called to account? How many officers have we penalised? How many Ministers have been dismissed for being associated with such scandals we would like to know when we discuss such things Therefore, if anything, we have been guilty of not sufficiently and strongly criticising the guilty Ministers, the guilty officials and the corrupt officials. On the contrary we have found out a tendency on the part of the administration to shield some of them in various ways. I say the time has come when this kind of amendment is to be given up. If you have the courage, if you have the moral courage and political courage, then you should not say that you require a certain advantageous position in the matter of such proceeding. On the contrary you should say you are prepared to give up some of your right and throw yourself open to public criticism so that you can stand them as political creatures. Answer criticisms by counter criticisms. Answer charges not merely by your words but by your deeds and thus belie the charges that are made against you. That should be the right approach of a right administrator in our country. That is how the Government should view this matter. They do not do anything of the kind. They have come with this kind of mischievous amendment here which has been condemned on all hands by all people in the country and it pains me to find that even in the course of the discussion in the other House only slight alteration had been made and the basic thing had remained. Sir, I say the time has come for them to realise and I hope the hon. Minister here will realise that this amendment has got to be given up and the suggestions that we have made in our amendments should be accepted Ministers, officials and our people are there in the administration and their honour and their prestige are in their keeping. They can preserve them; they can save them from being tarnished by any people if only they behave democratically and well, keeping in view the interests of the people. If they go against the people, indulge in undemocratic, unpatriotic and corrupt practices, they should jolly well be liable to the full blast of public criticism and there must not be any kind of interference with such public criticism. Let the pace of democracy develop in the country. Let public criticism go on. Let us see whether the criticism goes beyond limit. We shall go into the volume of public criticism, either on the platform or in the press and then we shall see in our good time whether they have overreached their mark in making such criticism and whether an amendment of this type is called for. When we are already suffering from a dearth of public criticism, when we are suffering from want of even ordinary and legitimate criticism against them, we should not propose or sponsor amendments which disturb such criticism, which intimidate the people and the press from criticising the Ministers, which put our officials and the Ministers in a superior category compared to those of the others, which make it possible for them to hold the Damocles Sword over the heads of the press and the publications and thereby silence and stifle criticism. Let them overnight ponder over the suggestions that we make and I have got no doubt in my mind that many others on this side of the House will get up to oppose this pernicious amendment. I hope hon. Minister will come tomorrow morning fresh with a better outlook and as a better man and take away the amendment which is proposed. This amendment stands today condemn-

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ed at the bar of public opinion Any insistence on this amendment of yours will mean that you are not in favour of democratic criticism. On the contrary

SHRI H C DASAPPA May I rise on a point of order? Is he moving for the deletion of the whole clause? He seems to be opposing the whole clause and asking the hon Minister to withdraw the whole amendment.

THE VICE-CHAIRMAN (SHRI V. K DHAGE) He is speaking on his amendments, the amendments that are in his name

SHRI BHUPESH GUPTA. I have to go now, Mr Dasappa You had better sit Therefore I say that all the other arguments that will be given here should be considered by the hon Minister and he should keep his mind open Tomorrow he should consider whether really it is necessary to insist upon the amendment he has proposed or whether it would be better at the moment to leave the law as it is today without trying to alter it in their favour Therefore let it not be said that some of the panicky Ministers with the panicky officials behind them came forward with an amendment which had been rejected by the people and that the panic was so great that they did not yield to public opinion and retrace their steps

SHRI JASPAT ROY KAPOOR Mr Vice Chairman, I extend to this clause my wholehearted support subject, of course, to the three amendments that I have moved which I hope the hon Minister will kindly accept I consider this clause to be in great public interest and in the interests of purity of administration I also honestly consider it to be in the interests of the Press at large and also in the interests of the accused I make this submission with a full sense of responsibility and not in a debating or partisan spirit I have given this clause my most serious and anxious consideration and I have also given serious consideration to the criticism that has been offered against it But I must submit that all this wailing, all this weeping and all this fulmination is without even the slightest justification. It is contended with very great seriousness that under this clause discrimination is going to be made in favour of the Ministers and public servants, but I fail to see how it is going to be. At the very outset I would like to remind the hon Members that the general criminal law of the land is that a complaint relating to a criminal offence can be made to a court of law by any person This is the general law of the land There are only a very few offences in respect of which an exception has been made to the effect that the person affected can only file a complaint Otherwise ordinarily speaking in a majority of cases, almost in every case excepting a few in respect of which exception is made —they are offences of defamation, adultery etc and they can be counted on the finger tips—a complaint can be filed by anybody If for instance, I am assaulted, my hon friend Mr Wadia who has great sympathy for me, can go and file a complaint in a court of law seeking redress in my favour. That is the general law of the land. Therefore if it is now provided that a Public Prosecutor can file a complaint of defamation on behalf of the Minister or the public servant subject of course to the sanction granted to him by the authority mentioned in the clause it is only bringing the law of defamation so far as Ministers and public servants are concerned, in line with the general law of the land and to take it away from the excepted category Therefore there is nothing strange about it

Secondly, let us see the case of defamation of a Minister or a public servant who is affected It must be readily admitted—and it has been admitted by everybody—that the party affected should have the authority to file a complaint If we pursue this argument to its logical conclusion we will at once

have to agree that the Government also should have the authority to file a complaint because in such a case it is not only the Government servant or the Minister who is personally defamed but it is the Government also that is defamed in addition to him. There cannot be two opinions on this point because what is Government after all? The Government is composed of Ministers and Public servants. So if a public servant or Minister is defamed, he is firstly defamed in his personal capacity and secondly the Government of which he forms part is also defamed. Therefore it is only logical that both the public servant and the Minister should have the authority as also the Government which is defamed, to file a complaint.

I submit that it is in the interest of the Press and the accused also. If criticism is levelled against a Minister or Government servant what is the object of that criticism? Surely if the person who offers that criticism is an honest critic he will want that whatever grievances he has got against the Minister or the public servant should be investigated. If he is an honest critic he would like that the Government should take serious notice of his criticism which he has levelled against the public servant or the Minister. And how can the Government take notice of it? The Government can take notice of it by instituting an enquiry. Or is it that the critic or the defamer would not like his allegations to be gone into and investigated? If that is his object, why should he have made the criticism at all; unless his only object was to level defamation maliciously? If he is an honest critic he should welcome his allegations to be looked into and investigated. Now, there are only two ways in which the allegations can be enquired into either by the Government departmentally or by a judicial authority. Now, I ask with all respect what would the critic like, whether he would like the investigation to be by an independent judicial authority or whether he would like the investigation to be by the Government Department or by somebody other than judicial authority, appointed by the Government. If I were a critic, I would surely like my allegations to be enquired into by a judicial authority. We are these days reading in the papers that some members of the Punjab Legislative Assembly are levelling charges against a particular Minister. The Chief Minister there has promised a sort of enquiry—a departmental enquiry—but the legislators who have levelled those charges are insisting that their allegations should be enquired into by a judicial authority. If I were in their position I would make a similar demand. I therefore submit that if the Press offers criticism fairly and honestly, and if the Press is convinced that the allegations that it makes are true and correct, it will certainly like an enquiry to be made by a judicial authority and who can be a better judicial authority than a District and Sessions Judge? Everybody has admitted that our Judges are very honest and independent and therefore the Press or whosoever makes the criticism should welcome an enquiry into the allegations which are made, by an independent person like the District and Sessions Judge. And when I say that it is in the interests of the accused also, the remarks that I have just made hold good in every case whether the Press is the accused or any individual is the accused. It makes no difference. I therefore submit in all seriousness that this clause authorising the Government to launch an enquiry into the allegations made should be welcomed by the Press because it is in its interests, otherwise the whole object of the criticism is gone.

It has been said that a discrimination is being made but, as I have submitted, no specific instance has been given to show how discrimination is being made except in one respect that the Public Prosecutor can file a complaint and that, as I have sub-

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mitted, is in the interests of the Press and the accused and in public interest.

5 P.M.

Then, Sir, I would submit that there is another reason why I submit that it is in the interests of the accused. If there is a conviction, he will have the right to go in appeal straight to the High Court. That is a very great advantage, because before the High Court he can plead his case as much as he likes. The appeal would be heard not only on a point of law but on points of fact also. And this means that the final verdict in this case will be by a High Court Judge. There could be no greater advantage to the accused than that the final verdict would be by the High Court Judge. Nobody could be more independent, more honest and more reliable than a High Court Judge and the High Court Judge will have the final say on the subject. I submit that it not only makes no discrimination in favour of the Minister or the government servant, but I find it makes considerable discrimination against him. The poor public servant's interests are not being looked into at all here it seems. What are we now going to do? We are going to place him in a very, very awkward position. Firstly, if the complaint filed by the Public Prosecutor fails, then he will be liable to pay compensation to the extent of one thousand rupees. Under the ordinary law of defamation, he could be fined only to the extent of one hundred rupees and no more. Now, he can be fined to the extent of one thousand rupees Is this not a discrimination against him? Why should the poor Government servant be liable to pay compensation to the extent of one thousand rupees if the Public Prosecutor files a complaint? He will not only have to pay compensation to the extent of one thousand rupees. he will also be dismissed by the Government and he may also be prosecuted by the Government. He will be open to so many risks. Is it not discrimination against him? Must we not sympathise with his lot and must we not amend this clause in this respect? Must we not reduce the amount of compensation payable to one hundred rupees only?

Then, again, if the complaint is filed by the public servant in his personal capacity and if he is ordered to pay compensation, it is open to him to go in appeal. But in this case no provision is made to that effect. The poor Government servant or the Minister will have only to submit to the order of the Sessions Judge. He must humbly, quietly, silently deposit the amount of compensation in court to the extent of one thousand rupees. If he had filed his complaint in his personal capacity, he could have filed an appeal, and cleared his conduct there. Now the accused can go in appeal but not the complainant. Under the ordinary law of defamation, he could as well go in appeal against the verdict of the Magistrate. He could there show cause, he could there say that the verdict of the Magistrate was absolutely incorrect; and that his complaint was true, just, and proper and the verdict of the Magistrate was wrong. Clearly he had a right of going in appeal against an order of a Magistrate. Here you are going to deprive him of that right. It is much too serious. Here the Sessions Judge's order would be final. The Government would take cognizance of it and would dismiss him or launch a prosecution against him. I, therefore, submit that my amendment which is to the effect that he should have the right of appeal must be accepted. I do not want to take credit for it myself, because I have virtually taken it over from section 250 of the Criminal Procedure Code. That is, I want to give him the same right which he would have had if he had filed the complaint in his private capacity.

Then, there is one more reason why I submit that this clause should be accepted. We know that under the ordinary law, it is open to the court to grant permission to the accused not

to be appearing from day to day. It is also open to the court to grant permission to the complainant, if it considers it proper, not to appear in the court from day to day. Here in the case of a Government servant, in the interests of public service, it is necessary that he should not be compelled to appear in the court from day to day. Thereby the Government and public work would suffer. It is not that the man does not appear in the court at all. Even the present wording of the clause makes it obligatory on him to appear as a witness; the accused will have the satisfaction and advantage of cross-examining him at any length he likes. He has to appear. But then it should not be necessary for him to appear in a court of law from day to day. What useful purpose would be served by his appearing in the court from day to day and I do not know why should any hon. Member here should insist that the Minister or Government servant must come to the court every day. Surely the accused is not in love with the public servant or the Minister that he would like to see him there every day. If the insistence by the accused is only with the malicious intention of harassing him, why should he go there? Even the accused need not be there in the court from day to day. If he is an important person, if he is a very busy man, he can apply to the court seeking the permission of the court not to be present in the court every day. He can be represented by an advocate. Therefore, I submit that we should not compel the Minister or the Government servant to appear in court from day to day unnecessarily and let the Government and public work suffer. I would, of course, very much perfer that he might be called as "the first witness" and I have tabled an amendment to this effect which I hope would be accepted by the hon. Deputy Minister. Of course, his being the first witness will also be subject to the condition that if the court considers it proper for justifiable reasons, that he will not be the "first witness", he need not be the first witness. This authority of the court is already in the amendment in its present form. But then, I think, ordinarily he should be the "first witness" because in a defamation case the accused would always like to have the full facts extracted from him—because he is virtually the complainant, though the complaint is formally filed by the Public Prosecutor. With this submission, Sir, I support this measure wholeheartedly and would strongly request the hon. Members who have opposed it to seriously consider whether they would like the allegations to be enquired into by a Magistrate or by a Sessions Judge, and finally by the High Court. Sir, they have always been contending—and we also contend—that there should be separation between the executive and the judiciary. Now here when this clause specifically makes a provision to that effect, at least to the limited extent, in respect of the trial of the defamation cases, there is opposition. On this occasion, if the provision is being made to the effect that these defamation cases should be enquired into, and tried by a Sessions Judge, there is this weeping, wailing and howling against it. And now they would like that they should be enquired into by the Magistrates. When the complainant is a Minister, who certainly wields influence over the Magistrate, when the complainant is a public servant like an I.C.S. Secretary who wields considerable influence over the Magistrate, they would like that his complaint should be enquired into by the Magistrate over whom such persons have influence, and not by the Sessions Judge. I cannot, Sir, understand the logic of it. I cannot understand what consistency is there between their professions ordinarily and their opposition to this clause. It is something beyond my comprehension, Sir. I would therefore humbly request them—those who have opposed it—to seriously consider this point and reconsider their position and support this measure, and, of course, the three amendments that I have moved.

SHRI H. P. SAKSENA (Uttar Pradesh): Sir, while speaking on the

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first reading I recommended that the matter should be left between the dafamer and the defamed, and the Government should not appear in the picture at all, not even through the Public Prosecutor. Here is an individual who defames another individual. And the dafamed person has got full liberty to vindicate his honour to get the defamer, who has indulged in malicious defamation, punished, but the Government should not appear in the picture at all.

Now, Sir, the law of defamation is a law in which whenever you talk about it, you bring in the printing press, the journalists and all that. My friend, Mr. Bhupesh Gupta, spoke of journalists and Ministers and talked all sorts of things. I am very sorry that he is not here at this time. But then I was, all the time, wondering what type and variety of journalism he was representing. He talked of journalists being called by the Ministers and intimidated by them. I invite him to persuade any of the Ministers of my own Government to call me and try to intimidate me. Do you think they will succeed? Never, never, Sir. So long as the last breath lasts in me, I shall not be intimidated by any Minister, even though he may be my personal friend. A person who is intimidated and who falls a victim to the intimidation of a Minister is not worth his salt, is unfit to be called a journalist or to remain in the field of journalism.

SHRI KISHEN CHAND: The Party intimidates you every day.

SHRI H. P. SAKSENA: My hon. friend, Mr. Kishen Chand, is always labouring under the false notion that we of the Congress Party are the slaves of the Party. We are the most independent individuals under the sun. We behave in any manner we like. There is no ban on us, and there is no restriction on us. We are the freest of the freest, and he should—I would advise him for the sake and the satisfaction of his own conscience—wash off his false notions that we are bound down by any restriction whatsoever. Now, Sir, that was not my point. I did not want to be interrupted like that, and if any more interruptions occur, I will simply ignore them.

Sir, I just bring to your attention, and to the attention of this House, as to how this section, which is being so much opposed, will work and will operate. You know, Sir, that the spoken word is entirely excluded from the field of defamation. As we are all aware. our country is a country of illiterates, of uneducated people, which means that at least 85 per cent. of the people who can only indulge in spoken words in the matter of defamation, but nothing in writing, will be excluded, as the spoken word is not to be brought under the law of defamation. Now there remain only 15 per cent. educated people, or even less than that, who may defame by a written word. Now, Sir, if I am an educated man, and if I am so loose and so callous as to write a defamatory article and get it published in a newspaper without being sure of my own ground, without having any conclusive proof to prove the allegations that I make in that article, then certainly, I am an individual who must be punished for this carelessness, and I should be conscious of my own responsibility. Now, Sir, this is all that I have got to say. And therefore, all the arguments that have been put forward in this behalf up till now fall flat to the ground.

Now, my friend, Mr. Bhupesh Gupta, again pressed for public criticism. There is no ban on public criticism. Public criticism has always been permissible. Every journalist and every public man is always free to indulge in public criticism, provided it is a fair public criticism, and provided he is sure to substantiate all that he writes. Now, Sir, we talk of moral rearmament, and we want to establish a welfare State, which is nothing more and nothing less than a society based on piety, righteousness, and all the good things in this world. Now, that does include the journalists also; that does include the writers in the press,

the readers, and everybody else. Now, Sir, we want to create a class of good and honest people, whether they be the readers or those who are engaged in writing in the newspapers, or working in the press etc. My friend, Prof. Kane, thought that we were creating a class by itself, a caste by itself, if we allowed the Ministers—starting from the President downwards, the President, the Vice-President, and the Vice-Chairman, Sir, if you don't mind—and others into a class. We are not going to do anything like that. It is only a sort of a duty which is put under the care of a certain official who will be known as the Public Prosecutor. Now he will act in certain cases; in others, he will not. Now, as I said then, I would repeat that it would have been much better, if the matter had been left between the defamer and the defamed. And you see, Sir, that there are certain instances in which the method that has been invented or devised in this clause will be more handy. And therefore, it has been adopted.

THE VICE-CHAIRMAN (SHRI V. K. DHAGE): You will have to be brief.

SHRI H. P. SAKSENA: If this is so, I will simply say that I oppose all that my friend, Mr. Bhupesh Gupta, said, and support what is contained in this clause. I do not understand my hon. friend, Mr. Kapoor. His arguments were beyond my understanding. I support the clause as it is.

SHRI H. N. KUNZRU: Mr. Vice-Chairman, as everybody knows, at the present time in defamation cases, whether they involve public servants or not, the procedure that is observed is the same. The complainant must come forward before a Magistrate can take cognizance of defamation cases. Now, it is proposed to alter this procedure and to lay down that, when a public servant is unjustly criticised or defamed in connection with the discharge of his public duties, the Government should be at liberty to initiate prosecution of the person guilty of the offence of defamation. I should like to know what is the reason for the proposed change in the existing law. It has been said several times in Parliament by the representatives of the Government that the defamation of public servants has reached a serious proportion and that in fairness to them, it is necessary that the Government should take adequate action to protect them so that they may be able to discharge their duties honestly and efficiently. Now, the whole question of the defamation of public servants was considered by the Press Commission to whose views the Deputy Home Minister referred in his earlier speech, but he did not refer to the particular aspect of the question to which I want to draw the attention of the House. In paragraph 1157 of its report (p. 452), the Press Commission says:

> "In our view, there is no case for discrimination in favour of public servants in this matter."

Before I go further, I would like to say that the Commission considered the question of making defamation of public servants a cognizable offence.

SHRI H. C. DASAPPA: Whose particular opinion is that?

SHRI H. N. KUNZRU: That of the Press Commission.

SHRI H. C. DASAPPA: The majority or the minority?

SHRI H. N. KUNZRU: This is the majority opinion.

SHRI JASPAT ROY KAPOOR: That was with reference to the original provision that this should be made a cognizable offence. It is no more the position now.

SHRI H. N. KUNZRU: My hon friend need not be in a hurry. He will have his chance. In order to remove all possible misapprehensions, I shall read out the whole paragraph with your permission:

> "The reasons for the objection to making defamation of public servants a cognizable offence are so strong that we are glad that the Commission has come to unanimous decision on the point but we cannot

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accept the changes suggested in section 198 and section 202 of the Criminal Procedure Code."

It is clear from these observations that they were not considering merely the question of making defamation of public servants a cognizable offence. They were also considering other changes recommended by Government perhaps privately to the Commission.

SHRI J. S. BISHT: It is here in the original Bill, clause 25 (section 198). This change was being made which was in consonance with the proposal to make it a cognizable offence.

SHRI H. N. KUNZRU: My hon. friend will have to read the whole paragraph in the Commission's report in order to understand the position.

Since the time at my disposal is hort, I cannot deal at length with this point. The Press Commission goes on to say:

"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. The conditions are fairly well-balanced. While it may be true that some newspapers have enlarged their liberty into licence, public servants in this country are yet free from the amount of criticism which is due in democratic conditions. Neither factor should be exaggerated. The right of the individual, including the public servant, to exercise his legal right must be increasingly encouraged and with growing response from the Government, there is bound to be corresponding growth of responsibility on the part of the Press. While steps should be taken to make the trial of defamation cases speedy for everyone, the suggested amendment of section 198 and section 202 of the Criminal Procedure Code does not seem to be justified."

It should be noted that the Commission has said that the trial should be made speedy for everyone, not merely the public servants.

If this is the ground on which it is proposed to change the existing law, I venture to submit that the Government have not made out a case in favour of the change. It may be pointed out, as the Deputy Home Minister pointed out on earlier occasion, that the Commission have, with regard to the defamation of public servants in the discharge of their public duties, suggested that the law may be changed so as to allow a complaint to be lodged by an officer to whom the defamed public servant is subordinate, but it should be noted here that the Deputy Minister failed to make it clear in his speech that this was not a unanimous decision, but that the observations made by the Commission in paragraph 1157 of their report were unanimously agreed to by all the members of the Commission. But in regard to this matter, there were differences of opinion and it is not surprising at all that there should have been a difference of opinion on this point because if the Commission has come to the conclusion that the defamation of public servants has not gone beyond reasonable bounds and that the conditions against and in favour of the public servants are well-balanced, then obviously it is hard to suggest any ground for making Government a complainant when a public servant is believed to be defamed. The Commission has dealt at length with this matter and I know, has recommended that the only change that may be made in the law is that courts should be empowered, that the magistrates should be empowered to take cognizance of defamation cases relating to public servants in the discharge of their duties at the instance of their superior officers. Nevertheless I should like Government to tell us how in the face of the conclusions that the Commission has come to with regard to defamation of public servants, it can justify the proposed change.

Then I take the procedure as laid down here. It is said here in sub-

clause (5) of clause 25 that a Sessions Court shall examine the person against whom the offence of defamation is alleged to have been committed unless—these words should be noted—the Court of Sessions, for reasons to be recorded, otherwise directs One can understand this in the case of dignitaries like the President of India or a Governor or Rajpramukh of a State but I should like to know whether the Court of Session should have the power to say that in its opinion the Minister who is alleged to have been defamed need not be examined If Ministers can be allowed to avoid appearance in the court and cross examination by the accused, then I submit that the scales will be unduly weighted against the accused

SHRI JASPAT ROY KAPOOR Why would he be exempted unless there is a very strong ground in the view of the judge?

SHRI H N KUNZRU I think the judge, considering the position of the Ministers and the work that they have to do, I shall not be surprised if the judge as a rule comes to the conclusion that the Minister need not be examined and that it would be enough if the Secretary to his Department or some other responsible official were examined

SHRI JASPAT ROY KAPOOR You would not trust even the judge?

SHRI H N KUNZRU: We are considering here the provisions as they are You may say "Do away with every safeguard and say that the High Court in every case shall decide what the procedure should be followed and what sentence should be inflicted" Can anybody accept this? Can persons who are unable to accept this be charged with distrust of the courts? So the right procedure is a matter of great importance, and we have a right to see that any changes that are made in the law are not of such a character as to discriminate in favour of any clause of public servants I venture to say therefore that even if the unfair criticism of public servants was excessive, there would be no case for laying down a provision which would make discrimination in favour of the Ministers possible—Ministers or any other class of public servants possible.

My third point is the one that I referred to in my speech when the Bill as passed by the Lok Sabha was considered in this House a few days ago Government provided a different procedure for the trial of cases which concerned Government servants in the discharge of their public duties and they have to do it because they have taken the power to initiate proceedings against the person who, they believe, has defamed one of their public servants They are compelled to devise a procedure which would not lay itself open to the charge that the case would be tried by an officer subordinate to the Executive But as I mentioned on the previous occasion to which I have referred, the provision of different procedures in cases of the same kind merely on the ground that some of them concern public servants and others do not, is contrary to Article 14 of the Constitution Only the Supreme Court can decide this matter but I think it will be allowed on the present occasion that the matter is not free from doubt And is it right that the Government should try to lay down a procedure which may, if it is challenged, be found to be invalid?

On all these grounds, I oppose the proposed change and feel that there is no case for altering the existing law The Government can help their public servants even now They can ask the Public Prosecutor to come to the aid of the public servants They can even help the defamed public servants financially The Government Servants' Conduct Rules, as the Press Commission have observed, are no bar to the Government giving such help Then why do the Government not help their officers in this manner rather than by changing the existing law? My hon friend the Deputy Home Minister spoke at length on this subject on a previous occasion but did not tell us what difficulties they had found in helping such public servants of theirs

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as had been defamed by newspapermen or others. He did not give us any instance of the insufficiency of such help where it had already been given. It seems to me that unless he can show that the help that Government can give at the present time is inadequate, I think there will be no case for a change in the law.

SHRI K. S. HEGDE: Mr. Vice-Chairman, generally speaking, I am in tire agreement with the amendment that is proposed by the Government, except to a very small extent which I will elaborate a little later. There is a good deal of misapprehension about this provision and the intention of Government is questioned as to why this particular amendment has been brought forward. Constitutional objections have also been raised. Just now Dr. Kunzru doubted whether the proposed provision may not come within the mischief of article 14 of the Indian Constitution. In a matter like this, nobody can give any final judgment, because that judgment always rests with the Supreme Court. But if you can have a reasonable examination of the subject, there can be hardly any doubt that the proposed provision will not come within the ambit of article 14 of the Constitution. This proposition is beautifully discussed in a very small book called "Constitutional Precedents" by the late Shri B. N. Rau where he has explained this provision with a great deal of lucidity. He said that article 14 does not lay down absolute equality. It is not something absolute, it is something relative to the facts that come before the court or before the House. It is an accepted doctrine both in America and here and it was so held in the Chiranji Lal case also which, as was read out by the Deputy Minister this morning, and in numerous other cases also, that the Legislature has always the right of classification, and the mode or basis of the classification is entirely left to the legislature's discretion. All that the court is going to do is to examine whether the classification is arbitrary or not. This is illustrated by saying whether one is having a black hair and another a white one and such other distinctions. Apart from such extreme cases, if there is any reasonable ground for classification, that classification is invariably accepted by the Court in all the countries where either article 14 *in pari materia* or in another substantial form exists in the Constitution. There can be hardly any doubt about the classification; it is real and not nominal. The protection is to a class of people whose interests and duties in many respects differ from those of the citizen, and whose criticism reflects not merely on themselves but on the administration as a whole. As such, with the greatest respect to my learned friend, Dr. Kunzru, I am unable to agree with the proposition that in any manner this proposed legislation would be hit by article 14 of the Constitution. He also sounded a note of warning that if there is the possibility of a legislation being found invalid by the court, then we should not risk it. I am afraid this is a very dangerous advice in a country where there is a written Constitution and where there is always the possibility of a Statute being declared invalid by the highest court. If this advice is accepted, it will neutralise all legislative action. If you think that merely because there is a distant possibility of the legislation being nullified we cannot act in the matter at all. We will have to refuse to function effectively.

Now coming to the proposed legislation itself, I would examine it on merit. So far as I can see, I think if there is any body or class of people who should object to this legislation, it is the government servants and not the public at large. I visualise two approaches in examining this matter. One is that Government servants should have a conduct far above reproach Secondly that they should be given the best possible protection so long as they discharge their functions fairly and satisfactorily. With these two objects I am scrutinising the provision before us. What exactly is provided here and what is likely to be

the effect, the practical effect of that provision?

Undoubtedly there are doubts that this provision is provoked or enacted with a view to defending or protecting unworthy Government servants or unwanted Ministers. I need not go into that matter at all. I am prepared to reject it offhand, that insinuation. What I am concerned as a legislator is what is likely to be the effect of it in practice. Please visualise for yourself that somebody writes an article against a Government servant making certain allegations against him. Either the Government will have to look into it and take action or if that is not the case, you have numerous men in the country now to send a cutting of it to the concerned department and once a cutting is sent, no Government can sleep over it, because there are thousands of legislators in the country who will rake up the matter. So once this is done, the Government must invariably hold an enquiry and on such an enquiry they must come to a conclusion, that either the allegation is true, or substantially true, or partially true or wholly false. Having come to that conclusion, either they must take action against the public servant, or they must take action against the defamer. Now the public servant is under the microscope every minute and the public servant knows that he acts on his peril, that everybody watches him and the Government is bound to scrutinise his conduct. If that is so, even people who are generally considered honest—though there may be human lapses—even they will have to live in horror hereafter. Therefore taking into consideration the practical effect of it, I think this provision will go to strengthen the Administration, to purify the Administration, because the government servant hereafter, would have to act with care, would always have to scrutinise every one of his actions.

On the other hand, suppose there is an honest government servant. Let us examine that case. Some one falls foul of him for one reason or other and carries on in a paper a scurrilous attack on the public servant. Either he does not want to stand up or for any reason keeps quiet. What is the effect on the whole Administration? The public read the paper and find that the whole Administration is rotten, though in reality it may not be so. So we are not in reality protecting the government servant, but in reality we are protecting the Administration, either by taking action against the government servant or by taking action against the person who is defaming the government servant. In either view of the law and in the practical conditions in which we are living *today, I think this is a very beneficial* measure in practice and likely to be quite useful.

I have, however, some little difficulty when I come to the question of the President, the Vice President, the Rajpramukhs and the Ministers. My objection is two-fold. One is legal and the other public or from the point of policy. Coming to the policy question first, because that is a minor one, in the case of public servants, normally, before going to court, the matter is examined by the superior officer and he bestows some thought on it and he decides whether the subordinate public servant should be prosecuted or what action should be taken against him, if any, or whether the defamer should be proceeded against. But in the case of a Minister, the sanction is given by a Secretary who is subordinate to the Minister. So he will not be in a position to impartially judge his own superior. Naturally, willy-nilly, he will have to grant sanction in the matter.

His hands would be tied. There is no question of an examination. That is one set of limitations that I visualise.

SHRI P. S. RAJAGOPAL NAIDU: What is the remedy you propose?

SHRI S. MAHANTY: Cabinet.

SHRI K. S. HEGDE: I shall come to it.

Another thing is that a Government servant is a permanent fixture. A Minister may be a passing phenomenon. He may be there today; he may

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not be there tomorrow. I do not know what interpretation will be put, whether he should be a Minister at the time of defamation and also continue to be a Minister when the prosecution is launched. That is one thing that has got to be examined. A Minister who is a Minister at the time he is defamed may not be a Minister at the time the prosecution is sanctioned. This is a matter which is worth examining. I am not going into it but that is an aspect which you must bear in mind. A politician is a public man and his skin must be thick. I for one would like to have a pugilistic fight, in the political sense.

SHRI H. C. DASAPPA: You are fit for it.

SHRI K. S. HEGDE: We should not blind ourselves and we should not try to live in seclusion. Of course, a Government servant must live in *purdah* to some extent. But, all these difficulties get dimmed when we come to the legal difficulties. You know, Sir, that defamation is an offence under sections 499 and 500 of the Indian Penal Code; section 499 deals with the definition and section 500 is the penal section. You will also find that there is a definition of public servants in section 21 of the Indian Penal Code. There, in that section, different categories of public servants are given. If you analyse section 21, however much you may try to fit in, the President, the Vice-President, the Governor and the Rajpramukh will not come in under the definition of the public servant. So, so far as the Indian Penal Code is concerned, the definition that comes in is under section 21. Under sections 499 and 500 which are controlled by section 21, these authorities, high personages are not termed as public servants. It may be argued, Sir, that in the amendment to the Criminal Procedure Code, by implication, by saying, after the names of these people, "or other public servants" we have tried to convert them into public servants. I am afraid it will not do for this reason that if there is a specific enactment defining and if there is a definition by implication, then the specific enactment governs and not the implication. That is one thing. The specific section will govern. That is not all. So far as the Indian Penal Code is concerned, the only definition that will govern is section 21. Amending sections 499 and 500 of the Indian Penal Code uncontrolled by section 21 will not do. So long as you do not amend section 21 of the Indian Penal Code there will be no effect and these high personages will not be brought within the scope of "public servants". What is the result? If a public servant is defamed, *bona fides* is good defence. The courts may come to the conclusion that criticism was done *bona fide*, in public interest in which case the man is protected by exception No. 2 and subsequent exceptions to section 499. As it happens in many cases, there may be a mixture of truth and exaggeration or falsehood. There may be 25 per cent truth or 50 per cent truth and the rest may be either exaggeration or falsehood. Even then, if I had done it *bona fide*, I am protected. So far as the high personages are concerned, the only exception under which I can come is exception 1 Exception 1 says that is must be both true and in the public interest, no question of *bona fide*. You may be knowing, Sir, that in defamation there is one doctrine, the greater the truth the greater the defamation. A mere plea of truth is no defence at all. It must come under exception 2 wherein you must prove two things, that it is wholly true and that it is in the public interest. *Bona fide* is no defence at all. Under exception 1, supposing somebody makes an allegation against a Minister which is 90 per cent true and 10 per cent false. Has he got any defence of *bona fides*? Why are we placing that man in the dangerous situation when the other things are absolutely all right by saying that it is in the public interest? For both these reasons and from the point of view of law also, I do not think these personages should be excluded. I want the hon. Minister to examine this matter from the legal point of view which I have just submitted. I think it would

be worth examining to find out whether we are not creating a situation for which we may repent later That is all that I will say and in a House of Elders, apart from the questions of policy which have been thrashed and re-thrashed, I think it is our duty to examine the Bill with a critical eye and even accepting the policy, to see how far that policy is implemented It is our duty, as representatives of the States rather than the people themselves, to give a perfect touch to the piece of legislation I am sure that in this matter the hon Minister will take our co-operation and be in a co-operative mood Knowing him as I do, I can say he is absolutely anxious to do it and make this a perfect piece of legislation of which he and we may be proud of and present it to the public as a piece of useful legislation

SHRI J S BISHT Mr Vice Chairman, we have very great respect for our learned friend, Dr. Kunzru Unfortunately he has disappeared from this place today He is an elder statesman but unfortunately when he was quoting those figures, I think he did not care to find out what the Press Commission had said.

THE VICE-CHAIRMAN (SHRI V K DHAGE): I may inform Mr Bisht that Dr. Kunzru left with my permission.

SHRI J. S BISHT. I am sorry, Sir He was referring to paragraph 1157 on page 452 of the Report of the Press Commission That referred to an entirely different thing and that referred to the proposal of the Government to make defamation a cognizable offence On that there was this clause: "That in clause 198 of the principal Act, for the words and figures, 'Chapter XIX or XXI of the Indian Penal Code,' the words and figures 'Chapter XIX of the Indian Penal Code or Chapter XXI of the same Code, except an offence of defamation against the President, the Governor or the Rajpramukh of any State or Minister or any other public servant in the discharge of his public function' shall be substituted The amending part was in Chapter XXI which said that no court can take cognizance of an offence except on a complaint by the person defamed. Now, when it was being made cognizable, that was merely a consequential amendment so that they could be taken away from section 198 and that is what they were referring to here They opposed the proposal of the Government when it made that a cognizable offence and, therefore, they were opposing this consequential amendment altogether Dr Kunzru, however, did not read out to this House paragraph 1164 which is the real recommendation of the Press Commission and I will read out paragraph 1164 Paragraph 1164 says "With regard to defamation of public servants in the discharge of their public duties, our colleagues do not desire any change in the law The only change that we suggest is that without making it a cognizable offence, it should be possible to set the law in motion on a complaint, where necessary, from an officer to whom the public servant is subordinate and a provision should be made by which there shall be a magisterial enquiry or a police investigation to decide whether there is any truth in the allegation before a process is issued in pursuance of the complaint" It is very plain and simple The Select Committee looked into this question and it went one step further than the Press Commission in making it acceptable to the greatest number of people. They did not leave the authority even to the officer to whom the defamed officer was subordinate They made it subject to sanction by the Government. In fact, the Select Committee made a provision that it should be open to the officer who is the authority to dismiss him and, under our Constitution and the rules pertaining to it, every officer, even of a subordinate rank is dismissable only by the State Government Now, this Bill, as it has come from the Lok Sabha, incorporates that suggestion, that is to say, the prosecution can be sanctioned or started by a public prose-

[Shri J. S. Bisht.]

cutor only after it has been sanctioned by the Government itself. Now, that is a great improvement even on what the Press Commission has recommended. It would be open, for a Deputy Commissioner, to sanction proceedings in the case of a Tehsildar or a Patwari. If a Sub-Inspector of Police was defamed then the Superintendent of Police could sanction the case but now, in view of the changes made, he cannot do it.

THE VICE-CHAIRMAN (SHRI V. K. DHAGE): Will the hon. Member take two or three minutes more?

SHRI J. S. BISHT: I will take much more than that, Sir.

THE VICE-CHAIRMAN (SHRI V. K. DHAGE): You can continue tomorrow.

ANNOUNCEMENT *RE*: SITTING ON SATURDAY, 23RD APRIL

THE VICE-CHAIRMAN (SHRI V. K. DHAGE): I have an announcement to make.

I have to inform hon. Members that the House will also sit on Saturday, the 23rd instant for the transaction of Government legislative business.

The House stands adjourned till 11 A.M. tomorrow.

The House then adjourned at six of the clock till eleven of the clock on Friday, the 22nd April 1955.