RAJYA SABHA

Friday, 22nd April 1955

The House met at eleven of the clock, MR CHAIRMAN in the Chair.

MOTION FOR ELECTION TO INDIAN CENTRAL ARECANUT COMMITTEE

MR. CHAIRMAN: Dr Deshmukh

THE MINISTER FOR AGRICULTURE (DR. P S DESHMUKH): Sir, I move:

"That in pursuance of clause (vi) of paragraph 3 of the Ministry of Agriculture Resolution No. F. 43-11/48-Comm, dated the 21st May, 1949, as amended by the Ministry of Food and Agriculture Resolution No. F. 17-66/53-Com I, dated the 10th February, 1955, constituting the Indian Central Arecanut Committee, this House do proceed to elect, in such manner as the Chairman may direct, one Member from among themselves who is neither a grower of, nor a trader in, arecanut to be a member of the Indian Central Arecanut Committee."

MR CHAIRMAN The question is:

"That in pursuance of clause (vi) of paragraph 3 of the Ministry of Agriculture Resolution No. F. 43-11/48-Comm, dated the 21st May, 1949, as amended by the Ministry of Food and Agriculture Resolution No F. 17-66/53-Com I, dated the 10th February, 1955, constituting the Indian Central Arecanut Committee, this House do proceed to elect, in such manner as the Chairman may direct one Member from among themselves who is neither a grower of, nor a trader in, arecanut to be a member of the Indian Central Arecanut Committee"

The motion was adopted.

MR. CHAIRMAN: I have to inform hon Members that Monday the 25th April, 1955, has been fixed as the last date for receiving nominations and Wednesady the 27th April, 1955, for holding elections, if necessary, to the Indian Central Arecanut Committee The nominations will be received in the Rajya Sabha Notice Office up to 12 noon on the 25th The elections which will be conducted in accordance with the system of proportional representation by means of the single transferable vote will, if necessary, be held in Secretary's room, No 29, Ground Floor, Parliament House, between the hours of 3 P M and 5 P M on the 27th

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

SHRI J. S BISHT (Uttar Pradesh): Sir, I was replying to the points made out by Dr Kunzru in his criticism with regard to clause 25 (Defamation). Now, Dr Kunzru quoted a para of the Press Commission's Report I think it was 1150.

SHRI H N KUNZRU (Uttar Pradesh) 1157

SHRI J S BISHT But I think in his hurry Dr. Kunzru missed one point, namely, that he was not quoting from the Press Commission's Report but from the minority Minute of Dissent. If he had looked at page 441 he would have found the Note of Dissent on Press Legislation and the paragraphs from 1142 onwards are not the Report of the Press Commission, not the majority report but it is the minority report and the minority consisted of four gentlemen who were those of the press whereas the recommendation of the Press Commission will be found at page 434, para 1134 There it says: "Under section 198 of the Criminal Procedure Code it is only the aggrieved party that can set the law in motion and if he happens to be thousands of miles away or is unwilling to take any steps, nothing can be done" And then they say "If the public servant concerned is unwilling or unable to file a complaint of his own accord the superior officer will decide whether the alleged defamatory matter is serious

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enough to be taken notice of and how far it is in the public interest to launch a criminal prosecution" and so on. And then they give their recommendation.

I would also invite the attention of Dr. Kunzru to the summary given at page 454, paragraph 1164. There also they repeat the same thing, and I quoted it yesterday. That was probably because of an inadvertence and Dr. Kunzru, Sir, is a busy public man and having been engaged in such onerous duties he, probably in a hurry, got hold of a paragraph which was not really the recommendation of the Press Commission.

Then, Sir, in fact, as I was saying yesterday, what the Joint Select Committee has done is to improve on what the Press Commission itself has recommended. In fact, they have given better concessions to the accused in this case than the Press Commission had recommended. The Press Commission had said that the superior officer should be in a position to file a complaint. That would mean that the Superintendent of Police could file that complaint if a sub-inspector was defamed or the Collector could file a complaint for his *tehsildar* so defamed. Now this clause provides what the Select Committee had recommended and what the Lok Sabha had also approved. Sub-clause (c) in clause (3) says: "in the case of any other public servant employed in connection with the affairs of the Union or of a State, of the Government concerned." That is to say, no ordinary prosecutions can be filed in a defamation case where the defamation is alleged to have been committed against a public servant except with the consent or sanction of the Government concerned, be it the Union Government or a State Government, and then only will the public prosecutor file a complaint. The only difference is that, instead of an individual filing a complaint in his private capacity, it is the public prosecutor who sets the law in motion. It must here be borne in mind clearly please that even where it is the President or the Vice-President, the Minister or a public servant, it is not every defamation that has been protected under this law. If it is a defamation concerning his private life, in his private capacity, then he is in the same category as any other citizen of India. There is absolutely no difference there. It is only in regard to defamation in so far as his conduct as a public servant in the discharge of his public functions is concerned that the law is set in motion by filing a complaint through the public prosecutor. That is the only difference. Beyond that the substantive law of defamation as defined and laid down in the Indian Penal Code remains intact. There is absolutely no difference. Hon. Members who know the law of defamation are very clear that there are a series of explanations there and any fair criticism, any legitimate criticism, any reasonable criticism is always exempt from the law of defamation.

There was another point, Sir, which Dr Kunzru raised and that was with regard to article 14 of the Constitution. He said that article 14 of the Constitution lays down that there should be equality before the law and equal protection of the laws within the territory of India and therefore this clause, he said, offended against the idea of equality before the law and equal protection of the laws. I may bring to his notice that that is not the position. There have been innumerable rulings on this point. This 'equality before the law' is taken from the Common Law of England and 'equal protection of the laws' has been taken from the Constitution of the United States of America and there have been rulings. Now I will quote one and this is from the English King's Bench Division's ruling in R. V Huntingdon. Confirming Authority. It says: "Equal protection thus means in short that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offences." Here also no difference is being made with regard to punishment and the substantive law remains as it is.

Then I will quote to you, Sir another portion which deals with the question of 'equal protection of the laws' and there it says: "The rule of equality permits many practical inequalities. And necessarily so. In a classification for governmental purposes there cannot be any exact exclusion or inclusion of persons and things" Now, Sir, with regard to this what has been done is, no discrimination at all in favour of or against anybody. What has been dealt with is only the mode of setting the criminal law in motion That is all Instead of a private person filing the complaint in the case of a public servant or a Minister, in so far as his conduct as a public servant in the discharge of his functions is concerned, the machinery of the criminal law of defamation is set in motion by a complaint filed by the public prosecutor Beyond that, nothing is done In fact, if there is any discrimination it is in favour of the accused in this case because ordinarily the complaint would lie in the court of a magistrate Here the complaint will go straight to the court of a Sessions Judge and the Sessions Judge has been vested with the powers of original jurisdiction in this matter. It is a great advantage because I think it is agreed on all hands that the court of District and Sessions Judge is an absolutely independent court It is not under the Executive, no pressure, no influence of any sort can be brought to bear on the District and Sessions Judge. It is under the High Court both administratively and otherwise and there the accused can fight out his case with greater freedom and greater hopes of success than if it were before a Magistrate who is under the District Magistrate or under the pressure of the Superintendent of Police which means ultimately under the pressure of the Minister or the Government.

Secondly, another advantage that the accused is granted in this case is that he goes to the High Court in first appeal and the first appeal in a criminal case has got very great advantages because there they can challenge the judgment of the District and Sessions Judge if it is adverse to them on the ground both of fact and of law, whereas in a second appeal or in a case of revision it becomes very difficult unless there is a very serious error in law or something which is very serious in nature like miscarriage of justice. Ordinarily it is not possible in revision to upset the judgment of the lower courts For instance, if it was a judgment of the Magistrate there would be a confirmation of that judgment by the District and Sessions Judge and the High Courts are very loath to interfere in such matters Therefore, looking at it from every point of view, I do not see why there should be this sort of objection against it I believe that the general idea is that the Press as a whole is a category of people who should be above the law I am not prepared to subscribe to that view at all

SHRI H P SAKSENA (Uttar Pradesh) How did you get that idea?

SHRI J S BISHT The whole point is this Because the Press is likely to be prosecuted in this manner, therefore you should not have this I say that no category of men is either wholly good or wholly bad. You take lawyers, journalists doctors or anybody There are good men and there are also some bad men The penal law is not made for good men at all The penal law is made to take action against bad men And, why should the journalists themselves try to protect the black sheep among them? Ordinarily, all journalists who gave fair criticism, reasonable criticism or reasonable comments on affairs in general, are totally exempt Nothing is going to happen to them Only in exceptional cases when some atrocious allegations are made, which are baseless and which the Government consider fit to be brought before the court, action will be taken. And there should be no objection to that Apart from that, it is not only the Press that will come under this, any written thing which is of a defamatory nature will

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be subject to this. We have seen during election times people print these handbills and distribute them on a large scale.

SHRI S. MAHANTY (Orissa): One question I would like to ask. The pamphlets which are distributed during elections are different. If they are found to be defamatory, the Election Tribunal will hold that election to be illegal. Is it not so?

SHRI J. S. BISHT: That is another point. So far as the prosecution of the person is concerned, it may not be in the matter of election pamphlets. There may be so many other things. There may be some agitation started. For instance, agitation against cow slaughter, let us say, is started by R.S.S. or Jan Sangh. And many handbills are printed and distributed where all sorts of allegations are made which are defamatory. I am merely quoting an illustration. These things are happening every day in the districts. Malicious type of people get thousands of handbills printed and circulated and when there is so much illiteracy, when people see something in writing, something in black and white, they begin to suspect that there is something bad about the person against whom the allegations are made. They think that there cannot be smoke without fire and they come to harbour a prejudiced idea about the person against whom such allegations are made. So, it is not only the Press but even those, who print or write anything which is defamatory, who will come under this. After all, it should be our duty to protect the honour of the citizen. It is as valuable as, in fact more valuable than, even his property and, as I said in my first speech, this character assassination should not be allowed. In fact, my objection is that the Lok Sabha has put in certain other clauses like compensation to the tune of Rs. 1,000/- which I do not like and which were not suggested in the Select Committee at all. If, as my friend Mr. Kapoor suggested yesterday, there is a provision made for appeal in such cases, then I am prepared to accept that. I, therefore, appeal to the House that the clause, as it is with the proviso with regard to appeal, may be allowed to get through.

SHRI S. MAHANTY: Mr. Chairman, I rise to oppose the whole of clause 25 as it stands. My views on clause 25 are well known. In fact, during the first reading stage I mainly emphasized on clause 25, but I am sorry that I have not been able to convince my friends about the desirability of deleting clause 25, in the name of equality before law and in the name of not inducting any discriminatory principle in favour of a certain class of citizens whether they be Ministers or public servants or Rajpramukhs or the President and Vice-President. I have listened with a good deal of attention to the three eminent spokesmen of the Congress Benches, who have spoken in favour of clause 25.

I will first come to Mr. Bisht, whom I consider virtually the Draco of the Indian legislature. In fact, he was sorry that the provision was not made more Draconian. He spoke a great deal about the Press Commission. In fact, his main argument rested on the fact that the Government is not doing anything new *suo motu*. The Press Commission, a very responsible body, had made certain recommendations and the Government have only tried to implement them in a more innocuous manner. But I consider that the citation of the authority of the Press Commission is very unfair in this context, because the Press Commission was not appointed solely to go into the Press Laws in this country. I hope Mr. Bisht will agree on this point.

A Committee was appointed in the year 1948—the Press Laws Enquiry Committee—specifically to go into the matter of Press Laws in this country and it made certain recommendations and those recommendations you will find in Appendix D of its Report. I ask in all seriousness: have those recommendations been implemented? That Committee was also presided over by a High Court Judge. It recommended

that section 144 should not apply to the Press and that there should be separate legislation for the Press. I am simply quoting an instance at random and I ask the Government whether they have implemented that recommendation of the Press Laws Enquiry Committee. Now, it was only one among the terms of the Press Commission to go into the question of Press Laws. And it has made some recommendation even though there was a minority opinion against it and the Government comes and says that after all, 'we are simply implementing what the Press Commission has recommended.'

Sir, by emphasizing so much on the Press Commission they are suggesting indirectly that a small bird might have whispered in the ears of the Press Commission about the Government's intention and for incorporating the same in the body of the Report for facilitating certain action. Therefore, I consider the citation of the authority of the Press Commission is completely irrelevant and has no meaning.

Now, Sir, the second point that he made was equality before law. He tried to refute the arguments of Pandit Kunzru when he emphasised on article 14 of the Constitution which enshrines the principle of equality before law. But the rulings which he quoted related to "equal protection before law." I hope you will agree with me that "equal protection before law" is completely different from "equality before law." The doctrine of equality before law is too well-known and it could never be confounded with equal protection before law.

The third point he made was that after all this measure has got two merits. Number one is that the cases of defamation will be tried not by magistrates but by sessions judges. He posed a question in this context: "Do you disbelieve the judges?" They work with a certain amount of freedom. The magistrates may be under the dictates and directions of the executive. Therefore, the executive decisions may not be fair, but the sessions judge who works in relative freedom and independence is certainly a better tribunal where an accused can be tried. Well, Sir, the question is over-simplified. It is not a question between a magistrate and a sessions judge. It is a question of human element, human frailties and human strength. There are instances where magistrates have worked with an amount of independence which even now no High Court Judge can imagine. I know of an instance where a junior magistrate initiated proceedings of contempt of court against his District Collector. That happened, I think, year before last as a result of which the District Collector was punished. It happened in my own town, Cuttack. On the other hand, there are instances where judges are under the directions and dictates of the executive. After all it is a question of human weakness, human frailty and human factor. Therefore, there is no immutability about the independence of a judge or the servitude of a magistrate. Therefore, this point also has not much merit which we can consider on any objective basis.

And the second merit according to Mr. Bisht is that the first appeal will lie in the High Court. Of course, I agree that here is a benefit, but it has to be weighed against the demerits of clause 25 in the present Bill. The only merit is that the first appeal will lie in a High Court, but the disadvantages are enormous. The disadvantages have been pointed out by various speakers, not only from this side of the House but from that side also.

Now, Sir, I come to Mr. Hegde; he is another eminent spokesman. I have got a great deal of regard for his opinions on matters of law. Yesterday in his very lucid speech he also tried to defend the retention of clause 25. Sir, he also emphasised on "equality of law." He said that retention of clause 25 will in no way offend the doctrine of equality before law. He tried to propound another new doctrine of equality before law; but I do not find

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it here But if you will please go through his speech of yesterday you will find the sum and substance of the doctrine of equality before law, which according to him, is "doctrine of classi fication" Sir, it is strange logic to say that doctrine of equality means doctrine of classification Of course, neither he nor I can speak with any authority on article 14 It should be left and it is left to the Supreme Court to give a final ruling in the matter. But the doctrine of equality can by no stretch of imagination be the doctrine of classification He also said equality before law is not absolute, it is related to legislative discretion True But I ask is legislative discretion an abso lute concept? It must be related to something Therefore, in a world of inter-related values, one cannot say that this is absolute and that is rela tive We have to make only a reasonable examination of the concept that we have before us and am sure if this question is even examined by the Supreme Court, they will surely hold that this contravenes at least this abrogates the principle of equality before law

Then, Sir, he made a very strong point that defamation of a public servant in discharging his public duties is tantamount to defamation of the Government Therefore, there is reason enough why clause 25 should be applicable in respect of public servants alone not in the case of Ministers Sir, I wish to examine what is the con cept of a Government in a Welfare State in the year 1955 Let us go back to the year 1898 when the present law was enacted The present law was drafted by the British Government who wanted to give all kinds of safeguards to the servants of the Crown The discriminatory provisions in favour of public servants in the Indian Penal Code and the Criminal Procedure Code are very well-known to my lawyer friends but after having done that after having allowed that discrimination in favour of public servants the British Government in the year 1898 when the concept of Welfare State was still in the womb of dark history, did not provide this If, therefore public servants of the Crown were defamed, the Government did not provide for any discriminatory provision in favour of them They were treated on a par, at a common level with ordinary citizens of this country But what has happened in the meantime in this Welfare State of "socialistic pattern" that this Hegelian concept of a Government should be brought in, that the State should be equated with the Government and the Government should be equated with certain infallible authority and equality before law shall have to be sacrified to satisfy that kind of concept? Sir, the Government have not made out any case, nor will they ever make out any case If I may venture to say so, the concept of a Welfare State does not go hand in hand with the outmoded Hegelian dogma that the State is the march of God on earth, which held sway in pre-Hitlerite Germany It does not hold good today in the India of "co-existence" of "Welfare State", of "socialist pattern", and so on and so forth

Then, Sir, again let us examine what a Government is Now, it is a well-known doctrine that Government in a democratic State means not the Ministers and the public servants alone, but also means the Leader of the Opposition We may not have any Leader of Opposition in the Indian Parliament. There are various State legislatures where there are leaders of Opposition Now, I would like to know from the hon Minister and from the honourable defenders of clause 25, whether the leader of the Opposition is a part of the Government or not If the Leader of the opposition is part of the Government what protection are you going to give him in clause 25? If a leader of the Opposition is defamed, then, of course, he is to take the normal procedure which has been laid down in the Criminal Procedure Code. But when it comes to a Minister, then, of course, this new provision will be there I ask in all seriousness and in

all humility, is it justifiable? If you say that this is a democratic Government where the Opposition also is a part of the Government, then certainly you should not restrict your scope of Government to a few public servants alone who range from chowkidars to the President of India; nor a few Ministers, Deputy Ministers and Parliamentary Secretaries.

And, again, Sir, let us consider—God forbid—our Deputy Minister for Home Affairs for whom I have got very great regard tomorrow elects to retire from political life, from Parliament, and would like to lead the life of an ordinary citizen. He will be defamed. Then, he shall have to take recourse to the normal procedure which has been prescribed in the Criminal Procedure Code. But, Sir, if the chowkidar of his bungalow is defamed, then the Executive Engineer can bring in the whole State to defend the chowkidar. So, it is a question of values. Who told you that a public servant has got a greater value than an ordinary citizen of the land on whom depends the sustenance of his public office? Therefore, Sir, we should not bring in that kind of outmoded and primitive concept of the Government and say that they are above law and they are above the normal procedure which has been prescribed for the ordinary citizens of this country.

Then, Sir, another important point that he made was this. So far as I understand it, the debate has proceeded on that assumption. He said that this clause 25 has been brought in here not to conceal corruption and delinquency in the ranks of the Government, but to expose them. Sir, I am not going to contest that kind of a proposition. But I will only examine the contention of the Government. My test is whether that is the intention of this clause or not. Now, Sir, you will find that sub-clause (4) of clause 25 states as follows:

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

That means that the time limit is six months. It has been argued that first the Government will make an initial enquiry, and if after the enquiry it is found that the publication had no basis in fact, then the prosecution will be launched. Now it is a very well-known fact, Sir, that whenever the Government undertakes a departmental enquiry against an officer, it takes not only six months, but it takes six years. Firstly, they have to establish whether there is a *prima facie* case or not, and then they have got to place the responsibility on somebody. And, Sir, the departmental enquiry is not a judicial enquiry. A Government officer cannot be sacked simply because there was a departmental enquiry against him whose findings were hostile. There must be some judicial enquiry. Otherwise, he is entitled to all the protection which the Constitution-makers have conferred on our public servants. And I ask the hon. Deputy Minister to give me a single instance where any departmental enquiry against an officer has been completed within a period of six months. The contention is that after a defamatory publication is made against a Government officer, some departmental enquiry will be initiated and then alone will prosecution be launched. But I ask: has ever any departmental enquiry been finished within a period of six months?

SHRI J. S. BISHT: Sir, may I just remove the misapprehension of the hon. Member? If he will kindly look to sub-clause (11) of this clause, he will find there that "Nothing in this section shall be deemed to be in derogation of the right of the person aggrieved under section 198." All that has been done here is this. Because the Opposition made out a point that the Sword of Damocles will be hanging over the head of the man—he may have written something three years ago, and he will be held as a hostage for it—this time limit was fixed that if the State so decides, it must be done within six months. Otherwise, the man can do it in his private capacity.

SHRI S. MAHANTY: I am thankful to the hon. Member for his elucidation. But my trouble is this. Yesterday, Mr. Bisht said that after a particular charge is made against the officer, departmental enquiries will be made against him, even though there is no such mention in this clause. It will ultimately be left to the discretion of the Government. They may do it or they may not do it. After all, the Public Accounts Committee's reports are exposing so many scandals against so many persons, so many public servants. The recent Audit Report has pointed out how an official of the External Affairs Ministry—even though it was decided that he should be given no further employment under the Government—was employed in another Ministry on a fee of Rs. 10,000. But that is a different matter. I am not going into it.

Therefore, Sir, it is quite naive to suggest that the Government will take up initial proceedings against the officer, when a particular charge is made. That is completely beside the point. Let us not try to confuse the issues. The limited issue here is: Are you going to allow this kind of discrimination in favour of a body of public servants and also in case of Ministers, who are politicians, and who are expected to be thick-skinned, as thick-skinned as boars? They should not be so thin-skinned and sensitive. They should face public opinion boldly. Particularly in the matter of elections, I read another meaning into the arrangement that the Ministers will also be entitled to this kind of discrimination. Sir, against the background of our fight against bureaucracy, I think that it is not only repugnant, but it is also retrograde, and it should merit no consideration. I would submit, Sir, that if the hon. the Leader of the House allows free voting and gives a chance, he would not be able to find very many supporters of this provision.

With these words, Sir, and in all humility, I will again press, before the hon. the Deputy Minister and this House, for the deletion of clause 25.

DR. P. V. KANE (Nominated): Mr. Chairman, when we were discussing the general principles underlying the several amendments in this Bill, I had spoken at very great length. And my contention, for various reasons, was that the whole of this clause should be omitted. Now, Sir, I am not going to repeat those arguments. I assume, as the hon. Minister has said, that this is a very necessary clause. If the clause is to be there, I would suggest two matters.

When I read sub-clauses (1), (3) and (7) together, I feel that there is something wanting. That is to be clarified. In sub-clause (1), the wording used is "upon a complaint ~~in~~ writing by the Public Prosecutor". And in sub-clause (3), the words used are "No complaint under sub-section (1) shall be made by the Public Prosecutor except with the previous sanction ....." Now there are three different kinds of sanctions mentioned. But in none of these occurs the important matter whether the Minister himself, who is alleged to have been defamed, has consented to the complaint or not. You will notice that in sub-clause (3) (b), it is said that "in the case of a Minister of the Central Government or of a State Government, of the Secretary to the Council of Ministers, if any, or of any Secretary to the Government authorised in this behalf by the Government concerned;". So, instead of the Minister's sanction, permission or endorsement, in writing, what is required is simply the sanction of a Secretary, and that too, of any Secretary, because the wording used is "or of any Secretary to the Government.....". So, the result is what the hon. Minister contended, that a Minister may not be willing to come before the court for various reasons, or he may have taken some bribe, or he may not want to figure in a court, and so on and so forth. He gave many reasons. But still, the Government want that the Administration, in the eyes of public, should be above reproach, and therefore the Government want to take it upon themselves to launch the prosecution

in favour of the Minister who is unwilling to appear in a court. The Public Prosecutor is only to be authorised in the case of a Minister, by any Secretary to the Government. But nothing is mentioned about the Minister himself.

Then, Sir, sub-clause (7) states as follows:

> "The Court of Session shall record and consider any cause which may be shown by the person so directed and if it is satisfied that the accusation was false and either frivolous or vexatious, it may, for reasons to be recorded, direct that compensation to such amount, not exceeding one thousand rupees, as it may determine, be paid by such person to the accused or to each or any of them."

Now, it appears that the hon. Minister himself said that if such a prosecution is a failure, then Rs. 1,000, or whatever be the amount, will have to be paid by the Minister.

The Minister has not given his consent; there is no writing from him. Therefore either you must add in the first clause "upon a complaint in writing made by the Public Prosecutor and endorsed by the Minister or officer concerned as the case may be" or, if you do not do this and if you retain this as it is, then you will have to add in (7) that the compensation should be paid by the Public Prosecutor, or the Government. Why should a man who has not subscribed to the complaint or whose permission or whose signature has not been taken for the complaint, be charged with the payment of compensation? My point is this: Supposing the Minister or public servant is unwilling to make a complaint and still the Government forces him to make a complaint so that his reputation may be protected or so that the reputation of the Government itself may be protected—I concede this point—yet in such a case, if the Government fails to get a conviction against the accused, the payment of compensation has to be made by the Minister or public servant. This is somewhat anomalous. The man does not himself complain and has not given his sanction or authority. I think that there is something disproportionate between these clauses. They do not go together.

Another thing that I want to bring to your notice is with regard to subsection (5) of the new section 198B. It says:

> "When the Court of Session takes cognizance of an offence under subsection (1), then, notwithstanding anything contained in this Code, the Court of Session shall try the case without a jury and in trying the case, shall follow the procedure prescribed for the trial by Magistrates of warrant cases instituted otherwise than on a police report 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."

I want that the words "unless the Court of Session, for reasons to be recorded otherwise directs," should be omitted. I would submit that the first person to go into the witness box should be the man whom the accused is alleged to have defamed. The accused has a right to demand that those who are his accusers should go before the court and be subjected to cross-examination. That is the general principle. Every man who makes a complaint must come before the court and go into the witness box and support the statement that he has made in his complaint on his sworn testimony. Here the power has been given to the Sessions Court to ask him to appear before the Court or not. You will find that in the Criminal Procedure Code the man who makes the complaint must appear before the court. Here you may say that when a Minister or a public servant is defamed, both he and the Government are defamed. I concede the argument, but the point here is that the Government, on its own motion, even when the other man who is actually the aggrieved person has not consented or subscribed to this,

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launches the prosecution for probably reinstating that man's reputation or for the good name of the administration itself. Even then, no power should be given to the Court to excuse the attendance of the person before the Court and his being subjected to cross-examination. My submission is that this discretion should not be left to the Sessions Court at all. The man who has made the complaint or on whose behalf the complaint is made must come before the court and support the complaint. Therefore, I think that these words "unless the Court of Session, for reasons to be recorded otherwise directs," should be omitted.

SHR. H. C. DASAPPA (Mysore): Mr. Chairman, I have got three amendments to clause 25, Nos. 48, 51 and 57. As regards No. 48, which refers to the authorities according sanction to the Public Prosecutor to lodge a complaint, let me read the relevant sub-section, because to me it is not very intelligible. My complaint is not so much about the substance of the sub-section as about its form, and I think it will be better if the hon. the Deputy Minister considers my amendment sympathetically. Sub-section (3) of the proposed new section 198B reads:

> "No complaint under sub-section (1) shall be made by the Public Prosecutor except with the previous sanction,—
>
> (a) in the case of the President or the Vice-President or the Governor or Rajpramukh of a State, of any Secretary to the Government authorised by him in this behalf;"

Now, to whom the words "by him" refer is not quite clear to me.

SHRI H. P. SAKSENA: They refer to the President or the Vice-President or the Governor or the Rajpramukh.

SHRI H. C. DASAPPA: It is not clear to me whether they refer to the President or the Vice-President.

THE DEPUTY MINISTER FOR HOME AFFAIRS (SHRI B. N. DATAR): That is the meaning.

SHRI H. C. DASAPPA: And then:

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

This is fairly clear. And then:

> "(c) in the case of any other public servant employed in connection with the affairs of the Union or of a State, of the Government concerned."

My amendment reads like this:

> "(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."

In the case of the President or the Vice-President or any servant of the Union, the authority to sanction a prosecution should be the officer appointed by the Central Government, or in the case of a Governor or a Rajpramukh or a servant of any State, it should be one appointed by the local Government. This would make things quite clear.

My second and third amendments should be taken together for purposes of discussion. Amendment No. 51 says:

> "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."

This amendment I am moving for the reason explained already by my hon. friend Dr. Kane. I would not have moved this amendment but for the

presence of a subsequent provision in the proposed change relating to payment of compensation. Difficulty arises because a new provision has now been introduced into the Bill by the Lok Sabha, and that relates to the award of compensation by the accuser to the accused in case there is a false, frivolous or vexatious prosecution. The difficulty that I apprehend is that it is possible to have cases where a public servant or a Minister does not want a complaint to be lodged at all. Yet a complaint is lodged because the authorities concerned—the Secretary or so—authorise the Public Prosecutor. My apprehension that it is possible for a complaint to be lodged even though the public servant is unwilling for it is not unfounded for the obvious reason that the hon. Deputy Minister yesterday said when I put him a question:

> "Am I to understand that a complaint can be lodged even though the person defamed does not want a complaint to be lodged?"

He replied:

> "It is perfectly possible."

Now when the hon. Deputy Minister says that it is possible to lodge a complaint even though the public servant or the Minister concerned, whoever it may be is unwilling for the complaint being lodged, I cannot for my life understand how he can be hauled up for launching a false, frivolous and vexatious prosecution. It seems to me almost an impossible feat for him to perform when he is not only not keen on prosecution but he may even be against it. Therefore, I have suggested in the alternative that if you want to charge him with this responsibility of paying costs to the accused for launching a false and frivolous or vexatious prosecution, his consent must have been obtained beforehand. But if on the other hand as is sought to be made out, the Government is not inclined to require of the public servant to give his consent and it must be open for the Government to launch a prosecution even though the public servant or Minister is unwilling, then I say you cannot connect this public servant with the offence of launching a prosecution, much less a false and frivolous and vexatious prosecution, and make him liable for compensation. After all, we must enact a piece of legislation which stands the test of canons of elementary jurisprudence. We cannot throw all these canons to the winds. I am afraid here in this particular instance it has been done. My reading of the case is that it is possible that this aspect did not present itself to them at the time this amendment was sought to be introduced in the Lok Sabha. The original Bill does not provide for this compensation. The Select Committee went exhaustively into the question and sat day after day and there were very many eminent people there but it did not strike them to provide for this. Then all of a sudden, these compensation clauses were put in. The idea of providing against a false, frivolous and vexatious accusation is naturally in the mind of everybody. The question was: what are you going to do if the Prosecution fails and it is also vexatious and frivolous? Then they said that somebody must be hauled up. It cannot be the Government, it cannot be the Public Prosecutor who is only an agent. Therefore haul up this public servant. This seems to be the simple idea that must have prevailed, forgetting the *dharma* that ought to rule the country.

I must also say this that this question has been discussed in private also and I have tried my best to bring home this elementary point to the minds of the authorities. What they say is, in logic, in theory, tested by all canons of jurisprudence, the contention that I am putting forward is perfectly right but then they seem to feel that when a complaint is proved to be false and frivolous or vexatious, who could compensate the accused other than the person against whom there were those allegations? All because the public servant steps into the box—

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even that may not be necessary as Dr. Kane suggested—but I presume ordinarily any person against whom there is this defamatory matter will have to step into the box and defend himself. If that is so, why is it that his consent is not taken beforehand? Before lodging a complaint one or the other of the following happens, *viz.*, when the aggrieved person, the public servant or the Minister whoever it is, is apprised of the particular defamatory matter and is asked "What do you say in this matter?", he will have either to say "Yes, the defamation is correct" or "it is not". If he says that it is and supposing even that there is some substratum of truth—may not be entirely true—then it is for the Government of the day to take necessary action against the public servant. The moment he indicates his unwillingness to have the complaint lodged against the person who has defamed him and stand up in defence of his own character, a certain presumption arises that there must be something wrong with him and therefore the other provisions of the service regulations can be set afoot, a proper enquiry held and the person duly punished. The powers of the Government are so vast and wide that it is possible for one to take action against any public servant provided he is not coming forward to defend himself.

SHRI H. P. SAKSENA: And no defamation is launched? So, you are going in a vicious circle if you will excuse me

SHRI H. C. DASAPPA: I have no idea of the vicious circle at all. I have seen a number of prosecutions launched—leave alone departmental action against the offending public servants. What prevents the Government of the day from taking action against such a public servant if he says that he is not inclined to defend himself? For it is obvious that if there is an allegation of corruption against him and there is a defamatory matter, either he must clear his conduct before a Court by prosecuting the accused as is provided for or he must face the enquiry before the Government and be answerable to the Government. He can be sacked or prosecuted or suspended or demoted —and any other disciplinary action can be taken against the public servant whose character is found to be incorrect. Therefore, I really don't know what my hon. freind Mr. Saksena is thinking.

SHRI H. P. SAKSENA: I simply mean this that if all this happens, there will be no defamation suit launched on that account. Why are you arguing on a hypothetical proposition? This is my whole point.

SHRI H. C. DASAPPA: I quite see the point that if a public servant is prepared to admit his guilt there is no sense in lodging a complaint against the person who has defamed. It makes no meaning. I don't think they will ever do it. When the sanctioning authority is convinced of the guilt of the public servant, there is no meaning in launching a case against the accused and then having the accused acquitted by a finding that the charge is a false and frivolous one and then get the public servant to pay compensation. It never happens or rather should never happen, but what I say is that it is possible that when he does not give his consent or when he withholds his consent or when he expresses a desire that there should be no complaint lodged for any reason whatever, there could still be a prosecution by the sanctioning authority and it is possible that the public servant will be charged with the offence of having prosecuted the accused. I cannot relate this awarding of compensation and taxing him with the payment of the costs when he has not been in the slightest degree responsible for the prosecution. I am only viewing it from that judicial point of view and that is a simple and reasonable point of view. You cannot haul up a man for an offence that he has not committed. Here the public servant has not committed the offence of launching

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a false or frivolous prosecution. The idea seems to be that he should be accused of launching a false and frivolous prosecution. He has not done it and when he has not done it, then somebody else who is responsible for the prosecution must take the responsibility for it. But here somebody else launches the case and the public servant must pay; it is curious.

SHRI A. DHARAM DAS (Uttar Pradesh): But it was his public conduct that gave rise to the defamatory statement.

SHRI H. C. DASAPPA: Perfectly right. Hang him for it; you may send him to the gallows.

SHRI A. DHARAM DAS: He will go to court against the Government.

SHRI H. C. DASAPPA: But he cannot be prosecuted for the offence of launching a frivolous and false prosecution, for as a matter of fact, he has not even given his consent to it.

SHRI S. MAHANTY: He is an abettor in this offence.

SHRI H. C. DASAPPA: Sir, he may be guilty of committing any wrongful act, of bribery, corruption, nepotism or anything of that sort, but he surely is not guilty of launching a prosecution which is frivolous. I can never understand that and that he is going to be hauled up for that offence. A person is a murderer and you hang him for committing that murder, but surely you do not fine him even Rs. 5/- for having insulted a man, when he has not insulted any one.

MR. CHAIRMAN: All right, please go to the next point.

SHRI H. C. DASAPPA: Yes, Sir, I am going to the next point. In any case, where there is this section 250 of the Criminal Procedure Code, I can see no reason why there should be this extraordinary provision. What is the exceptional circumstance that in this one instance alone a separate and specific provision should be made? Section 250 already provides amply for all kinds of circumstances. I beg with your permission, Sir, to read that section, because it is very relevant and important. It says:

> "if in any case instituted upon complaint or upon information given to a police-officer or to a Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that the accusation against them or any of them was false and either frivolous or vexatious, the Magistrate may, by his order of discharge or acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one, or, if such person is not present direct the issue of a summons to him to appear and show cause as aforesaid."

And there are other provisions relating to giving him show-cause notice and so on That is also provided here.

SHRI J. N. KAUSHAL (Pepsu): But that deals with magistrates and not sessions judges.

SHRI H. C. DASAPPA: Of course, but the principle has already been enunciated there and I should have no objection to a similar provision being inserted here. This is what I have submitted.

There is a lot of difference in the wording or phraseology. My hon. friend over there said that it was with reference to magistrates. Here in the case of sessions judges you have it here in sub-clause (6) of clause 25 of the Bill:

> "If in any case instituted under this section, the Court of Session by which the case is heard discharges or acquits all or any of the accused, and is of opinion that the accusation against them or any of them was false and either frivolous or vaxatious, the Court of Session may, by

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its order of discharge or acquittal, direct the person against whom the offence was alleged to have been committed (other than the President, Vice-President or the Governor or Rajpramukh of a State) to show cause why he should not pay compensation"

Therefore, it is not the person who has complained or upon whose information the complaint is lodged. If in this case a similar provision is adopted that if the man himself complains or if it is with his permission, under section 198, or if it is lodged on the information given by the public servant I should have no objection at all to making him responsible for the prosecution. In fact, my amendment is to that effect. I am only saying that I do not want a person to be punished for an offence for which he is not responsible, whatever other guilt he may have committed or however enormous the other guilt may be. I do not want a clause like this, if you will permit me Sir, to say so, to tarnish this otherwise beautiful piece of legislation.

As I have already said I welcome the provision, because the public servant may be reluctant to go to court for more than one reason. For one thing, in a defamation case, it is the complainant who is virtually in the dock. He is virtually the accused, because the accused has every chance as they say of doing character assassination. Secondly, it involves a lot of absence from his duty. Thirdly, it involves enormous cost and so on. Therefore, the public servant is naturally reluctant to incur all these inconveniences and losses and the present provision of clause 25 is a very salutary one. In fact, Mr. Bisht, who so vehemently supported it, had sought to move an amendment to remove the whole of clause 25 and I was rather surprised.

SHRI J. S. BISHT: No, no. I shall explain the reason. I thought with these new sub-clauses (6), (7), (8), (9) and (10), which have been added and which are so much against it, the clause would be worth nothing.

SHRI H. C. DASAPPA: Sir, that is funny. If you do not like a person's nose, then cut off his head. I say, it is easy enough to omit those sub-clauses. I am entirely in support of Mr. Bisht's contention and others, that this clause relating to compensation may go. Or it is open to them to incorporate section 250 with slight alterations here. In any case, let us leave it to the accused who is the aggrieved party in this case to seek his remedy in a civil court or even in a criminal court for false and vexatious prosecution. Such an extraordinary provision like this is not given in any other case. In any case, I must voice my strong protest against incorporating an extraordinary provision like this which goes against all decent canons of jurisprudence.

SHRI T. S. PATTABIRAMAN (Madras): Sir, I rise to support clause 25 that is under the consideration of the House now.

SHRI S. N. DWIVEDY (Orissa): Oppose?

SHRI T. S. PATTABIRAMAN: No, I support it and the reasons are very clear. The special protection that is being given in this clause to the President, Vice-President, Governors, Rajpramukhs and the Ministers, and also to public servants, is well justified. Nothing that is written on these people's private activities is being covered by this clause. But if the defamation is with regard to anything done in the discharge of public functions, this clause comes in. If a Rajpramukh or the President or the Vice-President is defamed, it is not an individual who is defamed, but the country, or the State, which he represents, or of which he is the symbolic head, is defamed. Therefore, it is necessary to have special provision made in this Bill. That is the reason for the introduction of this clause. Some hon. friends would agree that the clause is good enough for the President, Vice-President and also for Rajpramukhs, but most of them are not able to agree to the inclusion of "Ministers" in this list. But Ministers also have to be included for the reason that

whatever they do, in the capacity of Ministers, also brings in the State and the Government.

Suppose the Minister is being accused of bribery or corruption in the discharge of his duty. It is not only the Minister's reputation that is at stake but it is the reputation of the Government, the reputation of the party that runs the Government that is at stake. The Government is run on the principle of joint responsibility by the Cabinet and it is the reputation of the Cabinet that is at stake and, therefore, the Government is justified in making enquiries. If it is left to the individual Ministers, they may not like to face the Court and they may like to take things easy but it is the reputation of the ruling party that is at stake and as such, it is absolutely necessary that the Government's position must be made clear in the eyes of the public. That is why, even if a Minister is unwilling, even if the Government servant is unwilling, it has been provided that the matter must be brought to the Court so that the truth may be found out. Left to himself, the Minister may not like to go to a Court of law and people will go on writing things against him so that the reputation of the Government will be at stake; not only that, the election chances also will be jeopardised. We know what happened in Madras just before the General Elections. I need not go into the details but a certain set of people went on making allegations against the Ministers which we knew were absolutely and completely false.

SHRI S. N. DWIVEDY: But they were not enquired into.

SHRI T. S. PATTABIRAMAN: If my hon. friend wants proof, I shall give him but I do want to go into that now. I know the truth. They went on doing propaganda against the Ministers that they were corrupt, that they showed favouritism in the discharge of their public duties. In such a way, the people can be generally led to believe that what they say is true. Even the Ministers were unwilling to go to the Court, much against the wishes of the Government. It might affect the reputation of the Party and also affect the election chances. It is in the public interest that if an allegation is made against a Minister in the discharge of his public duty, it must be cleared up in a Court of law. The Ministers and others know it to be false propaganda but they do not want to go to a Court not because they are afraid of their conduct but because they do not want to face the consequences. Under this clause, the Government have done the right thing so that they could go to a Court and prove that what they have done is in the interest of the public.

SHRI S. MAHANTY: May I ask one question? If a Minister is defamed, who will sanction the prosecution against the defamer?

SHRI H. C. MATHUR (Rajasthan): The Secretary.

SHRI T. S. PATTABIRAMAN: If I understand him correctly, the answer is that if a Minister is defamed in the discharge of his public duties then the prosecution will be sanctioned by the Government. I think what is meant by the Secretary to the Council of Ministers is the Cabinet Secretary. People ask as to why a Secretary should give approval for the prosecution. The fact is that the Secretary is an executive authority and he only does what the Government decides. The Secretary is only doing or acting upon what has been decided by the Government. If a Minister is defamed, it is for the Government to decide whether a prosecution should be launched or not. It is not for a single Minister to decide and that is what I want to mention to my hon. friend Mr. Mahanty. It is not left to the sweet will of the individual Minister. The Cabinet as such decides whether the particular matter should be sent to a Court of law in the public interest. It is absolutely necessary that in order to curb the mischievous false propaganda of the political opponents of the existing Government this provision should be enacted. That is the reason why the Opposition does not want such a provision in the law in order that it can carry on false propa-

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ganda, damn the party and the Government. That is why they are opposed to this and not because of any principle, not because they feel that this will go against them.

Secondly, Sir, this matter will be tried not by the executive magistrates but by the District and Sessions Judge and we can be sure that justice will be done. That is also the reason why we welcome this provision in this Bill.

It is said that sanction should be given by the respective persons. It is very clear that the Secretary is giving the sanction only in his executive capacity. He, being an executive officer, gives the sanction which is decided upon by the Government. That is the implication. In the case of the President, Vice-President, Governor or Rajpramukh, the sanction is to be given by the person nominated by him, the reason being that these dignitaries have their own separate secretariats. In the case of the Ministers, either of the Central Government or of the State Government, the competent authority to give the sanction is the Secretary to the Council of Ministers—I think, Sir, the Government means the Cabinet Secretary. That must be the interpretation. The other portion is "any Secretary to the Government authorised in this behalf by the Government concerned". If a Secretary gives permission, he must be specifically authorised by the Government to give such a sanction. That officer will be posted with the full particulars.

Similarly, in the case of any other public servant in connection with the affairs of the Union or of a State, it is the Government concerned that will have to give the sanction. Before the Public Prosecutor is authorised to file a complaint, the authorised officer will go through the facts of the case to find out whether it is possible to prove the allegations in a court of law. So, great care will be taken by Government before sanction is accorded. During the War years, on the words "Government sanction", the Courts have held that the mere wording "Government sanction" will not be sufficient and that it must be proved by the prosecution that the Government applied their mind and that the Government went into the merits of the case in detail. That has been our experience. There are safeguards enough and, therefore, there will be no abuse of the provisions of the law.

I come now to the question of compensation. As my learned friend says, section 250 of the Criminal Procedure Code is there and one of my friends here said that it applies only to a magistrate's court. I am afraid that interpretation is not very correct for we have a new clause here which makes the District and Sessions Judge take cognizance of the cases directly. That is why a new sub-clause and a new provision has been made that in case of a frivolous or vexatious complaint, compensation should be paid but I am afraid Government have missed the mark. It is a well-established principle of criminal jurisprudence that the man who sets the law in motion should be responsible for it. That is why, the man who files the F.I.R. and not the Public Prosecutor—*e.g.*, in a murder case—is held responsible. In any case, the man who files the F.I.R., the man who sets the law in motion is responsible for the contents of the same. That is the principle that has been accepted. Similarly, under section 250 of the Criminal Procedure Code, it has been well laid down as to who should be made responsible for the payment of compensation if the court finds that the institution of proceedings is vexatious or false. The wording is very clear. "If in any case instituted upon complaint or upon information given to a police-officer or to a magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that the accusation against them or any of them was false and either frivolous or vexatious, the Magistrate may, by his order of discharge or acquittal, if the person upon whose complaint or

information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one, or, if such person is not present direct the issue of a summons to him....." So, the Criminal Procedure Code, under section 250, makes it very clear that the person who will be liable to pay the compensation will be the person upon whose complaint or information or accusation, the law is set in motion. I wonder, Sir, what necessity there was for the Government to deviate from that accepted principle. It has not been made clear at all. I wonder whether it will be possible for any man, in the case of a frivolous or vexatious complaint, to get any compensation from the Government at all. The compensation is to be paid by the Minister or the Government servant who sets the law in motion. The provision here says: ".....by his order of discharge or acquittal, ... call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one, ..." The person against whom defamation was made will come and say that he never complained, that he never set the law in motion and that he was not responsible. The Court will certainly take that into consideration and the Court will say that because he was not responsible for setting the law in motion, he shall not have to pay any compensation. What is given by the right hand will be denied by the left hand if the provision is allowed to exist as it is. It will only be illusory. If we want the aggrieved person to get compensation, there is a definite provision existing in the criminal jurisprudence of the country. There is a section which says that the Court can direct the person on whose complaint or information the case was started to pay compensation if the case proves to be false or vexatious. What will happen in the case of the President, Vice-President, the Governor or the Rajpramukh of a State? What is their position? I would like the hon. Minister to clarify the position as to who will pay the compensation in their cases. Will the Court direct the Rajpramukh to pay compensation or if a Secretary had sanctioned the prosecution, ask him to pay the compensation? Or, will it ask the man who, according to the criminal jurisprudence, set the law in motion, namely, the Public Prosecutor, to pay?

SHRI H. C. DASAPPA: Nobody.

SHRI T. S. PATTABIRAMAN: I respectfully disagree because even then section 250 of the Criminal Procedure Code can be operated. It has not been said that they are excluded from the payment of compensation. It is only an inference.

SHRI J. S. BISHT: May I interrupt the hon. Member? If he looks to sub-clause (a) of clause (3) he will find that the President, the Vice-President or the Governor or Rajpramukh have to consent to the launching of the prosecution; it is not in the power of the Government to launch a prosecution.

SHRI T. S. PATTABIRAMAN: My friend reads more meaning than is there. Sub-clause (a) says: "in the case of the President or the Vice-President or the Governor or Rajpramukh of a State, of any Secretary to the Government authorised by him in this behalf." It is not actually giving consent to the prosecution.

SHRI. J. S. BISHT: 'Authorised by him', that is, authorised by the President or the Vice-President or the Governor or Rajpramukh.

SHRI T. S. PATTABIRAMAN: He may be authorising him to communicate the sanction, but this does not mean that he is giving his consent for the prosecution; that is a different thing. I personally feel that 'authorising' does not mean giving 'consent'. That is my humble submission, Sir.

(Interruption)

MR. CHAIRMAN: Well, that is a matter of opinion.

SHRI S. MAHANTY: Does not authorisation carry an element of consent?

SHRI H. C. DASAPPA: It may be a general authority that whenever there

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is a charge of defamation such and such secretary will sanction the lodging of complaint. It may be a general one.

SHRI T. S. PATTABIRAMAN: I find even now, within this House there are different opinions and different interpretations. I would request Government to clarify.

Then if Government servants have to pay compensation, why should not the Rajpramukh or Governor or the Vice-President or the President also pay it? Is it Government's intention that they would be completely exempt from making such payment, even if the case has been vexatious of unjust? I do not understand the meaning there. I would like the Government to clarify what is their intention in the matter and I am afraid, Sir, unless the intention is clarified it will be very difficult to follow the meaning. I think the court will take recourse to section 250 of the Criminal Procedure Code and also make the public prosecutor pay compensation in the above-mentioned cases because in every such case it will be the public prosecutor who will lay the complaint.

Then the clause as it makes the compensation illusory and not real and it is where the man who is affected may not be examined as a witness at all. See sub-clause (5) line 24 onward: "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." The Sessions Court may come to the conclusion in a case that the person against whom an offence is said to have been committed need not be examined as a witness.

Suppose that is the case, will it be possible to make a man pay compensation if he is not even examined as a witness, Sir? It will be impossible for the court to make him pay compensation. That is why I say if you want to make the compensation clause real, make it really real, and not make it illusory. If a man is not even examined as a witness by the Sessions Court, can you ever think that he can be made to pay compensation? Therefore, under these circumstances, the wording of the clause is very, very unhappy and in my opinion it is a very bad clause and before asking us to vote for this particular clause I would like the hon. Minister to give a good clarification that will be of a convincing nature.

ANNOUNCEMENT REGARDING EXTENSION OF SESSION

MR. CHAIRMAN: I have to inform the House that the current session will be extended up to the 4th May for the transaction of Government business. There will, however, be no Question Hour during the extended period.

Yes, Mr. Kishen Chand.

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

SHRI KISHEN CHAND (Hyderabad): Mr. Chairman, I am totally opposed to this addition of clause 25 in this Criminal Procedure Code.

[MR. DEPUTY CHAIRMAN in the Chair.]

Hon. Members who have spoken in favour of this clause are divided among themselves. Some hon. Members do not like sub-clauses (6) to (10). Other Members do not like certain other parts of the clause, and the reasons offered are so varied that it is very difficult to counteract them and give a suitable reply because there is divergence among themselves. No hon. Members has come forward really fully to support the clause in its present form and give reasons for the support.

I submit, Sir, that our Criminal Procedure Code and the Penal Code were established in our country by the British Government. They had all sorts of rules and regulations for sedition. They had very repressive press laws and yet in the Penal Code and the Criminal Procedure Code no special privilege was shown to the Executive Councillors—the Ministers