[Shri T. S. Pattabiraman.]

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.

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## 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.

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## 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

were called Executive Councillors in those days—and other public servants. The British had a sense of justice and they thought it went against their grain if any sort of discrimination of this type was made. Our Government is a free Republic now. What has happened and what circumstances have changed that the Government feels the need for inserting a clause of this type ? I should have thought that in a free country where we have given freedom of speech, where it is a part of the Fundamental Rights, there should have been no such special privileges given to Government servants. Therefore, we have got to examine carefully what is the fear in the mind of Ministers and public servants for which the Government should bring forward this clause in the Bill. I submit, Sir, as pointed out by some hon. Members, if this clause was confined to the President, the Vice-President, the Governors and the Rajpramukhs, who are really occupying these posts as posts of honour and who really do not carry out any executive work on their own initiative, there would have been some justification. But to include in this list Ministers and all public servants widens the scope of this clause very much.

Now in our country commercial undertakings are being carried on by Government, for instance railways, and all railway employees are also public servants, and therefore this will be applicable to all railway employees. They will also come under the definition of 'public servant' and will be entitled to the privilege that if a defamatory article is printed against them, the public prosecutor will have to launch a case against the press.

SHRI J. S. BISHT: Government sanction is required in every case.

SHRI KISHEN CHAND: Oh, yes, Government sanction is required, and even in the matter of Government sanction, the issue has been raised by the hon. Member, who spoke before me, asking whether the word 'authorisation' means 'consent' of the party, or it only means a formal authorisation. What I say in this connection is that it only means a general authorisation and the secretary, when he is giving the sanction, is not asking the President or the Vice-President or the Governor or the Rajpramukh whether he consents to it, but in the normal course of affairs he is asking the public prosecutor to launch the prosecution. Therefore, there is no question of consent involved in it. It is a sort of procedural matter. It is a part of the procedure which is adopted by the secretary in the normal course of his work to inform the public prosecutor to launch the prosecution.

Sir, I was saying that we must really examine as to what are the new conditions that have arisen in free India for which the Government wants this new clause. Hon. Members have already pointed out that it is against 'equality before law'. Mr. Hegde said that they formed a class and if once you make them a class there is no idea of discrimination. I should like to know from the hon. Member who propounded this point of view whether the Government servants form a class by themselves when these Government servants include from the *chowkidar* to the highest authority, the President of India. How can they be classified as coming in one group? And therefore this contention is not right. This clause will lead to discrimination. It is against the spirit of the Constitution and I am sure that if the matter is referred to the Supreme Court, it will be held to be *ultra vires* because the Government servants are not a class by themselves, as they are not performing any distinctive work. And therefore, Sir, this is discriminatory.

Secondly, Sir, you know it is very difficult to prove corruption. In the various cases it has launched, the Government has found out how difficult it is to prove corruption, to prove nepotism. It is a well known fact that when discussion was going on in this House on corruption among Government servants, every hon. Member was very eloquent that there is widespread corruption in the country. And yet the Government finds it very difficult to launch prosecution against

[Shri Kishen Chand.]

corruption. One solitary case—the fertiliser case—took nearly two to three years and then after a great deal of expense the Government was able to prove some sort of corruption and the officer was convicted. Now, the machinery of the Government will be up against the writer in any newspaper of a defamatory article and the writer will have to prove that the officer concerned was guilty of corruption or nepotism. Sir, you have been a lawyer and you know that in a criminal case the task of the Defence is very difficult. It is very easy for the Prosecution to launch a case and ask the accused to prove his case. In common parlance it is said that it is best to be a defendant in a civil suit and a petitioner or a prosecutor in a criminal case. So we are really putting the whole authority of the Government at the disposal of the defamed person and the poor writer in a newspaper will have to attend the court every day, employ a legal adviser, produce witnesses and what not, to justify his charges made in that defamatory article. I ask you, Sir, is it fair and is it putting the Defence and the Prosecution on par with each other? Is it fair to ask the accused, which means the author of the defamatory article, to undergo all this expense and to prove the most difficult thing—the nepotism and corruption of officers? Sir, this will really gag all criticism. If the idea of the Government and that of the Ministers is to have no criticism at all, then this clause can be kept. Even fair criticism will not be possible. I may point out that truth cannot be hidden for a long time.

You know the newsmagazine "Blitz" was for a long time against the Chief Minister of Bombay and the Prime Minister of India. It was continuously publishing articles against these two honourable men but after some time when the paper came to know the truth, it completely changed its policy and now you read any issue of the "Blitz" and you will find it is full of praise for the Chief Minister of Bombay and the Prime Minister of India.

SHRI H. P. SAKSENA: What do you prove by it?

SHRI KISHEN CHAND: I am trying to prove that sometimes under an honest misconception of facts a newspaper may write defamatory articles but when later on it finds that it has made a mistake, it revises its position. What I am trying to show is that it is far better to allow the newspaper to carry on and find out the truth than to launch prosecution against it, because you can win more by love than by this type of prosecution. And this method will lead to the washing of dirty linen in public. There will be charges and countercharges; naturally in trying to defend itself, the newspaper is going to utilise all means at its command to prove sometimes even false charges against the person concerned. I do not want this type of charges and countercharges in our public life. As it is, public life in India is dirty and the job of the Ministers is very hard. I hope that the hon. Minister in charge of this Bill will not like to make it harder still by allowing this type of prosecutions to be launched.

We have got our Press Laws. When the matter of Press Laws was being discussed in this House, an hon. Member said that there is yellow Press, irresponsible Press. When we have got these Press Laws which will control the yellow Press by the imposition of a deposit and by other means, why do you want this additional power for the Government to launch prosecutions? Therefore, in conclusion, I will appeal to the hon. Minister to withdraw this clause entirely, but if he is not prepared to do that, he may keep only the President, the Vice-President, the Governors and the Rajpramukhs and remove the other officers and Ministers from this list because they are public men and they must really defend themselves.

SHRI J. N. KAUSHAL: Sir, I am one of those who are oppossed to this clause. The whole of the criminal law administration in this country is

based on some fundamental concepts and one fundamental concept is that the society at large is interested—if any offence is committed—and it is on that basis that the Indian Penal Code and the Criminal Procedure Code were drafted by the British Government.

But then some exceptions were made to this rule and that was that whenever an injury of a private character was committed the society had nothing to do with it and defamation and certain offences against marriage were taken out of the general rule that anybody could set the criminal law in motion and there was very good reason behind it. Now, as has been pointed out here on the floor of this House, when the British Government ruled this country, they never tried to create any protection; they never tried to create a different procedure for their public servants. On the other hand, they said that whenever any Government servant was defamed, it was entirely his business to go and defend himself in a court of law. The society at large has nothing to do with it.

Mr. Kishen Chand has very pertinently pointed out that Government has not made out any clear case as to why the Government should feel the necessity that they should come out to protect their paid officials if they are defamed, if some person writes against them or criticises them in the discharge of their public duties. I personally feel that there is a lot of justification for saying that this will stifle even legitimate criticism because everybody will be afraid of proceedings being launched by the Government.

Now, one fact which strikes everybody is that originally when the Bill was drafted the Government was of this opinion that perhaps the time had come when these offences should be made cognizable. I could very well understand if Parliament had also endorsed it. We could have felt that public opinion has come to this view that this freedom of writing is being greatly abused but then we know that as soon as the Bill went to the Joint Committee, they turned out that proposal and they said that the offences could not be made cognizable.

I do not know as to why any special procedure should be laid down. Either the offence should be made cognizable or it should be left as it is. The Joint Committee and the Lok Sabha are now of this opinion that the offences should not be made cognizable but yet some special procedure should be evolved for enquiring into those offences. This by itself shows that there is not at all any justification for the Government to take these cases out of the purview of section 198 of the Criminal Procedure Code. This shows a great conflict in the mind of the Members themselves. At one place they think that the fundamental concept should not be changed and the fundamental concept is that whenever there is a private injury that person should go and defend himself in a court of law. Well, that is the fundamental concept and that is why they turned down the proposal of the Government that this offence should be made cognizable. But, on the other hand, people think that when Government servants are defamed it is the Government which is also defamed, and some right must be given to the Government to launch prosecutions. Well, I ask actually whether this view is correct.

SHRI J. S. BISHT: Do you want defamation to be made a cognizable offence?

SHRI J. N. KAUSHAL: No. But, on the other hand, I want the clause in the Criminal Procedure Code to remain as it is. I want the whole clause in the Bill to be deleted. I am just pointing out to you that the Government was obsessed with one idea and the Government gave expression to their obsession by making this offence cognizable, but the Select Committee never agreed to it. Even then the Select Committee could not find—I would say with all humility—courage enough to turn down the proposal altogether. They have again tried to meet the wishes of the Government halfway which there was no occasion to do.

[Shri J. N. Kaushal.]

And that is why there is a lot of criticism in this House. My friend Mr. Bisht is not prepared to accept the clause as is it. Why? Because the clause is a jumble of contradictions and those contradictions must come whenever there is contradiction, whenever there is jumble in our own minds; and our jumbled mind is very much apparent from the various safeguards which are now being tried to be introduced either in favour of one party or in favour of the other. Otherwise, the one main principle is that these offences are offences against a private person; and if that person does not find courage enough to go to a court of law to defend himself, why should the society bother if that man is defamed?

And as for the argument that the Government is also defamed, well, that argument does not stand one moment's scrutiny. If there is a Minister or there is a government official against whom scandalous things have appeared in the press, it is open to the Government to ask that officer to go and clear his conduct in a court of law or to go out of service. That man cannot remain in service for one moment if he is not prepared to go and clear his conduct in a court of law. And my hon. friends have said again and again that there may be a hundred reasons why the man may be afraid to go to a court of law, but for a hundred reasons the Government is not precluded from holding a departmental enquiry. If in the departmental enquiry the allegations are established against him, that man should be sacked. If the allegations are not established, then that man has the greater cause to go to a court of law and defend himself and file a suit for defamation and launch prosecution for defamation.

Therefore, my submission to this House is that we in the Rajya Sabha should not agree to this provision, as is expected of elder statesmen of the country. This type of protection which is needed for Government servants, I would say, was entirely due to one fact and that is that whenever Government servants are defamed, the Government is also defamed. I do not agree to this. If criticism is levelled against an individual public servant, the Government is not defamed. If some of the officers of the Government indulge in corruption, if some of the officers of the Government indulge in nepotism, how can we say that the Government has become corrupt, or the Government is indulging in nepotism? The Government does not allow any of their servants to indulge in corruption and nepotism. And instead of taking the help of the criminal law, the Government should use their own power and the power is to enquire into the conduct of those Government servants, either to dismiss them or to ask them to clear their conduct in a court of law. This sort of protection which is now sought to be given is absolutely uncalled for and it will only stifle even legitimate criticism.

Now, again, so many defects have been pointed out and Mr. Dasappa was very eloquent in one thing. That is, why should a public servant be asked to pay compensation who never agreed to the prosecution? Well, I entirely agree with him. But then would my hon. friend agree that the Public Prosecutor, the poor man, should be asked to give the compensation?

SHRI H. C. DASAPPA: I did not say that.

SHRI J. N. KAUSHAL: The Public Prosecutor should not pay compensation; the public servant who never agreed to that complaint being filed should not pay compensation. The Government should pay compensation then. The Government should be bold enough to say that if the complaint is found to be false and vexatious, we will pay the compensation. Why should the Government shirk their responsibility? They are moving the criminal law, they are moving the machinery of criminal law to run down a person who makes allegations against one of their own servants. If the Government want their conduct to be cleared in the eyes of law, then either the Government should pay the

compensation in case of frivolous and vexatious complaints, or nobody else can be charged with that responsibility And that is why I say that so many contradictions have crept into the various clauses since one fundamental principle has been ignored and that fundamental principle is that these injuries are injuries of a private character and, therefore those persons alone who have been defamed should be asked to go and clear their conduct in a court of law and the Government has nothing to do with it Society at large has nothing to do with it On the other hand, society is very much interested in seeing that people should not be afraid to write defamatory articles if there is truth in them And we all know that truth gives complete protection even in a court of law from defamation If that truth has been resorted to, those allegations have been resorted to in the public interest there is enough safeguard for those purposes

My submission to the honourable House is that absolutely no case has been made out for trying to make a departure from the salutary provision which was enacted in section 198 of the Criminal Procedure Code If you look carefully at the fundamental changes which have been brought about by the present Criminal Procedure (Amendment) Bill, some of the things are to the one effect that the Government feels that perhaps they have little power to run down people Perhaps they have little power to run down the accused in a court of law. Well, I would very vehemently submit in the clause which has been held over, clause 162, this fear lies in that clause also. They want that whatever is done by the police seems to be sacrosanct to the Government Whatever is done by their own officers that, again, seems to be sacrosanct to them. I would say that this goes very much against the spirit of freedom in the country Nothing is going to happen if criticisms are levelled against corrupt Government officers In fact, it is the Government who should discharge their duty very properly by running down, in their own departments, corrupt officers, rather than try to stifle legitimate criticism I would, therefore, with all the emphasis at my command request this august House not to agree to this amendment because this particular provision is very much derogatory to the spirit of freedom, to the spirit of the Welfare State which we are trying to introduce in this country

MR DEPUTY CHAIRMAN: Mr Datar

DR W S BARLINGAY (Madhya Pradesh) May I just say a few words, Sir?

MR DEPUTY CHAIRMAN: I had called him much earlier

DR W S BARLINGAY: But I will not take more than two minutes.

Mr Deputy Chairman, I do not want to add to the arguments which have already been advanced in this House with regard to this clause 25 of this Bill Most of the arguments are really very weighty and I do hope the hon Minister will consider them

But I do want to draw the attention of the House to sub-clause (6) of clause 25 There you will find that an exception has been made in the case of the President, Vice-President, Governor or Rajpramukh of a State Now, I say with all respect to the hon Minister that to my mind there is no justification whatever for making this exception If the complaint is found to be frivolous, then, whether the original defamation was against a petty Government official or whether it was against the President or the Vice-President or against any high dignitary of the State, I do not think that that should really make any difference at all On the contrary, what I would suggest is that if defamatory statements against the President or such high dignitaries are found to be true, then there is every reason to suppose that that President or the Vice-President, or the high dignitary in the State, does not deserve to be in office, and therefore, it should be his duty forthwith to resign from the office that he holds.

[Dr. W. S. Barlingay.]

I think, Sir, that the weightage of argument is really on the other side. I do not want to take the time of the House in dilating upon my argument, but I feel that the higher the position of the dignitary concerned, the greater is the responsibility on him to behave in a righteous, in a proper, and in a dignified manner. And if he does not do it, then he deserves to resign forthwith. Thank you, Sir.

SHRI B. N. DATAR: Mr. Deputy Chairman, in the course of a very long debate on this clause, objections have been taken, in the first instance, regarding the propriety of the clause itself, and secondly, Sir, there are also objections to the various provisions contained in this clause, as it stands.

So far as the first general objection is concerned, Sir, I have already stated that there is no question of any discrimination at all, because the same provision continues in respect of a prosecution filed by a Public Prosecutor as in respect of a complaint filed by a private person. All that the Government are interested in is that if the defamation is true, then the man must go out, and if the defamation is not true, then the defamer has to pay the penalties under the Indian Penal Code. Certain other question also should be understood.

SHRI H. N. KUNZRU: Does my hon. friend bear in mind the fact that the magistrate has been given the absolute discretion to exempt the public servant who is supposed to be defamed, from appearing before the court to give evidence?

SHRI B. N. DATAR: I am going to explain that particular provision at great length, Sir, when I come to that particular point. But it will be noted that so far as that provision is concerned, it is only of an exceptional nature.

SHRI H. N. KUNZRU: The language does not make it exceptional. Whatever your intentions may be.....

SHRI B. N. DATAR: Sir, what is required is faith in the court, and we must believe that at least so far as the Sessions Judges are concerned, they would not grant permission for exemption except under exceptional circumstances. In all cases, Sir, where such powers are given, the Courts always exercise their powers with great restraint and after using their judicial discretion. So, what has been done.....

SHRI H. N. KUNZRU: This is not the point. We have section 198 of the Criminal Procedure Code before us. Certain exceptions are allowed by that section. They have been specified there. Why was it not possible for the Government, if it wanted any exceptions to be made, to specify the cases in the amendments that they have proposed?

SHRI B. N. DATAR: That is exactly what has been done, Sir. So far as these cases are concerned, the cases in respect of which the Public Prosecutor has to file a complaint are those which arise out of libel. And then, Sir, it has also been made clear that such complaints have to be filed after certain enquiries are made by them. It is not that in all cases, Government will be filing such complaints. There are certain cases where the public servants would not like to go before a court of law. I have pointed that out on a number of occasions.

And therefore, Sir, I was explaining the position, so far as the general scheme under the Indian Penal Code, as also under the Criminal Procedure Code, was concerned. The general rule in this respect is that whenever an offence has been committed, it is open to any person to set the criminal law in motion, so that any person can be a complainant, provided there is the commission of a crime.

To this, an exception has been provided, so far as marriage offences and offences of defamation are concerned. Now, here I am not dealing with the question of marriages at all, because marriage is a completely private affair, and, therefore, certain persons have to file complaints in that respect. But here, what happens is this. When we have to deal with defamation, we find that defamation is two-fold. It may be a

defamation in respect of even the private conduct of a public servant. It should be noted, Sir, that a public servant has a public aspect also. When a public servant has been defamed in respect of his private conduct or character, there is no question of filing any complaint, so far as the Government are concerned. It is entirely for him to protect his own reputation or not to protect it. That is a matter entirely between him and the defamer.

But it has to be understood very clearly, Sir, that a public servant's conduct has also a public character. And whenever there has been a criticism amounting to defamation—not an ordinary criticism, but a criticism that transcends the bounds of ordinary, dignified and responsible character, and when it amounts to an offence under the Indian Penal Code—then a question arises as to whether in the Government machinery there ought to be such a man whose conduct has not been above board, and who has committed certain other offences, say, like corruption or criminal misconduct. We have got now an offence regarding criminal misconduct also. Under these circumstances, it assumes a public character, and therefore, the Government will be perfectly justified in seeing to it that either the defamer has been brought to book or the offender, namely, the person defamed has been brought to book. That is exactly the object which is in the heart of all of us, in the interest of the purity of administration. The Government desire that in such cases the matter should not be slurred over. It is quite likely, Sir, that the Government servant, or whoever he is, would not like to face a public enquiry. Under these circumstances, the Government have stepped in. And there might be cases—and there have been cases—where the officers are nervous. An officer may or may not be guilty. An officer may be absolutely nervous to enter a witness box. Under these circumstances, there may be cases where, as I have already stated, the officers may not like to go into the witness box.

Now this question has been considered at great length in the Press Commission's Report, so far as the majority report is concerned. There, on a number of occasions, they have pointed out that when there is the danger of cross-examination and when the cross examination goes on, then naturally the cross-examination covers a very wide ground. In fact, they have stated that in some cases it would not be possible even for the court or for the magistrate to control the cross-examination, because the cross-examination is sometimes had only for the purpose of further blackmail. Under these circumstances, you will understand, Sir, that, as the Commission has pointed out, if there is mud-slinging, then some mud does remain, and there are persons who would believe that the particular accusation that was made, the defamation that was made, was entirely wrong. And therefore, there is, in general, a reluctance on the part of the public servants concerned to go to the witness box. That is the reason why, it might be pointed out here, the Press Commission have suggested that certain amendments should be made, so far as the trying of a presumption is concerned. And if such presumption is drawn, there should be a check or control of the general cross-examination under those circumstances.....

1 P.M.

SHRI H. N. KUNZRU: Of the general cross-examination?

SHRI B. N. DATAR: Of the Government servant, of the person defamed. They have stated very correctly that under the present Law of Evidence, it is open to the cross-examiner to traverse a very wide ground. They also state that in such cases matters which ought not to come within the scope of cross-examination are often allowed to come in, and this naturally is unfair so far as the reputation of the public servant or the person defamed is concerned. Therefore, you will find that in the course of their recommendations they have also suggested that the present

law in this respect, so far as the general powers of cross-examination are concerned, ought to be modified by certain amendments.

MR. DEPUTY CHAIRMAN: You can continue after lunch.

The House stands adjourned till 2-30 P.M.

The House then adjourned for lunch at one of the clock

The House reassembled after lunch at half past two of the clock,

[MR. DEPUTY CHIRMAN in the Chair.]

SHRI B. N. DATAR: Mr Deputy Chairman, I was this morning dealing with the public aspects of private acts which constitute certain offences, and I pointed out how it was necessary whenever there was this public aspect that the Government should step in and carry on the prosecution. You are aware that whenever there are certain offences committed, they have a bearing on law and order, they have a bearing on public decency and they have a bearing on a number of other circumstances connected with the public or with the Government which after all is a representative of the public. An offence might otherwise appear to be a perfectly private one, say, for example, when a theft is committed. But a theft has certain aspects, a murder also has certain aspects where the public has to step in and this is the reason why in such cases the Government, *i.e.*, the public has to step in and carry on the prosecution. Therefore, when in the case of a defamation which might be ordinarily a private affair, there are certain public aspects which Government have to take into account, then only should the Government have a right to intervene and to vindicate the course of justice. This justice might be to the public or to the Government and in that case it will be found that whatever has been stated against the public acts of a Government servant—and the public acts have a bearing on his participation in the administration of the country—then in that case you will agree that the interests of the public are advanced.

Similarly also where it is found that a public servant has been defamed without any reason at all, that it is not merely an ordinary criticism but it is something coming within the mischief of the definition of 'defamation', then in the interests of that particular Government servant, it is essential that Government should step in. In both these cases you will find that the object that the Government have is to maintain the purity of administration at the highest level. It is not that the honour of A, B or C is to be vindicated but the honour of A, provided he is a public servant, deserves to be fully maintained. For this purpose Government have decided that in this particular case there ought to be an opportunity open to the Government, subject to certain conditions which have been laid down, where Government can step in and have a prosecution.

SHRI KISHEN CHAND: May I know from the hon. Minister what is the law in the U.K. in this connection?

SHRI B. N. DATAR: We are governed by our own conditions. I am not going to point out what is the condition in the U.K. or in other countries. I would like to point out that here it is absolutely essential that in certain cases, subject to certain reservations, Government will have to step in.

Then, so far as the various provisions in clause 25 are concerned, I would like to explain them and while explaining, I would meet also the various objections raised in this respect.

DR. W. S. BARLINGAY: Does it occur anywhere in the world?

SHRI B. N. DATAR: So far as proposed section 198-B is concerned, the offence for which action has to be taken is only in respect of libel and not in respect of slander at all. I would agree that slander also has a very insidious effect. Slander is something like a whispering campaign but after all it is confined to certain persons or persons who speak but a libel is of a serious nature and it was felt in the Lok Sabha that slander should be excepted. Therefore Government

excepted it as a matter of concession to the opinion of the Lok Sabha and therefore we are concerned here only with the cases of libel.

Then it was contended that so far as different categories of persons are concerned, why a difference is made. Now I might point out to this House that so far as the President, the Vice-President, the Governor or Rajpramukh are concerned they are very high dignitaries, and in that case the question has been left entirely to them. It would be derogatory to their interests and position if the prosecution was to be filed at the instance of the Government as such and hence it is that in such cases the matter has been left exclusively to the Governor, Rajpramukh, the President and the Vice-President.

Then it was contended assuming that these persons also are guilty of certain acts of misconduct, then what is the position in law? So far as Constitution is concerned, I may point out to this House that under Article 361 of the Constitution, the President, Governor and Rajpramukh have been exempted from the payment of compensation in defamation cases and no criminal or civil proceedings may be instituted against them. Therefore, they are completely exempted so long as they continue to occupy these posts. It will be understood, assuming that these persons themselves who are complainants are guilty of such acts —and in my humble opinion, it would be extremely rare—you will find that these persons will surely resign rather than continue by taking the odium. So, that remedy is already there and therefore no further action is necessary in this case and the complaint has to be authorised by the President, Vice-President, the Governor or Rajpramukh as the case may be.

Now, so far as the Ministers and the public servants are concerned, here it will be found that it is the Government that has to authorize the starting of a particular prosecution. It may happen in an extremely rare case that the Minister or a public servant may not agree. In fact, it is one of the grounds made out by my friend Shri Dasappa. The case is that ultimately the decision has to rest not with the particular officer, be he either a Minister or a public servant, but with the Government and Government will take a decision. Ordinarily, so far as public servants of a lower order are concerned, it might be that the head of the department might take the decision but ultimately it will be scrutinised at the highest quarter and authorisation would be the authorisation of the Government. Then, another objection was taken that in these cases the Secretary to the Government would be authorised and it was stated that the Secretary might be an officer who is subordinate to the Minister. Therefore, how was it that a Secretary was to issue authorisation to a Public Prosecutor? I may point out here to this hon. House that so far as the Secretary is concerned, the Secretary is the formal channel through which the Government acts so far as the announcement of their decisions or their policies are concerned. So it is not individual act of the Secretary but it is the act of the Government and when a Minister is concerned, naturally it is the Cabinet that will take the decision because the Cabinet will look at the question from the public viewpoint and therefore it is only the Secretary through whose signature the particular permission is issued or the authorisation is issued. Beyond that the Secretary will not be personally liable nor would the Public Prosecutor be. This is so far as the distinction that has been made between the four dignitaries on the one hand and the Ministers or public servants on the other hand. In this case the authority has to be issued by the Government formally through the Secretary of the Government concerned. Then, in the case of any other public servant, it is the Government concerned. At an earlier stage in the course of discussion it was stated that the department or the officer under whom a particular defamed officer was working, the head of the department, ought to have the authority or a person who had the authority to terminate the services of the defamed officer should have also the

[Shri B. N. Datar.]

authority to issue the sanction in respect of the initiation of a prosecution in this connection. It was considered that there might be hard cases and that ultimately the highest authority of the State or of the Nation as a whole should take this question upon itself and therefore you will find in sub-clause (c) in clause 3 it has been.....

SHRI BHUPESH GUPTA: The highest authority would be an individual officer ultimately and can we have some idea as to who these officers are likely to be? When you talk about the highest authority, we know what it would be ordinarily.

SHRI B. N. DATAR: The highest authority so far as the Ministers are concerned would be the Cabinet, the Cabinet at the Union Centre or in the State as the case may be. And so far as the other officers are concerned, generally this question would be considered by the departmental head and ultimately it will pass in the name of the Government, because the authorisation will be issued by the Secretary to the Ministry concerned. Therefore, you will find that this particular safeguard has been used for the purpose of seeing that no unnecessary prosecution is started in such cases.

Then, coming to sub-clause (4) the period of 6 months has been purposely put down for the purpose of avoiding the continuance of what was called here the "Damocles Sword" for all time to come. If the particular defamed officer desires to file a complaint then he can follow the course and there is no question of limitation at all. But if the Government wants to step in, then the Government must step in and initiate the proceedings within six months. That is why this period has been put in. Otherwise it is likely that the matter might take a long time. The particular defamer or the person accused should have some opportunity of feeling that either the prosecution has been filed or that no prosecution would be filed at all. It is for this purpose and only for this purpose of expediting the previous enquiries that the Government, would have to make in such cases, that this limit of a period of six months has been laid down, in the interest of the accused.

So far as sub-clause (5) is concerned, my hon. friend Dr. Kunzru was very unhappy that we have introduced here a reservation in these words: "unless the Court of Session, for reasons to be recorded otherwise directs". Now, I may submit that such a provision occurs in all cases wherever judicial discretion has to be used by a court, it may be a Sessions Court or any other court, it may be a Magistrate's Court; it is used whenever there are exceptional circumstances. If for example, there is a libel, a written libel, and in that particular case the matter or the writting is *per se* defamatory, in that case, the Magistrate or the Sessions Judge might feel that there would be no need for putting this complainant or the officer in the witness box. The very phrase in which it has been put, the form in which that has been put gives this power to the Sessions Judge. It may be noted that the general rule is that the defamed officer "shall" come to the witness box, and he "shall" be examined. The word used is "shall", that he shall be examined as a witness for the prosecution. The word "shall" which is of an imperative nature has been used and that will be the general rule and he will have to be examined. But only in certain exceptional cases where the magistrate uses his judicial discretion, not on the arbitrary desire of the party to the prosecution, would permission either be sought or granted by the Court. Therefore, my submission is this. So far as Sessions Judges are concerned, they are very high officers. A Sessions Judge is a very high officer of great judicial experience and if we trust that he would be doing justice in all cases, I am quite confident that even so far as the exercise of his discretion in these cases is concerned, it will be done in a judicial manner, it would not be done in an arbitrary way, much less would it be done in a way partial to the prosecu-

tion. There is absolutely no desire, I may point out, on the part of the Government, to keep the officers away from the witness box. Therefore, this general rule has been accepted here and the exact purport of the rule has been made clear by using the most imperative expression "shall" in the clause. Only, if the matter is of a highly exceptional nature—and there would be not even one in a hundred—has the Sessions Judge been given the discretion to dispense with the examination of the person.

Sir, it was also contended that this person shall be the first witness. Ordinarily he will be the first witness. But it may be that there may be a formal witness sometimes, some formal thing might have to be proved. Suppose an officer has to come from a distance and has to go back as early as possible. If we say that in all cases, invariably, he shall be the first witness, then some technical difficulties might arise. Therefore the matter has been kept as it is. But I can assure the House that there is no desire either not to put the defamed officer in the witness box or to defer his examination. In fact, I might point out that ultimately the whole case ordinarily depends upon the way he fares in the witness box. If, for example, there is a defamatory statement, in which the officer has been charged with corruption or some other malpractice, then in that case, naturally his evidence is of the most material kind and it would not be in the interest of the prosecution at all, when the Government themselves have taken upon themselves the duty of starting the prosecution proceedings, not to do so, and the prosecution would be absolutely ill-advised if they did not put this particular officer in the witness box. I desire that.....

SHRI BHUPESH GUPTA: But it may well be that in order to avoid the cross-examination of that particular officer the prosecution would lead other types of evidence.

SHRI B. N. DATAR: In that case the Court is there and we have got the rule of law, the rule of evidence that the best evidence and the most direct evidence has to be produced; and if in place of the best evidence, indirect evidence or secondary evidence is led, then naturally, the matter would be subjected to adverse inference against the prosecution. But that is unlikely, especially when the Government have taken the initiative of filing the prosecution through the Public Prosecutor. In such cases there ought to be no suspicion about the *bona fides* of the Government. The fact that the Government have started the prosecution means that Government are, at least *prima facie* against the officer, because they are going to subject him to a trial in the form of a prosecution.

SHRI BHUPESH GUPTA: Do I understand that by sanctioning this prosecution, the Government is putting the officer on trial? Strange expressions. There should be some sense of proportion.

SHRI B. N. DATAR: I am afraid my hon. friend neither hears nor appreciates. Really it will be found that it is the officer who will always stand on trial, because whatever he has done will be scrutinised. When will such an occasion arise? Of course, these are very elementary things, but as the question has been raised by the hon. Member, I would like to explain the position.

SHRI BHUPESH GUPTA: Do, please.

SHRI H. N. KUNZRU: Would he mind explaining another point also? Has the magistrate in cases of defamation of private persons any right to exempt that person, the complainant, from appearance in court where the statement appears *per se* to be defamatory?

SHRI B. N. DATAR: In such cases it depends upon the discretion to be used by the complainant's lawyer. In such cases the magistrate may or may not use the power. But ultimately, if.....

SHRI H. N. KUNZRU: But has he got that power? Has the magistrate got that power under the existing law?

SHRI K S HEGDE (Madras). The magistrate shall examine the complainant and other witnesses that is the provision So the complainant has to be examined.

MR DEPUTY CHAIRMAN: He has to be examined.

SHRI K. S HEGDE: Unless it is the case of a minor or where the husband comes in There are a few such exceptions

SHRI B. N. DATAR: Apart from the technicalities of it, I am dealing with the question on its merits. If I go to the Court as a complainant, either as a private person or as a public servant, in both these cases, unless I go into the witness box and swear to certain facts and also deny the allegations, I will have no case at all.

Therefore, I would point out to this honourable House that in all such cases, the complainant shall have to go into the witness box even so far as a private complaint is concerned So far as the public complaint is concerned, apart from the form that it has taken, namely, that the Government has come in through the Public Prosecutor as a formal complainant in this case, the fact remains that ultimately the evidence has to be properly appreciated by the Sessions Judge so far as the merits or the substance of the procedure is concerned. It is the same rule that applies in all these cases and I would point out that even if the prosecution does not, for certain reasons of its own, put the defamed officer in the witness box, it will be doing so on its own risk. The further point is that when Government undertakes the prosecution, it must also understand the implications of the step that it has taken and the implication is that the Government has to prove the case Therefore, the ordinary rule of commonsense requires that the officer will have to be put into the witness box. It is only in highly exceptional cases or I might even say rare circumstances that the officer would be saved from the witness box. I would, therefore, appeal to this House not to view these words "unless the Court of Session, for reasons to be recorded otherwise" with any suspicion or misgiving Here also, we have stated, "for reasons to be recorded".

SHRI H. N. KUNZRU. Why don't you extend this provision to a case where private complainants are concerned?

SHRI B N DATAR· Government will consider that question also if it becomes necessary I have no objection.

SHRI H N KUNZRU: Has it not become necessary now?

SHRI B N. DATAR: It is not necessary because in such cases the private complainant will himself go into the witness box and the private complainant will not face the chance of a dismissal of this complaint by his omission to go into the witness box.

SHRI H N KUNZRU: What about those cases where, according to the Deputy Home Minister, the defamation is *per se* proved and, therefore, the complainant need not be examined?

SHRI B. N. DATAR: In that case it depends upon the way in which evidence is to be led. I am prepared to explain the position. If the statement is *per se* defamatory then either it is a private complaint or is a complaint filed by the Public Prosecutor on behalf of Government, the position would be the same

SHRI H N. KUNZRU· How?

SHRI B. N DATAR. In that case, under the law as it stands, there would be no adverse inference against a private complainant because the Court would come to the conclusion that his testimony in the witness box was absolutely unnecessary.

SHRI BHUPESH GUPTA The hon. Minister is assuming too much. That

is what we feel. Things do not take place exactly in the same manner described by the hon. Minister.

SHRI B. N. DATAR: I am not assuming too much but am only pointing out what is being done in Courts. There is a way in which evidence has to be led. Under the present law, I would repeat, Sir, that in the case of a private complainant if there is nothing that has to be proved by direct, oral testimony of the complainant, then there would be no adverse inference drawn at all and, therefore, the position has not been worsened in the case of a complaint filed by the Public Prosecutor. That is so far as subclause (5) is concerned.

SHRI H. N. KUNZRU: Do I understand the Deputy Home Minister to say that the magistrate has discretion in those cases of defamation, where the complainant is a private person, to exempt the complainant in any case from appearance in the Court for examination unless he falls within one of the exceptions specified in the Criminal Procedure Code?

SHRI B. N. DATAR: Which is the section that the hon. Member is referring to?

SHRI H. N. KUNZRU: I think it is section 200.

SHRI K. S. HEGDE: That is with regard to private complaints.

SHRI H. N. KUNZRU: I think it is section 198.

SHRI B. N. DATAR: Section 200 makes it very clear:

"Provided as follows:

(a) when the complaint is made in writing, nothing herein contained shall be deemed to require a Magistrate to examine the complainant before transferring the case under section 192.

(aa) ***** in any case in which the complaint has been made by a Court or by a public servant acting or purporting to act in the discharge of his official duties".

SHRI K. S. HEGDE: That is not a private complaint.

SHRI B. N. DATAR: Under the second proviso to section 198, the complainant and other witnesses. He must be the first witness.

SHRI H. N. KUNZRU: Yes, he must be the first witness.

SHRI B. N. DATAR: In a private complaint, the complainant ordinarily has to go into the witness box and there can be no question of his being exempted from appearance in the witness box. He has to appear in Court but the question that has now to be considered is whether it is absolutely necessary for him to seek exemption from going into the witness box by an order of the Court. I would agree that there is no question of asking for any such exemption because to go into the witness box or not to go into the witness box would be a matter which the complaint or his lawyer has to decide entirely on its own merits and at his own discretion, and at his own risk, if you like to call it so. Therefore, the general rules of evidence require that the best kind of evidence has to be produced; direct evidence has to be produced, not the secondary evidence. Direct evidence would be oral testimony and, therefore, I was submitting, Sir, that there was no reason to suppose that there is something wrong in this. There would be nothing wrong so far as this particular case is concerned.

SHRI H. N. KUNZRU: The hon. Minister referred to section 200 which says in proviso (a) that the Magistrate, for transferring a case under section 192, need not examine the complainant.

SHRI H. P. SAKSENA: It is not section 192.

SHRI B. N. DATAR: Transfer of cases?

SHRI H. N. KUNZRU: He need not examine a witness before a transfer; that is all. The proviso (a) reads, "when the complaint is made in writing, nothing herein contained shall be deemed to require a Magistrate to examine the complainant before transferring the case under section 192".

MR. DEPUTY CHAIRMAN: Section 192 does not apply.

SHRI K. S. HEGDE: The relevant section is section 200.

MR. DEPUTY CHAIRMAN: Section 198.

SHRI H. N. KUNZRU: But the hon. Deputy Minister, in his reply to me, referred to proviso (a) to section 200.

MR. DEPUTY CHAIRMAN: He referred to section 200.

SHRI H. N. KUNZRU: It does not apply. That is my point.

SHRI B. N. DATAR: I read only section 200.

SHRI H. N. KUNZRU: I might point out that section 200 does not apply to the case that we are discussing.

SHRI B. N. DATAR: I am pointing out, Sir, that there is no question of asking for any exemption in such a case whenever a private complaint is there. There is no need to ask for exemption and if the complainant is not put into the witness box, the omission is entirely at his own risk.

SHRI K. S. HEGDE: There is no valid complaint if the complainant is not put into the witness box because the section says, "A Magistrate taking cognizance of an offence on complaint shall at once examine the complainant upon oath, and the substance of the examination shall be reduced to writing and shall be signed by the complainant, and also by the Magistrate." So, there is no option at all.

MR. DEPUTY CHAIRMAN: There is a little confusion here.

SHRI B. N. DATAR: That refers to verification, Sir.

MR. DEPUTY CHAIRMAN: The relevant section is section 198 which deals with the taking of cognizance of the offence of defamation.

SHRI B. N. DATAR: Yes.

MR. DEPUTY CHAIRMAN: Section 200 does not deal with cognizance at all.

SHRI H. N. KUNZRU: The real section that applies is section 198.

MR. DEPUTY CHAIRMAN: You want another exemption under section 198B. Under section 198A there is already one exemption.

SHRI B. N. DATAR: We are inserting this new section 198B.

MR. DEPUTY CHAIRMAN: That relates to the taking of cognizance of offences but what we are discussing here is about the exemption of the complainant from being put into the witness box for reasons to be recorded.

SHRI B. N. DATAR: Under the present provision.

MR. DEPUTY CHAIRMAN: That was the point that the House was discussing. You were saying that if the complainant is not examined, it is open to the Court to draw an inference adversely against the complainant. That was done under section 198. But, we are not concerned with either section 198 or section 200. They are not relevant to the point that we were discussing.

SHRI B. N. DATAR: That was what I pointed out, Sir. I pointed out that there was no question of asking for exemption from the complainant being put in the witness box. That is the rule of evidence and that is the rule of presumption. His conduct or omission would be the object of inference so far as the providing of evidence is concerned but here, in this

particular case, what we have done is that in as much as Government thought it necessary to take the action of complaint in its own hands, Government, under this particular provision, has introduced also a procedure. I want to point out to this House why this particular clause appears under section 198 This has been done with a view to providing for a special procedure when the complaint is filed by the Government It is only for this purpose that this has been done.

Otherwise it would have been put in somewhere else.

3 P M.

SHRI H. N. KUNZRU: My point is: There is this discrimination in favour of Government servants

SHRI B. N. DATAR: Where is the discrimination, Sir? That is exactly my point.

SHRI K. S. HEGDE The present rule is more favourable to the accused; there is no discrimination at all.

SHRI BHUPESH GUPTA: There is the discrimination If not, what is this amendment for?

SHRI B N DATAR: The question of discrimination would arise provided you proceed on the assumption that in all cases exemption would be asked for or would be granted. This is not the case at all We have .....

SHRI H N KUNZRU: The discrimination arises in this way. When the magistrate has not got the power of exempting any private complainant from appearance in court for examination, why in the case of Government servants he has got that discretion?

SHRI B N DATAR What has been done is that we have gone a step further in this particular case. Now so far as a personal or private complaint is concerned it was a rule of evidence and presumptions by way of commissions or omissions Here what we have done, you yourself may see The original rule would have been sufficient, the original rule by which the omission to come into the witness box would be a matter of adverse inference would ordinarily have been sufficient But it was felt, Sir, in certain quarters, especially in the Lok Sabha, that it was likely that Government, though they might start such a prosecution, they might not actually put the person defamed, the officer defamed into the witness box In order to meet such a contingency this rule has been laid down. The rule is positive in its nature, namely, that he shall go before the court and he shall be examined as witness for the prosecution, and the rare exceptions have of course been provided for

DR P V. KANE. May I ask the Minister to give a concrete example of what is that *prima facie* defamatory case where it is not necessary to put him in the witness box? I do not find any example.

SHRI B N DATAR: I have already given the exemptions and rare cases may arise under exceptional circumstances

SHRI BHUPESH GUPTA: How?

SHRI B N DATAR: Rare cases might arise, I would again repeat.

DR P V KANE Can you give me any one example?

SHRI B N. DATAR: I have given an example already, namely, when the matter is *per se* defamatory, then it is not necessary for him to go into the witness box at all The court itself would come to the conclusion that his examination would be a waste of time of the court

DR P V KANE Suppose the court finds that there is a *prima facie* defamatory case, but still the accused wants this person to be examined, what is the position?

SHRI B. N. DATAR: I would point out again to this House that this order of granting exemption from the wit-

[Shri B. N. Datar.]

ness box would be passed after hearing both the parties. That is what is every day being done and I am extremely sorry that my hon. friend, a great lawyer, does not seem to know what is done every day in the court.

DR. P. V. KANE: But the real complainant is being exempted.

SHRI B. N. DATAR: The real complainant would be exempted only in rare cases after hearing all the parties and after putting down on record the particular reasons for the exceptional procedure. I was wondering, Sir, as to why such an ordinary or a normal explanation which has been put in for the purpose of keeping the discretion of the court as it is, is being objected to.

Then, Sir, I pass on to the next sub-clause, sub-clause (6). So far as sub-clause (6) is concerned, the matter has been the subject of great misconception. Now, here in these cases I should like to make the whole position clear. Now, for example, there has been a defamation, a certain statement has been published. Now that statement contains certain allegations, say, about the corruption of the man or his misconduct or his official misconduct or criminal misconduct or certain other offences connected with the administration. Then in such cases what is done is: Government would file a complaint or Government would file an accusation. The word should be understood and the word that has been used is 'accusation' to be filed by the prosecution which in this case is the Government. Now if this accusation is ultimately found to be wrong, when the complaint is found to be false and frivolous, then in that case what does it amount to? It amounts to this that so far as the accused person is concerned, he has stated what was not defamatory but what was a fact. That means that the defamed officer concerned, this particular so-called defamed officer is guilty of certain malpractices or, as the expression was used, that there was dirty linen so far as that man was concerned. Now if there was dirty linen, then it was the duty of Government to expose that linen.

SHRI BHUPESH GUPTA: Sometimes they wear it!

SHRI B. N. DATAR: Now when a complaint is found to be false, then two results follow. One result is that so far as the accused is concerned, his position has been vindicated and the writing was justified. This is so far as he is concerned. But so far as the officer is concerned, we shall take into account what is the result, what is the implication of such a finding or adjudication by a court of law and there we shall come to the conclusion that, if it is found that this accusation which the Government filed by way of a prosecution.....

SHRI K. S. HEGDE: Why is the hon. Minister using the word 'accusation'?

SHRI B. N. DATAR: Because it is already there in the sub-clause.

SHRI K. S. HEGDE: It is 'complaint'—'upon a complaint'. It is not 'upon an accusation'. Further, 'accusation' is not a term of law.

SHRI B. N. DATAR: I would invite the hon. Member's attention to line 30; 'that the accusation against them or any of them was false'.....

SHRI K. S. HEGDE: It is the content of the complaint. 'Complaint' is the expression used all through, beginning with the very first sub-clause wherein it appears "upon a complaint in writing made by the Public Prosecutor."

SHRI B. N. DATAR: That is what I am pointing out to you.....

SHRI K. S. HEGDE: We draw a distinction between 'complaint' and 'accusation'.

SHRI BHUPESH GUPTA: It is all the same for him.

SHRI B. N. DATAR: I mean 'accusation contained in the complaint' and if

this expression will please you I have no objection. I have no objection either to use the word 'complaint'. Now I was pointing out that, for example, it is found that the complaint was false, then, as I said, two results follow as a matter of course. One is that the defamer has been justified. The second is that whatever he has stated is true. Now what does it mean? It means that this particular officer is a guilty person, that the defamer is not guilty but really the accuser himself is guilty of misconduct.

SHRI H. C. DASAPPA: That is the only question. Is he the accuser so far as these accused are concerned? He has used the word 'accuser' very aptly and I would like to know how he has chosen to accuse the accused here when he is not in the picture.

SHRI B. N. DATAR: If you will allow me to explain I will explain. Now I was pointing out in this case, Sir, if, for example, as a result of the finding of the court that the complaint was false, it follows that the accused in this case or the defamer was justified, then it means that the allegations that he made in his paper or otherwise, that those allegations were true.

SHRI H. C. DASAPPA: Granted.

SHRI B. N. DATAR: Now, if it is accepted that the allegations are true, then it means that this officer is responsible for bringing about a state of affairs which is absolutely bad and which leads us to believe that he is guilty of it.

SHRI K. S. HEGDE: Not necessarily, because an accused may be acquitted of the charge that the allegation is false, that he was not responsible for it and he made it *bona fide*.

SHRI B. N. DATAR: I was submitting in this case as to who is ultimately responsible. We have to take into account the circumstances so far as the question of compensation is concerned. Now, compensation is to be granted as against a person who was responsible for the prosecution. Now in this particular case, though technically Government was responsible for the prosecution, for filing.....

SHRI H. C. DASAPPA: And in reality.

SHRI B. N. DATAR: If Government was taken responsible for filing the prosecution, the prosecution has its birth, Sir, in the conduct or in the misconduct of the particular officer and therefore it is that this connection has been established between the misconduct of the officer and the punishment and the compensation that has been awarded to him. Therefore you should take into account all these circumstances. Taking them into consideration the Lok Sabha purposely put in this because in the ultimate analysis the question arises: Why should the prosecution fail? How is it that in that particular case the complaint was held to be true? Because the officer at the very inception was guilty of misconduct or guilty of bad conduct.

SHRI H. C. DASAPPA: May I in all humility say that he is misreading his provisions? There is no idea whatever that he will have to pay compensation because he has been.....

SHRI B. N. DATAR: Sir, the whole point is this.....

SHRI H. C. DASAPPA: It is an extraordinary suggestion to make which is not to be found anywhere in this document.

SHRI B. N. DATAR: I shall explain the whole question, Sir.

MR. DEPUTY CHAIRMAN: The complainant has to pay compensation because the complaint he has filed against the accused is false and he is asked to pay compensation only for a false complaint.....

SHRI B. N. DATAR: And the defence is that inasmuch as he is not a complainant at all.....

MR DEPUTY CHAIRMAN We are not concerned with the defence now He has to pay compensation because the complaint is proved to be false

DR W S BARLINGAY Not merely false but false and frivolous

SHRI B N DATAR The question of compensation would arise only when it is false and frivolous

MR DEPUTY CHAIRMAN He may be guilty of misconduct or corruption but is that the reason for the dismissal of the complaint? But is that the reason for the Government to take this occasion to mulct him with compensation also? The Government can dismiss him or prosecute him

SHRI B N DATAR As I have explained

SHRI H C DASAPPA The hon Minister may kindly hear the Chair who has not completed the sentence

SHRI B N DATAR I have heard the Chair quite fully and respectfully

SHRI H C DASAPPA I am afraid not

SHRI B N DATAR When a complaint is found to be false, what does it mean? What does it imply? That is a question which arises if the complaint is false It means that this officer is at fault, I shall not use the expression 'guilty' I am putting a very innocuous expression that this officer is at fault Had this officer not been at fault there would have been no defamatory article, and much less a prosecution Thus it is that there is a connection between the two

SHRI H C DASAPPA Heavens save us!

SHRI P S RAJAGOPAL NAIDU (Madras) If at least the officer is consulted by the Government before it launches the prosecution, there is some point in the officer being asked to pay But when that officer is not consulted before the Government launches the prosecution, it is not proper

SHRI B N DATAR There is no question of asking the officer at all. The Government might file a complaint in such cases even in spite of the want of consent of the officer Ultimately it is a question in which a decision is taken by the Government on the merits of the case irrespective of the wishes of the officer concerned.

SHRI H C DASAPPA If it becomes a frivolous application, who has made that? Is it the Government or the public servant?

SHRI B N DATAR Now, the Government would file a prosecution on the basis of a particular writing which they consider objectionable In other words, it means that the conduct of this officer is fair The two things go together Now we have to presume this When a complaint has been filed—whether a private complaint or a Government complaint—in this case the Government proceeds on the assumption—I am even prepared to use the expression 'presumption'—that that particular article or writing constitutes an offence under the Indian Penal Code What does this mean? It means that our officer was acting uprightly and properly and his conduct was above reproach

SHRI K S HEGDE This is a great departure from the basic principle

SHRI B N DATAR There is no basic principle at all involved here

SHRI P S RAJAGOPAL NAIDU To get that label of goodness he has got to shell out costs It means only that

SHRI B N DATAR I was pointing out to the House what the particular assumption at the start was and how that assumption has been falsified when the complaint is held to be false.

SHRI S MAHANTY Who is responsible for that assumption?

SHRI B. N. DATAR: The officer's conduct has been, in the ultimate analysis, responsible for this. That is a point which I am labouring to point out to this hon. House.

SHRI S. MAHANTY: But the officer's conduct is something unverified.

SHRI B. N. DATAR: How can it be called unverified? The officer is put into the witness box. And when the prosecution starts, you will kindly understand that all that is in favour of that particular officer would be brought on the record. Nothing would be kept back because the Government have started with this assumption that this particular officer of theirs is above reproach and his conduct with reference to that particular writing or article has been proper and that he was quite upright. If the Government tries to defend him where he does not deserve a defence, then in that case who is responsible? We have to accept the position that he alone is responsible for that. So if the whole conception on which the structure has been based is taken into account when the complaint is held to be false, then the falsity of the complaint also places before us a picture of the officer himself being guilty or at least being responsible for the whole prosecution.

MR. DEPUTY CHAIRMAN: But the question is, is that the way to punish him?

SHRI B. N. DATAR: This is one of the ways in which he can be punished, Sir.

SHRI H. C. DASAPPA: It is not too late even now for the hon. Minister to give up this clause.

SHRI S. MAHANTY: Who is responsible for the prosecution? Is it the Government or the public servant concerned?

SHRI B. N. DATAR: The public servant's conduct is responsible. (*Interruptions.*)

MR. DEPUTY CHAIRMAN: Let us not argue in a circle. The simple question is this. The officer concerned does not want to file a complaint but to vindicate the prestige of the Government the Government files a complaint. If there is a conviction the Government is vindicated and the accused is also punished. But suppose for some reason the complaint falls through and the court orders him to pay compensation for filing a false complaint, which he was not prepared to do. If he was prepared to do that, he would have taken the consequences. The point is it was open to the Government to punish him in other ways. The Government can take action against him, prosecute him or dismiss him. These are all open to the Government and he is entitled to defend himself. But here by filing a complaint against his will you are going to punish him. The complaint may be dismissed, maybe for any reason because we know how criminal cases get dismissed, even true cases at times get dismissed, and he is made to pay compensation for a matter for which he was not responsible. Would that be right? That is the main point.

SHRI B. N. DATAR: Now, the first point that was raised by you, Sir, was that in spite of the fact that there was such an objectionable writing, the officer was not prepared to file a complaint or to vindicate himself. Now, such a conduct or omission on the part of the officer may lead to different conclusions or may become the subject-matter of a number of inferences. One such inference is—and let us take the worst inference—that he wants to save himself from severe cross-examination or that he wants to save himself from the consequences of his bad actions.

That also has to be understood. Then you stated, Sir, that when the complaint has been dismissed or when it is found that the complaint is false, in that case why should not the Government proceed against him by way of a departmental enquiry or why should they not sack him?

SHRI H. C. DASAPPA: Or prosecute him.

SHRI B. N. DATAR: Whatever it is. That is perfectly open, but it will be found that here instead of the defamer or the accused being a wrongdoer, he is himself the wronged person. I am referring to the accused in the case.....

SHRI H. C. DASAPPA: Who wrongs him?

SHRI B. N. DATAR: If you will allow me to say, I shall develop; otherwise I shall not say anything at all.

Now, Sir, I was pointing out to this House that what happens is that the accused has been vindicated. That means the accused has been a wronged person and here in this case the scheme has been based on a desire to grant him monetary compensation immediately. Otherwise, so far as the ends of justice are concerned, so far as the administration is concerned, Government can take departmental procedure, can dismiss him, or even subsequently prosecute him. That is entirely a different matter. But so far as the aggrieved party is concerned, now the scales have turned. The aggrieved party is not the officer, but the aggrieved party is the person who wrote what was proved to be not defamatory, but a fact. Now, in such a case, the dismissal of the officer or the prosecution of such an officer would not be any consolation to this person at all. And, therefore, what had been decided by the Lok Sabha was this: in such a case there ought to be a summary method by which the person who was responsible initially for this ought to pay compensation to the other party. (*Interruption*).

DR. W. S. BARLINGAY: May I respectfully ask, what is the necessity for this summary provision? Under the ordinary law of the land, when a complaint is found to be false and frivolous or vexatious, the accused has the right to proceed by way of malicious prosecution.

SHRI B. N. DATAR: My friend is entirely oblivious of section 250 of the Criminal Procedure Code. There also the provision has been made for granting, by way of a summary procedure, compensation to an accused where the complaint is false and frivolous Now, what we have done is this. We have merely taken over the provisions of section 250 and brought them here because there is a possibility.....

DR W. S. BARLINGAY: Sir, it is all the worse for his argument. That means there is already provision about this in the Criminal Procedure Code.

SHRI B. N. DATAR: But if you do not allow me to complete my sentence.. ...

MR DEPUTY CHAIRMAN: Order, order.

SHRI B. N. DATAR: Now, this morning one of the hon. Members from this side read section 250. ...

SHRI H. C. DASAPPA: I.

SHRI B. N. DATAR:... and you will find that all along section 250 proceeds on a complaint before a magistrate And here in this case the case is tried not by a magistrate at all but by a Sessions Judge.

SHRI H. C. DASAPPA: Therefore, I said, let the word 'Magistrate' be replaced by a Court of Sessions.

SHRI B. N. DATAR: That is entirely different. Lok Sabha thought that it would be better to have a special provision in connection with the procedure that we are laying down in this particular class of cases. ...

SHRI J. S. BISHT: May I know, Sir, whether he will be pleased to accept amendment No. 59, by which an appeal can be made?

SHRI B. N. DATAR: I am going to accept it.

SHRI J. S. BISHT: Then what is the difficulty?

SHRI H. C. DASAPPA: That is a different matter.

SHRI J. S. BISHT: Why different matter.

MR. DEPUTY CHAIRMAN: Order, order.

SHRI B. N. DATAR: I may point out to the hon. Member that I am going to accept Shri Jaspat Roy Kapoor's amendment with slight verbal changes here and there. Now, we are going to accept the right of the person in such a case to go in appeal against the order passed by the Sessions Judge.

SHRI H. C. DASAPPA: It is there even today under section 250.

SHRI B. N. DATAR: Section 250 does not apply to this case at all. For a number of reasons it does not apply. I may, therefore, submit to this House that so far as this clause is concerned, the man who is ultimately responsible for all this bother, that man has to pay compensation to the person who has brought out all these things before the public. I would point out to this House that in such a case we ought to be thankful to that particular press, to that particular man who wrote it, because thereby he made it possible for Government to take up this case. He has been vindicated, but the officer's guilt has been proved and ultimately Government might take some action so far as the officer is concerned.

SHRI BHUPESH GUPTA: These are mere platitudes.

SHRI B. N. DATAR: All right, all right. So far as we are concerned, we are not desirous of platitudes at all. We propose to bring it in action and the aggrieved person, the writer of that article which was wrongly called defamatory, ought to be given compensation by the person who is ultimately responsible. And, therefore, I submit that so far as this clause is concerned, I have explained all the circumstances. Regarding the other clauses I have very little to add.

DR. W. S. BARLINGAY: Sir, he has not explained why an exception has been made in sub-clause (6) of clause 25, with regard to the President, Vice-President, Governor or Rajpramukh of a State.

SHRI B. N. DATAR: I repeat it just now to my hon. friend that it is on account of constitutional obligations. There is a constitutional immunity so far as these officers are concerned. I explained it, possibly the hon. Member was not here. Under article 361 of the Constitution, no criminal or civil proceedings may be instituted against the President, Governor or Rajpramukh.

MR. DEPUTY CHAIRMAN: Was that your question?

DR. W. S. BARLINGAY: Yes, Sir.

SHRI B. N. DATAR: And therefore we have got this immunity in sub-clause (6), and nothing can be done that will be unconstitutional. It would be against the Constitution in the fullest sense of the term, and you cannot file a complaint against him.

SHRI H. C. DASAPPA: Sir, could he add at the end of sub-clause (6) something like this: "Provided that such a person had not objected to the lodging of the complaint."? Then it would be something.

SHRI J. S. BISHT: That knocks the bottom out of the case.

SHRI H. C. DASAPPA: No, Sir.

MR. DEPUTY CHAIRMAN: I think we have had enough discussion.

SHRI H. C. DASAPPA: As regards the lodging of the complaint, of course, there may not be insistence of

[Shri H. C. Dasappa.]

consent but for this particular purpose of compensation, if he had nothing to do with the lodging of the complaint whatever, or if he had been against it, then he cannot be accused.....

MR. DEPUTY CHAIRMAN: He has explained that position.

SHRI B. N. DATAR: I have explained that, Sir. One very important point to which my hon. friend Mr. Hegde has drawn the attention of the House requires explanation. He contended that there is some distinction between the procedure in respect of a private complaint and the procedure now sought to be introduced so far as the complaint by the Public Prosecutor is concerned. Now, he made a reference to the Indian Penal Code and he brought before this House the provisions in the two Exceptions to Section 499 which defines Defamation. Now, it has been stated:—

> "First Exception: It is not defamation to impute anything which is true concerning any person if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact."

Then, Sir, another exception has also been provided for by the framers of the Indian Penal Code:—

> "Second Exception: It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct and no further."

In other words, he contended that if a private complaint were to be filed, then the accused in that case had the advantage of the second exception under which he can say that whatever he had expressed was regarding the conduct of a public servant.

Now, in the present case, the provision relates not only to the public servant, but also to a Minister, Governor, etc. Now, so far as those dignitaries are concerned, I have already pointed out the constitutional provisions. So far as the Ministers are concerned, his contention was that a Minister was not a public servant, and hence an accused in such a case would not be entitled to the defence under exception 2 of section 499 of the Indian Penal Code. So far as that question is concerned, Sir, I have before me a ruling of the Supreme Court. That ruling is A.I.R. 1953—Supreme Court—394 to 401. It was a case in respect of some Minister—I believe, Shiv Bahadur—*vs.* the State of Vindhya Pradesh. Now, their Lordships have considered the whole question and they have come to the conclusion that a Minister is also a public servant. Now, Sir, this ruling has been followed by us in the manner in which we have used the exceptions in clause 25. Now the wording that we have used here is "to have been committed against the President, or the Vice-President, or the Governor or Rajpramukh of a State, or a Minister, or any other public servant—". The word 'other' has been put in here. Therefore, I would submit that according to the view that the Supreme Court have taken in this respect for the purposes of such a proceeding, for the purposes of such defence that would be open under section 499, exception 2 of the Indian Penal Code, a Minister has to be understood as a public servant. My hon. friend rightly felt that in such a case the accused would be at a disadvantage, because he will have to bring his case under exception 1, and not under exception 2. Under exception 1, Sir, the truth has to be fully proved, and giving expression to the truth must be in public interest. In other words, truth and public interest have to be proved. But so far as the second exception is concerned, all that has to be proved is good faith. And whenever there is good faith, it is immaterial whether the particular statement was wrong or erroneous.

SHRI K. S. HEGDE: May I just clarify the position, now that the hon. Minister has pointed to the case of Vindhya Pradesh? If I recollect correctly, Sir, the Privy Council had earlier laid down the principle that a Minister is not a public servant.

MR. DEPUTY CHAIRMAN: That is over-ruled now.

SHRI K. S. HEGDE: In the Vindhya Pradesh case, the Minister was acquitted. He was acquitted in the Supreme Court. And in the acquittal judgment, in passing, they made a reference.....

AN HON. MEMBER: He was not accused.

SHRI K. S. HEGDE: On the question of bribery, if I remember correctly, he was acquitted. The matter may be checked up. We should not take into account only one single decision. Other man may take a different opinion. We have an earlier decision where they have come to the conclusion that a Minister is not a public servant.

MR. DEPUTY CHAIRMAN: Today, whatever the Supreme Court lays down is law here. So we are not concerned with the earlier decisions.

SHRI K. S. HEGDE: The Supreme Court has the right of review. Supposing the Supreme Court comes, in a different case, to the same conclusion.....

MR. DEPUTY CHAIRMAN: Then we will follow the other law.

SHRI B. N. DATAR: Anyway, Sir, I would assure my hon. friend that we have no desire to prejudice the defence in such a complaint by the Public Prosecutor. There is no such desire at all. We are anxious to put the accused in both the cases on the same footing. And, as at present advised, the Minister is considered by the Supreme Court as a public servant. And even the *obiter dicta* of their Lordships of the Supreme Court have a value of their own. We have got a ruling of the Privy Council to the effect that the *obiter dicta* of the Privy Council had a value.

DR. W. S. BARLINGAY: Assuming that your argument is correct, which is undoubtedly so, even then the word 'other' in that particular clause has no meaning.

SHRI B. N. DATAR: It may or may not have any meaning.

DR. W. S. BARLINGAY: Why should we have a word which has no meaning?

SHRI B. N. DATAR: We have put it on a ruling of the Supreme Court. And that is the reason, Sir, why we have put in the expression "....any other public servant.....". In case, Sir, after examining the whole thing, if it is found that the defence is likely to be prejudiced by putting a narrow interpretation on the expression 'Minister', the Government would take the necessary steps to safeguard the interests of such an accused in such a case. That is all I have to say, Sir.

SHRI BHUPESH GUPTA: If you are a public servant, why don't you withdraw this amendment, because the public demands its withdrawal?

MR. DEPUTY CHAIRMAN: What are you going to accept?

SHRI B. N. DATAR: I am accepting amendment No. 59 moved by Shri Jaspat Roy Kapoor with certain changes.

MR. DEPUTY CHAIRMAN: What are those changes?

SHRI B. N. DATAR: In place of '7A' we are putting '9A', and in place of '7B' we are putting '9B'. There are other changes also. I will read out as it would read after the amendment. It is as follows:

> "(9A) The person who has been ordered under sub-section (7) to pay compensation may appeal from the order, in so far as the order

[Shri B N. Datar.]

re'ates to the payment of the compensation, as if he had been convicted in a trial held by the Court of Session

(9B) When an order for payment of compensation to an accused person is made, in such a case, the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been disposed of."

MR. DEPUTY CHAIRMAN: What about the words "which is subject to appeal under sub-section (9A)"?

SHRI B. N. DATAR: These words have been dropped and the words 'in such a case' have been substituted.

MR. DEPUTY CHAIRMAN: When an order for the payment of compensation is made, "in such a case" refers to sub-section (9A). So, you may put in the words "under sub-section (9A)". Even if it remains as it is, I think there is no harm. It can remain as it is.

SHRI H. C. DASAPPA: There is no non-appealable award of compensation. There is no compensation which is not subject to appeal.

MR. DEPUTY CHAIRMAN: We are concerned with defamation cases before Sessions Judges. The power of appeal is given under (9A). So. (9B), as it is, can remain.

SHRI S. MAHANTY: The amendment which is proposed by the hon. Minister has not been circulated to us.

MR. DEPUTY CHAIRMAN: I have got it here.

SHRI BHUPESH GUPTA: Please read out the clause as amended by the hon. the Deputy Minister, and then we can think over it.

SHRI B N DATAR: I shall read out:

"(9A) 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.

(9B) When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (9A), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided"

SHRI H. N. KUNZRU: May I have one point cleared up? Suppose an official is asked to pay compensation to the person against whom the Government started prosecution. What is the good of the Government servant appealing against the court's order, if he cannot appeal against the acquittal of the accused?

SHRI B N. DATAR: If I have understood the hon Member, what he says is this: Whenever it has been held by the Sessions Court or the Trial Court that the complaint is not sustainable and the accused has been acquitted, then there is no right, so far as this officer is concerned, to present an appeal Is that the point?

SHRI H. N. KUNZRU: He may have the right, but what use will this right be?

SHRI J. S. BISHT: It will mean that in the case of acquittal, the Government will have the right of appeal, but so far as the payment of compensation is concerned, the man concerned can go to a High Court and say that the finding that the complaint was false or frivolous is not sustainable.

SHRI B. N DATAR· So far as the person's right of appeal is concerned, it is confined only to the question of compensation. It does not extend to the question of acquittal. When there

is a specific order against him for payment of compensation, then there is a 'show cause' notice and ultimately there is a right of appeal.

MR. DEPUTY CHAIRMAN: The question is:

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

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

42. "That at page 6, lines 42-44, 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."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

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

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

46. "That at page 6, line 48, for the words 'the Public Prosecutor' the words 'the Attorney-General of India or the Advocate-General of a State, as the case may be' be substituted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

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.'"

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

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.'"

The motion was negatived.

*Amendments Nos. 50A and 51 were, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

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

The motion was negatived .

*Amendment No. 53 was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

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

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

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

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

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*For texts of amendments, *vide* cols. 5511-5512 *supra*.

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

'(5A) When any case of which the Court of Session takes cognisance 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.'"

The motion was negatived.

MR. DEPUTY CHAIRMAN: What about Amendment No. 57?

SHRI J. S. BISHT: I beg to withdraw it.

The amendment* was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: No. 59 as amended by Mr. Datar.

The question is:

59. "That at page 8, after line 4, the following be inserted, namely:—

'(9A) 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 Sessions.

(9B) When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (9A), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided.'"

The motion was adopted.

*For text of the amendment, *vide* col. 5513 *supra*.

MR. DEPUTY CHAIRMAN: The question is:

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 motion was adopted.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 25, as amended, stand part of the Bill."

The House divided:

4 P.M.

AYES—49

Ahmed Hussain, Kazi.
Amolakh Chand, Shri.
Barlingay, Dr. W. S.
Bisht, Shri J. S.
Chandravati Lakhanpal, Shrimati.
Daga, Shri Narayandas.
Dasappa, Shri H. C.
Das, Shri Jagannath.
Dharam Das, Shri A.
Dube, Shri Bodh Ram.
Dutta, Shri Trilochan.
Galib, Shaik.
Gilder, Dr. M. D. D.
Hegde, Shri K. S.
Hemrom, Shri S. M.
Italia, Shri D. D.
Jalali, Aga S. M.
Karumbaya, Shri K. C.
Khan, Shri Pir Mohammed.
Krishna Kumari, Shrimati.
Lakhamshi, Shri Lavji.
Leuva, Shri P. T.
Mahesh Saran, Shri.
Mazhar Imam, Syed.
Misra, Shri S. D.
Mookerji, Dr. Radha Kumud.
Mukerji, Shri B. K.
Naidu, Shri P. S. Rajagopal.
Panigrahi, Shri S.
Panjhazari, Sardar Raghbir Singh.
Parikh, Shri C. P.
Pushpalata Das, Shrimati.
Pustake, Shri T. D.
Rajagopalan, Shri G.
Saksena, Shri H. P.
Sambhu Prasad, Shri

Seeta Parmanand, Dr Shrimati
Shah, Shri M C
Sharma, Shri B B
Shrimali, Dr K L
Singh Capt Awadhesh Pratap
Singh, Sardar Budh
Singh Shri Ngangom Tompok
Singh Shri Vijay
Sinha, Shri R P N.
Sumat Prasad, Shri
Tamta, Shri R P
Venkataramana, Shri V
Vijaivargiya Shri Gopikrishna

NOES—12

Dhage Shri V K
Gour Dr R B
Gupta Shri Bhupesh
Kamalaswamy Shri T V
Khan Shri Abdur Rezzak
Kishen Chand Shri
Kunzru, Shri H N
Mahanty Shri S
Matnur, Shri H C
Parvathi Krishnan, Shrimati
Sinha, Shri Rajendra Pratap
Venkata Narayana, Shri Pydah

The motion was adopted

Clause 25, as amended, was added to the Bill

MR DEPUTY CHAIRMAN Now we come back to clause 22

SHRI B N DATAR Sir, so far as clause 12 is concerned, we are accepting a small amendment which consists of the deletion of the words "by the accused" in page 5, line 41, so that whenever there is such cross-examination by the prosecution for the purpose of contradiction, the other party the accused will also have the right to put in certain questions

SHRI H N KUNZRU Would the hon Deputy Minister mind making his point clear? I could not follow what he said

SHRI B N DATAR Yes, I will clear up What has been done is this The words in respect of the proviso to clause 162 which

SHRI H N KUNZRU Is he referring to section 162 or clause 162?

SHRI B N DATAR I am speaking of clause 22, dealing with section 162 on page 5 Now I will read the portion

> " any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (I of 1872), and when any part of such statement is so used by the accused, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination "

This Sir, is the present provision What is now proposed to be done is to delete the words "by the accused" at the end of line 41 on page 5

MR DEPUTY CHAIRMAN So you omit the words "by the accused" at the end of line 41

SHRI B N DATAR Yes, Sir, and so now the right of re-examination is being given to both the accused and the prosecution

SHRI S MAHANTY But what is the effect of it?

SHRI H N KUNZRU What is the improvement that has been effected?

SHRI B N DATAR It means this, that whenever there is such a cross-examination by the prosecution of its own witness, then it would be open to the accused to put certain questions for the purpose of getting a proper explanation according to their light, from the witness If these words had remained in the clause then the right of getting the explanation or the right of re-examination rested only with the prosecution But by the deletion of these words, such a right has been extended to the accused also

SHRI H P SAKSENA That is clear enough

SHRI B N DATAR Sir, I move

"That at page 5, line 41, the words 'by the accused' be deleted."

MR. DEPUTY CHAIRMAN: And so now both parties are placed on the same footing.

SHRI S. N. DATAR: Yes, Sir. If the words had remained in the clause, only the prosecution could use it. Now both the parties are placed on the same footing in this respect.

SHRI V. K. DHAGE: (Hyderabad): What does Mr. Hegde say?

SHRI K. S. HEGDE: But that is only one alternative. I had other objections. Now to this extent the hon. Deputy Minister has amended the clause.

SHRI H. N. KUNZRU: But our main objection is there, for clause 22 remains as it was.

SHRI H. C. MATHUR: Exactly, the main objection remains.

MR. DEPUTY CHAIRMAN: What about Mr. Hegde's amendment No. 36?

SHRI K. S. HEGDE: Even yesterday I was for confining myself to the next amendment, amendment No. 37. I am prepared to withdraw my amendment No. 36.

The *amendment was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: I will put amendment No. 37 to vote.

The question is:

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

The motion was negatived.

MR. DEPUTY CHAIRMAN: I shall next put the amendment now moved by the Deputy Minister to the vote of the House.

The question is:

"That at page 5, line 41, the words 'by the accused' be deleted.

*For text of amendment, *vide* col. 5473 *supra*.

The motion was adopted.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 22, as amended stand part of the Bill."

The House divided:

AYES—52

Ahmed Hussain, Kazi.
Amolakh Chand, Shri.
Barlingay, Dr. W. S.
Bisht, Shri J. S.
Dhage, Shri Narayandas.
Dasappa, Shri H. C.
Das, Shri Jagannath.
Deogirikar, Shri T. R.
Deshmukh, Shri R. M.
Dharam Das, Shri A.
Dube, Shri Bodh Ram.
Dutta, Shri Trilochan.
Gilder, Dr. M. D. D.
Italia, Shri D. D.
Jalali, Aga S. M.
Kurumbaya, Shri K. C.
Khan, Shri Pir Mohammed.
Krishna Kumari, Shrimati.
Lakhamshi, Shri Lavji.
Leuva, Shri P. T.
Mahesh Saran, Shri
Malviya, Shri Ratanlal Kishorilal.
Mazhar Imam, Syed
Misra, Shri S. D.
Mookerji, Dr. Radha Kumud.
Mukerjee, Shri B. K.
Naidu, Shri P. S. Rajagopal.
Panigrahi, Shri S.
Panjhazari, Sardar Raghbir Singh
Pant, Shri Govind Ballabh.
Parikh, Shri C. P.
Pushpalata Das, Shrimati
Pustake, Shri T. D.
Raghavendrarao, Shri.
Rajagopalan, Shri G.
Reddy, Shri Channa.
Saksena, Shri H. P.
Sambhu Prasad, Shri
Seeta Parmanand, Dr. Shrimati
Shah, Shri B. M.
Sharma, Shri B. B.
Shrimali, Dr. K. L.
Singh, Capt. Awadhesh Pratap.
Singh, Sardar Budh.
Singh, Shri Ngangom Tompok.
Singh, Shri Vijay
Sinha, Shri R. P. N.

Sumat Prasad, Shri
Tamta, Shri R. P.
Tankha, Pandit S. S. N.
Venkataramana, Shri V.
Vijaivargiya, Shri Gopikrishna.

NOES—11

Dhage, Shri V. K.
Gour, Dr. R. B.
Gupta, Shri Bhupesh.
Kamalaswamy, Shri T. V.
Khan, Shri Abdur Rezzak.
Kishen Chand, Shri.
Kunzru, Shri H. N.
Mahanty, Shri S.
Mathur, Shri H. C.
Sinha, Shri Rajendra Pratap.
Venkata Narayana, Shri Pydah.

The motion was adopted.

Clause 22, as amended was added to the Bill.

Clauses 26, 27 and 28 were added to the Bill.

MR. DEPUTY CHAIRMAN: We shall now take up clause 29.

Amendment No. 64 is negative and is ruled out.

SHRI ABDUR REZZAK KHAN (West Bengal): Mr. Deputy Chairman, I beg to move:

65. "That at page 8, line 47, after the words 'fourteen days', the words 'and not earlier than seven days' be inserted."

66. "That at page 9, line 2, after the words 'the prosecution', the words 'or the accused person' be inserted."

67. "That at page 9, at the end of line 11, after the word 'furnished', the following words be added, namely:—

'and shall, if requested by any accused person so to do, adjourn the enquiry for such period, not exceeding seven days as such accused person may desire, unless he deems it just to adjourn it for a longer period.' "

68. "That at page 9, line 13, the words 'if any' be deleted."

69. "That at page 9, lines 14 to 17, the words, to the actual commission of the offence alleged; and if the Magistrate is of opinion that it is necessary in the interests of justice. to take the evidence of any one or more of the other witnesses for the prosecution, he may take such evidence also' be deleted."

71. "That at page 9, for lines 21 to 30, the following be substituted, namely:—

'(6) When the evidence referred to in sub-section (4) has been taken and the Magistrate has, if necessary, examined the accused for the purpose of enabling him to explain any circumstances appearing in the said evidence, against him, the magistrate shall, if he finds that there are not sufficient grounds for committing the accused person for trial record his reasons and discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly.

(6A) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.' "

72. "That at page 9, line 24, after the words 'the accused,' the following be inserted, namely:—

'for the purpose of enabling him to explain any circumstances appearing in the evidence against him.' "

73. "That at page 9, lines 31-32, the words 'such documents being Considered' be deleted."

[Shri Abdur Rezzak Khan ]

74 "That at page 9, after line 49, the following be inserted namely —

'(9A) The Magistrate may, in his discretion, summon and examine any witness named in any list given in to him under sub-section (9) ' "

76 "That at page 10, line 3, after the word 'list', the words and the witnesses, if any, included therein, whom the Magistrate desire to examine have been summoned and examined under sub-section (9A)' be inserted "

77 "That at page 10, after line 6, the following be inserted, namely —

'(10A) If the Magistrate, after hearing the witnesses for the defence, is satisfied that there are not sufficient grounds for committing the accused, he may cancel the charge and discharge the accused

(10B) A commitment once made under sub-section (10) by a competent Magistrate can be quashed by the High Court only and only on the point of law' "

78 "That at page 10, line 9, for the words 'the witnesses included in the list', the words 'such witnesses included in the list, as have not appeared before himself' be substituted "

79 "That at page 10, lines 11 to 24 be deleted "

80 "That at page 10, line 25, after the words 'for the prosecution', the words 'and the defence' be inserted "

81 "That at page 10, lines 45 to 47 be deleted "

SHRI J S BISHT Sir, I beg to move:

70. "That at page 9, lines 18 to 20 be deleted."

SHRI H C DASAPPA Sir, I beg to move

75 "That at page 10, for lines 1 to 6, the following be substituted, namely —

'(10) When the accused, on being required to give in a list under sub-section (9), has declined to do so, or when he has given in such list and the witnesses, if any, included therein whom the Magistrate desires to examine have been summoned and examined under sub-section (9A), the Magistrate may make an order committing the accused for trial by the High Court or the Court of Session, as the case may be and shall also record briefly the reasons for such commitment

(10A) If the Magistrate, after hearing the witnesses for the defence, is satisfied that there are not sufficient grounds for committing the accused, he may cancel the charge and discharge the accused.' "

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

SHRI BHUPESH GUPTA Sir, I would only make a very brief observation with regard to the amendment proposed by the Government. As you will see, Sir, this amendment relates to certain commitment procedure I do not see as to why a differentiation should so suddenly be created between the commitment proceedings launched by the police in police cases and in private cases. This is point number one As you know, Sir, at present all the witnesses have to be examined before a commitment is made and the trying magistrate must not rely only on the eye witness or the witness to the actual offence alleged Now, here, of course, the Magistrate will rely on the eye witness and it will be at his discretion to decide whether other witnesses should be called I think this discrimination is bad and

that the present position should remain that is to say, before he makes the commitment he should examine all the material evidence and all the witnesses that are there

Then, under the existing law, the trying magistrate can at the investigation stage, discharge an accused person even before examining all the witnesses Under the proposed amendment nobody would be in a position to discharge an accused person without going into all the evidence or examining all the witnesses in a case

Then, Sir, there are certain other matters, also procedural, I need not go into it, these are stated in the amendment itself Our objection to this thing is that it would cause more hardship on the part of the defence and very often cases which might have been otherwise discharged at the investigation stage would be committed to the sessions trial Now, as you know, an eye witness is very often not a very reliable witness Certainly the prosecution would place great reliance on such witness, and until and unless the evidence given by the eye witness is corroborated or substantiated by other witnesses, it would not be fair to create a situation in which the trying magistrate proceeds to commit the case to sessions trial

Likewise, Sir, in the case of discharge also we know a whole number of cases get discharged at the investigation stage After going into the evidence, very often it is found that there is no material evidence to commit the case to the sessions trial Now, here of course the magistrate need not call any other witnesses and if he is satisfied that the case is false or the case has no substance in it, he would be in a position under the existing law to discharge the accused person But here in this Bill the position is altered I think that is wrong That would operate against the interests of the accused person and would put the prosecution in a somewhat better position and we must remember that sessions trial itself is becoming an oppression at times for a number of people Apart from the intimidation it creates and the mental anxiety and all that sort of thing it brings in its train, it involves heavy expenditure

Now there are two stages of the trial, namely, one stage is at the time of investigation, and then at the sessions court What we say is that the case should be thoroughly gone into even in the investigation stage so that an innocent accused may be spared the hardship of the sessions trial Now I do not see as to why, with a view to saving time, such an onerous procedure is sought to be adopted in this amendment

Then with regard to the question of the time that is given to him, it is insufficient as per provision here, I think, that the accused should be given in any case fair time to prepare his case so that he can meet the prosecution

Then you will find our amendment No 72 where we say "for the purpose of enabling him to explain any circumstances appearing in the evidence against him" the magistrate should examine him Here we want to retain the original position Here we want that if the accused person is at all cross-examined by the magistrate, then he should be examined with a view to explaining the circumstances which appear against him That is how we should view this matter. What I am suggesting is to retain the original position existing in the present law

Then about summoning witnesses we suggest in our amendment No 74 "The Magistrate may, in his discretion, summon and examine any witness named in any list given in to him under sub-section (9) " Here we want this to be inserted because defence witnesses are very important and unless this kind of thing is there the defence may be prejudiced in trial If the provision as it is in the Bill is accepted, then of course the

[Shri Bhupesh Gupta.]

defence witnesses will not be examined at the investigation stage. Sir, on the whole I think that it worsens the existing provision instead of improving upon it and I think this approach and attitude runs like a red thread through a number of amendments proposed by the Government. I hope the Government would consider and see to what extent the amendments that we have offered and the amendments that have been suggested by other hon. Members are acceptable to them. I think they should be guided in such matters not merely by the question of speed but also by the question of justice. Sir, justice should not in our view be slaughtered at the altar of so called speed. Justice should be saved. Justice delayed is better than justice killed in the name of speed. That is what we are trying to impress upon the hon. Members of the Government and this is something which they would not at all see. All the time they are seeing only that the whole procedure has been more or less compressed with a view to ensuring speed in a criminal trial, but what they are not seeing and refuse to see is that in doing so they are actually stabbing justice right and left and I think this attitude should be given up and justice should be saved first and foremost. Otherwise, all this question of procedure would turn out to be a sheer farce if you allow justice and the rule of law to be adversely affected. He says that he believes in the rule of law, but whenever I hear him, whenever he has been speaking on the subject, it seems he has made up his mind to commit an outrage on the rule of law, and I think that kind of outrageous mentality should be given up and the rule of law redeemed from these unacceptable and unwholesome amendments proposed by the hon. Minister in charge of the Bill.

SHRI J. S. BISHT: Mr. Deputy Chairman, my hon. friend Mr. Gupta has made certain sweeping remarks with regard to trials. I think he forgot that we are not dealing with a trial. We are dealing only with preliminary enquiry before a magistrate. The trial will be before the Sessions Court and the whole old procedure is there intact; nobody is going to touch it.

What happens today under the present Code is that the accussed has to wait there for their trial in the magistrate's court for months together and then every bit of evidence has to be produced before the committing magistrate and then alone the committing magistrate sends the case for trial to the Sessions Court. All that has been compressed now. If you will be pleased to look at the Bill as it was introduced before, you will find—that was clause 29 of the Bill as it was introduced in the Lok Sabha—therein that the committing magistrate was not given any chance to discharge or acquit the accused during the preliminary enquiry at all. What the magistrate had to do was that he should decide whether the accused should be committed for trial or should be tried before himself or some other magistrate, and he should proceed accordingly and no evidence was to be taken there. Now what is to be done is that the magistrate shall peruse all the documents relating to the case, examine the accused, if necessary, and after giving the prosecution and the accused an opportunity of being heard, he shall decide whether the accused should be committed for trial or should be tried before himself or some other magistrate and he shall proceed accordingly. The whole thing had been so much compressed that all that was necessary was that under the revised section 173 of the Code of Criminal Procedure the accused would be supplied with a full list of the relevant documents with regard to the trial. And as soon as the magistrate receives those papers he would read those papers and if necessary he would examine the accused and then immediately send them up for trial.

Now the Select Committee has very considerably improved the whole procedure. Here what has been provided is that every document will be given to the accused. Then the accused would be asked whether he has received every document. If he has any complaint that he has not received a document, it will be given to him. Then the actual witnesses to the occurrence, whether it was murder, or dacoity or arson or rape, anything like that, those witnesses will be produced before this magistrate. And then the further right has been given to the accused to cross-examine those witnesses. He may do it then and there or he may defer the cross-examination until the other witnesses have been examined. And even the magistrate has been given the further right that he may call some other witness although under section 540 of the Criminal Procedure Code he is already vested with that power. But in addition this power has been given here that if in some case the accused is able to bring to the notice of the magistrate that there is likely to be some light thrown on the case if such and such a person is brought before the court, then the magistrate is entitled to send for him and after that the charge will be framed and he will be committed to the Court of Sessions.

So the whole procedure has been very considerably improved and the delay has been cut down and the accused will be able now, with all the documents that are to be given to him free of cost by the Government, with all the evidence that he will have before him, to defend himself better. You will please note that the Joint Committee had laid down in sub-clause (5) that "the accused shall not be at liberty to put questions to any such witness; but nothing in this section shall be deemed to preclude the Magistrate from putting such questions to the witness as he thinks necessary." Now, in the Lok Sabha this has been completely changed. Now, the sub-clause reads: "The accused shall be at liberty to cross-examine the witnesses examined under sub-section (4), and in such case, the prosecutor may re-examine them. A further concession has been made. I am personally not in favour of granting this concession because this delays the whole procedure to some extent but when I discussed this matter with Dr. Katju he was able to point out to me one very important fact. He said that if we did not give this right of cross-examination and if a certain witness happens to die between the committal stage and the trial stage then the difficulty will be that that evidence will not be produced in the Sessions Court. At present if a witness is examined in the committing magistrate's court and if he had the opportunity to cross-examine him—whether he has cross-examined him or not—or if he happens to die or if he is not available or if he is too far away, then his evidence can be tendered in the Court of Sessions. I think that is a great improvement so far as that goes because he is given a chance to cross-examine and satisfy himself. The Prosecution gains by this fact because in case he happens to die and in case he happens to be one of the star witnesses, that evidence can be brought before the Sessions Court. I think therefore it is a considerable improvement upon the present state of affairs.

Then there are various other sub-clauses here which are merely a reproduction of the existing provisions in the Criminal Procedure Code. In the code after section 207 there are a series of separate sections and what has been done is instead of putting them in separate sections, they have been put here as sub-clauses. Therefore in every case that is chalaned by the police this procedure will be followed. It may be asked why it is that in a private complaint the same procedure is not being put in and why this dual procedure has been prescribed. The reason is very simple. For instance, in a case in which the police does not want to prosecute

[Shri J. S. Bisht.]

but the private person is not satisfied, the person whose relation has been murdered, if he wants to continue the prosecution on his own engaging his own lawyers, in that case there will be this difficulty. In that case the accused is not supplied with any of the documents at all. That private person makes the complaint in the court. That is the only document. There are no other papers. He has not got the statement made before the police; he has not got the Chemical Examiner's Report; he has not got the Serologist's Report; and if it is a case of gun-shot wounds he has not got the Explosive Expert's Report, he has not got the Medical Report. All these things are not supplied to the accused and a very great hardship would be caused to the accused if this procedure were prescribed for that also. That is why the Select Committee thought it right that in the case of private complaints the same old procedure should continue to be followed and only in the case of Government prosecutions where all these facilities are granted to the accused this new procedure should be put in. And I think it is very reasonable and in the interest of expeditious trial.

SHRI H. C. DASAPPA: Sir, I have got three amendments Nos. 72, 74 and 75. Before I come to them, I am rather wonderstruck about the attitude of my friend Mr. Bisht because here I see that he had sent an amendment No. 64 suggesting deletion of the whole clause.

MR. DEPUTY CHAIRMAN: That was not moved. It was ruled out of order.

SHRI H. C. DASAPPA: I understand that.

SHRI J. S. BISHT: I may point out to him that I sent that because I did not want any change from what had been recommended by the Joint Select Committee. In the Select Committee the hon. the Home Minister was there and it was not taken up as a party question. It was in fact as unanimous agreement. Every viewpoint had been thrashed out there and therefore I was surprised when I found that certain changes had again been accepted upsetting the whole balance.

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

So I thought the better plan would be to delete that now and bring in a fresh Bill and again restore the whole thing. Not that I want to get away with it.

SHRI H. C. DASAPPA: I understand that. My hon. friend Mr. Bisht has suggested deletion not only of this clause but of all important clauses, clauses 23, 25, 29, 30 36 and all those.

SHRI J. S. BISHT: 30 is merely consequential; 36 also is consequential.

SHRI H. C. DASAPPA: I am referring to those clauses.....

SHRI K. S. HEGDE: The hon. Member forgets that we are all advocates.

SHRI H. C. DASAPPA: I want to draw sustenance from his attitude. It means that apart from the other clauses which are non-controversial and which are innocent, Mr. Bisht and we are on the same common ground.....

SHRI J. S. BISHT: No, no. I am in favour of the Joint Select Committee's recommendations.

SHRI B. N. DATAR: He is trying to draw you into his own fold.

SHRI H. C. DASAPPA: Now, Sir, I feel that my friend Mr. Bisht must have had a purpose in bringing these amendments for deletion of whole clauses, including clause 29. That means whatever may be the case, so far as the present clause 29 is concerned, it is not an improvement over the previous section 207 of the Criminal Procedure Code. But when one is naturally inclined to draw that conclusion my friend today vehemently supports the existing

clause 29. That is rather difficult for me to understand. I will presently show that my friend Mr. Bisht must have had very good reasons why he wanted to move an amendment for the deletion of clause 29. I do not go so far as my hon. friend but I only say that there are these three things which have got to be done if we have to improve the clause.

Firstly, there is the examination of the accused. At present the examination of the accused by the magistrate is for a specific purpose and what is that purpose? It is for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him. Now, that saving clause is taken away. Is it not open —I ask the hon the Deputy Minister to give me the interpretation— to the magistrate now to put questions to the accused, maybe even by way of cross-examination? When that safeguard is removed that it should be only for explaining any circumstances appearing in the evidence against him and if the Magistrate is free to put any question, it means obviously that he can put any number of questions which will be almost like cross-examination.

SHRI K. S. HEGDE: But I think we should read 207 with 209.

SHRI H. C. DASAPPA: I am reading 209 and my friend may brush up his memory with regard to that section So the examination by the magistrate is for a specific purpose. What I have said in amendment No 72 is that it must be for the purpose of enabling him, that is, the accused, to explain any circumstances appearing in the evidence against him and it should not be open to any magistrate to put any other questions.

Sir, I only advance one reason apart from other things Look at the condition of our country, the knowledge, the education, the upbringing, the intelligence of the average accused that come before the court. It may be that in the case of an intelligent accused, cross-examination may further strengthen the case of the accused, he will be sharp enough for that purpose. But in the case of an illiterate man and so on, who is defending and who has got a fairly good defence, if the magistrate puts him a question in cross-examination, far from saving himself, it is possible that he may give answers which are prejudicial to him. Why is this safeguard taken away and can we call it an improvement? Does it help for speed? Does it help for cheapness of litigation?—the two grand objectives of this Bill This is so far as amendment No 72 is concerned.

Now, with regard to amendments Nos 74 and 75, again the amendments that I have suggested are not strange or new provisions. They are there already in the present Criminal Procedure Code. That is, after framing a charge, if the accused so desires, he may file the witness and he may even request the committing magistrate to examine certain of the witnesses. And it is open to him now under the Criminal Procedure Code to examine those defence witnesses or such witnesses as the accused may summon And after hearing them, he may not commit, he may discharge the accused. That is the present section 212 and section 213. Does not that make for speed and expedition? Why is that taken away? Why is he prevented from doing that? Sir, I have almost given up my hope with regard to improving this Bill, in this House we are supposed to be a revising Chamber, a grand name I wish the House was enabled to justify itself; when any reasonable proposal is brought, that would be considered very sympathetically and adopted. But I am afraid, Sir, that sufficient consideration is not being given; and apart from these things—I am not today saying that this will make a vital departure—I feel that it will be helpful to the accused, if these amendments are accepted and it will not in any way mean prolongation and so on I am stating only generally and I think that the hon. Deputy

[Shri H. C. Dasappa.]

Minister would be considerate enough to treat this House with the same regard and respect as the other House; and when he is convinced—in his heart of hearts I mean—that an amendment is really in improvement on the Bill, he should not hesitate to accept those amendments.

SHRI K. S. HEGDE: Mr. Vice-Chairman, so far as amendments relating to section 207 are concerned, I am quite in agreement with the proposed amendments in the Bill. There has been a good deal of misconception about the nature and the necessity of a preliminary enquiry. There seems to be a prevailing opinion in certain quarters that at present there are two trials going on, one at the time of the preliminary enquiry and again in the Sessions Court. If you will kindly examine the present position, you will appreciate the necessity for the present amendment. The present procedure lays down that when an accused is chalaned in a Sessions case, the entire evidence that is likely to be placed before the Sessions will have to be placed before the magistrate. What happens is if supposing there are thirty, forty or fifty witnesses in a Sessions case, most of them be proving some formal matters. All these witnesses will have to be examined before the magistrate before they could be examined before a Sessions Judge. Now, what happens? This drags on for months and months together. In addition, even formal evidence, such as the report of the serologist, the evidence of the medical officer, even that will have to be taken in a committal Court. In practical experience what happens is a medical officer who has examined a witness for injuries or conducted a *post mortem*, may be transferred to some other place. By these processes hardly any important Sessions case is committed to Sessions before six or eight months. By this process the accused goes on having the agony of the preliminary enquiry and in most cases continues to be in jail whether he is guilty or innocent, apart from having the psychological feeling that he is an accused in a murder case or in a grave case. Out of this, does any benefit come? Any practitioner in a criminal court would be able to tell you, Sir, that the powers of a committing magistrate are very limited. In the language of the lawyers we call him a post office. Many courts have held that the committing magistrate has the right to see whether there is any evidence which, if believed, would end in his conviction. It is not for him to consider whether the evidence is believable or not. This is not a uniform opinion and there has been difference of opinion on this point, but the largest body has held that the powers of a committing magistrate are extremely limited and he can only in very rare and exceptional cases exercise his discretion and discharge the accused. Then, what is the practical purpose of this paraphernalia? On the other hand, the provisions in this amending Bill have provided that the whole set of records will be made available to the accused at the earliest possible opportunity to build up the case. And the whole case is likely to be committed within an extremely short period of a month or two months. Now, the accused can place his case before the Sessions, or he will have to do it even otherwise. This is from the point of view of the accused.

Now, what happens from the point of view of the prosecution? After all interest in a case is like a soda drink. Enthusiasm surely cannot sustain itself in a case for a long time, especially on the prosecution side. For the first month or two months, everybody is quite interested. The parties who were injured are interested. The investigating officer is interested. But as days go on, interest diminishes. And that is why, while the defence continues to have sustained interest, the prosecution goes on dampening. That is an occasion for witnesses becoming softer, if not entirely won over. Therefore, there is always room for

miscarriage of justice From this point of view, I am entirely in agreement as regards amendment of this procedure In my earlier speech I have dealt with this to a large extent

Coming to section 209, it is rather a strange clause You will appreciate that there is some mistake somewhere or overlooking by the Lok Sabha At an earliar stage of the Bill as it emerged from the Select Committee, both in section 342 and section 209 the relevant portion which said "for the purpose of enabling him to explain *any circumstances appearing in the* evidence against him' had been omitted In fact, the framers of the Bill as it emerged from the Select Committee had the idea that the magistrates' right should be greater than asking the accused for merely explaining the circumstances Now, when it came before the Lok Sabha, so far as section 342 is concerned, they went back to the original position So far as section 209 is concerned, obviously by forgetfulness, they allowed it as it is There is no question that if in a warrant case, the questioning of the magistrate is limited only for the purpose of explanation of the circumstance appearing against the accused, why the law should be different in so far as the accused in a committal case is concerned In either case the law requires that the same treatment should be meted out to the accused, apart from anything else In a grave case under section 326 where the punishment can be anywhere about ten years, if the accused can be put questions eliciting explanation for circumstances appearing against the accused, in a committal case where the sentence may be only for three years or two years—as in most cases —it will happen that the accused is not having that safeguard But, on the other hand, the magistrate can more or less cross-examine him Mr Dasappa has elucidated that point and has brought not the dangers involved Now, Sir, I do not say that every magistrate is a bad man But there are magistrates who are both defence-minded as well as prosecution-minded There are a number of magistrates who try to play the role of both, the judge and the prosecutor What is happening in the mofussil courts? Sometimes there will not even be the Prosecutor, and still the case will be taken up by the magistrate. He will play the role of the prosecutor as well as of the magistrate Now I can show you innumerable cases where even the prosecutor is not present in the court Only some constable is brought to deputise the prosecutor, actual prosecution being done by the magistrate Now in such a case, there is a brave danger involved in the magistrate cross-examining the accused The illiterate accused makes unwary admissions which may be only partly true and not wholly true This is an extremely dangerous position I therefore respectfully request the hon Minister to consider whether there is any case for making a distinction between 342 and 209, or between the questioning of the accused in a warrant case and the questioning of the accused in a sessions case The privilege that you give under 342 is taken away by this method It is neither just nor proper to bring in the present amendment to section 209 It must be brought in line and in conformity with the idea that we have incorporated or that we are going to incorporate in section 342 With these few words, Sir, I would request that the amendment suggested by Mr Dasappa and others may kindly be accepted

SHRI B N DATAR Sir, I may point out here to my hon friend that section 342 is of general applicability And section 342 governs both these sections, section 207A and section 209. And therefore the difficulty that he has pointed out does not arise in this case I would read out section 342 for the information of the hon Member It says

> "For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the court may, at any stage of any enquiry or any trial, without previously warning the accused put such questions to him as the court

[Shir B N Datar ]

considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence"

Sir, this is a general provision and it covers both the sections, section 207A and section 209, because the word 'enquiry' has been specifically used there Therefore I would point out to my hon friend that there is no particular point in deleting these words For example, in the general section, section 342, we have these words, and we will see that these words have to be understood as applying to all cases Therefore with a view to avoiding repetition of the same expressions at every place, they have been removed from both the sections, section 207A and section 209

SHRI K S HEGDE Am I to understand that 342 is going to control it?

SHRI B N DATAR Yes, it will control, and it will continue Once it was thought that 342 might be amended, but it has not been amended Section 342 continues as it is, and the words do remain At one time, it was considered that the powers of the magistrate should not be confined so as to enable him to ask questions only for the purpose of enabling the accused to explain Now these limits have been taken away It was considered that these limits should be taken away and the magistrate should have a general power of examining the accused But there were certain difficulties also And it would not be right, Sir, to put to the accused certain questions which might be of a hostile nature or of a cross-examining nature Therefore, after deliberations section 342 has been retained as it is It was not a case of inadvertence or oversight But it was considered that when these three sections are taken together, section 342 is a general section which applies to all

SHRI K S HEGDE It may apply to 245 and not to 209 Sir, section 342 reads like this.

"For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the court may, at any stage of any enquiry or any trial, without previously warning the accused, put such questions to him as the court considers necessary " And this is the second part—

" and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence"

In a warrant case, Sir, you are

SHRI B N DATAR You will find it, Sir, that it is a general provision

SHRI K S HEGDE The old section 209 alone had this exception which says "For the purpose of enabling ", whereas section 245 did not have it The framers of the Code introduced this provision in 209, but not in 245 Sir, section 245 reads as follows —

"(1) If the Magistrate upon taking the evidence referred to in section 244 and such further evidence (if any) as he may, of his own motion, cause to be produced, and (if he thinks fit) examining the accused, finds the accused not guilty, he shall record an order of acquittal"

Sir, section 209 can never be controlled by 342, whereas section 245 has been controlled by it

SHRI B N DATAR How do say that 245 has been controlled by 342, while it does not control 209 or 207A?

SHRI K S HEGDE It is made very clear, because if you see the second part of section 342, it says

" and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence."

Now under 209 you are not going to call him for his defence at all.

SHRI B. N. DATAR: Do you agree that section 342 applies to all cases?

SHRI K. S. HEGDE: Yes, it applies to all cases.

SHRI B. N. DATAR: Then, if section 342 governs the examination of the accused at all stages and in all cases.....

SHRI K. S. HEGDE: There are two ways of questioning the accused: one, under the relevant provision either in 209 or 245, and another, generally under 342.

SHRI B. N. DATAR: In other words, would you agree that section 342 consists of two distinct provisions?

SHRI K. S. HEGDE: Undoubtedly.

SHRI B. N. DATAR: If they are two distinct provisions, then we can apply the first provision to an enquiry even in respect of commitments.

5 P.M.

SHRI B. K. P. SINHA (Bihar): Sir, these two powers are of two different kinds. Section 342 gives a positive power. This power can be exercised for one specific purpose, but under 209, there is a sort of prohibition on the court, an injunction on the court. While one is a positive power, the other is of a negative character. We are making the court a cross-examiner for the prosecution by lifting the ban in this clause.

THE VICE-CHAIRMAN (SHRI V. K. DHAGE): Mr. Datar may think over the amendments. There are two messages from the Lok Sabha.

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## MESSAGES FROM LOK SABHA

I. FINANCE BILL, 1955

II. THE COMMANDERS-IN-CHIEF (CHANGE IN DESIGNATION) BILL, 1955.

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

I

"In accordance with the provisions of Rule 133 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose herewith a copy of the Finance Bill, 1955, as passed by Lok Sabha at its sitting held on the 22nd April 1955.

The Speaker has certified that this Bill is a Money Bill within the meaning of Article 110 of the Constitution of India."

II

"In accordance with the provisions of Rule 133 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose herewith a copy of the Commanders-in-Chief (Change in Designation) Bill, 1955, as passed by Lok Sabha at its sitting held on the 22nd April 1955."

Sir, I lay these two Bills on the Table.

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## ANNOUNCEMENT *RE* BUSINESS ON 23RD APRIL, 1955

THE VICE-CHAIRMAN (SHRI V. K. DHAGE): I have to inform the House that the Appropriation Bill will be taken up tomorrow. Further consideration of the Code of Criminal Procedure (Amendment) Bill will be resumed after the disposal of the Appropriation Bill and the Finance Bill.

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

The House then adjourned at three minutes past five of the clock till eleven of the clock on Saturday, the 23rd April 1955.