

18.05 hrs

DEFAMATION BILL— CONTD.

[English]

MR. DEPUTY SPEAKER: Now, we take up clause-by-clause consideration of the Defamation Bill.

There is no amendment to clause 2. I shall now put clause 2 to the vote of the House.

The question is:

"That clause 2 stand part of the Bill"

The motion was adopted

Clause 2 was added to the Bill

Clause 3 (Defamation)

MR. DEPUTY-SPEAKER: Now, we take up clause 3. Shri Amal Datta.

SHRI AMAL DATTA : I beg to move:

Page 2, Line 25 —

omit "This caste or" (4)

Sir, in clause 3, Explanation IV (a) says:

"(a) that imputation, directly or indirectly in the estimation of others, lowers the moral or intellectual character of that person, in respect of his caste or his calling or lowers the credit of that person etc."

Now, so far as mention of "caste" is concerned, I think, it should be omitted. This part of the Bill has been taken variation from the original Act, IPC. There, if a person belong to a higher caste was called by somebody that he belonged to lower, caste, that would bring him down in the estimation of the people. The situation today, at least, legally is changed. So, the law cannot now take cognizance of the fact that if a person belongs to

a higher caste and is said to be a person belonging to a lower caste, in that case, he goes down in the estimation of the people. If in the estimation, of some people, he goes down, they are not the right thinking people and we should not be concerned about that. This is the Constitutional, legal position which we have enshrined in this Parliament. We cannot now say that because a person belonging to a higher caste is called as a person belonging to a lower caste, that will be a matter of defamation. This cannot be considered as defamatory at all in any sense.

THE MINISTER OF STATE IN THE MINISTRY OF PERSONNEL PUBLIC GRIEVANCES AND PENSIONS AND MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI P. CHIDAMBARAM): I accept his amendment.

PROF. MADHU DANDAVATE (Rajapur) Will he accept the repeal of the Bill?

MR. DEPUTY-SPEAKER: It is only the amendment.

Dr. Datta Samant.

DR. DATTA SAMANT (Bombay South Central): I beg to move:

Page 2, line 7 —

after "Whoever" insert —

"including Government servant and police officer including C.B.I. (12)"

All discussions are there. If somebody defames other persons, he can be prosecuted in the Sessions Court and all this. The whole problem here is that the defamation is not done by the Press or Editors or some persons but sometimes this Government is also involved in the defamation of the Opposition or some of the leaders for political sake. In that thing, though they are not directly involved, the police officers and the CBI and all people are involved to make the

[Dr. Datta Samant]

propaganda against a particular man. I was the major victim with 4 murder cases and all that. But the High Court acquitted me. (*Interruptions*)

MR. DEPUTY SPEAKER: Please Order.

(*Interruptions*)

DR. DATTA SAMANT: I am the victim of their propaganda. (*Interruptions*)

PROF. MADHUY DANDAVATE: Mr. Deputy-Speaker, Sir, that reference might be expunged. Otherwise, he may be hanged tomorrow!

DR. DATTA SAMANT: In bogus murder cases, I was the victim. In 1972 in order to please the Godrej, I was kept behind the bar and it was announced that I would be hanged. The Court has acquittance. This is your political connivance with the Godrej

THE MINISTER OF PARLIAMENTARY AFFAIRS AND MINISTER OF INFORMATION AND BROADCASTING (SHRI H.K.L.BHAGAT): I have absolutely no intention to stop him but what Prof. Madhu Dandavate has said, I agree with him because that should not go on record, what he has said. Otherwise, I am not saying one way or the other against him or for him. (*Interruptions*) You are free but these cases which are judicial findings should not be discussed. It should not go on record.

DR. DATTA SAMANT: What about a political defamation by the ruling party in order to serve their political influence? (*Interruptions*) **

MR. DEPUTY SPEAKER: It will not go on record.

DR. DATTA SAMANT: It is a defamation, Sir (*Interruptions*) **

MR. DEPUTY SPEAKER: No, no. It

won't go on record.

DR. DATTA SAMANT: Whatever law is applicable to the average man is applicable to the Government officers and the top people also. Therefore, you add the words "including the Government servants and police officers including CBI."

SHRI P. CHIDAMBARAM: I have accepted Mr. Amal Datta's amendment to delete the words "his caste or" line 25 page 2. As regards Dr. Datta Samant's amendment, it is hardly necessary for me to say that I do not accept it.

MR. DEPUTY SPEAKER: Now I will put the amendment moved by Shri Amal Datta to the vote of the House.

The question is:

"Page 2, line 25 —

omit " his caste or"

The motion was adopted.

MR. DEPUTY SPEAKER: Now, I will put the amendment moved by Dr. Datta Samant to the vote of the House.

Amendment No. 12. was put and Negatived.

MR. DEPUTY SPEAKER: The question is:

"That clause 3, as amended, stand part of the Bill."

The motion was adopted.

Clause 3, as amended, was added to the Bill.

Clause 4 (Exceptions)

SHRI AMAL DATTA: I beg to move:

** Expunged as ordered by the Chair.

Page 2, line 32, —

after "Which is insert" "substantially"(5)

Page 2, lines 33 to 35, —

Omi: if it be for the public good that the imputation should be made or published and it is a question of fact as to whether it is for the public good"(6)

I move both of them. The exceptions which are listed in Clause 4 begin like this. "Nothing in Section 3 shall apply to (i) the imputation of anything which is true concerning any person. "Of these, some may be major, some may be minor. If it has to be wholly true, that means, all the major and the minor ones have to be proved to be correct. That may not be possible because the minor allegations sometimes may not be wholly proved. But the major ones can be proved. In all the jurisdictions following British law, the word "Substantially" has been added before the word true so, that the substance of the allegations is proved. That is only the burden of proof on the person who is accused of defamation. The hon. Minister should also accept this because when I was talking about it, he was nodding his head. He may kindly accept it.

SHRI P. CHIDAMBARAM : This is a provision which has stood the test of time. Courts have interrupted this to mean that you must prove the material part of an allegation, the material facts of allegation. I don't think it is necessary to make any amendment at this stage. This Clause has stood the test of time. This Clause occurs not only in this Act but also it occurs in several other acts. I don't see any reason why we should introduce the word "substantially" and try to create scope for further interpretation. This has stood the test of time.

MR. DEPUTY SPEAKER: I shall now put the two amendments moved by Shri Amal Datta to the vote of the House...

SHRI AMAL DATTA: Sir, I have spoken only on the first amendment.

MR. DEPUTY-SPEAKER : I have asked you already. At that time, you should have spoken.

SHRI AMAL DATTA : Sir, this amendment at serial No 6 comes out of the Press Commission Report and the Law Commission report. I has explained this to the hon. Minister at the time of my speech. This is every important amendment (*Interruptions*) I hope the Minister will accept it.

MR. DEPUTY SPEAKER : I shall now put the two amendments moved by Shri Amal Datta to the vote of the House.

Amendment No 5 and 6 Put and Negatived

MR. DEPUTY SPEAKER : The question is:

"The Clause 4 stand part of the Bill:"

The motion was adopted.

Clause 4 was added to the Bill.

Clause 5 (Punishment for defamation)

SHRI E. AYYAPU REDDY: Sir, I beg to move:

Page 3,—

after line 36, insert—

"Provided that if the convicted person informs the court about his intention to prefer an appeal against the judgement, the order for publication of the judgement shall by stayed. (16)"

Sir, this relates to defamation. A Magistrate or a person who tries may order the publication of his judgement in such a manner as he may specify. He may fix the date and say that it must be published within that date. But the accused person wants to prefer an appeal against that judgement. Then, he must be in a position to ask for the stay of this

[Sh. E. Ayyapu Reddy]

direction, to publish it also. That is why my amendment says:

"Provided that if the convicted person informs the court about his intention to prefer an appeal against the judgement, the order for publication of judgement shall be stayed."

It is such an ordinary principle. The judgement will not become final until the Appellate court has disposed of it. Therefore, I don't think there will be any objection for the acceptance of this amendment.

SHRI P. CHIDAMBARAM: Is it necessary to provide it in the Act? The accused will move the Appellate Court and get stay of operation of that judgement or even move an application before the Magistrate himself and ask for more time so that he can file an appeal. These are provided today. Today fine is imposed. If one does not want to pay fine, one moves the Appellate Court or asks the Magistrate to vary the order. These are not matters which have to be provided in the Act. There are provisions in the Criminal Procedure Code.

MR. DEPUTY SPEAKER : I shall now put the amendment moved by Shri E. Ayyapu Reddy to the vote of the House

Amendment No. 16 was put and Negatived.

MR. DEPUTY-SPEAKER: The question is:

"That Clause 5 stand part of the Bill"

The motion was adopted.

Clause 5 was added to the Bill.

MR. DEPUTY-SPEAKER: In Clause 6, there is no amendment.

The question is :

"That clause 6 stand part of the Bill"

The motion was adopted

Clause 6 was added to the Bill

Clause 7 (Sale of printed or engraved substance containing defamatory matter)

SHRI E. AYYAPU REDDY : I beg to move:

Page 4, —

after line 5, insert,—

"Provided that the proprietor of a press or the editor of a newspaper shall not be liable for punishment unless it is specifically proved that they had willingly given their consent to the publication containing defamatory matter". (17)

Sir, most of the publications are made without any knowledge by the proprietor. Therefore, I have provided that the proprietor of a press or the editor of a newspaper shall not be liable for punishment unless it is specifically proved that he has willingly given his consent to the publication containing defamatory matter. We normally know that most of the publications are made without going through the details. They may here and there skip through the script and allow its publication. If a bona fide person is not guilty, he should not get punishment. That is the intention of the amendment.

SHRI P. CHIDAMBARAM Sir, Clause 7 is a verbatim copy of the existing Section 502. I have not provided any other mens rea. It is the same mens rea knowledge. If he has knowledge, he will be punished. If he has no knowledge, he won't be punished. I do not see why there should be any amendment.

MR. DEPUTY-SPEAKER: I put amendment 17 to Clause 7 to vote.

Amendment No. 17 was put and negatived

MR. DEPUTY-SPEAKER : The ques-

tion is:

"The Clause 7 stand part of the Bill"

The motion was adopted

Clause 7 was added to the Bill

MR. DEPUTY SPEAKER: Now, clause 8.

Shri Amal Datta. Are you moving?

SHRI AMAL DATTA: I am not moving.

MR. DEPUTY SPEAKER: The question is:

"The Clause 8 stand part of the Bill."

The motion was adopted

Clause 8 was added to the Bill

Clause 9 (Unintentional defamation)

MR. DEPUTY SPEAKER: Now, Clause 9. Shri Ayyapu Reddy.

SHRI E. AYYAPU REDDY : I beg to move:

page 5,—

after line 30, insert—

" (c) That the publisher did not fail to publish the contradiction of the defamatory statement and called upon to do so by the person against whom the imputation was made." (18)

This is one of the matters which must be taken into consideration. Suppose, if a publisher is asked to publish a contradiction and if he publishes the contradiction, this must also be a matter which must be taken into consideration while trying to convict or sentence him. A publisher has not failed to publish the contradiction when desired by the person who has defamed. If he has not failed to do so that must be taken into consid-

eration while awarding the sentence.

SHRI P. CHIDAMBARAM : It is already provided in Clause 9(2) (c) that:

"An offer of amends shall-

(d) include an offer to publish, or join in the publication of, a suitable correction of the matter complained of and a sufficient apology."

This is provided for.

MR. DEPUTY-SPEAKER : I put amendment number 18 to clause 9 to vote.

(Interruptions)

SHRI E. AYYAPU REDDY : You must permit us. what is this?

MR. DEPUTY SPEAKER: I cannot permit. This is not a formal discussion.

(Interruptions)

MR. DEPUTY SPEAKER: You can put whatever you can. But after the Minister replies, I cannot allow. I cannot reopen it.

(Interruptions)

MR. DEPUTY SPEAKER : Let him speak whatever he wants to speak. After the Minister replies, how can you once again reopen the case.

(Interruptions)

This is not the way to speak. You have to cooperate with me.

(Interruptions)

MR. DEPUTY SPEAKER: I cannot allow. You have to cooperate. You should understand others' feeling also. when I allow you, you take five minutes, I have no objection. But after the Minister's reply, I cannot reopen the case.

(*Interruptions*)

MR. DEPUTY SPEAKER: I Put amendment number 18 to clause 9 to vote.

(*Amendment No. 18 was put and Negatived*)

MR. DEPUTY SPEAKER: The question is:

"That Clause 9 stand part of the Bill."

The motion was adopted

Clause 9 was added to the Bill

MR. DEPUTY SPEAKER Now, clause 10. There is no amendment to Clause 10

The question is :

"The clause 10 stand part of the Bill."

The motion was adopted

Clause 10 was added to the Bill.

Clause 11 (*Certain Statements not to constitute defamation*)

SHRI E. AYYAPU REDDY: I beg to move:

Page 7, —

after line 8, insert

" (g) a fair and accurate record of the proceedings of a general meeting of any political party or the press statements issued by any Member of Parliament or Legislative Assembly or Legislative Council or office bearers of a political party." (19)

Sir, I have moved a very important amendment. (*Interruptions*) I have merely wanted one more clause to be added to the clauses. There are up to (f) about any publication made by a person containing a number of things. What I have added is:

"(g) a fair and accurate record of the proceedings of a general meeting of any political party or the press statements issued by any Member of Parliament or Legislative Assembly or Legislative Council or office bearers of a political party."

Supposing the Press reports fairly accurately the proceedings of a political party or the meeting or the statements made by a Member of the Legislative Assembly or Member of Parliament or any office-bearer of a political party, he shall not be liable to be proceeded for defamation. That is what I wanted to be incorporated

You have merely stated so many things. (*Interruptions*) He must not be made the scapegoat because he fairly accurately reports the proceedings of a public meeting addressed by so many leaders.

Suppose press statements were issued by political leaders. Why should they be liable? For instance, you have said:

"(d) A fair and accurate report of the proceedings of any meeting or sitting of —

- (i) any local authority or committee of a local authority,
- (ii) any commission, tribunal, committee or person appointed for the purposes of any inquiry under a Central, Provincial or State Act by the appropriate government,
- (iii) any person appointed by a local authority to hold a local inquiry in pursuance of any Central, Provincial or State Act;
- (iv) any other tribunal, board, committee or body constituted by or under and exercising functions under a Central, Provincial or State Act, ..."

When publication of these shall not be

taken into consideration for the purpose of prosecuting the publisher, why should he be prosecuted if he accurately and fairly reports the proceedings of a political party or the meetings addressed by political leaders or Press releases made by Members of Parliament, MLA's and other persons or office-bearers? That should be included in the same category as you have mentioned in the other categories of (a) to (f).

SHRI P. CHIDAMBARAM : Sir, it does not come under the same category. That's why the Press Commission and the Law Commission did not recommend that reporting a statement in a public meeting or in a political meeting should enjoy either absolute privilege or qualified privilege. I think, the whole country knows that standards of public debate, in public meetings and political meetings are not always very high. That's why, I think, the Law Commission and the Press Commission did not make such a recommendation which Mr Ayyapu Reddy is making.

I think, it would be quite incorrect to give either a qualified privilege or an absolute privilege to a statement which is made in a public meeting. I think, it would be quite dangerous and I cannot accept this amendment.

MR. DEPUTY SPEAKER I shall now put Amendment No 19 to Clause 11 moved by Shri E. Ayyapu Reddy to the vote of the House.

Amendment No 19 was put and negatived

MR. DEPUTY SPEAKER The question is:

"That Clause 11 stand part of the Bill "

The motion was adopted

Clause 11 was added to the Bill"

Clause 12 (Burden of Proof.)

SHRI E. AYYAPU REDDY: I beg to

move:

Page, 7, lines 13 and 14, —

omit " and the prosecution shall have the right to lead evidence in rebuttal" (20)

Sir, I have submitted that the words, the prosecution shall have the right to lead evidence in rebuttal, should be omitted. That is the amendment. For the first time, we are introducing this provision. Sometime earlier, the hon. Minister read Section 105 of the Evidence Act saying that the burden of proving the exception is on the accused. I agree with him entirely. The Penal Code has been there and the exceptions have to be proved by an accused. But anywhere has the Criminal Procedure Code provided, at any time, for the prosecution to lead evidence in rebuttal? CPC has been there for more than a century. In almost all the cases, under the Penal Code, including the defamation, the burden of proving the exception is on the accused. But has the Criminal Procedure Code at any time contemplated that the prosecution should have the right to lead evidence in rebuttal? It has not. Why are you introducing a new concept which has not been there at all? If an accused pleads alibi and leads evidence in self-defence, does the Criminal Procedure Code now provide that the prosecution must have a right to lead evidence in rebuttal. How does it stand the test of Article 14 of the Constitution? You are trying to give one type of right in grave offences, and another type of right in lighter offences. After all, defamation is not such a serious offence. If a man is charged with murder and he pleads alibi in self-defence, prosecution is not given an opportunity to lead evidence in rebuttal. This principle that the prosecution must be given an opportunity to lead evidence in rebuttal is a new concept which has not been there. Therefore, this will upset the basic principles of criminal jurisprudence and, therefore, my amendment should be accepted.

SHRI P. CHIDAMBARAM : While replying to the debate, I pointed out that there is Section 135 of the Evidence Act which en-

[Sh. P. Chidambaram]

ables the court to decide the order in which whiteness are produced and examined. This shall be regulated by the law in practice for the time being applicable to the courts. If the hon. Member will look to the commentary under Section 135, he will find that wherever the accused or the defendant has the duty to lead evidence, then the court may allow either the prosecution or the plaintiff to lead rebuttal evidence. In fact, rebuttal evidence is well known in Criminal law and civil law both. In the election law, there is a specific provision to lead rebuttal evidence, where he takes a particular plea that he should be declared elected. At that stage, he can lead rebuttal evidence. Rebuttal evidence is well known to the courts, both civil and criminal, and that is what we are providing. Since the initial burden of proving that the case falls within the exception lies on the accused, if he discharged that burden, the prosecution must have the right to lead rebuttal evidence. This is consistent with the law today, as I understand, as I have been advised, with Section 135 of the Evidence Act.

MR. DEPUTY SPEAKER: I shall now put amendment No. 20 to clause 12 to the vote of the House.

Amendment No.20 was put and negatived.

MR. DEPUTY-SPEAKER: The question is:

"The clause 12 stand part of the Bill"

The motion was adopted.

Clause 12 was added to the Bill.

Clause 13 (Offence of Criminal imputation)

SHRI THAMPAN THOMAS : I beg to move:

"Page 7, the 23, —

Omit for a term which shall not be less than one month, but"(13)

SHRI P. CHIDAMBARAM : I Beg to move:

"Page 7,

After line 28 insert—

"Explanation — It is not an imputation under this section to make or publish in good faith an accusation against any person to a Court, Tribunal or other authority which has lawful authority over that person with respect to the subject matter of that accusation." (26)

SHRISOMNATH CHATTERJEE: I beg to move:

That in the amendment proposed by Shri P. Chidambaram and printed as S.No. 26 in List No. 7 of amendments,—

after the Explanation add —

"Explanation II— In this sub-section, offence shall not include an economic offence." (29)

SHRI THAMPAN THOMAS: I have moved my amendment to delete the minimum term prescribed for punishment as one month. I press for it because fair criticism by any person against any person in office or anywhere will not be available so long as this clause is there. A mandatory provision to send a person for defamation to jail will not allow fair criticism by any individual

If somebody files an affidavit in the court, the court takes cognizance of the offence and tries the case summarily and the magistrate has no discretion to say that it fines Rs. 10 Rs 100, and minor punishment is given. If the case is genuine, then the punishment should be there at least for a minimum period of one month. Suppose something happened and subsequently a charge is made at the time of . (*Interruptions*)

You should at least have the patience to listen to me.

Suppose there is one case which happened in Japan where at the time of publication it is said that Thanak has taken bribe from the Lockheed Company. Under this law, it is prohibited and it amounts to defamation and so the person who has made this statement should be punished. Subsequently in the later year it was found that he was really the guilty. There are certain basic aspects like intention, motive and *mens rea*. In the criminal cases, the punishment can be invoked only if there is *mens rea*. Absence of *mens rea* means absence of criminal offence. The court is bound to give punishment for a minimum of one month for making a criticism which is known to me. Therefore, At present what I say should be permitted.

Secondly what does the Law Commission recommended? Mr. Chidambaram has made a case, even in the statement of objects and reasons it is stated that this Bill has been based on the recommendations of the Law Commission and the Press Council. The Law Commission has only recommended to give the punishment of rigorous imprisonment for two year or fine. They have never recommended a minimum mandatory punishment of one month jail. So, if he is accepting the amendments of the Law Commission he should accept my amendment also. Therefore, I request the Minister that my amendment may be accepted.

SHRI. E. AYYAPU REDDY : Clause 13 is a totally new concept. The Hon. Minister has himself stated that this is a new type of specie of offence. This clause 13 and the subsequent clauses 14 and 15 are intended to stifle, preventer prohibit the investigative journalism which has been picking up in India just now very nicely and vigorously.

Sir, the principles of defamation were enshrined in Chapter 21 of the Indian Penal Code and they offered sufficient protection to one and all. It has served as a safety valve or at the same time a corollary or a controlling agency on the freedom of speech. Sir, the intention to usurp this new space of offence is to deprive the Press of the safe-

guards which have been incorporated in 499 of the Indian Penal Code, which has been now provided in Clause 5. In Clause 5 the ordinary defamation, the exception have been provided. First he has to prove at his loss of reputation. Apart from that there are 10 exceptions. Except Exception 1 all the other exceptions are not made applicable to the criminal imputation. When I pointed out how perversely it will affect even the benafide prosecutor or complaint, the Hon. Minister has today circulated an amendment by way of an exception to Clause 13. Nonetheless, some of the important provisions which govern defamation are not made applicable to this criminal imputation. For instance, certain safeguards are provided in sub-clauses (iv), (ix) and (x) of Clause 4, which are as under:

- (iv) the publication of a substantially true report of the proceedings of a Court or Tribunal or of the result of any such proceedings.;
- (ix) the imputation on the character of another provided that the imputation is made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good;
- (x) the conveying of a caution, in good faith, to one person against another, provided that such caution is intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

All these safeguards which are provided in the case of defamation are not made available so far as criminal imputation is concerned. Also, protection given for unintentional defamation provided in Clause 9, 10 and 11 is not available for criminal imputation because this states with clause 'notwithstanding anything contained in Chapter II of the Act.' Therefore, criminal imputation *per se* has been made an of-

[Sh. E. Ayyapu Reddy]
 fence. Previously, this was not at all the case. Therefore, even the safeguards provided under Clauses 9, 10 and 11 are not available for criminal imputation. The entire process is to prevent investigative journalism. Supposing a crime is committed and the press makes an investigation into it and publishes the results of the investigation which points out that the offence has been committed by a particular person, then the press is liable under Clause 13. If the press makes any type of investigation about some public scandal or corruption in the Administration or high places, they are likely to be hauled up under Clause 13. The only scope for them to get out is that they must prove under Clause 15 that their report is true and it is for the public good. If they are not able to prove that the investigation made by them is true and accurate and that it is for the public good, they will incur the minimum sentence of one month's imprisonment as has been prescribed under this Act. This clause 13 is brought only to make criminal imputation a new offence and it is mainly intended to stifle investigative journalism, relating especially to public scandals and corruption in high places. Therefore, I oppose Clause 13 tooth and nail.

SHRI SOMNATH CHATERJEE: Sir, I know that this Government has gone berserk. In their occasional lucid moments, I hope they will display some rare sense of political honesty by accepting my amendment.

Sir, Clause 13 is the brainwasher of Shri Chidambaram by which the Government has created a new species of defamation. What is this new species of offence that is being created by this clause? ... any imputation falsely alleging that any person has committed an offence, or has done or omitted to do any act which amounts to an offence. This is the new offence. The intention of this Bill is tell-tale. It is very clear. Whatever the bulldozing majority may try to project, the people have understood and will understand when the real ramifications of the so-called codifying Bill come to the

knowledge of the people with the whole object. You do not say anything. You have not even mentioned anything which may even remotely be construed to refer to an offence or amounting to an offence. Kindly consider when the Bofors thing was first published, the Swedish Radio broadcast was reproduced here. On the basis of that, there was the clearest indication of violation of law where offence has been created. On the first publication itself, Section 13 would have been attracted. Thereafter it has been admitted 'yes money was paid in violation of the law' Even that stage would not come if this law is there. Take the latest case of ONGC disclosure. If this law was there, what *The Statesman* has published could not have been published. Because as soon as it was published, immediately the next day, Mr. Shri could have gone to the court and the onus could have been on *The Statesman* to prove everything which can be proved from the Government records. These records are not forthcoming. Whether there is violation of Income Tax Law or not, one could get an information and or can draw reasonable inference from the facts disclosed or facts known. But actually clinching evidence can only be available from official records to which we have had no access. Nobody will have any access. Now, the defence is sought to be made that it has to be proved. Shri Ayyapu Reddy is absolutely right that the defence of fair comment, defence of unintentional publication, defence of absolute privilege or qualified privilege, nothing will be available in case of offence under Section 13. The offence is to impute an offence or the offence is to impute something which may amount to an offence. Therefore, at the there should, what is the sinister and the mala fide intention of this Bill? It is really to introduce or create a new offence and the only important Chapter is Chapter III. The Minister is right. A part of it is mere codification. Wherever they have tried to depart from the Indian Penal Code, which has stood the test of time, they have made it more unintelligible. I can concede that upto Section 12, you have faithfully, or faithlessly copied the old law. But where you have gone and thought of a new thing is

Chapter III. It is an atrocity. I know even the hon. Members on the other side fee very strongly about it. You hare unable to express yourselves- the Members on that side. As Prof. Dandavate says, you are bonded labour, what can you do?

PROF. MADHU DANDAVATE: No, no. Don't insult the bonded labour!

SHRI S. JAIPAL REDDY: They are willing to beliberated!

SHRI SOMNATH CHATTERJEE: Therefore, this is very very important. (*Interruptions*)

Mr. Chidambaram, with all his eloquence, with all his knowledge, with his persuasive knowledge, with the knowledge of literature and knowledge of law and Constitution and what not, could think of only one example and that is, if a dancer is dancing, her ability is criticised. That is one thing. But if some imputation is made against her for violation of the Suppression of Immoral Traffic Act, then it is a very serious matter and Section 13 will be immediately attracted. Therefore, it is a matter of the character simpliciter. It is a social crime. That is what I am saying. It is very well, if you want to include social crimes or allegations of commission of a social offence, then have it. It is because you will pass it. But why do you include economic offences? Why can't I allege FERA violations why can't I allege income-tax violations; why can't I allege sales tax violations?

Therefore, has this Government any political honesty solar as maintaining this country free of economic offences? (*Interruptions*) If they do not believe in middlemen, and if they do not believe in commissions, they should accept my amendment-I say that offences coming under the meaning of Clause 13 should not include economic offences. (*Interruptions*).

Even Mr. Shantaram Naik has become quiet. (*Interruptions*) I know it is no good

appealing. They will not go to the people; and when they go, the people will give them their lessons. But let them, even on a rare occasion, show some political honesty; and, therefore, let them accept my amendment. (*Interruptions*) With or without commission, I do not know. (*Interruptions*)

SHRI S. JAIPAL REDDY: We are prepared to pay commission, if they show that honesty.

SHRI SOMNATH CHATTERJEE: As I said, this is an absolute offence with an absolute punishment. There has to be imprisonment. Nothing less than imprisonment; Plus fine, Imprisonment is amuse, for one year. Against whom is it directed?

Therefore, Chapter I and II are merely thought of, to give company to Chapter III. Hence, in view of the fact that a very limited defence is available, and it is impossible for anybody to prove it in the absence of the official records and documents, they should restrict this offence only to social offences or offences other than economic offences, because this country is being bled white. Moneys are being kept in foreign banks...(*Interruptions*)

SHRI VAKKOM PURUSHOTHAMAN: You cannot make a political speech... (*Interruptions*)

MR. DEPUTY SPEAKER: Order please...

SHRISOMNATH CHATTERJEE: I was saying that this country is bled white. Moneys are being admittedly kept in the Swiss banks and foreign banks. I cannot say now that somebody is keeping money in a foreign bank. I have to prove it from the records of the Swiss banks. Is it possible? (*Interruptions*)

MR. DEPUTY SPEAKER : Order please

SHRI SOMNATH CHATTERJEE: Somebody is admittedly owning a flat in Switzerland. How can I prove it? They will not give the documents to us. Therefore, here is a deliberate and sinister motive to stop publication of information relating to economic offences, and this is nothing but a very serious move to keep people in darkness. They want extenuation by Chapter III, not on merits not by priving, on the basis of merit. Therefore, I submit that they should restrict it to offences other than economic offences, and that my amendment should be accepted. *(Interruptions)*

PROF. M.R. HALDER (Mathurapur) *

MR. DEPUTY SPEAKER: It will not go on record. Mr. Minister, you speak on the points, and also on the amendments. *(Interruptions)*

SHRI P. CHIDAMBARAM: I was aware that Mr. Somnath Chatterjee was reserving all his ammunition for this stage of the consideration of the Bill.

19.00 hrs

He called us names, he called us berserk. I can only say that it is a mind which suffers from a strange delusion which things that only that mind is lucid and everyone else is berserk. He called us other names, he called us bonded labour and so many other things. *(Interruptions)* To mind which cannot grasp the significance of perestroika and Glasnost, all I need to read is the Politburo resolution of the CPM of Perestroika and Glasnost. *(Interruptions)*

SHRI SOMNATH CHATTERJEE: Glasnost and Perestroika!

SHRI. P. CHIDAMBARAM: Let me go back to what I said about Clause 13. Clause 13 is a species of defamation. Imputation of

criminal offence is defamation in English law, and in Indian Law. In Indian law, it is a civil wrong as well as a crime under the law as it stands today. If I did not have Clause 13 then it will still be covered by Clause 3. Then I went on to explain why we have Clause 13. We can conceive of defamatory statements simpliciter and defamatory statements which carry with them a criminal imputation.

Take the very example which Mr. Chatterjee mentioned, Bofors. I am not running away. In Bofors, the first allegation published by the Swedish Radio was not an allegation against any person as having committed an offence. If you will kindly see Clause 13, it is attracted only if an imputation is made, falsely alleging that any person has committed an offence. The Swedish Radio did not make a charge that any person has received a bribe. On the contrary, the Swedish Radio made the charge and that charge has been repeated *ad nauseam* by the members of the Opposition

PROF. MADHU DANDAVATE: What about Hinduja?

SHRI P. CHIDAMBARAM: What a minute. I am not speaking about Hinduja. If you want to speak for Hinduja, you may speak for Hinduja. If Hinduja is aggrieved, Hinduja will go to court. If Hinduja goes to court he he will get the truth of the allegation.

Where does the Government come in Clause 13? Where do these people come in Clause 13? This is a mind which reads more into Clause 13 than is there. Where does anything come in Clause 13? Clause 13 is intended to punish a person who makes up a false allegation, against another person of having committed a crime, of having committed an offence which is punishable under the law. This is the definition under the law today

I gave one example. If Hon'ble Mr. Chatterjee wants to give me other examples, I am willing to give him another example. For example, if I say, that X suffers from a loathsome disease, that is defamation under Clause 3. But if I say, that he acquires this loathsome disease or transmitted this loathful disease in a manner by which he has violated some law, certainly that would attract Clause 13. The point is, we have to distinguish between defamation which carries with it a criminal imputation and defamation which does not carry with it criminal imputation. Both are covered under this law, under Section 499. What we are trying to do is covered under Clause 3 and we say that it is an aggravated form of defamation (*Interruptions*)

SHRISOMNATH CHATTERJEE: What about the exception to it?

SHRI P. CHIDAMBARAM : We have taken the aggravated form of definition which carries with it criminal imputation and put it in Clause 13 and say, if you make bold to make a specific false allegation against a person, that he has committed a crime, then you must stand by What statement and prove the truth of that statement. I cannot see how this is wrong.

As far as Mr. Thampan Thomas's points are concerned, I am afraid, he is wrong. It will be tried as a summons case, and the discretion to try as a summary case is left to the court and that discretion will be governed by Section 262 to 264 of the Criminal Procedure Code. There is a vast difference between a summons case and trial in a summary way.

Secondly, he spoke about *mens rea* In Clause 3, there is *mens rea* Definitely today under the India law this involves *mens rea* in Clause 13 *mens rea* is false allegation. There is a *mens rea*. There is a mental state. He must falsely make the allegation. Clause 3 has *mens rea*. Clause 13 also has *mens rea*.

Then he spoke about Law Commission's recommendations and the Press Commission's recommendations. I did not claim that the Law Commission and the Press Commission have recommended Clause 13. Kindly see the Statement of Objects and Reasons. I said, that the recommendations of the Law Commission and the Press Commission have been incorporated. I have separately mentioned in Paragraph 2(d) of the Statement of Objects and Reasons that we are providing a provision to punish imputations falsely alleging commission by any person of an offence. I did not attribute this to the Law Commission or the Press Commission.

Coming to Mr. Ayyappu Reddy's objections, again Sir, I would like to tell him that if he carefully read the exceptions now incorporated in Clause 4, We will find that exceptions 2,3 5 and 6 are opinions. These four exceptions by their very nature do not apply to Clause 13. Clause 13 does not take into account any opinion. So, exceptions 2,3,5 and 6 are *per se* inapplicable to Clause 13. Then, exception no. 4 is the publication of a substantially true report of the proceedings of a court ...; (*Interruptions*)

SHRI SOMNATH CHATTERJEE: If somebody says that in his opinion, he has committed an offence, then does it apply? (*Interruptions*)

SHRI P. CHIDAMBARAM: Obviously it cannot... (*Interruptions*)

MR. DEPUTY-SPEAKER : Please order (*Interruptions*)

PROF. MADHU DANDAVATE : Why are they shouting, Sir?

SHRI SOMNATH CHATTERJEE: They have not read the Bill. They do not know anything.... (*Interruptions*)

MR. DEPUTY-SPEAKER: Please order... (*Interruptions*)

SHRI P. CHIDAMBARAM: He is going on talking. What is it, Sir?

MR. DEPUTY-SPEAKER: Please carry on...

(*Interruptions*)

SHRI P. CHIDAMBARAM: I am entirely at the disposal of the House. I have no work today... (*Interruptions*)

MR. DEPUTY-SPEAKER: I request the hon. Members to cooperate. Please order... (*Interruptions*)

SHRI P. CHIDAMBARAM: Sir, I repeat that exceptions 2, 3, 5 & 6 are *per se* inapplicable to the offence we are creating under Clause 13, which is the offence of making a false imputation of a criminal offence.

Clauses 2, 3, 5 & 6 are *per se* inapplicable. If the hon. Member, Shri Somnath Chatterjee, will in the privacy of his chamber more closely read these four exceptions, then he will find that these four exceptions have no application where a man stands up and makes falsely an allegation that another person has committed a criminal offence.

Now exception 4... (*Interruptions*)

SHRI E. AYYAPU REDDY: It is stated that it is all opinion. Suppose if I say, in my opinion he appears to have committed an offence... (*Interruptions*) Because in the course of future interpretation of Clause 13, the debates of Parliament will be taken. Suppose if 'A' says that in his opinion, he appears to have committed this particular offence, then do you mean to say that Clause 13 will not be attracted. Will you allow it to go on record?

SHRI P. CHIDAMBARAM: I am answering you. Do not threaten by raising your voice... (*Interruptions*)

SHRI E. AYYAPU REDDY: I am sorry. I apologise... (*Interruptions*)

SHRI P. CHIDAMBARAM: Sir, he is raising his voice... (*Interruptions*)

SHRI V. SOBHANADREESWARA RAO (Vijayawada): He did so only for emphasising his point... (*Interruptions*)

SHRI P. CHIDAMBARAM: I understood his point. Let me answer it.. (*Interruptions*)

SHRI E. AYYAPU REDDY: Suppose if anybody says that in his opinion he appears to have committed this particular offence then will Clause 13 not be attracted and will he not liable to answer to Clause 13. If it goes on record, then it is all right. We will be very happy... (*Interruptions*)

SHRI P. CHIDAMBARAM: Sir, Mr. Ayyapu Reddy has said the same points three times. The point I am trying to answer is this. Kindly look at exceptions 2, 3, 5 & 6. It is not any opinion. Each one is an opinion in respect of a particular matter. When you falsely allege that a person has committed an offence, you are not expressing an opinion but you are making an imputation. You cannot cover it by calling it an opinion. And merely because you say in my opinion, it does not cease to be an imputation nor does it become an opinion. It is an imputation. And to imputation when you falsely allege that a person has committed an offence, Exceptions (ii), (iii), (v) and (vi) are *per se* inapplicable. I have no doubt in my mind that the courts will hold so.

SHRI S. JAIPAL REDDY (Mahbubnagar): Suppose, the Court holds so in good faith.

SHRI P. CHIDAMBARAM: Then (come to Exception (iv). Exception (iv) is publication of a substantially true report of the proceedings of a court of the result of any such proceedings. In publishing a substantially true report of a court, you are not making a false allegation against any person because

there is a true report of the court and the court would have taken responsibility for whatever it says in its judgement or in its order.

Exception (vii) is in good faith any censure on the conduct of a person." Exception (viii) 8 has now been taken care of in the Explanation which I have introduced by an amendment. Exception (ix) is the imputation on the character of another provided that the imputation is made in good faith — conveying of a caution in good faith.

Exception 10 does not apply. For conveying of a caution, Exception 9 applies. Nine is the only Exception which will apply to clause 13. That is why, we have deliberately taken away (ix) because if you make an imputation within the meaning of clause 3 not amounting to criminal offence, you are exempted from clause 3. But if you go further and make an imputation to a criminal offence, then, I think, you should be asked to stand by your imputation. You should be asked to prove your imputation and you must stand or fall by the truth or otherwise of the imputation. If you go through clause by clause, you will find that these exceptions are not applicable.

He said that this curbs investigative journalism. I am sorry that he says so. I think, investigation should lead you to truth and facts. If your investigation leads you to truth and facts, then publish that investigation. But if that investigation leads you to innuendos and insinuations... (*Interruptions*)

MR. DEPUTY-SPEAKER: When the Minister is not yielding, I am not allowing.

SHRI P. CHIDAMBARAM: A question was asked why clauses 9, 10 and 11 are made inapplicable to an offence under clause 13. I thought the answer was obvious because clause 9 deals with unintentional defamation whereas the offence under clause 13 is falsely alleging that a person has committed an offence. You cannot say unintentional and at the same time falsely allege that the person has committed an

offence... (*Interruptions*) When you allege that a person has committed an offence, you do so with all consciousness and do so intentionally... (*Interruptions*) I am not yielding.

As far as clause 10 is concerned, fair comment has nothing to do with a false allegation. How can I make fair comment and a false allegation of a criminal offence... (*Interruptions*)

SHRIV. KISHORE CHANDRA S. DEO: Right of information is denied not only to journalists but even to Members of Parliament.

SHRI P. CHIDAMBARAM: Clause 11 deals with absolute privilege and qualified privilege. Each one of them deals with either the proceedings of a legislature or proceedings of a court or a court of a foreign country or the enquiry commission under an Act. If you go through them, you will find that none of the items which are enumerated in clause 11 has any application to clause 13. It is not sufficient to merely stand up and say: "Why have you not made clauses 9, 10 and 11 applicable to clause 13?" You must go through clauses 9, 10 and 11 and tell me which portion of clauses 9, 10 and 11 will apply to clause 13.

The final question raised by Mr. Somnath Chatterjee is that I should exclude economic offences. It is a very attractive argument. I am not saying that is not an attractive argument... (*Interruptions*)

SHRIV. KISHORE CHANDRA S. DEO: Political offences also.

SHRI P. CHIDAMBARAM: Now you have a suggestion of adding political offence. I wish you define what a political offence is.

Sir, an economic offence is also an offence created by a statute. It is either under the Prevention of Corruption Act, or it is under the Foreign Exchange Regulation Act, or it is under the Foreign Contribution Regu-

[Sh. P. Chidambaram]

lation Act. There is no such thing as an economic offence. An offence is created by law. The Indian Penal Code creates a basket of offences. There is a number of special laws which create offences. Each offence is triable and punishable according to the law. Each one of them is punishable. That is why I read out the ingredient, Sir. The ingredient is that it must be indictable and it must be punishable. If by definition it is indictable and punishable and if the person has to suffer the charge that he has committed a criminal offence, then again I quote from Clark and Lindsell:

"The ground on which words imputing a criminal offence are actionable *per se* is the general obliquity which the person defamed suffers and not the fact that he is put in jeopardy of criminal proceedings."

Therefore, whether you charge a person of violating an offence created by this statute or that statute, as long as it is an offence, indictable and punishable, it is covered by clause 13 and it should be covered by clause 13. If you want to make an imputation against a person, of having violated a statutory provision which is indictable and punishable, I think you should stand by it. I cannot say how you can make a distinction between an economic offence and a non-economic offence. I am afraid you have not properly read clause 13. I think these distinctions do not exist. These distinctions are attractive but they do not exist on ground.

Sir, as far as my amendment is concerned, once again I acknowledge my debt of gratitude to Mr. Ayyapu Reddy for pointing out to me that exception (viii) under clause 4 should be engrafted in a suitable manner to clause 13. I owe this amendment to Mr. Ayyapu Reddy. I thank him once again and I commend that my amendment be accepted.

MR. DEPUTY SPEAKER: I shall put amendment No 29 to Government amend-

ment No. 26, moved by Shri Somnath Chatterjee to clause 13, to the vote of the House.

Amendment No. 29 was put and negatived

MR. DEPUTY SPEAKER: I shall now put Government amendment No. 26 moved by Shri P. Chidambaram to clause 13, to the vote of the House. The question is:

Page 7, —

after line 28, insert —

"Explanation — It is not an imputation under this section to make or publish in good faith an accusation against any person to a Court, Tribunal or other authority which has lawful authority over that person with respect to the subject matter of that accusation." (26)

The motion was adopted

MR. DEPUTY SPEAKER: Now I put amendment No. 13 moved by Shri Thampan Thomas to clause 13, to the vote of the House.

Amendment No. 13 was put and negatived.

MR. DEPUTY SPEAKER: The question is:

"That clause 13, as amended, stand part of the Bill."

The motion was adopted

Clause 13, as amended, was added to the Bill

Clause 14 (Trial of offence under this Chapter)

SHRI THAMPAN THOMAS: Sir, I beg to move:

Page 8, line 2, —

for "Court of Session" substitute —

"Court of Chief Judicial Magistrate" (14)

SHRI E. AYYAPU REDDY: Sir, I beg to move:

Page 8, —

after line 2, insert —

"Provided that it shall be open to a Court of Session having regard to the nature of the allegations made and the person against whom it is made to transfer a case to subordinate court of appropriate jurisdiction who shall try the case as provided hereunder." (22)

SHRI THAMPAN THOMAS: Sir, what I want to say is that you are not making it a Sessions offence. Hitherto, the law of defamation has never made it a Sessions offence. When seven years or more imprisonment is given, then only it is a Sessions offence. But here it is only two years. The normal principle is quantum of punishment. As here it is only two years maximum, which has also been recommended by the Law Commission, I cannot understand the reason for putting it as a Sessions offence. Also in the judiciary, the separation is now being made upto Chief Judicial Magistrate Court, being an authority to decide criminal matters of that nature, say first-class or something like that. So, in Session courts where murder is being tried and offence No. 302 where capital punishment is given, it is not proper to try these offences. I therefore submit that the Chief Judicial Magistrate should be empowered to try such cases.

SHRI E. AYYAPU REDDY: Sir, I not only move my amendment but I oppose Clause 14. My first objection is to the constitutional validity of Clause 14 along with Clause 13. The procedure that has been now devised for the purpose of trying the offences under Clause 13 is totally unrelated to the purpose for which offence has been

committed. I will illustrate my point. If a citizen is attacked, his hands are cut off, his nose is cut off, his face is defaced, he cannot go and knock at the doors of the Sessions Court. If his kith and kin are murdered, he cannot go and knock the doors of the Sessions Court. If his house is burnt and property is robbed, he cannot go to the Sessions Court and file a complaint and got the matter disposed of within three months. So, when his property, liberty and his person is being attacked the ordinary procedure is that he has to make a complaint and then the complaint has to be investigated. The police will file a charge-sheet, the case is then committed to the Sessions Court and a public prosecutor will be there. he will not have the right to have his own advocate. He cannot have his own advocate and prosecute his case in all serious offences and he has no right to go straight to the Sessions court. Either it must be through Police charge-sheet or by filing a private complaint before a Magistrate who requires examination of all the witnesses to be produced by him and then alone it can be committed to the court of Sessions. Now, in this particular case, if a citizen merely says that he has been accused of having committed an offence by another person, he can still go and knock at the doors of the Sessions Court. What is the speciality of this particular offence? When a citizen is being deprived to knock at the doors of the Sessions Court in most serious matters, how can you give this and say that he will be entitled to go and file a complaint and an affidavit and then the case has to be disposed of within three months and the matter has to be taken up day-to-day. Whereas more serious offence will have to go to the court, to the Magistrate and the procedure adopted by the courts is that these cases are not tried day-to-day. Magistrate will not try a case under 307 or 326 or even rape cases day-to-day. Therefore, these Clauses 13 and 14 are conferring exclusive jurisdiction only to a court of Sessions and that too in a light case like this. Did we ever have it like this at any time? In all the cases of defamation, the entire defamation is completely in the region of a first-class Magistrate. So, this is a procedure which has been advised in a very extraordinary manner

[Sh. E. Ayyapu Reddy]
and Article 14 'equality', the test of equality will not stand because there is no rationale as to why a mere allegation of imputation has to be tried by a Sessions court and that too within three months.

SHRI P. CHIDAMBARAM: I can only quote what I quoted this morning:

"The purest treasure mortal times afford
Is spotless reputation; that away
Men are at gilded loam or painted clay
Mine honour is my life; both grow in one;
Take honour from one, and my life is done."

If reputation and honour are not to be protected and are to be treated in such a casual way that Mr. Ayyapu Reddy suggests, I can only be sorry. We are giving this to a higher court because on the one hand a man's reputation is at stake and on the other hand, another person is asked to prove the truth of his allegation. I think the case is sufficiently important to warrant a trial by a higher court.

Secondly, I do not think that any one will say that it is an offence and will seek recourse to clause 13 and run to the Sessions court. Nobody likes to go to the court these days. Nobody will go to the court for the pleasure of going to the court. He will weigh it in golden scales, he will go to court only if he has been severely damaged by a false imputation of a criminal offence under clause 13, and in such cases I think the Sessions Court should try it. I do not think the cases would be in dozens or in hundreds. These will be cases where somebody has falsely made an allegation and a man's reputation is damaged. (*Interruptions*) You should have the courtesy to allow me to complete it. I cannot understand at all, he is a senior Member, he is rising before I complete my sentence. I cannot understand it at all. (*Interruptions*). Just because, Sir, we are on this side and they are in Opposition, before I complete my sentence he is rising. I think the matter is important enough to be tried by a Sessions Court. Cases will be few

and far between and I am sure that the trial by a Sessions Court will do justice both to the prosecutor and to the accused.

MR. DEPUTY SPEAKER: I shall now put the amendments moved by Shri Ayyapu Reddy and Shri Thampan Thomas to the vote of the House.

Amendments Nos 14 and 22 were put and negatived

PROF. MADHU DANDAVATE: I wanted to support one and oppose the other. What shall I do?

MR. DEPUTY-SPEAKER: Do you want division?

PROF. MADHU DANDAVATE: No.

MR. DEPUTY-SPEAKER: I shall now put clause 14 to the vote of the House.

The question is:

"That clause 14 stand part of the Bill."

The motion was adopted

Clause 14 was added to the Bill.

Clause 15 (*Exceptions and burden of proof*)

SHRI P. CHIDAMBARAM: Sir, I move:

Page 8, line 16, —

for "any offence under this Chapter"

substitute —

"an offence under section 13" (1)

Page 8, line 17, —

omit "it is established that" (27)

Page 8, line 21, —

for "establishing" substitute "proving" (28)

SHRI THAMPAN THOMAS. Sir, I move:

Page 8, lines 22 and 23, —

for "accused and the prosecution shall have the right to lead evidence in rebuttal"

substitute "prosecution" (15)

SHRI E AYYAPU REDDY Sir, I move

Page 8, lines 22 and 23, —

omit "and the prosecution shall have the right to lead evidence in rebuttal" (23)

SHRIMATI GEETA MUKHERJEE Sir, I move:

Page 8, lines 17 and 18, —

omit "if, and only if, it is established that the imputation made or published by him is true and" (9)

Page 8, —

omit lines 21 to 23 (10)

Sir, up to now the battle for amendments was being fought between legal luminaries and the Minister. I think it is the only way now to be in this suspicious company! Therefore, I am moving these amendments

Sir, between the lawyers there is one advantage or disadvantage. The time tested law cannot be contradicted. As far as commonsense is concerned, since I am not a lawyer, I sometimes see that often time-tested laws also need an amendment. Therefore, Sir, clause 15 deals with exceptions on burden of proof, that is, who will be exempted as an exception from the accusation that he has committed as defamation.

This is the fact. Here, yesterday itself I said that clause 15 does even go one step ahead of that IPC Section 499. Today I have seen the official amendment moved by Chidambaramji. That is why I have to cover both while speaking on my amendments. The phrase here is "a person accused of any offence under this section 13 shall not be guilty of the offence..". Now if Chidambaramji take out "if, and only if it is established that the imputation made or published by him is true and if it be for the public good that the imputation should be made or published", I would not insist on my first amendment. My contention is that this Exception should have taken into account two things. One is public good, another is the question of fact. The question of truth which even IPC says is stringent. But you wanted it to be more stringent saying that it has to be established and only if it is established that it is true, then that person can be waived from being prosecuted for defamation. My contention is that you are going one step forward from IPC when the IPC provision itself was prejudiced, in my opinion. It is because, the problem here is this. Yesterday also, I raised the question of circumstantial evidence. I may not be in a position to prove today what I am accusing is true but at the same time, time may show that it is true. Yesterday, I gave the examples—most of the Members were not here at that time—about Ajitabh Bachchan's case. It was reported that he has a flat in Switzerland, bank account in Switzerland. At that time, it was flatly denied by everybody. Had these two provisions of IPC been imposed at that time, then those Press people who have published it would have been liable for prosecution. But later on, what has transpired is quite different. So, they got certain circumstantial evidence. But it could not be proved that it is true but it is a fact, and published in good faith. The point is that there should not be insistence on establishing the proof. Now, "establishing" has been taken away by Chidambaramji. I am glad. But the words, "if, and only if" remain. Though I am a lay-woman, I can very well say that even that part of IPC is not in the right direction but in the left direction. That is why, I moved my amendment. If Mr Chidam-

[Shrimati Geeta Mukherjee]

baram would accept that not only he takes out "establishing" but also take out "if, and only if", for the time being, I may withdraw my first amendment. But "if and only if" remains, I would not withdraw. That is why, I moved it. According to me, even IPC needs amendment on this.

My second amendment is, burden of proof. As far as burden of proof is concerned, every time Chidambaramji here is reading out, it is under the Evidence Act and it is stated so and so, as if Indian Evidence Act is so sacrosanct that it cannot be touched. Well, the Evidence Act as it stands today has to be changed. It has been amended. It can be amended and it should be amended, if the situation so demands. Today the situation that is prevailing is, we are fighting against corruption, as a very special case in our social life. Our law should be suited to that situation encouraging everybody to reveal whatever they know. The people are not fools that they will be taken in by anything and everything. They will also wait and see

You say Glasnost. I do not agree with that. You may accuse Shri Somnath Chatterjee. You cannot accuse me. When you are so enamoured with Glasnost, how is it that you bring this new provision of anti-Glasnost to prosecute people who really are trying to have Glasnosts in our country?

PROF. MADHU DANDAVATE: Subject to Perestroika.

SHRIMATI GEETA MUKHERJEE: Subject to Perestroika. But I need not say *Glasnost*. Because of this I have brought it. I thought that in the new spirit which is prevailing today, you should accept my amendment.

SHRITHAMPAN THOMAS: Why I have moved this amendment is to shift the burden of proof from the accused to prosecutor. The common principle in criminal law is that so long as a case is not proved against a person, he is to be considered innocent. This is the basic concept. When you bring Chap-

ter III Clauses 13 or 14 or 15 imposing burden of proof on the accused, that too without giving an opportunity for concerned parties to express their opinions, it is a negation of that principle. You are taking shelter under 1978 Debate in the Rajya Sabha and the Indian Penal Code Amendment which was put to debate all over the country and all the interested institutions and all persons concerned including the Bar Council and the Press Council gave their opinion at that time. Chapter III Clauses 13, 14 and 15 ask the accused to prove the negative, if an allegation is made against him in a criminal case. Therefore, the burden of proof for prosecution to prove that a false allegation is made, is given a go by. This gives up the opportunity to get the benefit of doubt for an acquittal. Suppose, a person is charge-sheeted under Section 13 or 14 and or 15 in Chapter III, that person cannot get the benefit of doubt from the court even though the principal offender can get an acquittal on benefit of doubt. Therefore, so long as it is a criminal offence, if the burden of proof is put on the accused in this way, that will take away the fundamental basic approach of criminal law. Therefore, I press my amendment.

SHRI P. CHIDAMBARAM: Yesterday, hon. Member Shrimati Geeta Mukherjee pointed out Clause 15 and I noticed that the words "it is established that" are redundant. In fact, the sentence reads quite correctly, if you omit those four words. Therefore, I have, readily come forward with an amendment to delete those four words "it is established that." I am sure that brings some solace to Shrimati Geeta Mukherjee who was reading too much into the words "established" and she said that the word "established" goes far beyond what is there in the earlier provisions of clause 3. Therefore, I have come forward for an amendment to delete those four words.

Similarly, in sub-Section 15 (2), the word "establishing" is really not necessary. We should use the common word "proving."

Hon. Member Mr. Thampar Thomas raised the point once again about the burden

of proof. I answered this point several times. Under the law as it stands today, exception has to be proved by the accused and, therefore, there is no particular merit in that criticism because what is there in Clause 15 is what is there in Clause 4 and is what is there in Exception 1 to Clause 499.

But there is some force in what Shrimati Geeta Mukherjee has been pointing out but, I am afraid, she quite correctly characterised herself as a lay person and, that is why, this problem has arisen.

There is one thing known as 'fact' and another as 'proof of the fact.' Both the words 'fact' and 'proved' are defined in the Indian Evidence Act. You can prove a fact even through circumstantial evidence. If you have to prove the material facts which would prove the truth of a statement, you can prove those material facts even through circumstantial evidence. I am sure that if you go to the lawyer to whom you did not go, not to the lawyer when you went yesterday, but to another lawyer, he will explain to you that circumstantial evidence can be let in to prove the material facts which will prove the truth of your allegation. So, Sir, I cannot accept any of these amendments except the amendments which I have brought forward in deference to Mrs. Mukherjee's criticism.

MR. DEPUTY SPEAKER: I shall first put the three Government amendments moved by Shri P. Chidambaram to the vote of the House.

The question is:

"Page 8, line 16, —

for "any offence under this Chapter"

Substitute —

"an offence under section 13" (1)

Page 8, line 17, —

Omit "it is established that" (27)

Page 8, line 21, —

for "establishing" substitute "proving"
(28)

The motion was adopted

MR. DEPUTY SPEAKER: If the House agrees, I shall now put all the other amendments together to the vote of the House.

Amendments Nos. 9, 10, 15 and 23 were put and negatived

MR. DEPUTY SPEAKER: The question is:

"That Clause 15, as amended, stand part of the Bill."

The Lok Sabha divided.

MR. DEPUTY SPEAKER: The machine is not working. Let the slips be distributed.

19.45 hrs.

[Division No. 2]

AYES

Agarwal, Shri Jai Prakash

Akhtar Hasan, Shri

Ansari, Shri Z.R.

Bagun Sumbhu, Shri

Bairagi, Shri Balkavi

Bajpai, Dr. Rajendra Kumari

Bala Goud, Shri T.

Ban, Shri Deep Narain

Banerjee, Kumari Mamata

Basavarajeswari, Shrimati

Basavaraju, Shri G.S.

Bhagat, Shri H.K.L.

Bhakta, Shri Manoranjan

Bharat Singh, Shri

Bhosale, Shri Prataprao B.

Bhumy, Shri Haren

Bhuria, Shri Dileep Singh

Birbal, Shri

Birinder Singh, Shri

Brahma Dutt, Shri

Budania, Shri Narendra

Buta Singh, S.

Chandrakar, Shri Chandulal

Chandresh Kumari, Shrimati

Charles, Shri A.

Chaudhary, Shri Manphool Singh

Chawan, Shri Ashok Shankarrao

Chidambaram, Shri P.

Choudhary, Shri Nandlal

Dalwai, Shri Hussain

Das, Shri Bipil Pal

Dennis, Shri N.

Dev, Shri Santosh Moha

Dhillon, Dr. G.S.

Digal, Shri Radhakanta

Dighe, Shri Sharad

Digvijaya Singh, Shri

Dikshit, Shrimati Sheila

Dube, Shri Bhishma Deo

Engti, Shri Biren Singh

Gadgil, Shri V.N.

Gadhvi, Shri B.K.

Gandhi, Shri Rajiv

Ganga Ram, Shri

Gavit, Shri Manikrao Hodlya

Gehlot, Shri Ashok

Gholap, Shri S.G.

Ghorpade, Shri M.Y.

Ghosal, Shri Debi

Ghosh, Shri Bimal Kanti

Ghosh, Shri Tarun Kanti

Gomango, Shri Giridhar

Halder, Prof. M.R.

Jaffar Sharief, Shri

Jain, Shri Dal Chander

Jain, Shri Nihal Singh

Jain, Shri Virdhi Chander

Jatav, Shri Kammodilal

Jena, Shri Chintamani

Jhikari, Shri M.L.

Jitendra Prasada, Shri

Jujhar Singh, Shri

Kamla Prasad Singh, Shri

Kaushal, Shri Jagan Nath

Keyur Bhusan, Shri

Khan, Shri Mohd. Ayub

Khan, Shri Mohd. Ayub

Khirhar, Shri R.S.

Kidwai, Shrimati Mohsina

Kisku, Shri Prithvi Chand

Krishna Singh, Shri

Kehirsagar, Shrimati Kesharbai

Kujur, Shri Maurice

Kunjambu, Shri

Kuppuswamy, Shri C.K.

Kurien, Prof. P.J.

Lachchi Ram, Shri

Madhuree Singh, Shrimati

Malviya, Shri Bapulal

Manvendra Singh, Shri

Mehta, Shri Haroobhai

Mishra, Shri G.S.

Misra, Shri Nityananda

Murmu, Shri Sidha Lal

Murthy, Shri M.V. Chandrashekara

Naik, Shri Shantaram

Namgyal, Shri P.

Nagi, Shri Chandra Mohan Singh

Odeyar, Shri Channalal

Orson, Shrimati Sumati

Pandey, Shri Damodar

Pandey, Shri Madan

Panigrahi, Shri Sriballav

Panika, Shri Ram Pyare

Panja, Shri A.K.

Pardhi, Shri Kesharao

Patel, Shri Ahmed M.

Patel, Shri C.D.

Pathak, Shri Chandra Kishore

Patil, Shri Balasaheb Vikhe

Panwar, Shri Satyanarayan

Poojary, Shri Janardhana

Potdukhe, Shri Shantaram

Pradhan, Shri K.N.

Prakash Chandra, Shri

Purohit, Shri Banwari Lal

Raghuraj Singh, Chaudhary

Raj Karan Singh, Shri

Rajhans, Dr. G.S.

Ram Awadh Prasad, Shri

Ram Dhan, Shri

Ram Singh, Shri

Rana Vir Singh, Shri

Ranganath, Shri K.H.

Rao, Shri J. Vengala

Rao, Shri K.S.

Rao, Shri P.V. Narasimha

Rath, Shri Somnath

Raut, Shri Bheela

Rawat, Shri Harish

Rawat, Shri Prabhu Lal

Sahi, Shrimati Krishna

Sait, Shri Azeez

Sankata Prasad, Dr.

Scindia, Shri Madhavrao

Sethi, Shri Ananta Prasad

Shah, Shri Anoopchand

Shankarlal, Shri

Shastri, Shri Hari Krishna

Siddiq, Shri Hafiz Mohd.

Solanki, Shri Kalyan Singh

Soren, Shri Harihar

Sreenivasa Prasad, Shri V.

Sukhbuns Kaur, Shrimati

Sultanpuri, Shri K.D.

Suman, Shri R.P.

Thakkar, Shrimati Usha

Thomas, Prof. K.V.

Thungon, Shri P.K.

Tomar, Shrimati Usha Rani

Tombi Singh, Shri N.

Tripathi, Dr. Chandra Shekhar

Vanakar, Shri Punam Chand Mithabhai

Vijayaraghavan, Shri V.S.

Yadav, Shri Ram Singh

Yogesh, Shri Yogeshwar Prasad

NOES

Acharia, Shri Basudeb

Basu, Shri Anil

Biswas, Shri Ajoy

Chatterjee, Shri Somnath

Chowdhary, Shri Saifuddin

Dandavate, Prof. Madhu

Das, Shri R.P

Datta, Shri Amal

Deo, Shri V. Kishore Chandra S.

Dora, Shri H.A.

Ghosh Goswami, Shrimati Bibha

Hannan Mollah, Shri

Hansda, Shri Matilal

Kamson, Prof. Meijinlung

Mahata, Shri Chitta

Malik, Shri Purna Chandra

Masudal Hossain, Shri Syed

Misra, Shri Satyagopal

Mukherjee, Shrimati Geeta

Murty, Shri Bhattam Srirama

Pathak, Shri Ananda

Raju, Shri Vijaya Kumar

Rao, Shri A.J.V.B. Maheswara

Rao, Shri V. Sobhanadreeswara

Reddi, Shri C. Madhav

Reddy, Shri B.N.

Clause 17 (Power of High Court to make rules)

Reddy, Shri C. Janga

SHRI E AYYAPU REDDY: I beg to

Reddy, Shri E. Ayyapu

move:

Reddy, Shri K. Ramachandra

Page 8, lines 35 and 36, —

Reddy, Shri M. Raghuma

for "filing an appeal to it under this Chapter"

Reddy, Shri S. Jaipal

substitute

Riyan, Shri Baju Ban

"giving effect to the provisions of this Chapter", (24)

Saha, Shri Gadadhar

Samañt, Dr. Datta

The effect of my amendment would be that the High Court may make such rules for giving effect to this chapter. Even with regard to how the application has to be received by a Sessions Judge, how it has to be disposed of, the High Court has got the overall jurisdiction to frame rules even with regard to subordinate courts. Therefore, I want my amendment to be accepted by substituting 'giving effect to the provisions of this Chapter'.

Tanti, Shri Bhadreswar

Thomas, Shri Thampan

Thota, Shri Gopal Krishna

Tiraky, Shri Piyus

Zainal Abedin, Shri

MR. DEPUTY SPEAKER: Subject to correction, the result of division is:

SHRIP. CHIDAMBARAM: I do not find any reason to accept this amendment.

Ayes — 146*

MR. DEPUTY-SPEAKER: I shall now put amendment No. 24 moved by Shri A. Ayyapu Reddy to the vote of the House.

Noes — 39

Amendment No 24 was put and negatived.

The motions was adopted

Clause 15, as amended, was added to the Bill

MR DEPUTY-SPEAKER: The question is:

MR. DEPUTY SPEAKER: The question is

"That Clause 17 stand part of the Bill".

"That clause 16 stand part of the Bill"

The motion was adopted

The motion was adopted

Clause 17 was added to the Bill

Clause 16 was added to the Bill

Clause 18 (Application of the codes to offences under this Act subject to certain modifications)

* As corrected.

SHRI E. AYYAPU REDDY: I beg to move:

"Page 9, line 1, —

for "shall" substitute "may".(25)

With this, I will close my comments on this Bill. The proviso under Clause 18 reads:

"Provided that where the accused, being the editor, publisher or printer of a newspaper or periodical is prosecuted for an offence under the Defamation Act, 1988 the court shall not dispense with his personal attendance if it is proved that he has refused within a reasonable time, to publish any reply of the person against whom any imputation relating to..."

Usually, the discretion is given to the magistrate and the judicial officer to dispense with the presence of an accused. These are offences which are bailable and non-cognizable. Even in a murder case or dacoity, where the accused is punishable with imprisonment or death sentence, the discretion rests with the judge to dispense with his presence. That discretion is sought to be taken away. That shows the pent up feelings of the treasury benches against the press. Why should this harsh treatment be meted out to an editor, or publishers. Most probably, they had Arun Shourie in mind when they drafted this proviso. My amendment is to substitute 'may' in place of 'shall', so that the court may dispense with their presence in suitable cases. I know of a particular case where an editor was prosecuted on the basis of a private complaint in a remote first class magistrate's court. His presence was insisted. He was a busy person, but in spite of that, he had to make his presence in that remote place causing enormous loss to him. This is nothing but persecution, not prosecution against the press. I hope, my amendment will be accepted.

SHRI P. CHIDAMBARAM: I anticipated that this kind of twist will be given to a provision which has to be read with existing

Section 205 of the Cr. P.C. We are not touching Section 205, Sub-section (1) and (2) of the Cr. P.C. Sub-Section (1) says that whenever a magistrate issues a summons, he may, if he sees reasons to dispense with the personal appearance of the accused and permit him to appear by his pleader and Sub-section (2) says, however, at any stage, he may direct his personal appearance.

20.00 hrs.

This discretion has been given entirely to the Magistrate. All that is being done is in an offence of defamation, the minimum that a complainant is entitled to expect of a newspaper editor, printer or publisher who has published matter which the complainant thinks is defamatory is that the complainant's reply should be published. We are not asking for an apology from the printer, publisher or editor. The complainant's reply to the defamatory matter should be published and if the editor, printer or publisher, within a reasonable time, refuses to publish even a reply, even then should he remain away from the court? It is a very strange case you are pleading for editors, printers and publishers, Mr. Ayyapu Reddy. Kindly read the section. We are not asking the editor, printer or publisher to tender an apology at this stage. He may go and defend himself. We are only saying that if a complainant asks the editor, printer or publisher to please publish his reply and the editor, printer or publisher refuses to do so, and then the complainant goes to the court and sues him for defamation, then we think that the editor, printer or publisher should appear before the court. What is wrong with this? What are you pleading for?

MR. DEPUTY SPEAKER: I shall now put Amendment No. 25 to Clause 18 moved by Shri Ayyapu Reddy to the vote of the House.

Amendment No 25 was put and negatived

MR. DEPUTY SPEAKER: The question is:

"That Clause 18 stand part of the Bill."

The motion was adopted

Clause 18 was added to the Bill

MR. DEPUTY SPEAKER: The question is:

"The Clauses 19 to 22 stand part of the Bill"

The motion was adopted

Clauses 19 to 22 were added to the Bill

MR DEPUTY SPEAKER: The question is:

"That Clause 1, Enacting Formula and Long Title were added to the Bill"

The motion was adopted

Clause 1, Enacting Formula and Long Title were added to the Bill

SHRI P. CHIDAMBARAM: I beg to move:

"That the Bill, as amended, be passed."

MR DEPUTY SPEAKER: Motion moved:

"That the Bill, as amended, be passed."

SHRI SOMNATH CHATTERJEE: Mr. Deputy Speaker Sir, this Bill which is being passed in an unseemly haste violating the rules of the House is a product of nervousness born out of guilt complex of this Government and is the clearest admission that the Government has no answer on merits to the various charges of corruption which have already been made or are likely to be made. (*Interruptions*)

As can be seen from Chapter III of this

Bill, since their cupboards are full of skeletons and their 'Operation Cover-up' has failed miserably, it is now being followed by 'Operation Intimidation' — intimidation primarily of the press because they had done a great national service by exposing corruption at various levels. Sir, this Bill is an attempt to scuttle exposure and a more appropriate preamble of this Bill would be "Bill for unrestrained and unlimited corruption".

With all my respect for Thiru Chidambaram's persuasiveness and eloquence, I would state that this sudden attempt to create a new offence, viz. 'offence of criminal imputation' has been thought of and its object can only be that even a suspicion should not be allowed to be made even on the basis of reasonable material on which an inference can be drawn properly. Today, you want to completely preclude any publication of any set of circumstances from which reasonable inferences can be drawn. A very recent instance which this House had discussed, as I said earlier, was the disclosure made in *The Statesman* on ONGC's deal. It has now appeared that there was a middleman contrary to the Government's own decision, that moneys which had been paid by the Japanese Concern, had been deposited in England in the name of a Panamanian Concern and suddenly this money is repatriated to India. During the discussion the hon. Finance Minister Shri Chavan could not deny that there were charges of violation of FERA — Foreign Exchange Regulation Act. He could not dispute that. He stated that they are looking into it. In future that report can never be published unless the publisher or the editor invites a prosecution immediately. It is because he will be asked to prove to the hilt the truth of it and only defence that is permitted is truth, of complete truth, which nobody can do without the assistance of the Government...

SHRI JAI PRAKASH AGARWAL: Why are you making false allegation?

SHRI V. SOBHANADREESWARA RAO: Why do you want to cover up everything?

SHRI SOMNATH CHATTERJEE: This is a very serious matter. I am very respectfully submitting that until the hon. Finance Minister's reply had come on that discussion, one could not say that there was any basis of allegation or not. The Finance Minister on the floor of Parliament had to admit that these are matters which require to be looked into. Therefore that stage would not have come. Mr. Chavan, you need not answer any charge in future. No Finance Minister will be required to do that. It is because, he would ask anybody to make a complaint. The hurry with which this Bill is being passed and the Government's insistence yesterday that it must be taken up at any cost without giving proper opportunity to the Members to study, leaves a very bad taste in the mouth. You will be able to pass it. We have no doubt about it. But the question is whether it will be accepted by the people. I have a quotation here. I know it will be of no effect. This quotation may be found acceptable, I do not know. It is a very well-known observation from the judges of Supreme Court in a defamation case filed before it. I quote:

"Those who fill a public position must not be too thin skinned in reference to comments made upon them. It would be made upon public men which they know from the bottom of their hearts were undeserved and unjust; yet they must bear with them and submit to be misunderstood for a time" (Per Cockburn, Chief Justice)

"Whoever fills a public position renders himself open thereto. He must accept an attack as necessary though unpleasant, appendage to his office."

"Public men in such positions may as well think it worth their while to ignore such vulgar criticisms and abuses hurled against them rather than give importance to the same by prosecuting the persons responsible for the same."

I have also personally been a victim of newspaper propaganda. I had gone to the Press Council and Press Council upheld my

charge and it held that the newspaper had acted irresponsibly and it should be censured which the newspaper has failed to publish. But the question is what is being intended? There are the usual laws. All these years, these laws have operated. What you have done under Sections 1 to 12 is you have merely reproduced the Indian Penal Code. What was the sudden necessity for engrafting or taking it out from the Indian Penal Code and putting it in a new Act—we do not understand. But really this has been done in the name of so-called codification, to give company to Chapter III, because if you had come to the House only with Chapter III, you would have been subjected to greater criticism. People now are thinking: "Well it is a codification law. Why are these Opposition people shouting against it?" That is why, without coming before the House only with Chapter III, which is the real law which is being created, you are introducing this in the Statute Book of this country. You have only added Chapters I and II, transplanting them from the Indian Penal Code. Therefore, the real objective is Chapter III. Chapter I or Chapter II has no particular significance, because that is almost the existing law.

Therefore, we feel that the real object is stifling dissent, stifling exposure; and in our country where there are so many economic offenders and so many economic offences are being created and so many laws have been passed—even a preventive detention law has been passed for the purpose of dealing with economic offences—now those economic offenders will not even be suspected to have committed an offence. This will be a very serious thing. That is why I had suggested that at least let the economic offenders not come under Chapter III, if somebody makes an allegation of commission of an economic offence. I am not saying that nobody can proceed against him. You can proceed under Chapter II of this new law. What are you giving here? You are saying that about economic offences, whoever says anything must prove it to the hilt. That is why I said: it is an absolute offence, and you have provided for an absolute pun-

ishment; a minimum jail sentence has been given. I submit that this is a law which even now the Government should reconsider, and not Press it through—at least Chapter III in the form in which it has been drafted.

PROF MADHU DANDAVATE (Rajapur): Since the House has discussed clause-by-clause the entire Bill, and so many amendments have been rejected—of course, one of them has been accepted—I will not like to go at this fag end of the debate, into various clauses. But I would like to make brief, general observations.

Sir: I have always believed that in the governance of the country, it is always better to rely more on the freedom of expression, rather than more constraints and restraints, which are stretched to the extreme.

As far as various crimes and aberrations are concerned, no doubt we have to deal with them; but in dealing with them, it is better to rely more on the existing laws and stringent laws, rather than trying to have a proliferation of more and more laws, and more amendments to the existing laws.

On the question of defamation, it is better to rely on a proper balance between restraint and constraint on the one side, and freedom of expression on the other. Unfortunately, the Bill which has been moved for consideration and passing, do totally ignores the entire history of exposures of various corruption scandals in this country, for a clean political and economic life.

I do not want to stress only on what had happened outside. But I would only very briefly try to refer to some of the episodes which have been actually exposed to the hilt; and in doing that, the forum of Parliament, the forum of the Press and even public debates have been utilized.

In the presence of the Prime Minister, I cannot forget his respectable rather, a great hon. Member of this House, who had exposed, both by campaign outside Parliament and inside Parliament the famous

Mundhra scandal, the LIC scandal, in which initially when all the details came and some of the reports were published in the Press, at that time many voices were raised that those were unfounded rumours.

Only at a later stage almost at the fag end of that, in the debate in the Parliament Mr. Feroze Gandhi was able to produce correspondence between the Finance Minister and the Finance Secretary and some members in the House objected to his laying on the Table the correspondence between the Finance Minister and the Finance Secretary and the then Speaker gave the ruling, "I am not concerned how the documents are obtained by Mr. Feroze Gandhi", and he said clearly in the House that, "Even if the documents are produced by stealth, I am not concerned about it so long as the hon. Member is prepared to authenticate, and I accept the responsibility for the authenticity of the documents." And he said, "Outside also the debates have taken place. Outside, the articles appeared. But I am convinced at this stage that concrete documents have been laid" and the proof came at a fag end.

I would like to point out to you, not only in this country, but elsewhere, if the latitude to the Press was not available and they were trapped in the mesh of defamation laws and levels, no investigative journalism would have been possible.

In the United States the famous Water-gate scandal did not come out first on the floor of the Senate, but the details came through the Press. They were challenged that they were indulging in character assassination but only step by step through investigative journalism they began with a circumstantial evidence and at a later stage the climax was the documentary evidence that was made available, when the members of the party itself said that if he does not resign, in that case, we will have to resort to impeachment, only at that stage the final issue was clinched.

In Japan the Lockheed scandal, first the reports appeared in the Press and those who

[Prof. Madhu Dandavate]

published the report were not penalised for whatever reports had appeared in the Press. Later on concrete results came. Circumstantial evidence was converted into corroborative evidence, and corroborative evidence was converted into documentary evidence. That is how actually the exposures of those scandals took place.

In my own State of Maharashtra the Linton Commission came at a later stage. But prior to that, inside the Parliament, inside the Assembly, through the various journals number of details were brought out concerning the involvement of one particular Chief Minister in the matter in which the Centre was also involved regarding the distribution of cement. And when a nexus was established at that time he himself alleged that these are defamatory remarks. Later on in one of the cases it was established that concrete evidence came forward.

So, I insist that some latitude is necessary for investigative journalism in this country and the manner in which, they hastily try to go through this Bill, I was surprised that they were not even prepared to put the debate up to tomorrow. Sometimes I got a hunch that if they are insisting that they must go to sleep after adopting the Bill, sometimes I get a suspicion whether they are frightened, that tomorrow morning something is going to appear and probably some one may try to indulge in certain type of allegations. I do not know why this undue haste.

In the past, debates went on and I will also add also one instance which I have forgotten. In this very House Mr. H.V. Kamath had laid on the Table of the House a C.B.I. report about certain deeds. But it came as a climax after the debate went on in journals outside this House and only as a climax Mr. H.V. Kamath demanded that "I know that the CBI report is actually indicating all the evidence" and when the Government was not prepared to lay the CBI report on the Table of the House he produced the report and laid it on the Table of the House. Mr. H.V. Kamath could have been arrested and

prosecuted if at all this Bill were to be passed earlier. Thank God, at that time it did not happen! Mr. Feroze Gandhi could have been prosecuted and he could have been arrested, but thank God, Mr. Feroze Gandhi brought out that particular episode long before the present Government came into being!

THE MINISTER OF STATE IN THE DEPARTMENT OF COAL IN THE MINISTRY OF ENERGY (SHRI C.K. JAFFAR SHARIEF): One minute, Professor.

PROF. MADHU DANDAVATE: I am not yielding. I am at the fag end. Why do you want to disturb me? In spite of that, if you insist, I will yield. (*Interruptions*)

SHRI C.K. JAFFAR SHARIEF: Sir, it is so unfortunate, I do not know whether it is Prof. or many other people, how long they would like to feel that they can carry this kind of a thing. What I am trying to submit is the credibility of the system. You do not have to bother about the people. When the people get the opportunity, they will give the mandate. What happened to your Shah Commission? The character assassination in this country, if you continue with this kind of a trend, then what will happen to the credibility of the system? And you want this system to continue and say that it should follow what you are talking about the previous history.

Mr. Prof. I would request you, let us think of the future and the credibility of the system. Do not talk something. (*Interruptions*)

PROF. MADHU DANDAVATE: All right. He is an old friend of mine. Therefore I wanted to yield. I thought that he will throw some light on what I have been saying. In fact Sir, I do not know during my brief observation... (*Interruptions*)

SHRI C.K. JAFFAR SHARIEF: You have not talked about the system... (*Interruptions*)

PROF. MADHU DANDAVATE: I lis-

tened to you. I am neither deaf nor am I not in a position not to comprehend what you have said. All that I was pointing out is that I did not cast aspersions on any one. Only I was trying to build a case on the basis of experiences of our political and economic life that in this country investigative journalism worked under political leaders, eminent Parliamentarians like Feroze Gandhi and a number of others both inside the Parliament and outside have actually contributed to exposure of corruption in the country and that was possible because an element of freedom of expression was available. I am sorry to state that the type of Bill that we are likely to pass will take away that freedom and tomorrow, many journalists will be haunted with this fear that if they indulge in an investigative journalism even in a healthy manner, they are likely to come into trouble. Sir, in doing that they have quoted the experience of 1978. As my colleagues have rightly pointed out to you, whatever has been mentioned upto Third Chapter, I can understand that. I only want to go on record that in 1978, under the then Janata Government, Rajya Sabha had adopted a particular Bill and then it could not come to Lok Sabha because by that time, the Lok Sabha was dissolved. I want to go on record that prior to that amendment 204 provisions in the Indian Penal Code in 1978, the Law Commission's recommendations were taken note of; the Press Commission sent its note, they were taken note of; various Bar Councils were consulted; people were asked to give their evidence and on the basis of that certain formulations were done. Throwing away all that, in such an unseemly hurry, our Parliamentary Minister was insisting that whatever may happen, even if we sit up to midnight, today only the Bill must be passed. I feel that they can hurriedly pass this Bill. But the way the public reaction has taken place about the Bill that has been introduced in this House whether it is a pro-Congress journal or an anti-Congress journal, uniformly there were reactions. And I want to join the issue within one second with the Minister, while some of us said that investigative journalists like Chitra Subramaniam would also come into trouble if this Bill were to be passed earlier,

he himself made a statement in the House that 'I went through those despatches and pieces in Hindu, and I do not think that that particular right writings in Hindu by Chitra Subramaniam will attract the provisions of this.' On the contrary, if the very first despatch sent by her, which got a seven column headline in Hindu, in which it was said that "Hinduja connected with PITCO payments", is taken I am sure that on the basis of the Bill that has been already framed, whatever assurance the Minister has given, he will not be able to stand with that particular assurance. Therefore, I feel that since this particular Bill in the manner in which it is being passed, with its provisions, is likely to destroy the freedom of expression. Even at this final stage, I request that wiser counsel should prevail on the Minister and even at this stage, he should declare that he would not press for passing of this Bill. In case he is not able to do it, I would request and appeal to the conscience of the House, which I feel is still not nationalised. Let them use their conscience vote and throw away this obnoxious Bill in defence of freedom and freedom of expression.

SHRI BHADRESWAR TANTI (Kalia-bor): We are very much concerned that the country is passing through a very difficult situation so far as national calamities like floods, earthquake, etc. are concerned. May I ask the Government: What has necessitated them to bring such a Bill at this juncture when the country is passing through a very difficult situation? Lakhs of people in the country have been rendered homeless and their properties washed away... (*Interruptions*)

Section 499 of the IPC is the verbatim copy of section 3 of this Bill. This is nothing new. Already we are having a law under the Indian Penal Code... (*Interruptions*) Please stop this running commentary. (*Interruptions*) This is their culture what can I do?

Sections 499 and 500 are sufficient to deal with the situation and it is not necessary to bring a new law like the present one.

[Sh. Bhadreswar Tanti]

In the Indian Penal Code, in a murder case, the burden of proof is on the prosecution and not on the accused. Sir here under this Bill if a defamation is made, lighter punishment has been provided but the burden of proof is on the accused. I do not know why this double standard. Even though you are champion of bringing black laws like this, you should be the champion of implementing the laws also. I know, what is in your mind. (*Interruptions*) This Bill is nothing but just to trap an innocent man and put him behind the bars. Suppose, I am in possession of an instrument which constitutes an offence. They will simply go and file a complaint in the court that I have an intention to rap. Should I be punished for that because I am having an instrument which constitutes an offence? (*Interruptions*)

MR. DEPUTY-SPEAKER: If you interrupt him, he will take more time.

SHRI BHADRESWAR TANTI: The basic principles of the Constitution cannot be changed and the Supreme Court has upheld so. I have my right under article 19 of the Constitution. But by this black law you are going to curtail my right under article 19 of the Constitution. I request the Government to concentrate its mind on the building of the nation and not to bring such black laws. I request the Minister concerned to withdraw this Bill.

SHRIP. CHIDAMBARAM: I am grateful to the hon. Members who have spoken at the third reading of the Bill although it is a matter of regret that they should continue to repeat the same criticism without regard to the explanations and answers which were furnished during the course of the debate.

The charge was again repeated that the Bill is being introduced in a hurry. Merely because the charge is repeated again and again, it does not become the truth. As we have said earlier, this Bill has been under the consideration not only of this Government but previous Governments also. In fact, on more than one occasion, Ministers have

made statements in this House that we intend to bring a comprehensive law on defamation. The matter was considered by the 42nd Law Commission and the Second Press Commission. Portions of this Bill are on the lines of certain provisions introduced by the then Janata Government in 1978. After most careful consideration and after spending several hours at various levels of Government, this Bill was given notice of to the Lok Sabha on the 22nd of August and was circulated on the 23rd of August. The fact that 24th, 25th and 26th were holidays which Parliament declared unto itself for variety of reasons, is certainly not a factor which can be put against Government because Government has circulated this Bill on the 23rd of August. After we introduced the Bill and we began consideration yesterday, the Speaker allowed only two hours to the Bill. But we immediately responded and said, we had no objection to the Bill being debated as long as they wanted it to be debated. We have spent the full day today and a substantial part of yesterday debating this Bill. And what did we get out of this debate from those who were clamouring so much for time? As I said in my reply to the debate, two hon. Members from whom I expected considerable help, assistance and guidance, did not make any contribution to any clause of the Bill. On the contrary, Mrs. Mukherjee who described herself as a lay person and whom today I am willing to exalt to a position higher than most lawyers, pointed out certain things in the Bill which readily accepted. Mr. Ayyapu Reddy pointed out something which we had overlooked, and I readily accepted. So, the criticism is for the sake of criticism. Perhaps there is a more sinister design in this kind of an orchestrated criticism.

Mr. Madhu Dandavate, for all his long years of opposition politics, can think of no better example than Mr. Feroze Gandhi, who belonged to the Congress Party... (*Interruptions*).

PROF. MADHU DANDAVATE: I do not worry who fights corruption.

SHRI P. CHIDAMBARAM: But Mr. Feroze Gandhi and the enterprising journalist who investigated Watergate, investigated the scandals with a tremendous sense of responsibility... (*Interruptions*). Sir, there is a peculiar standard here. We should listen to them without interruption, they should interrupt us without allowing us to speak. Let me finish first. Sir, the two journalists who investigated Watergate — and I am sure you have read their book on how the investigation took place — did so with a tremendous sense of responsibility. At every stage they would check back with the White House and ask the White House if the White House had any comments to make. At every stage he would go back to what was described in the book as deep-throat, verified and then only published'. That is why I say this and I maintain this. I maintain the statement I made earlier I disagree totally with Chitra Subramaniam's conclusion. I think her inferences are wrong, her efforts are praiseworthy but her inferences are wrong. The analysis which they seek to make was commendable. But the conclusions are totally misconceived. But knowing that paper. I am willing to make a statement that nothing which Miss Chitra Subramaniam has written amounts to a false allegation or a false imputation of a criminal offence against any person. That is the high-standard which the paper has so far maintained although its conclusions are something in it which I totally disagree. But how many maintain that standard? How many people who make the allegations maintain that standard? And why are we constantly calling in the aid of newspaper? Clause 13 of this Bill has nothing to do with the newspapers. Clause 13 of this Bill has everything to do with a person who makes a reckless allegation, an irresponsible allegation, a false allegation, a criminal imputation against another person which would harm his reputation and will run away with the tail between his legs when challenged to prove the truth.

PROF. MADHU DANDAVATE: I would like to point out most humbly that in this very House when Chitra Subramaniam's thesis was read out and quoted, there were voices

in this House which said that those were C.I.A. agents. I want to remind you.

SHRI P. CHIDAMBARAM: What is the relevance of this intervention to the point I am making? The point I am making is: has she or did she at any time make a false... (*Interruptions*) Sir, this is an intervention in order to divert my trend of thought and interrupt the line of my argument. He asked a specific question and I am answering that specific question. The point that Clause 13 deals with is that you cannot make a false allegation, criminal imputation of an offence against the person, without standing by the truth of that allegation. Mr. Feroze Gandhi would have stood the test of Section 13. But I challenge you to stand the test of Section 13 when you make an allegation. We know what happened between 1977 and 1979. They put up microphones in Patiala House and strung loudspeakers upto Daryaganj and propagated in the streets of Delhi all kinds of malicious, mischievous and vicious allegations (*Interruptions*)

Sir, there is nothing in this Bill against the freedom of the press and I will say this again. I will defend until my death, until my last breath the freedom of press and the right of the newspapers and periodicals to publish what is true. They have the right to publish what is true. Investigations must lead to truth, investigations must lead to fact, investigations cannot lead you to innuendo, investigations cannot lead you to insinuation. Sir, the truth is that the fault is not with the newspapers and periodicals. These newspapers and periodicals or magazines, when they want to take upon themselves investigative work, they will take upon themselves investigative work and if anyone of them crosses the limits of law, I am sure the newspaper editors, printers and the publishers would defend themselves in the court of law. The truth is not that. The truth is that some vested interests would like the newspapers and periodicals and magazines to become the vehicles for their insinuation and innuendo. That is what we say is wrong. The newspapers and periodicals and magazines, freedom of expression and freedom of

[Sh. P. Chidambaram] speech, are not a vehicle of insinuation and innuendo. They say that there is nothing new in this Bill. This is nothing. I pinched myself and I asked myself: what are we doing here for the last 8 hours here? Clause 9, Clause 10 and Clause 11 are absolutely new. They do not exist in today's laws. So much was coincided by every speaker who spoke and yet Mr. Somnath Chatterjee, Prof. Madhu Dandavate and the hon. members would stand up and say that there is nothing new in this Bill. How can you say that? (Interruptions) Whom are you trying to distract and delude by saying that there is nothing new in this Bill? Clauses 9, 10 and 11 are enough affirmation that this Government fully support the freedom of press and is committed to liberalising the law on defamation and that is why Clauses 9, 10 and 11 have been introduced.

Sir, clause 13 is an implacable foe of one person. Clause 13 is the implacable foe of a person who will indulge in mischievous and malicious insinuation and innuendo. I reject the argument that responsible editors, printers, publishers, journalists, correspondents of newspapers in India will indulge in such things. I am sure they understand the responsibility. If here and there is one correspondent or one journalist who strays from the path of law, surely the editor, the printer and the publisher would bring him to the path of law. But the point is, here we have got groups of people, organized groups of people, who have organised themselves. We saw how they have organised as a seven-Party Front and even on a minor matter they would not let Mr. Madhav Reddi make a suggestion; the seven-Party Front crumbled before our eyes here. The seven-Party Front could not agree even on the point whether the debate should be resumed at 6 o'clock. But they would form themselves into fronts, into morchas, and into all kinds of things. Why? To carry on this insidious campaign of innuendo and insinuation. That is what clause 13 is against. Those who have regard for truth, those who have regard for investigation, those who will go step by step, those who will go from one fact to another

fact, those who will go from evidence to fact, to proof, they have nothing to worry. When Mr. Dandavate spoke about circumstantial evidence and concrete evidence, I was only reminded about how Mr. Vinod Dua and Mr. Ram Jethmalani fared against each other in that famous television interview. You almost reflected the words, you almost repeated the words of Mr. Ram Jethmalani. The Evidence Act is there, the Evidence Act defines what a fact is, the Evidence Act defines what 'proved' is, the Evidence Act defines what evidence is. From evidence you go to proof and proof will lead you to fact. Evidence can be circumstantial evidence, evidence can be oral evidence, evidence can be documentary evidence. If you make an allegation, an allegation which is not mere defamation but an aggravated form of defamation, certainly you have to stand by the truth. And then the question is asked that the only defence open to us under clause 13 is truth. It is so even under today's law. Kindly go back and look at clause 3, look at each one of the ten exceptions. None of the nine exceptions after exception 1 will apply to a false imputation of an offence. A false imputation of an offence, Professor Sahib, falls today under Section 499, it also falls under clause 3. But in clause 3 there are ten exceptions. We are carving out one and putting it in clause 13. Ignore clause 13, let us for a moment suspend Chapter III of this Bill and go back to Chapter II, take clause 3. If you make a false allegation of an imputation of a criminal offence, which is the exception which will come to your defence? Only the first exception will come to your defence, no other exception will come to your defence. It is the only exception... (Interruptions). Just a moment, I am answering it. Only exception 1 will come to your defence, exception 2 to exception 10 will not come to your aid even under today's law, even if the offence of a false imputation of a criminal offence is taken under Section 3. What we are doing is bodily lifting the aggravated form of defamation and the only exception which is relevant and applicable is exception 1 and putting it under Section 13 and Section 15 and giving it to a higher court requiring the court to conclude the trial within a period of three months so that either the

man who has committed the offence is exposed to the world or the man who has made a defamatory statement, his lie is nailed. And we are providing for a minimum punishment to one who cannot establish his charge. There is nothing, Sir. If only the lawyers will sit with other lawyers and discuss this Bill, if only lay persons will take the advice of the lawyers, they are taking advice from lawyers like Mrs. Geeta Mukherjee did yesterday — if you look at the provisions of the Bill, you will find that there is nothing in clause 13 and clause 15, which is different from clause 3, exception 1. Today we are only taking the aggravated form of defamation and saying truth is the defence because truth is the defence today and truth is the defence in the new provision. Sir, I cannot understand why they are running away from truth. For too long... (*Interruptions*). Wait a minute. Every day we stand here, we answer questions, we answer debates, we are not running away from truth, but when we introduce one provision which is nothing different from the existing provision of law and give it to a higher court and say 'within three months' either the lie will be nailed or the man will be exposed, here is the whole Opposition joining together and says: "No, truth shall not be the defence". Sir, I do not know how to make such a law. The only way of pleasing the Opposition is to say that untruth will be a defence; lie will be a defence. Such a law cannot be made by Parliament.

This Bill is brought after careful consid-

eration. This Bill advances the freedom of Press. This Bill introduces clauses 9, 10 and 11 which are liberal provisions, which liberalise the law of defamation and advance the cause of the Press. This Bill will protect reputations which are sacred. This Bill will raise the standard of political debate in this country and this Bill, as a codified Bill, a codification as a measure, I believe, will be welcomed throughout this country.

So, I commend this Bill to the vote of the House.

MR. DEPUTY-SPEAKER: The question is:

"That the Bill, as amended be passed."

The motion was adopted

20.45 hrs.

At this stage, Shri C. Madhav Reddi and Some other Hon. Members left the House.

MR. DEPUTY-SPEAKER: The House stands adjourned to re-assemble tomorrow at 11.00 a.m.

20.45 1/2 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Wednesday, August 31, 1988/Bhadra 9, 1910 (Saka)