

15.01 hrs.

DEFAMATION BILL

[English]

MR. CHAIRMAN : Now, we take up the Defamation Bill, as was announced earlier.

Mr. Chidambaram.

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. CAIDAMBARAM) : Sir, I beg to move :

“That the Bill to consolidate and amend the law relating to defamation and for matters connected therewith or incidental thereto, be taken into consideration.”

SHRI BASUDEB ACHARIA (Bankura): The amendments have not been circulated.

SHRI P. CHIDAMBARAM : The law of defamation is at present contained in sections 499 to 502 of Chapter XXI of the Indian Penal Code . . .

SHRI E. AYYAPU REDDY (Kurnool): Sir, I rise on a point of order. He has moved the motion that the Bill be taken into consideration. I am rising on a point of order. The Bill should have been circulated at least two days earlier . . .

MR. CHAIRMAN : This was decided already in the morning by the Speaker. Why are you starting it again ?

SHRI E. AYYAPU REDDY : Let me make my submission.

SHRI SHANTARAM NAIK (Panaji) : He cannot raise it now. He could have raised before the ruling was given.

MR. CHAIRMAN : You cannot raise it now.

SHRI E. AYYAPU REDDY : The right to move amendments has been practically denied . . .

SHRI SHANTARAM NAIK : A few days ago I was not allowed to raise . . .

SHRI V. SOBHANADREESWARA RAO (Vijyawada) : It was because that was a State subject.

MR. CHAIRMAN : All these points were made earlier and the Speaker has given his ruling.

SHRI E. AYYAPU REDDY : Earlier, Mr. Madhav Reddi spoke at the time of introduction of the Bill. Now, this point arises when the Minister has moved that the Bill be taken into consideration. Till then, this does not arise and no ruling can be deemed to have been given. What was moved at that time was the motion seeking leave of the House to introduce the Bill. Mr. Madhav Reddi raised a preliminary objection to the introduction of the Bill. With regard to this motion, namely, that the Bill be taken into consideration, my submission is this : we had practically no opportunity to move amendments . . .

MR. CHAIRMAN : In the House the Speaker has already given the ruling.

SHRI E. AYYAPU REDDY : I am on a point of order. The Bill requires circulation two days earlier . . .

MR. CHAIRMAN : All these points were raised and the Speaker has given the ruling.

SHRI E. AYYAPU REDDY : My point arises when he has moved that the Bill be taken into consideration. Till then it does not arise. This is the appropriate time to raise the point of order.

MR. CHAIRMAN : All these points were raised at the time of introduction.

SHRI E. AYYAPU REDDY : I did not raise it. Mr. Madhav Reddi also did not raise it.

MR. CHAIRMAN : There is no point of order. The Minister will continue.

SHRI E. AYYAPU REDDY : Let me make my submission, Sir,

MR. CHAIRMAN : I have heard in detail.

SHRI E. AYYAPU REDDY : You have not heard me at all. I have not completed it.

SHRI M. RAGHUMA REDDY (Nalganda) : He has not yet completed his point of order.

SHRI H.A. DORA (Srikakulam) : This point has not been raised earlier. Please hear him and then you give your ruling.

(Interruptions)

SHRI THAMPAN THOMAS (Mavelikara) : The Minister has already introduced the Bill and started . . . *(Interruptions)*

MR. CHAIRMAN : You are not having a Point of Order. He is having it.

(Interruptions)

SHRI E. AYYAPU REDDY : Actually, this matter came up when the Motion for leave to introduce the Bill came up at 1230 hours and leave was granted. Now this is to move the amendments. Now according to rules, only when there is a motion to move the Bill for consideration, amendments are allowed. But this came up at 1230 hours. Where is the time given for us to move the amendment to this Bill ? This Bill consists of four chapters and about 20 clauses. This is intended to amend the Criminal Procedure Code, the Indian Penal Code and has got reference to . . . *(Interruptions)*

MR. CHAIRMAN : We know those things.

SHRI E. AYYAPU REDDY : You may know it. We do not know. I am on the point. I tabled a number of amendments and they have not been admitted. They have not been circulated . . . *(Interruptions)*

MR. CHAIRMAN : There is no Point of Order.

(Interruptions)

SHRI E. AYYAPU REDDY : Let me say. Shri Amal Datta has certain amend-

ments. But we do not have the time to read those amendments. Where is the time given to any of the Members ? First and foremost, the amendments moved by me have not been circulated. And there is no time limit as to when we can move the amendments. There was no sufficient time given for the Members to move amendments. Amendments already tabled were not circulated to the Members. We are just now receiving the amendments tabled by Mr. Amal Datta and the amendments moved by me are not circulated to any of the Members. Where is the time for us to consider those amendments ? What is the difficulty in having this Bill taken up tomorrow or day after ? Why should we be hurried that too, in the midst of consideration of the another Bill ? *(Interruptions)* When the Bill is being considered, why should you have this procedure ? What is the big hurry about it ? *(Interruptions)*

MR. CHAIRMAN : In the morning, the Hon Speaker has given a ruling that amendments may be tabled up to 1300 hours today and the Bill may be taken up for consideration and passing at 1500 hours today.

(Interruptions)

SHRI SOMNATH CHATTERJEE (Bolpur) : I am on a Point of Order. There is no condition that it should not be circulated. The amendments should be circulated in time. *(Interruptions)*

MR. CHAIRMAN : I am giving my ruling on the Point or Order raised by the Hon. Minister Shri Ayyapu Reddy. Please hear me.

(Interruptions)

SHRI E. AYYAPU REDDY : So far as amendments are concerned, according to rules, amendments become relevant and the moving of the amendments will arrive only after he has moved the motion. He is moving it at 3 O' clock. You do not even allow us to move our amendments. You cannot rule out amendments being tabled by us. Is there any precedent which prevents the tabling of amendments ? *(Interruptions)*

MR. CHAIRMAN : The Hon. Speaker has said that the amendments may be tabled up to 1300 hours.

(Interruptions)

SHRI E. AYYAPU REDDY : Under what provision of the rules ?

SHRI BASUDEB ACHARIA : Half-an-hour is given to table the amendments.

MR. CHAIRMAN : I am coming to that.

SHRI E. AYYAPU REDDY : How can the right of the members to move the amendments be taken away ?

MR. CHAIRMAN : As far as your amendment is concerned it was received at 1340 hours. It was received after the time allotted. So it is time-barred.

(Interruptions)

SHRI BASUDEB ACHARIA : Although I had given two amendments only one amendment has been circulated.

MR. CHAIRMAN : Those amendments which have been received within the time-allotted have been circulated.

SHRI V. SOBHANADREESWARA RAO : The hon. Speaker and set the time-limit to 1400 hours. *(Interruptions)*

MR. CHAIRMAN : Mr. Acharia, I find, your amendment has been circulated. You please see. It is already there. I find the amendment of Mr. Ayyapu Reddy is also there. Those amendments which were received in time are already there.

(Interruptions)

SHRI BASUDEB ACHARIA : Let it be taken up tomorrow. Why is the Government in such a hurry ?

SHRI DINESH GOSWAMI : (Guwahati) : Sir, I find in the statement of objects and reasons the Minister has referred to the Law Commission's report. Then I find this Bill covers the entire Defamation Act. So what is the hurry in passing this Bill ? Is it that heavens are

going to fall if this Bill is not passed today? What is the difficulty if we take it up tomorrow ?

THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS AND MINISTER OF STATE IN THE PRIME MINISTER'S OFFICE (SHRIMATI SHEILA DIKSHIT) : Sir, I have two points to make. First, the Bill was circulated to all the members last week. *(Interruptions)*

SHRI BASUDEB ACHARIA : I got the Bill today from the Distribution Branch.

SHRIMATI SHEILA DIKSHIT : Secondly, Sir, this morning, it was decided that Members will give their amendments by 1.00 p.m. They will be circulated and we will start discussion at 3.00 p.m. I don't know why they have to discuss this all over again. *(Interruptions)*

SHRI DINESH GOSWAMI : What is the hurry ? Why can't it be taken up tomorrow *(Interruptions)* What is this ? *(Interruptions)*

SHRI SHANTARAM NAIK : Sir, don't allow them to hold the House to ransom.

AN HON. MEMBER : You are holding the House to ransom. *(Interruptions)*

MR. CHAIRMAN : The Bill was circulated last week itself.

(Interruptions)

SHRI DINESH GOSWAMI : If you want to run the House, run it. *(Interruptions)* If you do not want our cooperation, we will not cooperate. *(Interruptions)* We will not allow the Bill to be taken up today. If you want to pass it without our cooperation, let us see how you do it.

SHRIMATI SHEILA DIKSHIT : It is you who are not cooperating. *(Interruptions)*

SHRI DINESH GOSWAMI : What is this ? *(Interruptions)* How many Members of your party have gone through the Bill ? *(Interruptions)* What is the reason for doing away with the rules ?

SHRI SAIFUDDIN CHOWDHARY (Katnea): We want the Minister to explain. What is the hurry that this should be passed today? (*Interruptions*)

SHRI SOMNATH CHATTERJEE: What is the reason for hurry? (*Interruptions*)

MR. CHAIRMAN: I can go by the decision of the House and the ruling of the Speaker.

(*Interruptions*)

SHRI BASUDEB ACHARIA: Why are you passing it today? (*Interruptions*) Don't create such precedents. (*Interruptions*)

SHRI DINESH GOSWAMI: The Bill can wait till tomorrow and you can pass it in a congenial atmosphere. (*Interruptions*) There is one copy of Law Commission's report available. How many Members can go through it?

MR. CHAIRMAN: Please hear me... (*Interruptions*)... This could have been objected when the Speaker gave his decision and ruling. You have not. How can you go back upon the decision of the House?... (*Interruptions*)... It is already decided in the morning.

(*Interruptions*)

SHRI DINESH GOSWAMI: There was only one copy available.

SHRIMATI SHEILA DIKSHIT: Sir, shall I say something?

(*Interruptions*)

MR. CHAIRMAN: You hear the Minister speaking. The Minister is saying about this.

(*Interruptions*)

SHRIMATI SHEILA DIKSHIT: Please listen to me. I cannot shout beyond voice. (*Interruptions*)

SHRI BASUDEB ACHARIA: Why have you to pass it today? (*Interruptions*)

SHRIMATI SHEILA DIKSHIT: If the hon. Members were not able to go through

whatever they want, to go through within five days, I don't think that they can go through it within one day. But we can continue the discussion on this tomorrow and those Members who are not willing to speak, can speak tomorrow. I do not know the reason why we should not start the Bill now.

MR. CHAIRMAN: We can start the discussion and proceed as the Minister suggests.

(*Interruptions*)

SHRIMATI SHEILA DIKSHIT: We can continue tomorrow. (*Interruptions*)

MR. CHAIRMAN: Some of you can speak tomorrow as the Minister says. We can start the discussion today and continue tomorrow.

(*Interruptions*)

SHRI SAIFUDDIN CHOWDHARY: It is a very indecent way. (*Interruptions*)

SHRI P. CHIDAMBARAM: If you can bear with me for a few minutes... (*Interruptions*)... Please listen to me. (*Interruptions*)

SHRI DINESH GOSWAMI: If he can satisfy that the Bill will be... (*Interruptions*)... Let him satisfy me. Then I have no objection.

SHRI SAIFUDDIN CHOWDHARY: Is some big scandal coming tomorrow? What is the hurry now? (*Interruptions*)

SHRI SOMNATH CHATTERJEE: If the Government can wait till tomorrow for passing the Bill in this House, then why can't they start the discussion tomorrow? (*Interruptions*)

SHRI VAKKOM PURUSHOTHAMAN (Alleppey): The issue was raised in the morning. They cannot raise the subject now. The speaker has given his ruling. How can they raise objection now? (*Interruptions*)

SHRI P. CHIDAMBARAM: With great respect to hon. Members, I do not know why we should get excited about this.

As far as I know, the Bill was circulated last week . . . (*Interruptions*) . . . Why don't you listen to me? It is quite possible that some Members who may have gone back to their constituencies may not have seen this Bill. But the fact remains that the Bill was circulated. (*Interruptions*)

MR. CHAIRMAN : You take your seat.

(*Interruptions*)

SHRI VAKKOM PURUSHOTHAMAN: The Speaker also told in the morning that it was circulated from the Parliament and not from the Government.

SHRI P. CHIDAMBARAM : Sheilaji and I just wanted to say that the Speaker has said that the debate will commence at three O'clock. From past experience, we know that the debate is not likely to be concluded in the time that is usually reserved for the debate. It is not likely to be concluded. We are not asking that you sit late in the evening. It is now already half-past three. Let me make my speech. Let a couple of Members speak and then the debate will certainly go on tomorrow. What is the problem, I cannot understand? (*Interruptions*)

DR. DATTA SAMANT (Bombay South Central) : We have to go through the report.

SHRI P. CHIDAMBARAM : There is a ruling. So, let us start the debate. (*Interruptions*)

This is most reasonable; I cannot understand why there is such unreasonable attitude.

SHRI V. SOBHANADREESWARA RAO : Sir, in the Part-II Bulletin the time allotted is half-an-hour and now the Minister says that it can be discussed today and tomorrow also. So, why not discuss it tomorrow itself? (*Interruptions*)

MR. CHAIRMAN : I am sorry that you have not gone through the decision arrived at in the morning.

SHRI V. SOBHANADREESWARA RAO : Sir, only half-an-hour time was

allotted. Why not discuss it tomorrow itself?

MR. CHAIRMAN : There is already a decision in this regard.

(*Interruptions*)

MR. SOMNATH CHATTERJEE : Sir, I am on a point of order. If a Bill can wait till tomorrow for being passed, why cannot we start discussion tomorrow? Why should the discussion start today only?

SHRIMATI SHEILA DIKSHIT : Sir, it was there in today's Order Paper. You kindly go through the ruling.

MR. CHAIRMAN : Hon. Speaker gave the ruling in the morning.

(*Interruptions*)

SHRI VAKKOM PURUSHOTHAMAN: This is the decision of the House. (*Interruptions*)

SHRI P. CHIDAMBARAM : I am sure you have studied it Somnathji (*Interruptions*)

SHRI E. AYYAPU REDDY : My fundamental points is that I have tabled certain amendments to the clauses and they were received in the Notice Office. I myself went and delivered them at 1.45. They have not been circulated; they have not been allowed and they have not been disallowed. Now, I am saying under what rule . . . (*Interruptions*)

SHRI VAKKOM PURUSHOTHAMAN: You cannot question the ruling of the Speaker. (*Interruptions*)

SHRI E. AYYAPU REDDY : Let me make my point. It is not right, it is something . . . (*Interruptions*)

SHRI SOMNATH CHATTERJEE : The time is not given.

SHRI E. AYYAPU REDDY : What I am complaining of is not only individual right in this particular case but the right of every Member of Lok Sabha belonging either to that side or this side. It is our right to table the amendment to any clause

[Shri E. Ayyapu Reddy]

at any time when it is taken up for consideration. The right arises when that particular clause comes. You can move an amendment at that time even orally. There is no limitation placed upon the right of a Member to move an amendment. Now that has been disallowed. They cannot disallow it. (*Interruptions*)

SHRI V. SOBHANADREESWARA RAO : Where are the amendments moved by Mr. Ayyapu Reddy ? (*Interruptions*)

SHRI E. AYYAPU REDDY : The Hon. Minister may himself come forward with an amendment. Can he be prevented from doing that ? The right of a Member to move an amendment to certain clause is inherent and there can be no limitation placed upon it. The only thing is that they must conform to the particular rule, that the amendment must have the particular characteristics mentioned in the rules. When those amendments are in order, they cannot be thrown out simply because they have not been tabled at some time fixed by somebody or for that matter even by the Speaker. It was not intended for that. (*Interruptions*) I draw your attention to Rules 74 and 75. Kindly see what Rule 74 says :

“ . . . no such motion shall be made until after copies of the Bill have been made available for the use of members,”

Please note the words ‘use of members’. Merely saying that the Bill has been circulated is not enough. In the name of circulation, throwing them somewhere is not enough.

The rule further reads :

“ . . . and that any member may object to any such motion being made unless copies of the Bill have been so made available for two days before the day on which the motion is made . . . ”

SHRI VAKKOM PURUSHOTHAMAN : You have got it three days back.

SHRI E. AYYAPU REDDY : I am sorry to hear this from a senior member

like Shri Vekkom. This rule is intended to enable the member to go through the Bill and to understand it. The object of giving two days is for this purpose and here two days means two working days.

MR. CHAIRMAN : You have been repeating the same thing. What is new in it ? There are many instances when the Bill was taken the same day and also passed on the same day.

SHRI DINESH GOSWAMI : It was done with the consent of the House. It can be done only if there is consensus in the House. Show me one instance when a Bill is passed on the same day in spite of stiff opposition from the opposition members like this. Show me just one instance when the Bill has been passed on the same day in spite of opposition from the opposition. (*Interruptions*)

MR. CHAIRMAN : You are saying the same thing.

SHRI E. AYYAPU REDDY : Let me be allowed to complete.

MR. CHAIRMAN : I have permitted you. But you are repeating the same thing. You are not saying anything new.

SHRI E. AYYAPU REDDY : Please allow me to say sentences. Just listen. In the Statement of Objects and Reasons it has been mentioned that the Law Commission has recommended certain things in its report. During the last two holidays, when can a member go and get the Law Commission's Report ? Is it possible for us to get the report on Saturday and Sunday ? It is also stated that a Bill on these lines was discussed in 1978. Is it possible for us to go through the discussions held in 1978 ? The purpose of giving two days' time is to enable the members to understand the provisions of the Bill. Is the parliamentary process itself to be made into a mockery ? Now, I may also draw your attention to Rule 75.

MR. CHAIRMAN : How many points are you going to make ? And there is nothing new in what you are saying.

PROF. MADHU DANDAVATE (Rajapur) : This is a very important Bill. We

will not allow them to steamroller this Bill. First of all, they did not give us enough time to argue out the cases. This is a very dangerous Bill that they have brought. Let us be given time. We have to argue our case in detail.

SHRI E. AYYAPU REDDY : Rule 75 (2) says :

“At this stage no amendments to the Bill may be moved, but—(a) if the member in charge moves that the Bill be taken into consideration any member may move as an amendment that the Bill be . . .”

Therefore, our right to move an amendment arises only on this motion subsequently. There is no limitation in regard to the right of the member to move an amendment.

SHRI V. SOBHANADREESWARA RAO : My submission is that Mr. Chidambaram cannot take this House for a ride like this. We register our serious protest. *(Interruptions)*

SHRI P. CHIDAMBARAM : I beg to move that the Bill to consolidate and amend the law relating to defamation and for matters connected therewith or incidental thereto . . . *(Interruptions)*

SHRI BASUDEB ACHARIA : I am on a point of order.

MR. CHAIRMAN : What is your point of order ?

SHRI BASUDEB ACHARIA : Sir, the Bill has not been circulated to us. This a fact. Only half an hour was given to table our Amendments. How can we study such an important Bill within half an hour ?

MR. CHAIRMAN : You are repeating the same, thing, Mr. Acharia. The ruling was given by the Speaker in the morning as per the consensus of the House. You have not gone through the morning's proceedings. If you had gone through the proceedings, you would not have raised this matter now.

SHRI BASUDEB ACHARIA : My point was how can we study the Bill within half an hour ?

MR. CHAIRMAN : That stage has already been passed.

SHRI BASUDEB ACHARIA : Why are they in such a hurry ?

SHRI P. CHIDAMBARAM : We are not in a hurry. *(Interruptions)*

MR. CHAIRMAN : If the House agrees, let us admit the Amendments moved before 2 O'clock.

SOME HON. MEMBERS : Yes. *(Interruptions)*

MR. CHAIRMAN : So, that will solve the problem. Mr. Acharia, you have not gone through the proceedings. Let us agree. Let Mr. Reddy move his Amendment.

(Interruptions)

SHRI V. SOBHANADREESWARA RAO : Let it be circulated to all the Members. *(Interruptions)*

SHRI DINESH GOSWAMI : I am on a point of order. Firstly, if the time fixed by the Speaker up to 1 O'clock is not sacrosanct, then the Speaker's ruling is also not sacrosanct. The Bill can be taken up tomorrow. I am on Rule 79. “If notice of an amendment to a clause or schedule of the Bill has not been given one day before the day on which the Bill is to be considered.”

I would like to know, was the Parliament office opened yesterday so that I could give the notice one day before ? Am I not entitled to one day's notice ? Is it that every rule is to be put under the steamroller ? Is this the way you want to function ? Is every rule to be flouted like this ?

SHRI ANIL BASU (Arambagh) : Sir, you try to protect the dignity of the Chair.

MR. CHAIRMAN : The dignity of the Chair is being protected provided you cooperate.

(*Interruptions*)

SHRI DINESH GOSWAMI : I am making a request that, if necessary, we will sit late and get this Bill passed tomorrow but please give us time to submit Amendments till evening. This is a reasonable request which I am making.

PROF. MADHU DANDAVATE : We do not blame you, because of two days' holidays you were forgotten.

[*Translation*]

SHRIMATI SHEILA [DIKSHIT : You may start it today. We shall resume the discussion tomorrow . . . (*Interruptions*)

[*English*]

SHRI SAIFUDDIN CHOWDHARY : Sir, it is a very serious point of order. You listen carefully. By now, you have understood that the Bill was circulated amongst only the Congress Members and not the Opposition. Now, the Minister has to clarify here why this partiality. You ask the Minister to clarify this.

SHRI VAKKOM PURUSHOTHAMAN : Hon. Member does not know that it is circulated by Parliament and not by the hon. Minister. (*Interruptions*)

SHRI BASUDEB ACHARIA : I had to get it from the Distribution Branch. (*Interruptions*)

SHRI VAKKOM PURUSHOTHAMAN : It was distributed by the office of Lok Sabha. It was not circulated by Government. It was done by Parliament. This is contempt of the House, because it is an allegation against Parliament, and then of the Speaker i.e. to say that Parliament is circulating the Bill only to the Congress members, and not to the Opposition. It is a very serious allegation. Sir, I say that it is a very serious allegation. (*Interruptions*)

[*Translation*]

SHRI NARAYAN CHOUBEY (Midnapore) : What a useless talk. You may please take it up tomorrow.

SHRI P. CHIDAMBARAM : What is the problem, Mr. Narayan Choubey ? Dada, what is the problem—we start today. Tomorrow we will continue. What is the problem ? (*Interruptions*)

SHRI INDRAJIT GUPTA (Basirhat) : I am requesting the Minister, through you, not to stand on a sense of prestige. It is clear now that they did not know the rules and since they did not know the rules, they were not aware that they have violated the rules. They do not want to admit that. (*Interruptions*)

Of course, I was entitled to give amendments till yesterday, when the Parliament was closed; its office was closed. You cannot receive my amendments even. I have arrived this morning from outside Delhi. Am I not entitled to go out of Delhi ? (*Interruptions*) It has appeared in the agenda paper only now, i.e. today—for introduction, as also for consideration and passing. (*Interruptions*)

SHRI DINESH GOSWAMI : What about your ruling on rule 290 A ? (*Interruptions*)

MR. CHAIRMAN : Let us go one by one.

PROF. MADHU DANDAVATE : They do not know the rules. They only know misrule.

MR. CHAIRMAN : You could have given it. The Speaker had allowed it till 1 O' clock. (*Interruptions*) If you want to say anything in particular . . . (*Interruptions*)

SHRI INDRAJIT GUPTA : Sir, you are now the Speaker.

MR. CHAIRMAN : It is the sense of the House . . . (*Interruptions*) Mr. Reddi says that at 1.45 p.m. he has given. So, upto 2 o'clock we can admit. What is there ? (*Interruptions*)

SHRI DINESH GOSWAMI : Please give your ruling regarding rules 289, 290 and 290 A.

MR. CHAIRMAN : It was said in the morning. You could have given your

amendments. Who prevented you? The House was told so this morning. You could have given your amendments.

SHRI INDRAJIT GUPTA : I was to have given my amendments yesterday.

SHRI DINESH GOSWAMI : I want your ruling on rules 289, 290 and 290 A.

Rule 289 says ; 'The recommendations of the Committee shall be presented to the House in the form of a report.'

Rule 290 says : 'At any time after the report has been presented to the House a motion may be moved that the House agrees with amendments or disagrees with the report :'

Rule 290 A says : "The allocation of time in respect of Bills and other business as approved by the House shall take effect as if it were an order . . ." This was not passed in the Business Advisory Committee. *(Interruptions)*

Rule 292 says : 'No variation in the Allocation of Time Order shall be made except on a motion made, with the consent of the Speaker . . .' There was no motion made regarding variation, under rule 292.

MR. CHAIRMAN : Please take your seat.

This matter was raised in the morning. *(Interruptions)* Yes. The Speaker himself has also said :

"The House has also to allot time for consideration and passing of the Bill, as it was not placed before the Business Advisory Committee for allocation of time. If the House agrees, we may allot two hours for consideration and passing of the Bill."

That was done. *(Interruptions)*

SHRI DINESH GOSWAMI : What about rule 292 ? *(Interruptions)*

MR. CHAIRMAN: Now, Mr. Chidambaram, you may proceed.

(Interruptions)

SHRI P. CHIDAMBARAM : Madhav

Reddiji, it was all agreed in the morning. It was all agreed, and you are going back on it. *(Interruptions)*

MR. CHAIRMAN : The ruling was given. We will move on to the next item. *(Interruptions)*

SHRI SOMNATH CHATTERJEE (Bolpur) : I am on a point of order.

MR. CHAIRMAN : After Shri Madhav Reddi,

SHRI C. MADAV REDDI : (Adilabad) : The matter was raised by me. I objected to the introduction of the Bill itself. That was a different stage. Now we are at the stage of consideration. At the time of introduction, the Speaker observed that since there is no time, he has given half an hour for giving amendments. That is only up to one o'clock. I thought earlier that it was a simple Bill, When I read through the Bill, I found that it was a serious Bill and several clauses were to be amended. So, I wanted to give amendments, and I have no time. *(Interruptions)*

MR. CHAIRMAN : Mr. Madhav Reddi, the whole issue, which you raised now, has been decided in the House in the morning. *(Interruptions)*

SHRI C. MADHAV REDDI : No. *(Interruptions)*

MR. CHAIRMAN : We go by the record.

(Interruptions)

MR. CHAIRMAN : We go by the proceedings of the House. The House has agreed. *(Interruptions)*

MR. CHAIRMAN : You cannot change the decision arrived at. Mr. Minister, please continue.

SHRI P. CHIDAMBARAM : I beg to move that the Bill to consolidate and amend the law relating to defamation and for matters connected therewith . . . *(Interruptions)*

SHRI SOMNATH CHATTERJEE ; Sir, I am on a point of order,

SHRI P. CHIDAMBARAM : Sir, are you allowing him ?

SHRI SOMNATH CHATTERJEE : Kindly take your rule book. Sir, what has happened is, a contingent notice has been given. A contingent notice does not do away with Rule 79 and, if a rule has to be suspended, there has to be a formal motion under Rule 388. No Motion has been moved here. Rule 79 has not been suspended at all. The residuary power, the Chair has, only in cases where motions are not specifically provided. Here it is specifically provided Rule 79 gives the right to give an amendment a day before the discussion being taken up. Therefore, it cannot be done away with unless there is a formal motion for suspension of Rule 79 which has not taken place. Therefore, the right to give an amendment a day before the discussion is taken up cannot be interfered with. It cannot be interfered with. No residuary power can be exercised here. Therefore, the Hon. Speaker's observations were relating to the introduction of the Bill. Therefore, what has been now taken up relates to a period subsequent to that. Therefore, you have to apply your mind and give a ruling. Please do not go on quoting that. *(Interruptions)*

MR. CHAIRMAN : I cannot go back on the decision of the House.

(Interruptions)

SHRI SOMNATH CHATTERJEE : Has Rule 79 been suspended ?

MR. CHAIRMAN : All these questions could have been raised then.

(Interruptions)

MR. CHAIRMAN : All these things could have been done. All these issues could have been raised at that time.

(Interruptions)

MR. CHAIRMAN : After the Speaker has given the ruling, it is as per the decision of the House. I cannot go back.

SHRI SOMNATH CHATTERJEE :

You are to give a ruling on my point of order. Has Rule 79 been suspended ?

MR. CHAIRMAN : All these issues could have been raised at that time, not now. That stage is already over. *(Interruptions)*

SHRI SOMNATH CHATTERJEE : The House cannot overrule . . . *(Interruptions)*

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 beg to move :

"That the Bill to consolidate and amend the law relating to defamation and for matters connected therewith or incidental thereto, be taken into consideration," *(Interruptions)*

MR. CHAIRMAN : Nothing will go on record except the Minister's speech.

*(Interruptions)**

[At this stage, Shri C. Madhav Reddi and some other hon. Members left the House]

SHRI P. CHIDAMBARAM : Sir, the law of defamation is at present contained in Sections 499 to 502 of Chapter XXI of the Indian Penal Code. The Law Commission had suggested certain amendments to these provisions in its 42nd Report on the Indian Penal Code. Accordingly, amendments to these sections had been included in the Indian Penal Code (Amendment) Bill, 1978, which was passed by the Rajya Sabha in November, 1978 but had lapsed on the dissolution of the Sixth Lok Sabha in 1979. Sir, I wish to emphasise that these provisions were passed by the Rajya Sabha when it passed the Indian Penal Code (Amendment) Bill 1978. The Second Press Commission also had, in its report submitted in 1984, recommended amendments in the law of defamation in certain respects, namely protection of unintentional defamation, fair comment and certain types of privileged statements. Further, it is proposed to make publication of imputations

falsely alleging commission of offences, by any person as an offence. Those who make such imputations do so just for the sake of calling into question the reputation of the person concerned. Often they do not have any intention of pursuing the matter any further with the appropriate authorities. Sir, we believe that freedom of speech is an essential feature of our democracy. However, freedom of speech should not be allowed to degenerate into mere licence for casting aspersions on any one. It is considered necessary to check this tendency with a firm hand. For all these reasons, it is considered necessary and advisable to have a self contained law on defamation covering both substantive and procedural aspects. The Government have, therefore, come before this august House with this Bill.

I shall now briefly explain the provisions this Bill.

15.52 hrs.

[SHRI SHARAD DIGHE *in the Chair*]

Clauses 3 and 4 of this Bill are almost identical to section 499 I.P.C. Any imputation that exposes (directly or indirectly) a person to hatred, contempt or ridicule or disparages or causes injury to such person in his trade, business, profession, calling or office will also amount to defamation in terms of clause (b) of Explanation IV under Clause 3 of the Bill. During the course of the debate, I shall request the hon. Members to compare the provisions of the present section 499 I.P.C. and clauses 3 and 4 of the Bill. Clauses 5 and 6 follow and are more or less identical to sections 500 and 501 of the Indian Penal Code, with the change that enhanced penalties are proposed for the second or any subsequent offence under these clauses. The hon. Members will kindly compare the existing provisions and the provisions made in the Bill and will find that we are following the present Act. Clause 7 of the Bill is the same as section 502 of the Indian Penal Code. Clause 8 of the Bill relating to the printing, etc. of grossly indecent or scurrilous matter or matter intended for blackmail is an adaptation of new section 292-A proposed in the Indian Penal Code (Amendment) Bill, 1978 which was passed by the Rajya Sabha and which lapsed in the Lok Sabha. Sir, I may take this opportunity to point out that

the Indian Penal Code (Amendment) Bill 1978 was introduced by the then Janata Government. This provision will apply only in relation to the publication of such matter in a news paper, periodical or circular, and the author of such matter and the printer, publisher and editor of the such newspaper, periodical or circular will be liable to be punished. The Explanations under this clause have in-built safeguards. So from what I have said upto now it will be clear that in clauses 3 to 8 we have done nothing except to incorporate the existing provisions of the Indian Penal Code as well as introduce those provisions which have been passed by the Rajya Sabha in the Indian Penal Code (Amendment) Bill 1978.

Clauses 9, 10 and 11, which are important clauses, relate to protectional defamation, fair comment and certain types of statements. These three clauses will be widely welcomed because they signify a liberalisation of the Law of Defamation. These clauses have been introduced based upon appropriate recommendations made by the Law Commission as well as the second Press Commission. I have no doubt, hon. Members will welcome the liberalisation that we are introducing in clauses 9, 10 and 11.

Clause 12 only re-states a general rule of evidence which is already incorporated in the Indian Evidence Act.

Chapter III of the Bill deals with the offence of criminal imputation. Clause 13 defines of offence and prescribes the penalty, with a minimum term of imprisonment. Clause 14 provides for the trial of the offence by a court of Session following the summons procedure prescribed in the Code of Criminal Procedure. The Court may, if it thinks fit, try the offence in a summary way, in the manner laid down in the Cr. P. C. Clause 15 makes it clear that the defence available for a person charged with an offence under clause 13 will be that the imputation is true and made in the public good. This is identical to Exception 1 under section 499 of the Indian Penal Code. The onus of proving truth and public good will be on the accused and the prosecution will have the right to lead evidence in rebuttal. Clause 16 provides that an appeal shall lie to the High Court from the judgement of

[Shri P. Chidambaram]

the Court of Session, both on facts and on law. Clause 17 will enable the High Court to make rules for the purpose of filing appeals to it.

Chapter IV of the Bill contains miscellaneous procedural provisions including consequential amendments to the Cr. P. C. and the omission of Chapter XXI of the I.P.C. All offences under this law will be non-cognizable and bailable.

Sir, the Government has brought forward this measure after a great deal of thought and consideration.

Apprehensions voiced by the hon. Members that any novel or unusual provisions are there in this Bill are totally unfounded. The Bill faithfully follows the existing provisions of the Indian Penal Code. The Bill re-introduces provisions which were introduced in 1978 by the then Government in the form of Indian Penal Code (Amendment) Bill 1978 which was passed by the Rajya Sabha and which lapsed in the Lok Sabha on its dissolution. The Bill has incorporated many liberal provisions recommended by the Law Commission and the Press Commission. The Bill also has regard to the British Defamation Act of 1952. And in the course of the debate I shall refer to the corresponding *peri materia* provisions. This Bill is a Bill which is overdue. This Bill has been in the consideration of the Government of India for the last ten years. Therefore, this Bill is being brought in this House. I have no doubt, after the debate and after I have had an opportunity to explain and clarify to the best of my ability the doubts that the hon. Members may raise, that this Bill will be welcomed widely and all sections of the people as liberalisation in the law of defamation and protection against malicious or mischievous defamatory material. I commend this Bill.

SHRI THAMPAN THOMAS : You are misleading the House. Chapter 3, clause 13 has no co-relation with the Janata Government proposals.

SHRI P. CHIDAMBARAM : I have already referred to that in a separate para-

graph. I have already referred to that in a separate paragraph, I commend this Bill to this august House and request this hon. House to consider this Bill.

MR. CHAIRMAN : Motion moved :

“That the Bill to consolidate and amend the law relating to defamation and for matters connected therewith or incidental thereto, be taken into consideration.”

There are three amendments—one by Shri E. Ayyapu Reddy for circulation, another by Shri Basudeb Acharia for circulation, and the third by Shri Basudeb Acharia for referring the Bill to a Joint Committee. Are you moving your amendments ?

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

That the Bill be circulated for the purpose of eliciting opinion thereon by the 30th November, 1988. (2)

SHRI BASUDEB ACHARIA (Bankura) :
Sir, I beg to move :

That the Bill be circulated for the purpose of eliciting opinion thereon by the 1st November, 1988. (3)

That the Bill to consolidate and amend the law relating to defamation and for matters connected therewith or incidental thereto be referred to a Joint Committee of the Houses consisting of 15 members, 10 from this House, namely :

1. Seri Somnath Chatterjee
2. Shri P. Chidambaram
3. Prof. Madhu Dandavate
4. Shri Dinesh Goswami
5. Shri Indrajit Gupta
6. Shri Balwant Singh Ramoowalia
7. Shri C. Madhav Reddy
8. Shri Amar Roypradhan
9. Shri Piyus Tiraky
10. Shri Basudeb Acharia

and 5 from Rajya Sabha;

that in order to constitute a sitting of the Joint Committee the quorum shall be one—third of the total number of members of the Joint Committee :

that the Committee shall make a report to this House by the last day of the first week of the next session;

that in other respects the Rules of Procedure of this House relating to Parliamentary Committees shall apply with such variations and modifications as the Speaker may make; and

that this House do recommend to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of 5 members to be appointed by Rajya Sabha to the Joint Committee. (11)

MR. CHAIRMAN : Now Shri E. Ayyapu Reddy.

SHRI SOMNATH CHATTERJEE : Sir, will you consider my point of order ?

PROF. MADHU DANDAVATE : Sir, with a change in the Chair, the ruling can change.

MR. CHAIRMAN : I cannot go back.

SHRI SOMNATH CHATTERJEE : But if you go forward, you will behave, just see.

PROF. MADHU DANDAVATE : What is your point of order ?

SHRI SAIFUDDIN CHOWDHARY : Point of muscle.

SHRI E. AYYAPU REDDY (Kurnool) : Sir, this Defamation Bill, which after it is passed becomes a Defamation Act, unfortunately does not add any fame to the process adopted by the Lok Sabha in passing this Bill or in considering the Bill.

In the Statement of Objects and Reasons it is stated that the Indian Penal Code (Amendment) Bill of 1978 was considered by the Rajya Sabha in 1978 itself and was passed, but it could not be passed by the Lok Sabha in 1979. It gives the impression

that this particular Bill was also considered by the Rajya Sabha. It is not true, The Rajya Sabha considered a Bill which was intended to amend the Indian Penal Code. There was a Joint Select Committee. That Joint Select Committee had called for public opinion and examined a number of experts, a number of witnesses. That Committee's Report was considered and that came up for discussion and debate. It is not correct to say that this Bill is in any way related to that Bill. If that particular Bill had contained any provisions, it should have been made specifically clear that these particular portions of the Bill were also considered. . . (Interruptions).

SHRI P. CHIDAMBARAM : Sir, if the hon. Members yields for a while, I have said that section 292 A of the Indian Penal Code (Amendment) Bill is accepted and incorporated here. The hon. Member had left the House when I was reading that portion.

SHRI E. AYYAPU REDDY : Then, Sir, he has referred to Law Commission's Report, which is 25 years old. The Law Commission's Report was in 1971 or 1972. There is no explanation as to why the Government slept over all these matters. The Law Commission's forty-second Report was a quarter century old and the amendment of the Rajya Sabha Bill was a decade old. What is the reason that they have come forward with this Bill in this particular fashion and in this particular manner ? Now, it is said to have been circulated to the Members when they were absent. The hon. Minister knows that justice must not only be done but should appear to be done. The Lok Sabha must appear to have considered and studied the various aspects of the Bill. People laughed at us when the Direct Taxes Bill was passed within an hour. Now you are repeating the same performance. This is a very important Bill and contains certain new provisions.

Even in his opening remarks, the hon. Minister referred to the various clauses but there is a new Chapter added—Chapter 11. Criminal imputation is made an offence. Mere criminal imputation is made an offence ? From where did you get a inspiration to make criminal imputation an

[Shri E. Ayyapu Reddy]

offence ? (*Interruptions*). Even in your elaborate speech, or even in your brief speech, you have not referred that the previous amendment contained this or that the Law Commission has made a recommendation to make criminal imputation an offence. This is a new offence. . Have you studied the implications of this new offence ? And you have given direct powers that the case should be tried only by a Sessions Judge on an application. When it comes to the question of discussing this, I will show the implication of this case. This new offence has been created and it will be well-nigh impossible for the Sessions Judges to deal with this new type of offence. There are extreme cases. Even immediately after their acquittal in a criminal case, an accused will go and file an application that the criminal implication made against him has been found to be false and therefore it should be tried under Clause 13 of this Bill. Even the Public Officers who made a charge and then failed to bring it in a court of law will come under the scope of this new chapter. Apart from that, it has got vast implications. The right of the citizens even to tell and inform that they are being criminally prosecuted or criminally harassed or there is a threat to their life or that so and so is coming and making a threat to his life if sought to be deprived by the new species of offence which you have created. I will deal with it later on when it comes to clause by clause discussion.

Now, Sir, so far as the provisions are concerned, there are certain important changes which have been made. Clause 12, the burden of proof, is sought to be shifted and what is important is that prosecution is for the first time given a right to lead evidence in rebuttal. It will upset the entire procedure which you have been following for ages. The Criminal Procedure Code, never gives any right of rebuttal to prosecution. Even when an accused pleaded self-defence and lead evidence to prove his self-evidence or where an accused pleaded alibi and level evidence to prove his alibi prosecution was not given an opportunity to lead evidence in rebuttal, even in very serious cases like murder. How can this principle that prosecution must be allowed an opportunity to lead evidence in rebuttal be allowed cutting

across the basic principles of the Criminal Procedure Code ? Now, the burden is shifted to the accused and even after the accused gives evidence on his behalf to prove his innocence, prosecution is given a right again to demolish that evidence. This is a very atrocious provision.

Then, the so-called clauses which say that innocent and unintended defamation protection must be given adequately is not at all a protection. On the other hand, the protection which is given curtails the protections which are already given to the accused under the provisions of the Penal Code. This Bill is intended to brow-beat blackmail the freedom of the press. It is unfortunate that this Bill is coming under the guise of codifying the relating to defamation and that it is intended to check the misuse and abuse of the freedom of speech. It is better we allow freedom of speech and social ethical concepts and ethical conditions themselves will be in a position to equate and create equilibrium with regard to the abuse of right to speech to try to curtail the right of speech on the ground that it is likely to be misused is going against the fundamental freedom which has been conferred by the Constitution. The law which has already been there has sufficient, has given sufficient protection against misuse and abuse of the freedom of the speech and freedom of the press. No need was felt, nobody complained that in India the freedom of speech is misused to that extent that it is destroying the fabric of our society. There has never been any complaint to that level, and as a matter of fact the press has got its own code and the Press Council Bill and the Press Council Act contain so many provisions which safeguard the right of a citizen to privacy and secrecy and also provide safeguards against the misuse and abuse of the freedom of the press. Therefore, Sir, this Bill has got very serious implications and the Bill requires to be studied and it requires to be circulated for eliciting public opinion. There is no particular hurry when we should pass this Bill. After all we can circulate it for eliciting public opinion. It has not received publicity at all in the press, the press must also study this, public criticism must be there we must find out what is the reaction of the press, what is the reaction of the various organisations,

what is the reaction of the judiciary to this. And when it can be passed after mature consideration. Therefore, I submit that this Bill requires deep consideration and it should be circulated for public opinion.

Sir, I have also tabled various amendments and I will reserve my right to speak on the various clauses subsequently.

SHRI SHANTARAM NAIK (Panaji) : Mr. Chairman, Sir, I stand here fully to support the Bill.

Sir, right from the beginning the role played by the hon. Members of the Opposition is exactly in fitting line with the role they have played in the past several years. They were saying now, shouting at the top of their voices, 'Don't you like to have our cooperation?' They were asking the hon. Minister for Parliamentary Affairs: 'Would you not like to have our cooperation?' I am asking them as to at what stage in the last several years they have cooperated with the Government, in what connection, in connection with what legislation they have cooperated. They have never cooperated with respect to any legislation. Therefore, the question of their cooperation with the Government at this stage does not arise. They are shouting about their amendments. I will tell you, Sir, what type of amendments hon. Member Mr. Acharia has moved. He has moved an amendment to refer this Bill to a Select Committee. And do you know, Sir, who are the Members of the Select Committee? They were shouting in that Bofors, they have not given their cooperation. In the amendment that he has moved to refer the Bill to a Select Committee he has made the entire Opposition as Members of that Committee. (*Interruptions*). He has put only one name in that list belonging to the Ruling Party and all the Members who are listed are the Members of the Opposition Parties. (*Interruptions*) These are the ways. I remember, Sir, that hon. Member late Mr. Daga several times on our side used to move amendments to refer the Bill to a Select Committee and at that time I remember that hon. Member late Mr. Daga used to invariably include several Members of the Opposition party.

SHRI SOMNATH CHATTERJEE : This is a very unfair charge. Only half-

an-hour's time was given. No name he has suggested . . . (*Interruptions*)

MR. CHAIRMAN : In your reply you can say so.

(*Interruptions*)

SHRI SOMNATH CHATTERJEE : What is his imputation?

MR. CHAIRMAN : You say all this in your reply.

(*Interruptions*)

SHRI SHANTARAM NAIK : Here, in asking for the Bill to be referred to a Select Committee, only Opposition Members are included.

PROF. MADHU DANDAVATE : Dagaji, if he were to include our names, he used to take our consent. That is the only difference between him and Daga. (*Interruptions*).

SHRI SHANTARAM NAIK : Sir, they were saying why where is need for this legislation. They would like the Bill to be discussed even by the hon. members from the press, perhaps they would like an article to be written by Mr. Arun Shourie who is their guide in such matters, thereafter they will make their own submissions. That is why one of the Members just now opposed and said, let the press know about this Bill, let the Press write about this. It is only then, these people will be making submissions.

SHRI THAMPAN THOMAS : They want to muffle the Press. Therefore, the Press should be told about what is the law.

SHRI SHANTARAM NAIK : Mr. Chairman, Sir, the standard of public life has been brought so low that all these hon. Members, in the last several years, without any seriousness of any nature, have made allegations against responsible Members of the Government and the respectable people. They have never been tried even a single time to defame the respectable people. The other day, I quoted an example in this very House. Hon. Member, Prof. Madhu Dandavate was referring to

[Shri Shantaram Naik]

the House and the Business Advisory Committee. You are charging the Committee and saying in a very nice fashion : " I know my Parliament; I know my Business Advisory Committee." What did he mean to say by that ? When he did not even fail to defame or disrespect and denigrate this House on several occasions in the past, what about his action outside the House ? Therefore, these hon. Members who have, by their action, brought this stage. We have discussed several debates on subjects like Bofors, Submarines, Helicopter etc.

PROF. MADHU DANDAVATE : Also Feroze Gandhi's speech on [Mundra's case.

SHRI SHANTARAM NAIK : I would like to ask them, how many times they have not made defamatory statement against responsible persons. In each paragraph of their speeches, every time, the hon. Members used to defame this person or that person, without stating anything in substance.

SHRI V. SOBHANADREESWARA RAO : I do not want to defame you. But there is no fame at all.

SHRI SHANTARAM NAIK : They are even supporting these murderers and criminals. They do not mind supporting murderers and criminals and the people against whom offences are being registered, against whom CBI enquiry is going on and charged for murder. They go along with the concerned person to the CBI office, to the police stations in morcha

PROF. MADHU DANDAVATE : Are you referring to Nagarwala episode ?

SHRI SHANTARAM NAIK : I am referring to a person, whom you know, a person against whom charges are made and are being investigated for offence of murder. These political leaders in morchas and in processions go to CBI office to support him. He is a person who has made false allegations even against the Prime Minister and the members of his family . . .

SHRI BHADRESWAR TANTI (Kolea-ber) : What is happening in Tripura ? *(Interruptions)*

MR. CHAIRMAN : Order, please.

(Interruptions)

MR. CHAIRMAN : Mr. Shantaram Naik, why don't you come to the provisions of the Bill ?

SHRI SHANTARAM NAIK : I am coming to the provisions. *(Interruptions)*

MR. CHAIRMAN : Please sit down.

AN HON. MEMBER : What is wrong if an innocent person has been supported when he was falsely implicated ? *(Interruptions)*

MR. CHAIRMAN : In order to allow him to speak, you will sit down please.

(Interruptions)

MR. CHAIRMAN : Order, order. Nothing will go on record except Mr. Shantaram Naik.

SHRI SOMNATH CHATTERJEE : Subject to your right of expunction.

MR. CHAIRMAN : This is already there.

*(Interruptions)**

SHRI SHANTARAM NAIK : I am entitled to submit my point of view. I am entitled to say why the Government has brought forward this Bill. Therefore, in that connection I am entitled to say why the Government has brought the Bill. *(Interruptions)**

MR. CHAIRMAN : No interruption please. Please sit down. Let him speak. *(Interruptions)*. Let him speak. Nothing should go on record except the speech of the hon. Member.

SHRI SHANTARAM NAIK : What is the plan of these people supporting openly and fully Mr. Sanjay Singh against whom

a CBI enquiry is going on, a person who charges the Prime Minister one day and the next day charges Mr. P. Chidambaram and the third day charges Mr. V.P. Singh? All the charges are made daily in the press and these people are fully supporting these offences of defamation. With due respect to hon. Members, I am surprised why these wild charges are being printed without any relevance. Therefore, now the question is whether we would make our law of defamation strong or not. If you take certain developed countries, one cannot just make wild charges against any one. A person, even if abused in mild voice, can file a suit for millions of dollars as damages. Suits are decreed by the court. I do not say that a law of that nature where millions can be decreed towards damages should be passed but I think that both on criminal side and also on the civilian side, we have to strengthen our law of defamation. If these people are not interested to defame anybody and if they are honest in disseminating and putting forth their views genuinely, why should they worry? This law will be applicable only to those who are out to defame irresponsibly. If these hon. Members are interested in making their submissions in their own respectable way, why should they worry? They are worried because day in and day out they want to defame hon. Members of this House, the Ministers, the Government and the people at large in society in an irresponsible way. Therefore, I think that these provisions will be expected to deal with such people. (*Interruptions*)

MR. CHAIRMAN : Please order.

SHRI SHANTARAM NAIK : They are afraid of this legislation.

I would like to submit another aspect. You will find that, by and large, three-fourths of this law consists of the provisions contained in the Indian Penal Code and no changes have been made in those provisions except on the criminal side.

The major substantive provisions are in Clause 13.

If a person commits murder and commits breach of trust and besides go on making wild charges of criminal offence,

should these charges go on or should be included as an offence?

If I charge anybody without any basis of any offence or of the offence of swindling a large amount of money or indulging in corrupt practices, there must be a law in this country to charge me and punish me for that offence.

Our society should not leave such people just to make charges in an irresponsible way.

I do not know why we should have any objection as far as Clause 13 is concerned. As far as these offences are concerned, they will only be charging persons criminally. But in this country, I would submit that our Law of Torts is not very strong. Shri Somnath Chatterjee will agree with me on this point. They will have to see that in future we codify that aspect of Law of Torts which deals with libel or defamation so that suits can also be filed against those persons who commit such offences for charging them for certain damages. Today, our law, as far as the civil aspect is concerned, has not been codified, standards having been only in the form of decisions of Courts. Sometimes, decisions differ from Court to Court and the Courts, by and large, refuse to decree defamation suits of big amount. Therefore, we have to bring our civil law on defamation also in line with most of the developed countries, if not to that extent, but to some other limited extent so that as far as the criminal aspect is concerned—as also the civil side is strengthened—no person or no politician or no other average citizen is able to make wild charges and defame people irresponsibly.

SHRI AMAL DATTA (Diamond Harbour) : Sir, I am grateful and I am obliged to Shri Shantaram Naik who proceeded me for the frank admission that he has made in the House that such a Bill is necessary to protect the accusations and allegations which are being made against the hon. Members of the ruling party, the Ministers and the Prime Minister and his family. This is exactly what he is thinking. But, fortunately, we did not have to come out with this first; some hon. Member, a

[Shri Amal Datta]

very leading Member of the ruling party has brought it out himself. (*Interruptions*)

I do not have to make this allegation or accusation. Nobody can later blame me because I am just taking my cue from Shri Shantaram Naik. This is a Bill which is being brought very hurriedly and in a surreptitious fashion. The rules require that two days notice should be given. Everybody knows that. But what two days? Any two days when the Members are not only likely but certainly to be away from Delhi and those were the days of which advantage has been taken by the Government to circulate in a very casual fashion so that many Members did not get the Bill also and even last night when they returned, they might not know such a Bill has been circulated.

SHRI SOMNATH CHATTERJEE : (Bolpur) : My flight was 14 hours late. What can I do? The Indian Airlines authorities cannot operate it properly. I came only at 12.30 p m. this afternoon.

PROF. MADHU DANDAVATE : He can get Rupees one lakh compensation from the Airlines and Rs. one lakh from the Indian Parliament from rejecting his amendments. (*Interruptions*)

SHRI AMAL DATTA : The manner in which this has been brought shows the anxiety of the ruling party and the Government to get this Bill passed in the course of this Session. It is obvious. There is nothing subtle in it. They want this Bill to be passed because the accusations which are being levelled against them are likely to increase in the near future and particularly if they call for an early election. They have to safeguard themselves against that. They have to safeguard also those people who may not be in the ruling party, may not be in the Government but may be associated with the Prime Minister or other Ministers and so on. For instance, the other day we discussed, in this House, regarding the Lalit Suri affair. It transpired that whatever had come out in the newspapers regarding this Suri affair was not exactly correct; there were some variations because obviously the newspapers did

not have all the papers that were needed for the investigation to be complete and full. Therefore, if such a thing comes out in future, the newspaper can be proceeded against. This is the provision now being made. I don't mind if they bring such a Bill. Such acts should be there to see that the Press do not say things which they know to be false. But what is the right of the citizen of Indian today or the Press of India today to get information from the official sources in the official way? In all developed Parliamentary democracies and other democracies in other countries, there are Act which allow citizens and the press to get information from the Government which they think is necessary for the public. These are in the form of right to information Acts which they have passed in U.K., U.S.A. and other places. If such an Act is there, then, in the event of there being a suspicion or a rumour, we can have this satisfied by asking the Government to disclose the information relevant to this kind of accusation or allegation or rumour. Even when everybody knows that money has been taken in a certain deal or that certain people have been favoured with a certain deal out of which they have made money and out of which politicians may have got kickbacks, all these are going to be in the nature of a conjecture until you can prove it by producing official documents. If, even in this Bill they say that in case official documents are necessary in the court of law to prove an accusation or disprove it, those documents will be produced, then I would have understood that there is some bona fide. But no such provision has been made. This is all mala fide. Not a single good intention is there except to stop the press from making any allegation at all, because, obviously, they will not be able to bring out the official documents or the zerox copies thereof in every case, for all the cases. In other words, this is definitely a Bill to suppress any kind of criticism of the Government by the critics, by the press and even by the Opposition. We will not be able to speak even; we will not be able to speak if the elections come; we will not even be able to ask, "Who took the money in the Bofors deal?" Everybody knows that in the Bofors deal money has been paid; the JPC also has said that Rs. 64 crores have

been paid. Now some calculations have come out, from which it appears that the amount is much more than that, about Rs. 200 crores or something like that. Even if, by implication, somebody can connect it with some person in the Government, even then, by putting two and two together, this will become a criminal offence and nobody can even utter the name of Bofors or that kickbacks have been taken by some Ministers or the Minister who was in charge. Of course, anybody can find out who was the Minister in charge at that time, at the time when the deal was signed. Therefore, nobody can even say that. Even in regard to those matters which have come out in Parliament, if you say something which even very remotely links it up with somebody in the Government, that will become an offence and that cannot be stated. This is, obviously, a preparation for the elections, and the fact that this Bill is sought to be passed so hurriedly and surreptitiously, and in this Session itself, shows that the Government is probably bucking themselves up for elections soon enough.

Now, the question is, what is it they are trying to fall back upon when they say that, during the Janata regime, such a Bill had been brought and passed in the Rajya Sabha . . .

SHRI P. CHIDAMBARAM : I did not say that. Sir, I want to correct it. I only said that section 292 A of the Indian Penal Code Amendment Bill which was passed by the Rajya Sabha is incorporated here. I said : 'one section'.

SHRI AMAL DATTA : Which Clause is that here in this Bill ?

SHRI P. CHIDAMBARAM : Section 292 A is now Clause 8 of this Bill. When I was going clause-by-clause and when I came to Clause 8, I said, "This is section 292A", not the whole Bill.

SHRI AMAL DATTA : That is not what is stated in the Objects and Reasons...
(Interruptions)

SHRI THAMPAN THOMAS : When I raised it, he did not; now he has corrected.
(Interruptions)

SHRI NARAYAN CHOUBEY : The Minister can never make any mistake.

SHRI THAMPAN THOMAS : I said, "This is a misleading statement".

SHRI MADHU DANDAVATE (Rajapur) : Ministers can do no wrong, they can do blunders. (Interruptions)

SHRI AMAL DATTA : This Government loses no opportunity to abuse the 19 month old Janata Government. Whenever they get an opportunity, they do it. But now they fall back on the same Janata Government having brought such a Bill, although the Bill was not ultimately balked. I do not know what would have happened in Lok Sabha. In Rajya Sabha, it might have been brought and passed. (Interruptions)

MR. CHAIRMAN : Please do not disturb.

SHRI AMAL DATTA : They are justifying one other section in this Bill on the ground that similar section has been passed in the Rajya Sabha during the Janata period. Now, this is actually irrelevant. This is drawing a red-herring. This is for the purpose of confusing the people that what we are doing is nothing wrong because the Janata Government was also trying to do it. But even if the Janata Government tried to do it, the situation then was not as it is today. I am not going into it whether it was right or wrong. It was dependent on the situation prevailing at that time. But today what has happened is that, after a long period, when we could level criticisms at the Government and people who are running the Government and, particularly last two years have been very fruitful in this respect, and now that the Bill has come at this time, obviously points to only one direction that henceforth nobody will be allowed to level any criticism. Obviously any criticism will probably rebound to the Prime Minister or his family or his associates. And therefore, nobody will be able to make any criticism of the Government and the Prime Minister particularly at the time of the elections. We had not experienced this period when criticisms became very open and could be practically proved. Of

[Shri Amal Datta]

course the Government stood in the way of the opposition joining the Joint Parliamentary Party in the Bofors probe. But even then, lot of things which have been alleged before have been proved. More things have come under revelation even subsequent to the publication of the JPC Report. Many other things have come in after the Reports of the Comptroller and Accountants General which have been presented to the Parliament. But somehow or other, Parliament has been prevented from going into those reports now.

This being the position, it is obvious that the Government has been trying its best racking its brain to see what kind of law can be brought to suppress criticism being levelled at the Government particularly by the media. And once the media takes it up, it will automatically be reflected through the MPs or other politicians opposing the Government throughout the country. It had its experience in Allahabad elections. That is why, this Bill has been brought because in Allahabad elections, everything revolved around allegations of corruption against the people who are ruling the Government today. Because of that lesson which they have learnt in the Allahabad election, they think that it is necessary to suppress all allegations of corruption in the ensuing elections and hence this Bill.

I will go for a few minutes on some of the clauses of this Bill. If a person makes an allegation or imputation which is defamatory in character, he can bring himself under exception, and Clause 4 allows that exception. Clause 4 (a) says :

“Nothing in section 3 shall apply to—

- (i) the imputation of anything which is true concerning any person, 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 public good.”

I refer to this for two reasons. One is that the Minister has referred to the

Law Commission. The Law Commission has expressly said that it is not necessary to have the second part of this clause, namely, “and it is a question of fact as to whether it is for the public good,” The Law Commission has said that if something has to be determined as a matter of fact then it means a jury trial is envisaged. This is old English trial. Since no jury trial is available in the country, therefore, it is not necessary to have this part. But this, of course, has not been brought out in the statement of objects and reasons. They have referred to the Law Commission having given its report but to what extent they have referred the matter of Law Commission that they have cleverly suppressed.

I would also like to point out in this context that there are two defences which have to be proved by the accused in a defamation case if he has to bring himself with this exception and take advantage of this exception. He has not only to prove that the allegation or imputation is true concerning that person but he has also to prove that it is for the public good that the imputation should be made or published. Here there is a difference which criminal law has with civil law. In Britain apparently this particular clause that ‘it be for public good’ etc. was suggested to be deleted by a Select Committee as early as 1943 but this was not accepted so far as criminal law was concerned. So that criminal law in Britain remained different from the civil law and in our country also the same difference between the criminal and civil law still obtains and this was an opportunity when the two laws could be put on the same footing and this has been lost. I do not see any reason why it should be lost. It seems nobody is really thinking about it. Everybody is so scared so recklessly addressed to safeguard himself that they cannot apply their mind. It is necessary that they should now even at this stage apply their mind and delete this entire clause that if it be for public good that imputation should be made, etc. There is no necessity of having public good once an accused can show that what he has stated or what is sought to be held against him is defamatory, in fact, is true. Then the question of public good should not arise.

The other thing is why should a person has to prove that everything is true exactly. It may not be possible to know the facts as the facts may be known to only one or two persons including the person against whom accusation is being made. Therefore, in many countries in this law they say 'substantially true'. If it is substantially true then one does not have to show that every aspect of it is true. Therefore, the word 'substantially' should be included here to provide a proper defence so that the accused could have the advantage of a proper defence and not having to go into all the details to prove how far the allegation made by him is exactly correct.

Then Clause 8 of this Bill is tragically against the newspapers. It reads :

"Where any matter which is grossly indecent or scurrilous or intended for blackmail is published in any news papers, periodical or circular . . ."

Obviously the newspaper is a part of attack in this particular clause. Now what will happen? The first offence will be punishable for a term which may be extended to two years. In the second offence it is for a term which may extend to five years. Obviously, it is to gag the newspapers that this Bill is being brought. What is anything which is 'indecent' or anything which is 'intended for blackmail is published'? Unless you do certain favours to me or you do something for me, I will publish it. Once it has been published, there is no question of blackmail. Then, it is for the courts to decide. Because once a case has been enacted, particularly if this allegation is made, the court will have to take cognisance of it. Once cognisance is taken, then the case will go on merrily. And nobody will be able to refer to that again because it will become *sub judice*. This will give an extra handle by making matters *sub judice* or under the guise of any of the earlier clauses or 'grossly indecent or scurrilous or intended for blackmail'. Anything can be said. If something comes up in newspapers which is against a person, that can be intended for blackmail. Who knows that? The intention is proved or disproved later. Whether or not it was brought during the Janata regime and passed by Rajya Sabha, it should not find

any place in the statute book, where a statute is really restrictive of a fundamental right of a citizen.

Please do not forget that this Bill is really restricting the fundamental rights guaranteed by the Constitution. The Constitution says that Parliament can, by law, put reasonable restrictions on the guaranteed fundamental rights also. But one has to think of these bills in that context and whether it is a reasonable restriction because how is one to prove that something is intended for blackmail? Even in very small matters can they say that this matter has been published with the intention to blackmail. How this is to be proved? There is no guideline in this particular Bill. How this particular thing is to be proved or disproved? If somebody makes an allegation, how is it going to be disproved?

If any imputation is true and it is for the public-good, only then the person will be able to defend himself. The person against whom a suit is brought for defamation will be able to defend on proving two things: Truth and that it is intended for public good.

Again, it is a question of fact. In spite of the Law Commission's recommendations, they have put it there that 'it is a question of fact as to whether it is for public good.' Two things are involved here. First of all, the imputations may be of such a vague nature that nobody can either prove or disprove. But even if it is true, that is not a full defence because it has also to be for public good. And whether it is for public good, that is to be proved to the matter of fact. Who is going to prove or disprove, it is a matter of fact. How many witnesses can you bring to show whether it is for public good or it is not for public good? (*Interruptions*)

Then, it is said :

"*Explanation II*—In deciding whether any person has committed an offence under this section, the Court shall have regard, *inter-alia*, to the following considerations, namely :

- (a) the general character of the person charged, and where relevant, the nature of his business;"

SHRI SAIFUDDIN CHOWDHARY : Politics is business or what ?

SHRI AMAL DATTA : If one has also to put his entire antecedents on trial before the court, the court will not only see the truth of what he has said, the court will also see whether it is for the public good for him to say and also whether he is the right kind of person to say this. So, all this is just impossible. Whatever he has said, it is always a subject of . . . (*Interruptions*)

SHRI SOMNATH CHATTERJEE : If any person has committed a crime, his general character has to be seen. And the general character has a dominating effect.

MR. CHAIRMAN : Why don't you reserve your comments till your turn comes ?

SHRI SOMNATH CHATTERJEE : Will you give me a better chance ?

SHRI AMAL DATTA : In Clause 13, imputation of any criminal offence is also made an offence. As Shri Ayyapu Reddy has said already, even the Government servants who make an imputation or an allegation to charge a person before a Court of Law, will be guilty. But apart from that, are we not entitled to say that a person has committed violation of the Foreign Exchange Regulation Act ? He has taken money outside and has not brought it back or he has taken commission which he has put in Swiss Bank. As soon as he says, it becomes an imputation of criminal offence against him. Therefore, a person who says, whosoever is the accuser, will be accused under this law for committing the crime which is made by Clause 13 of this Bill.

SHRI SAIFUDDIN CHOWDHARY : They have to request the Swiss Government to disclose.

SHRI AMAL DATTA : That is not there . . . (*Interruptions*) . . . Unfortunately, I said at the beginning that I would not have suspected the Government bonafides if they made any provision here for any person to prove out of official docu-

ments as to what is the real state of affairs. Today if I say that one of the Bichchan brothers has got a house in Switzerland which he says that he has purchased—he cannot have that much money. How has it happened ? I must be violation of FERA. I do not even go to say that he has violated FERA. If I just say that how he has purchased this house there, that itself is an imputation. That makes me also to be prosecuted in a Court of Law. How seriously they have taken this particular thing is shown by the fact that this allegation is only to be tried by a Court of Session. Any offence stated in Section 13 shall be triable only by the Court of Session. This is fantastic. Two years and five years punishment has been prescribed. In Clause 8, that is not triable by Sessions Court but here it is triable by the Court of Session. I do not know what good it will do. But I think it will not be possible to have a trial by Court of Session. With this extra facility given to the prosecution of defending himself against whatever charge is proved to be correct by the accused, the right of rebuttal—I do not know whether this will succeed or not. This is really the result of lack of matured thinking and hurried and inefficient manner in which this Bill has been brought. This Bill should be out-right rejected by this Parliament if the freedom of speech is at all valued and the freedom of the Press is valued. If the Parliamentary democracy is to succeed and sustain in this country, then we cannot live with a Bill of this kind. So, I request the hon. Minister to withdraw this Bill and the House to reject it.

SHRI SOMNATH RATH (Aska) : Sir, I rise to support the Bill. It is a well considered Bill. At the outset I would like to say that the Bill is concerned with two individuals. Government has nothing to do with it. The Prime Minister has nothing to do with it. It has been stated that the offence is not cognizable and also bailable. Any individual can file a complaint before a Session judge against another individual. So, it cannot be said that the police can arrest innocent person under this Bill or some other person may be falsely implicated under this Bill. It is with respect to individual. If one person makes an allegation which is false, which is malicious, let him prove it. The other individual can

as well prove that it is true, that it is not false. This is the crux of the matter. So, how does the Prime Minister come in? For every thing the Opposition things the Prime Minister, Democracy means that one should be free to express himself but it should not be at the cost of innocent persons, or for political gains or for personal profits. So, the right should be followed with responsibility.

It is said that the responsibility has shifted from prosecution to the accused to prove his innocence. It is not new in this Bill. My friends on the other side know that it is there in the Food Adulteration Act and in Essential Commodities Acts. This is nothing new. It is not new to this Bill. Previously it was there in other acts.

Further, as the Hon. Minister has already stated there is some liberalisation. I would like to invite your attention to Clause 9. It has been stated there that if by some erroneous impression or by mistake somebody has made some publication or spoken against an innocent person, he can as well amend it. So, a person who has published any matter alleged to be defamatory of other person, if he claims that the matter was published by him innocently, if he repents or feels sorry for such publication, then he can amend it as well.

The Clause 9 (4) says :

“If an offer of amendment is not accepted by the party aggrieved, it shall be a defence, for the publisher, in any proceedings for defamation against him in respect of the publication in question to allege and prove.”

So sufficient protection has been given to the accused if he feels sorry for some publication, repents and later amends it. Under these circumstances if the accused still persists that what he has published is true then he has to prove? Who else will prove it? Certainly it has to be proved by the accused it goes on further to say :

“(a) The facts and circumstances which establish that the matter was published innocently in relation to the party aggrieved. . . ”,

So, there is nothing to worry. If a newspaper man publishes something believing it to be true and later on comes to know that what he stated is not correct, he can still take recourse to Clause 9 of the Bill and say that it has been done without any bad intention and that it has been a mistake. So, many provisions are there to safeguard the innocent.

17.00 hrs.

Similarly, provisions are there in this Bill to see that justice is done. The accused is to be tried in a Sessions Court. There is also a provision to the effect that an accused can make an appeal to the higher court. It is stated in the Bill that an appeal shall lie as a matter of right from any judgement of the Court of Session to the High Court both on facts and on law. So both the provisions, namely, facts and law, are provided. After having all these safeguards, if the accused still feels that what he stated or published is true, then he has to face the consequences of his action. It will be decided in a court of law by the Presiding Judge. The Presiding Judge will give the judgement. Advocates on both the sides will be there and after hearing the case from both sides, the judge shall pass a judgement. This is the normal procedure and how does the Government come into the picture and how does the Prime Minister come into the picture? How can my friends on the other side say that this has been brought to protect the Prime Minister?

AN HON. MEMBER : Anyway, the elections will decide it.

SHRI SOMNATH RATH : Let us wait and see. Let us not talk of elections when we are discussing this Bill. We have seen what has happened in Tripura.

AN HON. MEMBER : We have seen the Allahabad elections too.

SHRI SOMNATH RATH : We have got one year and some months for the elections to take place. Let us wait and see. And when you speak of elections, remember Tripura.

SHRI SAIFUDDIN GHOUDHARY : What about Orissa?

SHRI SOMNATH RATH : Congress will come with a massive majority in Orissa. We will get all the seats as far as Lok Sabha is concerned. Please have patience. We will see the results. We will meet you once again.

SHRI BIPIN PAL DAS (Tezpur) : How can you meet them here ? They will not be here.

SHRI SOMNATH RATH : That is correct. But I do wish that he will be here. Anyway, let us wait and see. It is rather premature to speak now about the elections when we are discussing the Defamation Bill.

Also, I would like to submit that there is a provision for trial in camera. This is a very good provision. In some cases, an open trial may reflect adversely on the minds of people, especially the younger generation. So, when the Judge feels that certain matters require to be tried in camera, I say wrong is nothing wrong in it. All these safeguards are provided in this Bill. It has also been rightly stated in the Statement of Objects and Reasons as to why this Bill has been brought forward. This Bill has been brought before this House to make provisions to deal with of defamation effectively as is given in the proposed Section 292A in the lapsed Indian Penal Code (Amendment) Bill, 1978, i.e. during the Janata Rule and also offences listed in Sections 499 and 500 onwards of the Indian Penal Code. All the provisions which exist in the Indian Penal Code are practically same here also. One sentence in the Statement of Objects and Reasons makes it very clear why this Bill has been brought forward. I quote : It is considered necessary to check this tendency so that freedom of speech, which is the very essence of democracy, does not degenerate into mere licence. In view of the above, it is considered advisable to have a self-contained law on defamation covering both substantive and procedural aspects." These are the only points. There is nothing to dispute.

So Sir, I hope that there will be no opposition to this Bill. Let us not impute

political motives on the Bill. I hope the Opposition will agree to pass this Bill.

17.05 hrs.

[MR. DEPUTY-SPEAKER *in the Chair*]

STATEMENT RE : FLOOD SITUATION
IN ASSAM AND WEST BENGAL

[*English*]

THE MINISTER OF AGRICULTURE (SHRI BHAJAN LAL) : Assam has experienced successive waves of floods during the months of May, June and July. The latest wave of floods has started since 20th August, 1988. The rainfall in the catchment areas of Brahmaputra has been very heavy from 22nd August onwards. During the five days from 22nd to 26th August, 1988, Pasighat recorded 1168 MMs, Teju recorded 625 MMs and Dola recorded 312 MMs. Consequently, the river Brahmaputra received very huge inflows and has been rising very rapidly. On 26th August, 1988 at 6.00 P.M. the river touched a level of 106.31 Metres at Dibrugarh as against the highest flood level of 105.97 Metres recorded during last year. This was 2.11 Metres above the danger level of 104.20 Metres. However with the decrease in rainfall in the catchment area, inflow is getting reduced and the water level has started receding. The level recorded at Dibrugarh today morning was 105.72 Metres.

The entire mass of water is moving from Upper Assam to the Western parts of the State causing damages all along the river course. Parts of Guwahati town on western side have also been inundated. The places further downstream Guwahati along the river course, will also experience the effects of these floods as the water flows further down.

Serious damage was apprehended in Dibrugarh on account of rising floods waters since the town is situated nearly half a metre below the danger level (104.20 metre) of the river at this point. The vast sheet of water was held back by a system of dykes and embankments. Arrangements for evacuation of people in the low lying