

Agra, etc., after their day's work in Delhi.

At present, the bogies of these two trains are looked after just by two TTEs or so and by the time the TTEs complete the checking, the extra over-crowded passengers reach their destination and they get down. The passengers in Madras-bound trains have to undergo a lot of difficulties because of over-crowding.

It is, therefore, requested that the hon. Railway Minister may kindly arrange posting of more TTEs in these trains so that over-crowding is avoided in these trains.

[English]

12.42 hrs.

STATUTORY RESOLUTION RE DISAPPROVAL OF CODE OF CRIMINAL PROCEDURE (AMENDMENT) ORDINANCE, 1990

AND

CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL -*Contd.*

MR. DEPUTY SPEAKER: The House now shall take up further discussion on the Statutory Resolution moved by Shri Jaswant Singh and Code of Criminal Procedure (Amendment) Bill moved by Shri Mufti Mohammad Sayeed. Shri Piyare Lal Handoo who was on his legs last time, may now continue his speech.

SHRI PIYARE LAL HANDOO (Anantnag): I would like to recapitulate what I submitted about the extra-territorial nature of the Bill, about the un-canalised powers contained in sub-section 1 of Section 1669a) and about absolutely unnecessary vesting of power in the foreign countries against your own citizens in the country. This is a critical matter and has got to be taken notice of by this House. Now I would like to quote from

the Debates of the Constituent Assembly with regard to adoption of Article 123 which was then Article 102. We will know what they said in the course of the discussion about the amendments. This requires your special consideration at this stage. This is what the Honourable Dr. B.R. Ambedkar said then. It is on page 214 of the Debates I would quote from his concluding speech. It reads as follows:

"if I may say so, this article is somewhat analogous-I am using very cautious language-to the provisions contained in the British Emergency Powers Act, 1920. Under that Act, also, the King is entitled to issue a proclamation, and when a proclamation was issued, the executive was entitled to issue regulations to deal with any matter, and this was permitted to be done when Parliament was not in session. my submission to the House is that it is not difficult to imagine cases where the powers conferred by the ordinary law existing at any particular moment may be deficient to deal with a situation which may suddenly and immediately arise. What is the executive to do? The executive has got a new situation arisen, which it must deal with. Ex. hypothesi it has not got the power to deal with that in the existing code of law. The emergency must be dealt with, and it seems to me that the only solution is to confer upon the President the power to promulgate a law which will enable the executive to deal with that particular situation because it cannot resort to the ordinary process of law because, again ex-hypothesi, the legislature is not in session."

So, the sole context for the President to proclaim an Ordinance, according to the framers of the Constitution, was a situation which arose 'suddenly and immediately'. Now, in this case, kindly note the date of 19th of February. On 7th of February itself, a letter of request had gone under the law then existing. The funds relating to Bofors deal

[Sh. Piyare Lal Handoo]

had been seized. Now what is it that has suddenly arisen and what was immediately on 19th of February 1990 for this action to be taken. My second submission is that on 19th of February in the absence of this wording 'suddenly and immediately arising of a new situation', you have yet to see what further he had said. The Honourable Dr. B.R. Ambedkar said as follows on page 213 of Debates.

'All that we are doing is to continue the powers given under Section 42 to the Governor-General to the President under the provisions of Article 102. They relate to such period *when the Legislature is in recess, not in session.*'"

What do we mean by 'Legislature is in recess'? You can certainly exercise this power when legislature is in recess. There is no dispute about this. But the summons were issued by the President on 7th Feb., not one day before 19th February but as many as 12 days before the actual issuance of the Ordinance. The sole consideration that requires to be given is to the fact 'what do we mean by Legislature in recess'. The recess had been terminated by the President by issuance of summons on 7th Feb. Parliament was in session in law, may not be in fact. My humble submission is that as soon as the recess gets terminated the Parliament in law has got to be regarded as in session. This type of hurry should not have been there and the unseemly haste should not have been there. We, as the Members of Parliament should also be concerned besides legality with propriety of the measure.

Sir, the rulings of the hon. Speaker in the First Parliament Dr. Mavalankar is that Ordinance in such haste should not be passed. Here we were not only concerned with the legality but with Parliament's convention and propriety as well. In fact, if you recollect, there were two items in TV news on 7.2.1990 one was that the Parliament had been summoned and the second was the

letter of request had been issued by some Delhi Court Judge. My humble submission is that a very important convention has been violated in haste. Certain matters in this law, which you will find, have been so hastily drafted that the mover himself has had to move three amendments, which touch very substantial matters. The very fact that between the date of introduction of this Bill and before the consideration stage, three amendments in respect of substantial matters have been moved by the mover, the hon. Minister himself, is an indication that there has been unseemly haste in drafting the Bill. So, I humbly submit that the statutory resolution of disapproval be accepted so as to ensure that not only do we work within the parameters of the Constitution but also with respect to propriety and to the conventions of this House.

It is the government's own right to fix the priority. I do not want to quarrel with them on this. Despite the trial by the press about Bofors, they still feel that priority has to be fixed there. It is their own right to fix the priority. The fact that no further steps have been taken after 19th February shows that there was no sudden or immediate new situation to be dealt with. Therefore, we have certainly got the right to question them wherever they transgress the boundaries of propriety, the convention of this House and misread the provisions of the Constitution.

SHRI K.S. RAO (Machilipatnam) My honourable, senior and learned colleagues have already expressed their opinion on this amendment in depth. I do not want to waste time of the House by repeating the same.

While there was total unanimity in regard to tracing out the culprits or the people who have done acts against the interest of the nation, the concern that many of the Members have expressed is that the Government is bringing this amendment in a haste without going into the consequences of this amendment and whether with a view to bring to book a few criminals who have done some economic offence or otherwise, the national interests are being subordinated

to the developed nations, or some vested interests outside the country. If you look to the past history of the country or the behaviour of the super powers, even without our committing any mistakes, still some of the major powers are looking at us as enemy and do several acts against the interest of our nation only because we have not towed their line whenever we felt that it is not right or we opposed their actions where we found that it was wrong. Possibly we can understand that the person who is privileged will always expect from the person who is not so privileged to be a slave of him or accept everything what he says. This is being applied between the nations or between the developed nations and developing nations. I do not need to elaborate the instance where some of these developed nations have acted not in the interest of international justice, not in the interest of other nations but they totally acted in the national interest of their own nation whether they are doing justice or not. For example, USA, a country which is supposed to be the biggest democracy in the world, was supporting dictatorships in the world. It clearly indicates that it is the national interest which is supreme for them and not justice. Why I am telling all this is that Switzerland was mostly living on the dirty money from various parts of the world for all the decades. Purely because the international community is looking down upon them, the people of Switzerland themselves have come forward and decided to avoid the confidential secrecy in backing, because of which alone, many of the culprits in the international sector, maybe the kings, emperors or rulers were identified and millions of money which was shifted to these banks over the decades, have been frozen. Also with the agreement of mutual assistance which the previous Government had entered into with Switzerland and also because of the acts brought in Switzerland, it has become possible to identify the culprits and also to freeze those accounts. To bring the amendment in so haste, I am of the opinion, is not good. If the Government has brought this amendment because of its deep knowledge of the matter or because of some problems which they have faced, then I have no objection.

While we have no objection to clause 166 A2, clause 166 A1 clearly hurts the national interest. Let me tell you that if a Sub-Inspector in Andhra Pradesh even in a remote place of Nizamabad, wants to do some harm to any national leader, no matter whether he is the Prime Minister or the President or some Minister, he can straight away request another person with whom he is in league, to give some information or secure some document and send it to our courts by which he can easily put the leader to disrepute and becomes responsible in changing the governments however strong they may be. Some of my colleagues might say on the other side that even if somebody were to be in league with somebody at the level of Sub-Inspector or the investigating officer, the Indian courts can always find out whether there is truth in the investigation and then later on rectify it. But what amount of damage will be done by the extensive publicity that will be given by the national newspapers and other media before the truth is once again arrived at? The damage would have already been caused. Some of the strong Governments might be incurring the displeasure of the people, however innocent they might be. So, before it is rectified, it seems, the damage would have been done to the people also, not only to the Government. This can also be utilised by the vested interests outside the country as a means for destabilising any Government they want, for destabilising any leader they want, for changing the Government as and when they desire, for changing the leaders if they do not toe their line, for changing the leaders if they do not act as slaves to them or to their leaders. So, it is necessary for us to ensure that this clause or amendment will not be put to misuse by anyone in future.

I do not understand if the powers were to be given at the level of investigating officer to directly contact or order another sub-Inspector or an equivalent officer elsewhere, why should the Lokpal Bill be brought, why should the Government dub that the Prime Minister is also subjected to Lokpal, and why should the Lokpal be of the status of not less than a sitting Judge of the Supreme Court or

[Sh. K.S. Rao]

13.00 hrs.

a former Judge of the Supreme Court. Why should it not be left only to the Criminal Procedure Code already existing, or why should it not be dealt with at the level of the Sub-Inspector or the investigating officer that we are dealing with here? Obviously we have got more faith in judiciary at higher level, particularly when we are dealing with very sensitive matters. Similarly, with regard to these issues which are to be dealt with here by this amendment which are serious in nature, I wish the Government rethinks this matter or brings amendments or certain clauses wherever the national interests will be at loss.

The hon. Minister for Law also is here. He was not here when Mr. Chidambaram was speaking on this matter. We are not against this amendment, we are only against some of the clauses which are there which might prejudice the national interests. For the sake of getting popularity or publicity for their Government, they are saying as if the earlier Government has not acted for it and it is only they who are acting. If you want to sacrifice the national interests, please give a rethinking. Let not anybody come to a conclusion that we are coming in your way in tracing out the culprits. We are equally interested in it. I understand, an undertaking is given in the Federal Court that any evidence or information that is secured in this matter will not be used in other cases. When you get a wide information during investigation even in this matter, it must also be made use of for finding out the actual criminals in other regards.

The other aspect which I wanted to know the hon. Minister for Law is that when he knows very well what is the thinking of the Switzerland people in regard to the confidentiality of the banking, should we also not think in terms of eliminating the secrecy in our banking system? Why should we give an opportunity for a multimillionaire or a billionaire to be guarded by this Act of secrecy, no matter whatever financial crimes he does?

Sir, I have been raising this point in Parliament for a long time that instead of trying to find out the methods after the crime is committed, if you avoid secrecy comfortably it can be known even to the common citizen living in that particular area what fraud is being committed by the people who are enjoying the benefits of the banking system of this country. Sir, similarly, I wish to bring to the knowledge of the Government about one important matter. If this Government are serious about rooting out the crimes or corruptions, to put an end to such malpractices to be repeated in future, the existing laws should be enough to route out or even check these malpractices at our level, at the national level. It requires a will on our part, not even the slogans can help in these matters. Everyone of us will agree with me but some of the bureaucrats may not cooperate or may not agree and say that it will never be possible in such matters. So, why don't you take action under the Indian laws against those people who are connected with this matter here.

Sir, similarly, in regard to the values, the traditions existing, the policies, the convictions, the goals, the ambitions and the culture in the country, they should also be taken into account, while considering this amendment. The value that we find here might be different from the value that is found elsewhere. If you want to create an impression of giving a reciprocal clause without your asking for it, if you bring a reciprocal clause and keep our matter at the disposal of the other nations, disposal of some of the officers, I do not know how much loss the country would be put to. Therefore, you please think over this matter.

Sir, my humble request to the Government and the Minister, who is sitting on the other side is: please don't be in a hurry in this matter. We are with you in tracing out these culprits. We will support and give unanimous support in this matter. But please think over what clauses to be amended, which will be good for the nation, in the interest of the

nation and not for petty interest for taking some vengeance against somebody. If necessary, you may refer it to the Select Committee.

[*Translation*]

SHRI NATHU SINGH (Dausa): Mr. Deputy Speaker, Sir, through you I would like to have only one clarification from the Government as to what effect will it have on those countries, with whom we have extradition treaty. Secondly, I would also like to have a clarification from the hon. Minister as to whether it is a fact that the amount deposited by Indians in foreign banks increased from Rs. 739 crore in 1983-84 to Rs. 969 crore in 1984-85 and it further increased to Rs. 969 crore in 1987 as has been stated in some magazines on the basis of the report of the World Bank and other reports. According to these reports till 1987, an amount of Rs. 1332 crores was deposited in foreign banks by the Indians. I would like to know whether the Government propose to find out the names of the persons who deposited money in those foreign accounts, details of the account numbers to which amounts were created and the deals on which commissions were taken and deposited in those accounts as also the reasons for this huge increase in bank deposits in foreign banks by Indians in a very short period of few years. I proposed my amendment with a view to have clarification on the points referred to above. This is because after 1984 elections, when Shri Rajiv Gandhi became the Prime Minister of India...after that money amounting to Rs. four hundred and fifty crores was deposited in the foreign banks. At that time, the then Finance Minister, who is now our present Prime Minister, declared to give some incentives to persons who would declare their assets. I would like to know from the hon. Minister of Home Affairs the number of persons who declared their assets in response to the scheme announced by the Government and whether the Government propose to utilise the news powers to vested with the Government after passage of this amending Bill to find out the identity of persons having money in foreign

banks and who did not disclose their assets. Will the Government lodge an F.I.R. against them?

[*English*]

SHRI P.C. THOMAS (Muvattupuzha): Sir, I have also moved an amendment.

Generally I would think that Section 166A(1) is going to be quite dangerous. To give power to police officers outside India to collect evidence by interrogating persons and to make those portions part of the evidence collected in an investigation may be rather too much. Unless very strong constraints are given in these Sections, I would think that there is every likelihood of this Section being misused by persons in power as well as investigating officers who may even go to the extent of using unfair methods. We do not know the methods which are used in other countries, but we have to provide sufficient safeguards and we have to take that the laws and the machinery by which the law is enforced and investigation conducted in other countries may not be fool-proof. So, I think it may not be proper to give such a blank cheque to the investigating officers who are outside.

Secondly, I think, as has been already expressed by many other speakers, that there is no reciprocity in Section 166B and therefore, the whole Section 166B is to be deleted and no power is to be given to the outside agencies to ask our investigating officers to do their investigation in the manner they like. So, I think the whole Section 166B has to be deleted.

I may also add that if at all an amendment as envisaged in this Bill is to be made a law, then the power which is sought to be given to the investigating officers as per Section 166A(1) has to be restricted as per the provisions of Section 166A(2) and Section 166A(2) alone is to be maintained and other Sections which give enough power to the investigating officers as such may be deleted. That is all.

[Translation]

SHRI HARISH RAWAT (Almora): Mr. Deputy Speaker, Sir, while moving the resolution, Shri Jaswant Singh raised certain issues. We hoped that the hon. Minister of Home Affairs would cover all those fundamental issues raised therein in his reply but he did not even touch them. He only tried to raise some issues. It is evident from his reply that this amending Bill is not intended to lend support to the investigation in Bofors and other deals; rather it appears that there are some ulterior political motives behind it. This is the only intention and our doubt grows with the fact that on 19th of February, this Government issued an ordinance. The Government could have waited till the next session but it did not do so because of the urgency of Assembly Elections scheduled to be held in many States on the 28th of February and the way Government gave publicity to this ordinance and efforts were made to project it through Government media by adding some other things it gives more ground to our apprehension that the powers to be vested with the Government after passage the Bill, will certainly be misused for political purposes. In this regard, this Government is no better than the 1977 Government. That Government did not camouflage its intentions whereas these people try to camouflage their intentions and do not clearly say that they will use it against their opponents with politically malafied intentions. Mr. Deputy Speaker, Sir, how the C.B.I. is being misused at present can be proved with the fact that a press conference was organised with the help of C.B.I. Chief before the Assembly elections in which the hon. Minister of Home Affairs tried to brief him. As soon as this ordinance was issued, news to this effect was telecast on television repeatedly and a lot of publicity was given to it. It was tried to link the Bofors gun also with it. The members belonging to the Home Minister's party repeated again and again in their election campaign-meetings that they have taken this step to bring the names of those people to light who have deposited the money earned fraudulently by way of commission in foreign countries. We will welcome this amendment

only if you could assure the House that with the help of this amendment, you will be able to catch hold of the real culprits and this Bill will not be used to defam or harass any Indian citizen or to achieve any selfish political motive. Every citizen of India and the entire Parliament will be on your side if you really intend to book those culprits who have illegally deposited the nation's money in foreign banks. But what we feel is that you intend to use this Bill to achieve political motives which will be strongly opposed not only by the opposition but by the public also. Your previous record is not that clean, because you did not mind engaging private agencies for investigating the internal matters of the country. Therefore, I would like to make it clear on my party's behalf that if you honestly intend to apprehend the guilty persons and through this amendment, you want to make the law more effective in punishing all the offenders, then it is most welcome. But if you have brought this amendment to shield your own shortcomings, then in that case, it will meet strong opposition from the people all over the country. With these words, I beg to move my two amendments.

SHRI R.L.P. VERMA (Koderma): Mr. Deputy Speaker, Sir, with regard to the resolution introduced by Shri Jaswant Singh, I would like to state that the amendment in Section 66(A) and (B) of the Criminal Procedure Code should be made as proposed. The reason being that some bad elements with vested interests, who are trying to obtain undue favours from the Government of India, have formed gangs in foreign countries. But I think it would not be possible for our investigating authority or the courts to directly instruct the investigating authority of that country to take action against the accused persons. If the investigation is at Government level then the foreign investigating authorities or courts will be incompetent of taking any concrete action against the culprits. Therefore, this amendment would have been more effective if the Law Ministry or the Law and Justice Department of the Government of India had written to the Law Ministry or the Government of that country to make available as much evidence and wit-

nesses as possible. But this provision is very limited in the sense that the courts of India can write to the foreign courts that if agreed, the investigating agency of India can take up the matter with its counterpart in the other country. But if any thing takes place at a higher level, then no investigation can be started. The investigating agencies cannot start operating in cases like the Bofors gun deal and the German Submarine deal which involve pocketing of commission and betrayal with the country by the gangs of criminals unless the Government so orders. Therefore, it is necessary to add this provision and make the Bill more comprehensive and effective.

[English]

SHRI M.G. SEKHAR (Dharmapuri): Mr. Deputy-Speaker, Sir, I want to move all my amendments.

At pages 1 and 2,

omit lines...

(Interruptions)

MR. DEPUTY-SPEAKER: Are you moving your amendments now?

SHRI M.G. SEKHAR: Yes, Sir.

MR. DEPUTY-SPEAKER: No. It is not at this stage.

You can express your views on the Bill and the Statutory Resolution. You do not have to speak on the amendments now. You can speak about the Bill and the Resolution.

(Interruptions)

MR. DEPUTY-SPEAKER: All right. I will call the hon. Minister.

[Translation]

THE MINISTER OF HOME AFFAIRS (SHRI MUFTI MOHAMMAD SAYEED): Mr. Deputy Speaker, Sir, a lot of discussion has

taken place on this issue. The first question is as to why it was felt necessary to amend the Criminal Procedure Code and secondly when this resolution had already been conveyed to the House on 7th February, then why did it become necessary to issue the ordinance? I would like to tell the Member that for the last three years, i.e. since 1986 to date, the economic offenders have not only been committing economic offences and looting the wealth of the country but they have also deposited the money in the foreign banks. Particularly in the Bofors case, the kickbacks were received in the purchase of equipment to be used for the security of our nation. During the last two years, the question has been raised again and again both on the House as well as outside about the names of those people who received commission and deposited that money in the foreign accounts. Questions were also raised whether any criminal action could possibly be taken against those people who have opened accounts in the banks of Switzerland. In Bofors case, the first step taken by this Government after coming into power is that CBI has lodged a FIR in a court of Delhi and orders have been issued to freeze all the five accounts opened in the name of those five companies. Secondly, the bank has refused to disclose the identity of the sixth account holder. It is believed that either the entire amount of all the other five accounts has been transferred or some new transaction has taken place in the sixth account. When we discussed the matter with the Government of Switzerland regarding this sixth amount, we were informed by them that they are unable to take any action in this matter until the Bilateral Agreement and the Memorandum of Understanding are signed and we write a letter of request to them. Therefore, we in consultation with them, have delivered the Memorandum of Understanding to them. Now we hope to get the complete information about the holders of all the six accounts.

So far as Bofors is concerned, the comments of the Swiss bank about the sixth account are

{Sh. Mufti Mohammad Sayeed}

[English]

It is sixth instance when they have frozen the account.

[Translation]

These accounts have been freezed by the Swiss Bank. Secondly we have issued the letter of request to Switzerland on 7th February.

[English]

Shri Bhatnagar, who is one of the accused in the First Information Report

[Translation]

His Preliminary statement will also be recorded. Similarly, Hinduja who are involved in Bofors as well as submarine deals have also somehow managed to dodge by adopting some diversionary tactics. Win Chaddha has also succeeded in dodging and has refused to accept the summon when warrant was issued to arrest him.

As you all know that Bofors company has refused to disclose the names of the recipients on the pretext of confidentiality. Swedish Government has expressed their inability to help in this case unless they receive our letter of request. Therefore, we have prepared our letter-Rogatory after consulting the Advocate-General to request the Swedish Government to look into the records of the Bofors Company and let us know the names of the recipients.

As regard, the submarine deal, a case has been registered on 5th March. Following people are involved in it :-

1. Shri S.S. Sidhu, Formerly Additional Secretary, Ministry of Defence.
2. Shri S.K. Bhatnagar, Formerly Defence Secretary.

3. Capt. M. Kondath, Former Director submarine Arms.

4. Shri B.S. Ramaswamy, Former Additional Financial Advisor, Ministry of Defence.

5. Vice-Admiral, M.R. Shunkar, Former Vice-Chief of Naval Staff.

6. Shri Gopichand Hinduja

7. Concerned Director of Employees' of MSAEG

8. M.S. Roger Enterprises

9. Other public servants, other private persons acted as middlemen.

It is being said that commission was paid in this deal also and it is just possible that the money too was deposited in the Swiss banks. Therefore, we have again written a letter to the Swedish Government requesting them to investigate this case also. The Ordinance was issued due to this urgency. This letter-Rogatory is a very voluminous letter asking for every minutest detail. Regarding the question asked here, as I was going through the previous record, I came to know that the previous Cabinet had passed a proposal of similar kind on 12th May 1989 to authorise the Indian courts to send a letter of request to the foreign courts. But I fail to understand why this proposal was shelved and not followed up properly. When the previous Government had decided about such a proposal on 12th May 1989 regarding the procedure to be followed for collecting any evidence, documents or making any enquiries from the foreign countries, why it was not followed up properly?

Many questions have been asked regarding the procedure of authorising the investigating agency.

Any S.H.O. or some other police official is not allowed to write letter-Rogatory directly to the S.H.O. of any foreign country. No letter can be sent directly. It is clearly

mentioned in sub-section 3 of section 166 A:-

[English]

"The letter of request shall be transmitted in such manner as the Central Government may specify in this behalf."

[Translation]

The investigating officer whether from Delhi or Bombay will have to fulfill a number of conditions while preparing a direct letter of request. That will be transmitted by the agency of the Central Government. When it was decided to authorise the investigating agency and pass this law on reciprocal basis and amend the Criminal Procedure Code, it was also considered necessary to keep a provision to give similar authority to the foreign investigating agency. But it is not all necessary for them to abide by the law enacted by us. Mutual understanding with them is the most important factor. It is being said that any foreign investigation officer should be allowed to correspond directly with our officials. But this is not possible. Any request made by the foreign officials has to be passed through the Central Government only. It has been mentioned here-

[English]

166B (1) Upon receipt of a letter of request from a court or an authority in a country or place outside India competent to issue such letter in that country or place for the examination of any person or production of any document or thing in relation to an offence under investigation in that country or place, the Central Government may, if it thinks fit,-

- (i) forward the same to the Chief Metropolitan Magistrate or Chief Judicial Magistrate or such Metropolitan

Magistrate or Judicial Magistrate as he may appoint in this behalf, who shall thereupon summon the person before him and record his statement or cause the document or thing to be produced; or

- (ii) send the letter to any police officer for investigation, who shall thereupon investigate into the offence in the same manner, as if the offence had been committed within India.

- (2) All the evidence taken or collected under sub-section (1), or authenticated copies thereof or the thing so collected, shall be forwarded by the Magistrate or police officer, as the case may be, to the Central Government for transmission to the Court or the authority issuing the letter of request, in such manner as the Central Government may deem fit."

[Translation]

In no circumstances, things will go out from here by-passing the Central Government. Similarly, their request-

[English]

It will come through the Central Government.

[Translation]

When evidence will be collected from here, it will be transmitted to them through Central Government only. I would like to inform the hon. Members that it is not only the case of Bofors and sub-marines deals in which kickbacks amounting to crores of rupees have been received, there are other serious cases also which are in the pipeline and investigations are being conducted into

[Sh. Mufti Mohammad Sayeed]

them. I would like inform the hon. Members that mutual Memorandum of understanding cannot be signed with each and every Government. So it is very necessary. The previous Government had also realised this thing. They had constituted a Committee for this purpose and a proposal was sent to the Cabinet. We have, now, take up that proposal. In the said proposal only courts had been given powers. Now we have widened the scope of that provision by empowering the investigating agency or the Investigating officer and his superiors. In view of the fact explained above, I request the hon. Member to withdraw the Resolution.

SHRI JASWANT SINGH (Jodhpur): My question was as to whether the word 'bribery' was mentioned by mistake or deliberately in the letter rogatory which was sent to the Government of Switzerland in October 1989 or so. After reaching Bonn the said letter rogatory was withdrawn and another letter was sent. The word bribery was deleted from the second letter of rogatory. I know that it was done by the previous Government. It will be helpful to me to make my point if a clarification on this point is given.

SHRI MUFTI MOHAMMAD SAYEED: There is no word 'bribery' in the procedure we have adopted to file F.I.R. in the criminal liability. Instead words like criminal breach of trust and violation are there. It is true that the word bribery was there in the letter of request which was sent earlier

[English]

SHRI JASWANT SINGH: I have got the answer.

Sir, it is customary at this stage of proceedings for me to thank all the hon. Members who have participated in the discussion. Their valuable participation has indeed enabled me to clarify my own thinking on the subject. The hon. Member from Sivaganga, the hon. Member from North East Calcutta, the hon. Member from Nainital and the hon.

Member of National Conference used very graphic phrases like 'laughing stock', 'monstrosity' 'black Bill', 'pernicious', 'fraud', 'assault on democratic rights', 'Government hoodwinking the people', etc. But I am afraid I have to admit with all humility that I remained unmoved by; both their arguments and by their invectives. I find substance in what the hon. Minister of Home Affairs has said.

For the sake of my colleague from the National Conference, I would say that I share his concern about the rights of legislatures and that we should, as the Parliament, constantly keep control on the Government's rule by ordinance. That does not take away the right of the Government, when the necessity or the need arises, to issue an ordinance.

SHRI A. CHARLES (Trivandrum): In your speech you stated that the letter rogatory was sent prior to the ordinance. We specifically asked as to what was the need for the ordinance in view of the fact that even without the ordinance and the law necessary action was taken. But there is no answer from the Minister.

SHRI JASWANT SINGH: The hon. Home Minister has clarified; perhaps you were not able to grasp it. The fact is that the letter rogatory or the request that was sent to the Federal Government of Switzerland was in pursuance of an existing memorandum of understanding. That was possible because the Government of India and the Federal Government of Switzerland had a memorandum of understanding. Therefore a letter rogatory or a letter of request was immediately honoured by them. This provision that has been incorporated in the Criminal Procedure Code enables the Government to send such a request whether there is a memorandum of understanding or not. To that extent it is an advance and it enables our investigating agencies to act meaningfully.

SHRI PIYARE LAL HANDOO: Would that be subject to acceptance by the foreign country?

SHRI JASWANT SINGH: Yes, it is.

SHRI PIYARE LAL HANDOO: Again it will be a matter of mutual understanding.

SHRI JASWANT SINGH: This matter has been clarified in Section 166 (4), that the letter of request shall only be sent by the Government in such a manner and through such rules as shall be prescribed. We well know that once this amendment is incorporated, necessary rules will be framed.

I remain convinced that the Government had indeed a very pressing need for issuing such an ordinance at that stage. I took recourse to the precedents etc. and remained convinced about the need for such an ordinance. Therefore I feel no need to press my motion of disapproval. Sir I tried to share my concern and have explained the position better. I thank the Members. Now, I seek your permission to withdraw, not to press, my Motion.

Sir I beg to move for leave to withdraw the Statutory Resolution moved by me

SHRI PIYARE LAL HANDOO: Sir, I am on a point of order. This Motion or Statutory Resolution for disapproval stands in the name of more than one Member. That is, besides Shri Jaswant Singh, there are three other Members in whose names it stands. Here, I do not think that withdrawal of one of the Members is enough.

SHRI JASWANT SINGH: As the Mover, I have the right.

MR. DEPUTY SPEAKER: The Mover can withdraw it. Is it the pleasure of the House that the Statutory Resolution moved by Shri Jaswant Singh be withdrawn?

MANY HON. MEMBERS: Yes.

The Resolution was, by leave, withdrawn

MR. DEPUTY SPEAKER: Now, I shall put the motion for consideration of the Bill to the vote of the House. The question is.

"That the Bill further to amend the code of Criminal Procedure, 1973, be taken into consideration".

The motion was adopted

MR. DEPUTY SPEAKER: Now, the House will take up clause by clause consideration of the Bill.

Clause 2—(Insertion of new sections 166 A and 166 B)

SHRI P.C. THOMAS (Muvattupuzha): I beg to move:

Page 2, line 14,

for "any Criminal Court" Substitute

" the Chief Metropolitan Magistrate or Chief Judicial Magistrate or such Metropolitan Magistrate or Judicial Magistrate of the First Class having jurisdiction of the area where the crime has been registered", (6)

SHRI MUFTI MOHAMMAD SAYEED: I beg to move:

Page 1, line 18,

for "reduce into writing any statement"

substitute "record his statement" (7)

Page 2, line 15,

for "competent" substitute

" competent to deal with such request" (8)

Page 2, line 17,

after "the case" insert

"and to record his statement made in the course of such examination". (9)

SHRI HARISH RAWAT (Almora) : I beg to move:

Page 1, and 2,

omit lines 10 to 18 and 1 to 9 respectively. (11)

Page 2, line 14,

for "any Criminal Court" Substitute

" the Chief Metropolitan Magistrate or Chief Judicial Magistrate" (12)

Page 2, line 33,

omit "if it thinks fit" (13)

SHRI GIRDHARI LAL BHARGAVA (Jaipur): I beg to move:

Page q1, lines 11 and 12,

after, "investigating officer" insert

"or such other authority or person as the Government may authorise". (24)

MR. DEPUTY SPEAKER: Shri Thomas, do you want to speak on your amendment?

SHRI P.C.THOMAS: I would like to speak a word about the Government amendment.

THE MINISTER OF STEEL AND MINES AND MINISTER OF LAW AND JUSTICE (SHRI DINESH GOSWAMI): Normally, in these amendments, a debate is not allowed. What we permit is that the mover speaks on his amendments only. He is not speaking on his amendment.

MR. DEPUTY SPEAKER: Are you speaking on your amendment or on the amendment moved by the Government?

SHRI P.C.THOMAS: I would like to speak on my amendment. Since the Chair

said that I can speak only on my amendment.

MR. DEPUTY SPEAKER: Let us take up the amendments moved by the Government first. After that, you can speak.

SHRI G.M. BANATWALLA (Ponnani) : But, Sir, you cannot bar him. He specifically wants to speak.

MR. DEPUTY SPEAKER: If he wants to make any reference to amendments by others also, he will be allowed to do that.

SHRI P.C. THOMAS: My amendment is about line No. 14. In sub-clause on page 2, it is stated that:

"... any Criminal Court may issue a letter of request to a Court or an authority in that country or place..."

So, instead of any Criminal Court, I think, that has to be specified. Any Criminal Court may mean a certain Court, a Magistrate's Court of different type, etc., and also throughout the country. So, the power has to be limited to:

"the Chief Metropolitan Magistrate or Chief Judicial Magistrate or such Metropolitan Magistrate or Judicial Magistrate of the First Class having jurisdiction of the area where the crime has been registered"

so that it will be specific. That is about my amendment.

Regarding the Government's amendment, I am asked to speak on that also.

MR. DEPUTY SPEAKER: If you want to make a brief reference, you may do so.

You have already spoken. Now, you have given your own amendment also. Because you have given your own amendment, it is not that have no objection to other things also. But briefly if you want, you can make a reference.

SHRI P.C.THOMAS: The Government has moved the amendment I think, that has been twisted. It is stated that it need only be recorded. That statement need not be written as such. I think, that power should not be given to the investigating officer.

[Translation]

SHRI HARISH RAWAT (Almora): Mr. deputy Speaker, Sir, so far as the part-II of this Bill is concerned, the courts are already vested with a lot of powers in this regard. I fail to understand as to why this Government wants to give these powers to a Sub-Inspector of Police. The hon. Minister of Home Affairs has not made any efforts to justify its necessity anywhere in the Bill. I want that the Hon'ble Minister should justify the necessity for making such provision in the Bill. Let him clarify the position so that the entire House could know as to what was the urgency which led them to vest such a wide power with a Sub-Inspector of Police, which have already been given to the court of law. Nothing has been said in this regard. Neither the Bill, nor the hon. Minister speaks anything about its urgency.

Secondly, Mr. Deputy Speaker, Sir, the hon'ble Minister has not made it clear in the bill as to what are those cases which are still in the pipeline for which necessity of such powers has been felt. There must be some limit to it. Why he is not prepared to share this information with the House. Why does he not want to give full information to the House? Why does he want to confine the information to himself only?

Thirdly, Mr. Deputy Speaker, Sir, it has not been clarified in this Bill as to what would be the of the fate work done by the previous Government in this regard. He should clarify those points in the House. What good he wants to do by hiding the information to the House? Why does he not want to take the House into confidence. My amendment is also very categorical. When a provision is already there, what was the need to introduce a second provision? I request the

hon'ble Minister of Home Affairs to clarify this point.

SHRI GIRDHARI LAL BHARGAVA (Jaipur): Mr. Deputy Speaker, Sir, I have given an amendment to section 166 A. After the word "investigating" I would like to add words "or such other authority or person as the Government may authorise."

In this connection I would like to submit that we want to make a thorough probe into the Bofors Gun deal, sub-marine deal and other such bunglings. This is the intention of the Government. As has been said by the hon'ble Minister in his reply, in order to examine person like Win Chadha and Hinduja and obtain documents, letters of request have to be issued. Besides, how can we make it incumbent upon foreign Government that it should take action on our letter of request and send the papers to us after taking oral or written evidence when no such agreement exists between our Government and that Government will they honour the request of the investigation Officer or the court? The first thing is whether other countries will honour our request or not. Secondly, if the person concerned goes to the Court and says that there is no *prima facie* case against him, what can we do? If we file a case against him in an Indian court of Law, the person concerned may challenge it on the ground that an Indian Court of Law has no right to examine him or call for his evidence or he may pressurise. The Government from whom we want to obtain papers. Who will take action on behalf of the Government of India in this regard? At best we could take oral evidence or a written evidence from the officer and prevail upon them to respond to our action. Otherwise we have no other remedy. We will only be sending letters of request time and again. Ultimately, the Government will not succeed to present the facts honestly before the people in regards to Bofors Gun deal even though it sincerely wanted to do so.

I would like to add further that the 7th Schedule provides that the Government of India could request the Governments other

[Sh. Girdharilal Bhargava]

countries to hold an enquiry. Through this amendment, I have suggested that we should not send letters of request time and again. Instead, we could call for the documents through the Indian Ambassador posted in that country. Let that country take action on our behalf or the Government of India should constitute a Committee which will go to other countries and submit its report after making enquiry into the matter. Then only some concrete action should be taken by the Government in the manner it deems proper. Otherwise it is not possible to do so.

Mr. Deputy Speaker, Sir, I would like to say that the panel code of one country cannot be made applicable to other countries. Besides, there are serious anomalies in 16 (A) and 16 (B). 16 (A) provides that the investigating officer or an officer of the superior rank who would be deputed to the other country and the Competent Authority of the that country will send him for conducting investigation and thereafter...

MR. DEPUTY SPEAKER: Bhargava ji, you have to be very brief.

SHRIGIRDHARILAL BHARGAVA: Sir, with your kind permission I am making my points in brief. I shall conclude within next two minutes.

MR. DEPUTY SPEAKER: The points you are making have already been covered.

SHRIGIRDHARILAL BHARGAVA: Mr. Deputy Speaker, Sir, my point is that the investigating officer will take the documents or the evidence and send the authenticated copies thereof to the concerned officer. In this connection I would like to know whether it is the criminal court or the investing officer who will send the copies.

Mr. Deputy Speaker, Sir, the hon. Minister has said that Central Government will prepare draft of the letter. But I would like to submit in this regard that sub-judge Shri R.C.Jain had stated that draft of the letter

would be prepared by the court and not by the Director of the C.B.I. and that letter would be sent through the Ministry of External Affairs and not through the Director of C.B.I. However it is my submission that you are sending a letter of request and the other country as it has been specified under clause 16-B, will transmit it to the Central Government and the Central Government, if it thinks appropriate, will get the enquiry conducted by a Chief Metropolitan Magistrate or Judicial Magistrate who, after conducting the enquiry, will submit his report to the Central Government.

It is my submission that if there is no authority to plead our case or to stress our point abroad then the amendments brought forward by the Central Government for sending a letter of request will not serve the purpose and the other countries will laugh at us and say that if the Government of India intended to conduct an impartial enquiry in respect of the Bofors case then these rules should have been made more stringent to implement them seriously. Under section 105, an Ordinance remains effective only for a period of 6 months. What I mean to say is that some more time should be given to draft the Bill, properly and my amendment is that either an Ambassador or an enquiry Commission should go there to take action in this regard or the Ambassador of India in that country should peruse the case.

[English]

SHRI MUFTI MOHAMMAD SAYEED: I have nothing much to say. It was mentioned that we should specify the courts which will have authority to issue letter rogatory. The courts which have the jurisdiction, they would have the authority. I therefore, oppose the amendment.

As regards the point raised by Shri Harish Rawat, the investigating officer or the superior officer will have the authority to issue the letter rogatory and that will be transmitted to the Central Government.

SHRI P. CHIDAMBARAM (Sivaganga): I am sorry, I was not here when the Home Minister replied. Equally, the Home Minister was not here when I spoke. We have raised various pertinent questions. The Law Minister is here, the Home Minister is here; we must be enlightened on those points. What are we sitting here for? We are not cattle here. A number of Members have raised questions. What is the difference between A(1) and A (2), let us be told. Somebody has to answer the points raised.

SHRI JASWANT SINGH: Let the hon. Member from Sivaganga exercise some restraint. I agree, I also raised some Points ... (*Interruptions*)

MR. DEPUTY SPEAKER: Probably they want the Government to reply to their points and they say that they have said what they had to say.

(*Interruptions*)

MR. DEPUTY SPEAKER: I shall now put the amendments to the vote of the House... (*Interruptions*)

MR. DEPUTY SPEAKER: Now the Lobbies have been cleared. I shall now put Amendment numbers 7, 8 and 9 to Clause 2 moved by Shri Mufti Mohammad Sayeed to the vote of the House.

The question is:

"Page 1, line 18-
for "reduce into writing any state-
ment"
substitute "record his statement"
(7)

Page 2, line 15,-
for "competent" substitute-

"competent to deal with such re-
quest" (8)

Page 2, line 17, -
after "the case" insert-

"and to record his statement made
in the course of such examina-
tion" (9)

The Lok Sabha divided

14.08 hrs.

Division No. 1

AYES

Acharia, Shri Basudeb
Banera, Shri Hamendra Singh
Basu, Shri Anil
Chatterjee, Shri Somnath
Choudhury, Shri Saifuddin
Das, Shri Bhakta Charan
Fernandes, Shri George
Hannan Mollah, Shri
Hansda, Shri Matilal
Jangde, Shri Reshman Lal
Jaswant Singh, Shri
Kale, Shri Sukhdeo Nandaji
Mahale, Shri Haribhau Shankar
Malik, Shri Purna Chandra
Mishra, Shri Bal Gopal
Misra, Shri Satyagopal
Mukherjee, Shrimati Geeta
Naik, Shri Ram
Nathu Singh, Shri
*Netam, Shri Arvind
Nitish Kumar, Shri

MR. DEPUTY SPEAKER: Now I put amendment No. 6 of Mr P.C. Thomas to the vote of the House.

Amendment No. 6 was put and negatived.

MR. DEPUTY SPEAKER: Now I put amendments No' 11,12 and 13 moved by Shri Giridharilal Rawat to the vote of the House.

Amendment Nos. 11 to 13 were put and negatived.

MR. DEPUTY SPEAKER: Now we take up amendment No. 24 moved by Shri Giridharilal Bhargava.

[Translation]

SHRI GIRDHARI LAL BHARGAVA: I withdraw it. I have placed my point of view. Government may accept it or not. I am a part of the Government and to make a mention of it was my duty. Even if the Government does not accept it, it does not matter.

[English]

MR. DEPUTY SPEAKER: Has Mr Bhargava the leave of the House to withdraw his amendment?

SOME HON. MEMBERS: Yes.

Amendment No. 24 was, by leave, withdrawn.

MR. DEPUTY SPEAKER: The question is:

"That Clause 2, as amended, stand part of the Bill."

The Motion was adopted.

Clause 2, as amended, was added to the Bill.

MR. DEPUTY SPEAKER: There is no amendment to Clause 3. The question is:

"That Clause 3 stand part of the Bill."

The Motion was adopted.

Clause 3 was added to the Bill.

Clause 1 (Short title and commencement)

MR. DEPUTY SPEAKER: There is an amendment No. 14 by Shri K.S. Rao are you moving it, Mr Rao?

SHRI K. S. RAO (Machilipatnam): Yes, I beg to move:

Page 1, for lines 5 and 6, —

substitute "It shall come into force with effect from the 1st day of April, 1990" (14)

MR. DEPUTY SPEAKER: There is another amendment No. 23 by Shri Nathu Singh. He is not here.

I now put amendment No.14 by Shri K.S. Rao to the vote of the House

Amendment no. 14 was put and negatived.

MR. DEPUTY SPEAKER: I now put Clause 1 to the vote of the House.

The question is:

"That Clause 1 stand part of the Bill."

The Motion was adopted.

Clause 1 was added to the Bill.

MR. DEPUTY SPEAKER: The question is:

"That the Enacting Formula and the Title stand part of the Bill."

The motion was adopted.

The Enacting Formula and the Title were added to the Bill.

SHRI MUFTI MOHAMMAD SAYEED: I beg to move:

547 **Stat. Res. re. Disapproval
of Code of Cr. Procedure
(A) ord., 1990
Code of Cr. Procedure (A) Bill**

MARCH 21, 1990

**Res. re. Approval of 1st
Report of Rly. Conv. Comm.
Rly. Budget, 1990-91 Demands for
Grants (Rlys.), 1990-91 Suppl.
Demands for Grants (Rlys.), 1989-90**

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

MR. DEPUTY SPEAKER: The question is:

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

Those in favour will please say, 'Ayes'

SEVERAL HON. MEMBERS: 'Ayes'.

MR. DEPUTY SPEAKER: Those against will please say, 'Noes'

SOME HON. MEMBERS: 'Noes'

MR. DEPUTY SPEAKER: I think the 'Ayes have it, the 'Ayes have it.

SHRI P. CHIDAMBARAM: 'Noes' have it.

MR. DEPUTY SPEAKER: Let the lobbies be cleared.

Now the Lobbies have been cleared.

Before I put the motion, I would like to read out as to how the voting has to be done in the House for the benefit of the new Members.

I would like to request each Member to make sure that he is sitting in his assigned seat. Each Member is requested to take a special care to record his vote *ab initio* corrected as 'Aye' or No or Abstention' as the case may be so that there is no occasion for making corrections. I may briefly recall that as soon as the automatic vote recording equipment is made active, on announcement of the Chair now 'Division', a gong sounds which is the signal to the Members to cast their votes. Each Member has to press push switch and then operate one of the three buttons, that is, 'Aye', 'No' or 'Abstention', according to his own choice. The push switch and the push button must be kept pressed simultaneously until the gong sounds for the second time after ten seconds. Kind

cooperation of the Members is solicited.

SHRISONTOSH MOHAN DEV (Tripura West): Those who are not Members should not cast their votes.

SHRI SOMNATH CHATTERJEE (Bolpur): During their time, they were caught.

MR. DEPUTY SPEAKER: The question is:

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

Those in favour may say 'Aye'

SEVERAL HON. MEMBERS: 'Aye'

MR. DEPUTY SPEAKER: Those who are against may say 'No'

SOME HON. MEMBERS: 'No'

MR. DEPUTY SPEAKER: The 'Ayes have it. The 'Ayes' have it.

The Motion is adopted.

The Motion was adopted

[English]

14.17 hrs.

RESOLUTION REGARDING APPROVAL
OF FIRST REPORT OF RAILWAY
CONVENTION COMMITTEE, 1989

RAILWAY BUDGET, 1990-91 GENERAL
DISCUSSION

DEMANDS FOR GRANTS (RAILWAYS),
1990-91

AND

SUPPLEMENTARY DEMANDS FOR
GRANTS (RAILWAYS), 1989-90

MR. DEPUTY SPEAKER: Now we take