

**CRIMINAL LAW AMENDMENT  
(AMENDING) BILL—Contd.**

[*English*]

**MR. DEPUTY SPEAKER :** We will now take up Item No. 9 "further consideration of the following motion moved by Shri K.P. Singh Deo on the 2nd August, 1985, namely :—

"That the Bill further to amend the Criminal Law Amendment Act, 1952, be taken into consideration".

I request the Hon'ble Minister to continue his speech,

**THE MINISTER OF STATE IN THE MINISTRY OF PERSONNEL AND TRAINING ADMINISTRATIVE REFORMS AND PUBLIC GRIEVANCES AND PENSION AND IN THE DEPARTMENT OF CULTURE (SHRI K.P. SINGH DEO) :** Mr. Deputy, Speaker, Sir. Last week I could just mention that I would like to beg permission to move the Criminal Law Amendment Bill, 1985. This Bill seeks to amend the Criminal Amendment Act, 1952, in order to provide for punishment of personnel of Border Security Force who assist smugglers or infiltrators in crossing over the borders by accepting considerations.

In accordance with clauses (ii) and (iii) of sub-rule (2) of Rule 15 of the Border Security Force Rules, 1969, it is the duty of the Border Security Force to :—

- (i) Prevent trans-border crimes, unauthorised entry into or exit from the territory of India;
- (ii) Prevent smuggling and any other illegal activity.

In the recent past, cases have come to notice where personnel of the BSF have shown connivance with smugglers and infiltrators after accepting consideration in the form of money or goods or services. The BSF officers whose conduct is found prejudicial to good order and

discipline of the Force can be dealt with under Section 40 of the Border Security Force Act, 1968. Civil offences committed by the BSF personnel can be tried and punished by a Security Force Court under Section 46 of the said Act.

Under sub-section (i) of Section 7 of the Criminal Law Amendment Act, 1952, the offences specified in sub-section (i) of Section 6 of that Act *viz.*, the taking of gratification by public servants are triable by Special Judges only. According to the judgement given by the Supreme Court in 1961, the Special Judge had exclusive jurisdiction to try any such offence and the mere fact that any such offence might also be an offence under the Army Act would not be of any relevance to a case where the general Act in express terms confers jurisdiction on a particular tribunal in respect of specified offences to the exclusion of anything contained in any other law.

The Criminal Law Amendment Act 1952, was therefore, amended through an Ordinance in 1965 replaced by the Criminal Law Amendment (Amending) Act, 1966, to save the jurisdiction exercisable by the court martial or other authority under the military, naval or air force laws and to validate the trials held, proceedings taken and sentences passed by courts martial and other competent authorities under these laws.

Since the BSF personnel are governed by the BSF Act, 1968 which is somewhat akin to the Army Act, 1950, it is proposed that the Criminal Law Amendment Act, 1952, may be amended prospectively so that the jurisdiction exercisable by the Security Force Courts in respect of offences specified in Section 6 (1) of the Criminal Law Amendment Act, 1952, is not affected in view of the provision relating to trial by special judges in Section 7 of the latter Act.

Sir, this is an enabling clause and to make discipline and to meet out justice, this is being introduced quickly and summarily. I beg leave of the House for consideration and passing of this Bill.

SHRI THAMPAN THOMAS (Mavelikara): Sir, this Amendment Act is intended to overcome the difficulty created by the Supreme Court decision. In this connection I would like to draw the attention that not only in BSF Act, but also in many other provisions of Law there is overlapping. So long as there is overlapping of provisions, the proper implementation is becoming impossible. This amending Bill is brought only for the purpose of meeting the situation that has arisen as a result of a Supreme Court decision that a particular way of trial is not possible in the case, of BSF personnel. If that is the case, it can be said not only with regard to BSF but also the officers and personnel who are working in similar other forces. They are also during the same thing. If the police force is taken, the same thing can be said about them, that you cannot get justice from them and they are corrupt people. Then there are the Customs people. Often we hear and it has come in the newspapers also that the customs offices connive with the people who come from abroad to bring things into our country. So a lot of persons whose job it is to implement the law have themselves become the law-breakers.

Here in the Bill it is said that instances have come to the notice of the Government that persons working in the BSF are themselves violating the law and that therefore, criminal proceedings will have to be initiated against them. It is all right to have a punitive and deterrent provision in the law, but, unfortunately, many laws in the country are not being enforced effectively. Therefore, if a law is intended to be implemented for a deterrent and punitive purpose, then its implementation should be effective, and then only there will be some fear. Therefore, the amendment is, of course, necessary in the light of the present day conditions.

But what I would like to urge is that the Government should appoint a committee to go into the matter as to which are the laws which are now overlapping on various accounts, specially in the field of criminal law. There are many over-

lapping provisions. It can be seen whether in the proceedings under a certain law punishment can be imposed whereas under another law, the punishment may not be possible. Then it becomes overlapping and the benefit of doubt will be given to the accused and he can very well escape. Therefore, the law should be more effective and should have a deterrent effect on the minds of the people who are governed under that law.

Also I would like to point out that the various pronouncements of the Supreme Court will have to be taken note of by the Government as early as possible. In the recent judgment in the matter of central Government employees the Supreme Court has said that under the constitutional provisions their services can be terminated whereas if you see the industries law, it provides safety and security to the industrial workers and under the industrial law a person can be dismissed only after proper enquiry and only after compliance with the principles of natural justice. My submission is that Government have come forward with this amending Bill to meet the situation arising out of the judgment of the Supreme Court. In the same manner, my submission is that the Government should be prepared to analyse every judgment of the Supreme Court and wherever necessary, to bring forward amendments to the law. In this connection I invite your attention to the recent decision of the Supreme Court with regard to Government employees that their services can be terminated without conducting any inquiry and without complying with the principles of natural justice whereas the industrial workers have got security and they have got the right of defence and appear before an enquiry to prove his innocence whereas the Government employees are denied this right. This is also in the same position. Therefore, perhaps an amendment to the Constitution itself may be required. Art. 311 of the Constitution will have to be amended.

Taking part in this discussion what I would like to submit is that similarly

[Shri Thampan Thomas]

there are so many decisions, so many pronouncements of the Supreme Court and other courts which overlap one another. Therefore, a streamlining in these matters is very necessary and some study should be conducted in this regard by the Government by appointing a Commission and bringing out a proper implementation of the law. Because of the multi-nature of the law, punishments cannot be given. I have submitted that. Other points also I have mentioned that in the case of other officers like the Customs people and also the Police, if possible, there should be a procedure by which the culprits can be brought to book. This is my submission in the matter.

[*Translation*]

DR. CHANDRA SHEKHAR TRIPATHI (Kh. Jilabad): Mr. Deputy Speaker, Sir, I support the Criminal Law Amendment (Amending) Bill which is under consideration at present. What I am going to submit is known to everybody. There has been rapid increase in the incidents of unauthorised and unlawful crossing over to this side of the borders of the country. Bhairava and Krishna Nagar which are adjacent to my district are situated in the territory of Nepal. Many illegal activities are going on there. The dacoits and thugs belonging to our country commit crimes here and then cross over to Nepal in collusion with the officials on this side of the border. The criminals are allowed to escape or cross over to the other side on the allurements of money or through somebody's approach. In Uttar Pradesh, there is a definite increase in the number of such crimes on this account.

The second important point is about smuggling. There was a provision in this Act till now that such persons would be put on trial in the courts of special judges. It resulted in the delay in disposal of the cases. Hearing of the trial was postponed to further dates and cases could not be disposed of. But now under the amendment, which has been brought, there will not be delay in the trials of such crimes and cases will be disposed of without delay. The amendment is very commend-

able from this point of view. Now under this Act, cases will be disposed of without delay. This amendment will also be helpful in maintaining the secrecy. Previously, the secrecy could not be maintained but now those secrets will not reach the common man and the secrecy will be maintained. Cases will also be disposed of quickly.

With these words I support the Bill.

[*English*]

SHRI SATYENDRA NARAYAN SINHA (Aurangabad): Sir, I rise to support this Amending Bill. It is a very simple proposition. The amendment seeks to exclude the jurisdiction of the criminal law courts from trying any offences which are triable under Sections 46 and 47 in a civil offence committed by the member of the Border Security Force and which would be tried only by Security Force courts.

In the Statement of Objects and Reasons it has been stated that it was in the year 1961 that the Supreme Court held that the Army Act also was not exclusively applicable to such offences and according to the provisions of the law the criminal courts were competent to try cases where Army people were hauled up for offences. An Ordinance was promulgated followed by an Act. It was done in 1966.

I would like to know from the hon. Minister why such a long delay has occurred in bringing forward this Amending Bill. The Minister has said that in the recent past it has come to the notice of the Government or the authorities that smuggling has taken place with the connivance of the Members of the Force. The Director General of B.S.F., Mr. Birbal Nath, though hesitatingly, has admitted that there has been spurt in the smuggling of arms and narcotics and other goods and he has said that it has happened not only with the connivance but collusion of a large section of the personnel posted in the border. It is a serious thing and I would like to know whether any persons has been arrested or any action has been initiated or

whether the Government came up with this Bill so that the Criminal Courts have the jurisdiction over the cases and not the Security Force courts. This is what I wanted to know from the hon. Minister.

Now, in supporting this amending Bill, I would like to make some remarks. Sir, recently or for some time past, there has been discontent among the B.S.F. cadre officers. Only recently, you might have seen that a big despatch on the subject appeared in 'The Statement' because they do not like the incursion of I.P.S. officers. According to a Notification by the government under para 6(iii) of B.S.F. (Seniority and Promotion and Superannuation) Rule of 1978 published in the Gazette Notification of 11th November 1978 all commandants and officers of equal rank who have put in 8 years of service in that position shall be eligible for promotion to the rank of a D.I.G. It was expected that most of the posts will be filled up by those officers. Therefore, the Home Ministry has issued a Circular that 75% of the posts in the D.I.G. would be reserved for I.P.S. officers cadre. Naturally, this has created discontent among these people. This is a fighting force and we want to maintain discipline and morale and we want to maintain integrated character and personality of the B.S.F. It is necessary that the Government should address itself to this problem as soon as possible. If I.P.S. officers have to be brought in, they may be brought in, but the Government must take some decision and offer one time chance so that they may either opt for B.S.F. or go for different cadres. This problem has to be solved. Otherwise, it will undermine the morale and discipline of the force. The Government should act immediately on this.

Secondly, the B.S.F. has been used too frequently for law and order duties to aid the civil administration. I am aware of the fact that in the chartered areas, duties include maintenance of law and order situation. But I would like to point out here that this is a fighting force and frequent use of this force is not good. It is primarily for maintaining the vigil

on the border and to prevent smuggling and trans-border crimes. But frequent use of this force for maintaining law and order will detract from the character of this force. They are used for different purposes. When they are called upon to deal with the law and order situation, the rough and tough method has in fact often produced dissatisfaction among the personnel. Even Mr. Sravan Tandon, the former D.G., has also said that the frequent use of the force for law and order duties is not good. Therefore, I would like to submit to the Government that even though it is within the right to use B.S.F. for law and order duties, they should refrain from doing it so frequently, as is being done now, because it has produced a lot of discontent among the people and rough and tough method produces more than that what was need. It is not for the B.S.F. which is a fighting force and it requires the support and goodwill of the people. With these words, I support the Bill.

SHRI E. AYYAPU REDDY (Kurnool): Mr. Deputy-Speaker, Sir, in my opinion, it is a very inconsequential amendment to Section 11 of the Criminal Law Amendment Act, 1952. There is no necessity to oppose this Bill and this Bill, in fact, should have been passed without any opposition, and discussion, but as you have allotted two hours for this Bill, we have to speak something on it.

AN HON. MEMBER: It is not a waste of time?

MR. DEPUTY-SPEAKER: No; Members may like to say something on it.

SHRI E. AYYAPU REDDY: Sir, I would like to go to the original Criminal Law Amendment Act, 1952, from which we are now asking for exemption. This Act was passed in 1952 to create special judges for the purpose of trying offences by or relating to public servants, that is, offences under section 161, 162, 163, 164, 165 and 165A of the Indian Penal Code, offences of corruption and bribery committed by public servants. Thirty three years have elapsed after

[Shri E. Ayyapu Reddy]

passing of this Criminal Law Amendment Act, 1952.

Prior to passing of this Act in 1952, all these offences were triable by a magistrate under the Criminal Procedure Code. Section 4 of the Criminal Procedure Code says :

- “(1) All offences under the Indian Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.
- (2) All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.”

Schedule to the Criminal Procedure Code provided that offences by or relating to public servants, namely the offences under Sections 161, 162, 163, 164, 165 and 165A, that is, corruption and bribery would be triable by a Magistrate of the 1st Class.

Prior to 1952, cases of corruption, bribery etc. against public servants used to be very few, by and large, and these were tried by Magistrates. But in 1952, in order to emphasise that offences by public servants have got special significance, the Criminal Law Amendment Act, 1952 was passed with the result that special courts and special judges could be appointed for the purpose of trying offences relating to public servants. This resulted in the appointment of two or three courts at the State capital. Even if a small offence is committed by a petty official in some remote corner of the State, he has to be tried by the special court. He has to come all the way practically from a remote corner to the State capital. Almost all these special courts are located in the State capitals,

they are not distributed, and because they are of the category of special judges, not more than two or three courts are allocated by the State Government for this purpose. The net result is that witnesses have to come all the way to the special courts, travelling sometimes four hundred to five hundred miles, and in case the case is adjourned, they have to go back. I would only request the hon. Minister to call for the data of all cases which are being tried by the special courts in all the States, the number of cases which is being disposed of, and to review how far these courts have been effective.

3.00 hrs.

As a matter of fact, the very same judge, who is a Sessions Judge, by notification is made a Special Judge and then, because he becomes a Special Judge and because he is stationed at the State capital, he gets jurisdiction to try almost all the cases relating to public servants and this has been causing a lot of inconvenience to the witnesses and delay in disposal of the cases. Among these, we hear of a very few conviction cases. If the hon. Minister gets the statistics, he will find that in some cases there has been enormous delay. Cases have been pending for five years, six years and even ten years and the public servants who are being prosecuted have been appealing to the State Government to suspend their suspensions and put them back again into service. There are a number of cases, where after being under suspension for ten or fifteen years, they were acquitted and they got back their salaries and allowance from the back date.

So, the necessity to have this special act of 1952 is no longer there for the simple reason that the number of corruption cases have also gone up. These can easily be tried by the special magistrate at the Taluka level and in some serious cases at the district level. So, my suggestion is that it is time to have a look at the Criminal Law Amendment Act itself. There is no necessity to make any special provision. All these cases of corruption can be easily tried by the

ordinary criminal courts. The same magistrates, the same judiciary and the same rules are being applied and they can be disposed of at the taluka level itself, probably more effectively, more efficiently and more expeditiously.

MR. DEPUTY SPEAKER : We adjourn for lunch and reassemble at two O' clock.

13.02 hrs.

*The Lok Sabha then adjourned for Lunch till Fourteen of the Clock*

*The Lok Sabha re-assembled, after lunch, at Nine Minutes past Fourteen of the Clock.*

[MR. DEPUTY SPEAKER *in the Chair*]

CRIMINAL LAW AMENDMENT  
(AMENDING) BILL—*Contd.*

[*English*]

MR. DEPUTY SPEAKER : Now Shri Basavaraju.

[*Translation*]

\*SHRI G.S. BASAVARAJU (Tumkur) : Mr. Deputy Speaker, Sir, our hon. Minister has brought a very good bill and I wholeheartedly welcome it. Several offences like trans-border crimes, unauthorised entry into or exit from the territory of India, smuggling, and other illegal activities have to be dealt with firmly and therefore such a bill is very essential. Even the members from the opposition have welcomed this measure. In fact I had expected such an amended bill much earlier.

While speaking on this bill I have to highlight some points. Like Border Security Force there are other forces like Central Industrial Security Force (CISF), Central Reserve Police Force (CRPF), Railway Protection Force (CRPF) etc. which could have been included in this amendment bill, However I request the

hon. Minister to bring in a comprehensive bill including all the above mentioned forces.

Secondly, I want to draw your kind attention towards the report of administrative reforms committee headed by late Shri Kengal Hanumantaiah, ex-Chief Minister of Karnataka. I do not know what has happened to the reports of this Committee. I urge upon the hon. Minister to implement the recommendations contained in the report of this Committee. If the recommendations contained in these Reports are implemented I am sure that honest, discipline, hard work, sincerity etc. in the administration can be vastly improved.

This Bill will definitely halt the reported unholy collusion between smugglers, drug-traffickers and some elements of BSF. I whole heartedly Support this Bill and I congratulate him for the timely amendment Cr. P.C. in this regard. With these words, I resume my seat.

[*English*]

SHRI SHANTARAM NAIK (Panaji) : I rise to support this Amendment Bill which is very much required from the point of view of jurisdiction which it involves. In fact, this amendment ought to have come long back. Nevertheless, I appreciate the efforts of the hon. Minister for bringing this amendment even at this late stage.

The Border Security Force is very relevant in the various para-military forces that we have. In tact, it is the restraint on the part of personnel of the Border Security Force that I may say prevents wars ; it is their restraint, it is their tactics and it is their dialogues that they hold between the forces on both sides that prevent wars which ultimately, as you know, how destructive they are. Therefore, in that sense, this force is very much important. In this Amendment Bill what is sought to be done is this. If a personnel from the Border Security Force is to be tried under the Prevention of Corruption Act 1947 or under certain

\* The speech was originally delivered in Kannada.

[Shri Shantaram Naik]

section of IPC, which deals with corruption, then the powers under this proposed amendment are vested in the authority under the Border Security Force Act, unlike Powers which are today vested in Special Judge, under the Prevention of Corruption Act or Criminal Law Amendment which exists. Therefore, in that light and for the reason that personnel like Border Security Force and army should not be exposed before ordinary criminal courts. In that light, this Amendment Act is most welcome.

Secondly when this matter goes to the Special Judge, normally, Special Judges are District Court Judges and they are stationed in district places; before them several cases of importance are there and therefore delays of years together are involved and consequently army personnel and the Border Security Force suffer to a great extent, and that again affects their morale, and in that light, this Amendment Act is very important.

However, I would like to make certain suggestions with respect to further better implementation of this provision.

In the first place I would like to suggest that when cases of corruption are dealt with under the Prevention of Corruption Act and the IPC, powers should be vested in the judges—senior judges of appropriate seniority—who sit at the Taluk headquarters so that people, as one of the hon. Members has suggested, who are poor litigants need not have to travel miles and miles to the district headquarters to be tried or to stand as witnesses.

Secondly, these cases come to light or get tried only if the affected persons come out and complain in the Police Station that so and so officer is asking for some money or bribe from them. Only then the case comes up and a charge-sheet is filed. However, the police authorities and the concerned officers should see that people involved in corruption cases are caught; they should take the initiative and *suo n. otu* and start the prosecution under the Prevention of Corruption Act

or Sections 161, or 165A of the Criminal Procedure Code. Unless the aggrieved parties take the initiative such cases will not be forthcoming.

Then there are some modalities of trapping the corrupt officers. When a person complains that an officer is demanding a bribe or some sort of consideration then a trap is laid. What is done is, the complainant is asked to meet the police party or the raiding party at a particular time or place. Then a bundle of notes is given to the complainant. These notes are treated in phenolphthalein powder in advance. Some lime water is also used. These notes are handed over to the complainant, some time is fixed between the complainant and the officers to call the official who is demanding the bribe. Say, if 3 p.m. is fixed at about that time the Police party also goes to the appointed place and the complainant hands over the notes to the corrupt officer. Then the Police party catches the officer and recovers the notes from his person. Thus the man is caught red handed. Normally the procedure is to sprinkle lime water on the notes which turn pink; and this proves that those were the notes handed over to the complainant. What I want to say is that the whole procedure is cumbersome. The Panch witnesses are not able to depose in a court of law and narrate these things one after another and if any Panch fumbles in between somewhere, then the case is gone. Therefore, what happens is only a few cases of corruption are proved. Ultimately only 10 per cent of the cases are conducted till the end; 50 to 60 per cent of people do not get any punishment. So, it is essential that these modalities or procedures are changed, so that the guilty do not go scot-free. Senior investigating officers are to be entrusted with this task.

In the Union Territories, what we find is that normally the investigating officer is an IPS officer of the rank of Deputy Inspector General. Such officers are vested with powers but the pity is that they are transferred very frequently. For instance, an investigating officer files a case under the Prevention of Corruption

Act and starts the prosecution, but within six months he is transferred to Delhi or to some other Union Territory. Then the case is practically gone. This I am speaking from my personal experience. I was a Special Public Prosecutor under the Prevention of Corruption Act. Once I.O. in a case which was conducted by me, the I.O. was transferred. I was helpless. I was searching for the I.O. at various places of his posting. The Officer subsequently resigned from his post. He subsequently joined politics and became a Member of Parliament. Thereafter I also contested the election and I also came to Parliament. But the case is still pending. These sort of co-incidents sometimes follow. Therefore, officers of the rank of Police Inspectors should also be vested with the powers to deal with offences so that they are not transferred outside the limits of the territory and the cases do not linger.

With respect to the last amendment which was introduced in 1966. I would also like to make a few suggestions. Section 11 of the Criminal Law Amendment Act says :

“Nothing in this Act shall affect the jurisdiction by or the procedure applicable to, any court or other authority under any military, naval or air force law.”

Although we are not directly concerned with this amendment today, I feel that the words used here namely ‘military, naval or air force laws’ are not correct and that the concerned statute ought to have been mentioned as has rightly been done with the present amendment.

**SHRI K.P. SINGH DEO :** It is known as Army, Navy and Air Force Act.

**SHRI SHANTARAM NAIK :** But the statute has not been mentioned. Lastly whatever vagueness or lacunae which are there in the Prevention of Corruption Act, should be removed. Who is the competent authority to grant sanction to prosecute under the prevention of Corruption Act? This aspect

has to be clarified properly in the Act. In the case of Mr. Antulay we have seen that because of vagueness the case was dragged on for months together. This sort of vague provision gives rise to delays which should be avoided. Therefore, although we are not directly concerned with the amendment to the Prevention of Corruption Act at this stage, I have incidentally mentioned all these things and I hope the hon. Minister will take note of these suggestions.

**SHRI INDRAJIT GUPTA (Basirhat) :** Sir, the Amendment Bill is long overdue. Actually I share the curiosity which has been expressed by some other Members who spoke before me as to why it has taken so long to bring this Amending Bill. It has a limited purpose i.e. removing the legal lacuna or anomaly which was existing as to the jurisdiction in respect of personnel of the Border Security Force who are charged with offences of smuggling, collusion with smugglers, corruption and so on. But I would like the hon. Minister to tell us as to why they have suddenly woken up now, because the Supreme Court gave its judgment in 1961. After that, an amendment to the Criminal Law was brought in 1966. And this is 1985. This anomaly or whatever it was there all this time. So I would like to know whether the fact of the matter is that the Government has decided to move in this matter only now because during this intervening period, the number of cases which have been reported of collusion by BSF personnel with smugglers, infiltrators and also corruption cases, have been increasing on such a scale that only it came to the notice of the Government that it would be necessary to do something. I think while introducing the Bill the Minister should have helped the House by also giving us some factual information as to what is actually the number of personnel who have actually been proceeded against and against whom action has been taken for such offences. There is no information. We have no data whatsoever to go on. The introductory remarks of the Minister consisted only of reading out the Statement of Objects and Reasons which has been supplied to us in any case. He need not have taken

[Shri Indrajit Gupta]

the trouble to read it out. Of course, I support the Bill but it is not merely a question of defining clearly the jurisdiction of the courts. One would also like to know whether any action is really being taken. I have to take this opportunity of just bringing to the notice of the hon. Minister and of the House that the way the Border Security Force has been behaving on the borders of our country is not inspiring very much confidence in the public. I do not mean to suggest that every single person who belongs to the BSF is corrupt, or is dishonest, or is failing in his duty. Not at all. I know that BSF has also, on several occasions, done excellent service. But my constituency, for example, runs all along the border of Bangladesh. The border in most of those places is not a land boundary, but the boundary on the rivers and canals. It is a siverine boundary where there is plenty of water and no roads in many places. The patrolling along that border has to be done very often by boats. BSF has got special types of vessels and crafts which they are supposed to use for this purpose. But I must say that smuggling of course, is going on in both directions on quite a large scale. I agree that it is very difficult to control every single yard or every single mile of that border but smuggling is on the increase. Everybody there knows it. Collusion of the BSF with these smugglers is common talk. Everybody talks about it there and everybody says that nothing can be done apparently to prevent it. Worse than that is that trans-border crimes are taking place in which the BSF is proving quite ineffective to do anything. Armed gangs are sometimes coming across to our side of the border from Bangladesh. My constituency is situated just opposite the districts of Jessore and Khulna, and a number of cases have taken place where armed dacoits with weapons have crossed into our territory and committed decoities. In one case they had kidnapped some people also. They also take away cattle and do all sorts of things like that. They are coming and going freely. Except in one case which is known to me, the BSF apparently failed even to intercept them. To check unauthorised entry

and exit from the territory of India which, as stated here in the Statement of Objects and Reasons, is one of the duties of the Boarder Security Force. It is totally incapable of checking this unauthorised entry and exit. Moreover, this has become a source of corruption to which the BSF is prone. The people who have got no valid documents for crossing or coming back, can get entry or exit by means of bribing BSF personnel, and this is being done quite frequently. I do not know what action the Government have taken or what steps they have taken to detect these things. We heard the other day, for example, that there was so much infiltration going on across the Punjab border. Perhaps it is still going on. It is reported that so many terrorists and extremists find it easy to slip across the border into Pakistan and then come back whenever they want. But they are coming and going after receiving training in arms and all that. Or, they are coming and going without training.

Yesterday, I happened to be on the Waga border near Amritsar. I just had gone down to the border to have a look at it. I had done it before also. Our BSF is there on the border checkpoint. It is very much in evidence, looking very much smart in uniforms petrolling there side-by-side with the Pakistani Rangers on the other side just a few feet away. But, after all, if infiltration is not going to take place at the point of Waga post, it is taking place along the Indo-Pakistan border. And if such massive infiltration has taken place and enabled infiltration of all sorts of arms here illegally—and we know what happened in the last couple of years—and these groups of terrorists and extremists have been freely going, one wants to know what the BSF was doing. It is an armed force, it is a trained force, it is a para-military force, which is specially trained to encounter and combat this kind of illegal trespassing, but here everybody talks about the Punjab border as being a border which is very easily open to penetration; and therefore, one cannot control or apprehend these terrorists and extremists who can just slip across and come back whenever they want. So, BSF has been failing in this matter also.

Merapani clash, which took place between the police forces of Assam and Nagaland is the most disgraceful and disreputable matter. It is really quite disastrous to the cause of national unity. It is true when the matter was raised a few days ago, the Minister here in the House denied knowledge of the fact that any BSF personnel was involved in the clash, but I would like to have further re-assurance from the Government, because every single report which has appeared and which has been published, does claim that at least on the Nagaland side the BSF did participate in this clash. They were used apparently by the Nagaland Government in the attack on the Assamese villages in Merapani area. In that incident perhaps an evidence was found of the use of mortar shells. It is not normally given to the ordinary armed police. If it is a fact that BSF took part in the clash, then a stern action has to be taken. I agree with the Members who have said that it is very wrong to use the BSF on any increasing scale on normal law and order operations in areas which are very far removed from the border or which have nothing to do with the border at all. To aid the civil power in so-called maintaining peace or law or order, police forces are used. Sometimes army is used. Sometimes army has to be used. I consider, it is a very inadvisable thing. The Army should be used with great restraint. It should not be used to replace the police force. But the BSF, whose very name is 'border security force' which has been raised and trained for the purpose of safeguarding borders of our country, if they are found to be brought into action in internal areas or in interior of our country far away from the border to help some State Government or State authorities to cope with some rioting or some civil strife, I think it is very undesirable. It will surely sap the morale of the BSF personnel, if they are more and more used for this purpose and it will make them unfit for the real purpose for which they are designed, namely to safeguard the security of the border and to prevent all these illegal incursions and smuggling and so on. So, that should be done. As far possible, the BSF at least should not be used for that purpose.

I welcome the Bill in so far it remedies any ambiguity or doubt that exist as to assure the judicial authority to try these people who are charged with these offences ; but simply that is not enough. We should be told something ; we should be given some information whether action has been taken or not, because Government itself admits these facts. It says and I quote :

"In the recent past cases have come to notice where personnel of the BSF have shown connivance with smugglers and infiltrators after accepting consideration in the form of money or goods."

This is the Government's own statement which is really quite an alarming business and we should know about it. Since these cases have come to your notice, some action should have been taken and action was taken probably, or in many cases, action was not taken ; we don't know anything about it. So, I would request the Minister to give us some more information about this matter, and also assure us that the discipline of the BSF—which means really in the last resort that of the officer cadre in BSF—has got to be made much more conscious about its duties and discipline has got to be strictly enforced and action taken whenever necessary. What are the steps which have been taken in this direction ? I would like to know that.

On the border at least I know that among the people whom I represent in this House there is absolutely no confidence on the BSF. People say : Oh, as long as BSF is there, you can be dead-sure that smuggling will go on freely on a big scale. BSF, according to the people, is the guarantee that smuggling will go on without any kind of check. This is not a nice kind of certificate to give to the BSF.

Therefore, Sir, I support the Bill because, I think, it is long overdue. But just a Bill, without any action being taken as follow-up is quite useless and not worth the paper it is written. I hope that the hon. Minister will enlighten us something about this.

[Translation]

SHRI VIRDHI CHANDER JAIN (Barmer) : Mr. Deputy Speaker, Sir, I welcome the Criminal Law (Amendment) Bill, 1985 brought forward in the House for consideration.

I quite agree with the views expressed by Shri Inrajit Gupta. I also come from the border area. We are constantly seeing the work of B.S.F. in the border areas of Barmer and Jaisalmer. It has been found that whatever smuggling activities take place or whatever unlawful activities go on from Pakistan side, these cannot take place without the connivance of the B.S.F. personnel. There cannot be cases of smuggling without the connivance of the B.S.F. personnel. It is a matter of great surprise that a large number of cows are taken to other side of the border and the B.S.F. fail to take action. Commodities like bidis, sugar are smuggled out in exchange of cloth, cassettes, medicines and other things. I am sure that if the B.S.F. do its work with interest, then the smuggling activities can be checked. Generally the Commandants and the Assistant Commandants of the B.S.F. are taken from the Police officers' cadre and only those officers are sent to the B.S.F. whose reputation is bad. Otherwise the police officers would like to remain in the district headquarter. When such type of officers are posted there the smuggling operation spreads and it cannot be checked. So it is very necessary that those persons should be appointed as Commandants, Assistant Commandants and Captains whose records of integrity and honest have remained clean. They should be selected after proper screening. Those officers should be removed whose records have not been considered clean. This fact has been admitted. In the Statement of Objects and Reasons of the Bill it has been stated that they are in connivance with them. Action should be taken against them when such cases come to notice. It is a right step that, this amendment has been brought to the Act. Now action can be taken against them under Section-40. But there is one point worth consideration. If the officers who are sup-

posed to take action are themselves not, honest, no action can be taken against not be taken against him the guilty. So there is need to take concrete step in this direction. It is very necessary to maintain discipline in them as well as to maintain secrecy. We do not want that the B.S.F. should be maligned and exposed in this way. But what can be done when they take bribes openly and badly tarnish their image. It is necessary to improve this image.

The B.S.F. has done commendable work at some places. Recently on 17th July, they have seized 329 Kg. heroin worth Rs. 16 crores in the Barmer district. This is their marvellous achievement. Such personnel should not only be appreciated, they should not only be given advance investments but should also be given promotion. I do not mean that all the personnel of B.S.F. are bad. There are some good and honest people in it. Such personnel should be encouraged in every way.

I have also visited the area manned by B.S.F. I think there is need to increase their strength. Particularly the border area of Rajasthan is a long one spread over to 1,500 kilometers. Taking into consideration the length of that area, the strength of the force deployed there is very less. There is need to deploy 15 or 20 battalions there. Only then the border can be properly guarded. If the area is sealed only then the border can be guarded properly so that smugglers or extremists are not able to infiltrate. A number of armed extremists have infiltrated into our area after getting training and they have committed such crimes which are condemnable. The Central Government have to be more careful in this respect. I had drawn the attention of the hon. Home Minister earlier also to the activities of B.S.F. and urged him to take suitable steps there. But no action has been taken till now and on this account such situation has developed.

In my opinion the assistance of B.S.F. and C.R.P.F. should be taken when the Police force is not able to control the law and order situation. The B.S.F.

have done commendable job whenever it was asked to handle the situation. It has discharged its responsibility more ably than the Police. Not only in Punjab in other areas also it has taken right step and discharged its duty. So we should not hesitate to take their help. I would also say that there is nothing bad in securing the services of the army even in such situation, If the law and order situation becomes uncontrollable then we should not hesitate in using the army. This should not be made an issue that the services of the army are not meant for the use of controlling the law and order. Generally, smuggling takes place during night in our desert areas but our forces have no adequate arrangement of lighting. They do not have sophisticated weapons. We should make available all the necessary equipments to them. Their cadre should be improved. They should get the pay scales and other facilities available to the military personnel. Their memorandum should be looked into and effort should be made to make provision to the effect that they may get the facilities available to the army personnel.

With these words I support this Criminal Law Amendment (Amending) Bill presented here.

**SHRIGIRDHARI LAL VYAS** (Bhilwara): Mr. Deputy Speaker, Sir, I support the Criminal Law Amendment (Amending) Bill, 1985 that is before the House.

The objective with which the Bill has been brought forward is praise-worthy and I welcome it, but there is need to pay special attention to the conditions prevailing in BSF which cause concern and as a result of which this amendment was brought forth. You are well aware that the arms which reached Punjab from Pakistan, were smuggled in through the Rajasthan border. Extremists have also entered through Rajasthan border. Had the BSF been alert, the situation in Punjab which has worsened due to these smugglers, extremists and smuggling of arms, would not have deteriorated to that extent. This is the main reason for

the incidents of this nature in Punjab. Just now Shri Virdhi Chander Jain spoke about the large scale opium smuggling in his area. Government want to curb the opium smuggling but it has not been able to check it. The hon. Finance Minister is present here and he is concerned with customs. Neither the customs department nor the Border Security Force is able to apprehend them. Opium, worth crores of Rupees is being smuggled out from that border every year but no action has been taken to check it. There are big gangs which are operating and they indulge in smuggling worth Crores of Rupees. No one knows whether the BSF is aware of it or not. If they know about it, action should have been taken. So all these things need to be looked into.

Heavy expenditure is incurred on these two departments—the customs and the BSF—and they should check smuggling. The smuggled goods are affecting our economy adversely. Only the other day, it was said that black money to the tune of Rs. 37,000 crores has accumulated. This figure has been given in the report but other sources say it is to the tune of Rs. 70,000 crores. The reason is that the goods are smuggled and many people indulge in malpractices for which the Border Security Force has proved ineffective and the whole system has gone topsyturvy. If you are able to check smuggling, the economy of the country can be put on sound footing. Another reason for the ineffectiveness of BSF is, as Shri Virdhi Chander Jain has also pointed out, that it is headed by rejected officers of the police or those DSPs, SPs and DIGs who do not have good reports and are not retained by the States. Being disgruntled, they do not perform their duties well and as a result these activities are on the increase. I would suggest not to post rejected police officers in B.S.F. If you post them there, then these activities can never be curbed. Rules may be framed amendments may be brought but it will not help much till action is taken against the erring officers and against those who are facing corruption charges and are in collusion with the smugglers. If the Border Security

[Shri Girdhari Lal Vyas]

Force consists of such type of officers, then who will take action against whom ?

If you want to give such a shape to this Act as if it is meant for an army, then induct officers like army officers. They should be given special training to work effectively. The training should meet the requirements of the Border Security Force. The system would function effectively only then. It will not help much if you appoint special judges or give special powers to the Director General, Border Security Force or bring forth amendments. Till the officers and staff do not, feel confident that the people and Government will praise their work, there will be no improvement in the situation. If they overcome this feeling of insecurity, there will be marked improvement. The police officers whom the State Government want to shunt out should not be posted to Border Security Force. This system should be changed.

MR. DEPUTY SPEAKER : Sir, the existing laws do have the following provision :

[*English*]

- “(i) Prevent trans-border crimes, unauthorised entry into or exit from the territory of India;
- “(ii) Prevent smuggling and any other illegal activity.”

[*Translation*]

All these things already exist in the present laws. This law came into force since 1969. How many officers or staff have been prosecuted or punished ? Nothing has been categorically stated in the Statement of Objects and Reasons of the Bill. It has been admitted in this statement that cases of collusion between the Border Security Force personnel and smugglers and infiltrators have come to light and that the smugglers are being encouraged. How many officers have been found to be engaged in such activities

and what action has been taken against them and how many of them have been punished ? It should be clarified so that we come to know the present circumstances and the measures to be taken to improve the situation. We should be assured that the hon. Minister is evolving a system so that there is no confusion in future and the harm that was being done by such activities will be no more.

It has been emphasized that the amendment is being brought to maintain discipline in Border Security Force. As I said just now the integrity of the officers that are appointed should be beyond suspicion. They should be honest and men of integrity. It has not been stated in the Statement of Objects and Reasons what sort of special training is to be given to the Border Security Force personnel so that the discipline improves and the country is protected against enemies and smugglers.

\*SHRI ANIL BASU (Arambagh) : Mr. Deputy Speaker, Sir, while participating in the discussion on this Bill I will speak in Bengali. The Government has brought forth this Criminal Law Amendment (Amending) Bill, 1985 with a view to amend sub-section (1) of section 11 of the Criminal Law Amendment Act, 1952. I and my party has nothing to oppose in this Bill. We all know the situation in which the BSF was constituted. A high powered Committee was set up with the then I.G. of Madhya Pradesh, Shri K S. Rustomji, Lt. General Camdeth GOC in Chief Western Command and a Joint Secretary of the Home Ministry as its members. This high power Committee recommended to the Government that a paramilitary force like the BSF may be set up since the presence of the military in the border areas and in different parts of the country all the time was not desirable. According to the recommendations of this High powered committee, the BSF, a paramilitary force was set up in 1965. Today, the strength of the BSF is nearly 1 lakh. That means, this Border Security Force has a strength of nearly 1/10th of our regular

\*The speech was originally delivered in Bengali.

army. Now, the Government has to bring forth this amending Bill in 1985 after such a long period because, as they have themselves admitted in the State of objects and reasons of this Bill that "personnel of the Border Security Force have shown connivance with smugglers and infiltrators after accepting consideration in the form of money or goods".

Not only the Government has admitted this fact, but the ex-Director General of the BSF, Shri Birbal Nath also admitted in an interview published in the *Tribune* dated 22-6-84 that "a sizeable number of personnel in that force i.e. the BSF may have been in collusion with the smugglers of arms, ammunition and other goods from across the Indo-Pakistan and Indo Nepal borders." The Ex-D.G. himself admits that the BSF is associated with smuggling, and this smuggling is in the form of arms and ammunition across the border. This is a very dangerous situation and it has surely assumed alarming proportions today which has forced the Government to come forth with this amending Bill. Sir, smuggling was prevalent earlier also, infiltration was also there. The Government also was not unaware of the association and connivance of BSF personnel with smugglers in exchange of money and other considerations. In spite of all that why did the Government wait so long to bring forward such a Bill? The hon. Minister should state, it would have been better if he stated it at the time of introducing this Bill, that what sort of complaints and allegations is he receiving against the BSF personnel? What is the real shape of this smuggling and in what way are the BSF personnel associated with this smuggling of arms? What type of allegations have been received against them in respect of arms smuggling. For want of such amending act, the Government found that whenever departmental proceedings were instituted against the BSF personnel, they were approaching the general criminal courts thus frustrating the departmental action. This resulted in the BSF authorities getting involved in prolonged court cases which also delayed the action against the guilty personnel. It was found difficult to take appropriate action against those personnel who were

conniving with smugglers and infiltrators. The Government was alarmed to find that even arms smuggling was indulged in by the BSF personnel who are entrusted with the onerous task of maintaining the security of our borders, because it was not found desirable to keep the presence of the army at the borders all the time. If the personnel of the BSF themselves indulge in nefarious activities like arms smuggling etc., that certainly gives rise to an alarming situation, which has forced the Government to move this amendment a after such a long time.

PROF. N.G. RANGA (Guntur): There is illegal immigration also into Assam (*Interruptions*).

SHRI ANIL BASU: Yes, everywhere. It is admitted in the report of the Ex-D.G. of BSF. Mr. Deputy Speaker Sir, this is the most disconcerting aspect of the whole matter. But there is one other thing which needs to be considered in this connection. Can the morale of the force or the discipline improved through the passing of such an amending act only? It is never possible to do that. Just by making the legal provisions more stringent it is never possible to improve that discipline or boost the morale of the force. The Border Security force was formed primarily for maintaining the security of our border areas, considering the undesirability of maintaining the presence of the army there at all times. But in later years we found that instead of protecting our border this very force was being used in the interior of the country for suppressing and breaking up people's democratic movements for their democratic rights. We have seen that the BSF was used for breaking up the railway strike. Of course the BSF is sometimes used to help the State Governments in times of natural calamities like floods etc. But there is the other side that this force is used for suppressing people's democratic movements like breaking up the railwaymen's strike etc. This is totally undesirable and inadvisable. This will naturally adversely affect the discipline and morale of the force.

Another thing needs to be seriously

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considered by the Government. This force has been set up with a strength of over 1 lakh, personnel. If the service matters and administrative matters of the personnel of this force, right from the lowest rank to the highest rank, from a constable to the D.G. are not governed in a clear cut, well defined and disciplined manner, we certainly cannot expect this force to give their best and fulfil the expectations of the country from them.

Sir, recruitment to the post of assistant commandant of the BSF was at a standstill for the last 7 years. There was no recruitment to this post. Only last year a few appointments have been made. Moreover, the constables, the BSF cadre officers etc. in this force do not have the same facility and avenues of promotion as is available to the army or police personnel. Sir, many BSF personnel are posted in far flung, inaccessible and difficult border areas, where they are engaged in providing security to our borders. Some are posted in Kashmir, some in Ladakh or in Nagaland etc. The Government should consider how to provide them more amenities, avenues of promotion and better facilities of work, housing facilities etc. Their legitimate demands should be considered sympathetically by Government. The promotional facilities for the BSF personnel are gradually shrinking.

Sir, a constable in the BSF has to wait for 12 to 14 years before he gets a promotion. A commandant stagnates for 20 years in the same post without any opportunity of promotion. There are 27 posts of D.G. in the B.S.F. One post has been upgraded as I.G. But the remaining officers see no hope of promotion. They do not know to which higher post they will get a promotion. The picture is very bleak for them. Therefore side by side with this amending Bill, the Government should also think how to boost the morale of the BSF personnel. Further, Sir, merely saying 'smuggling' is not enough. The whole House must know what is the nature of trans-border crimes that are taking place, what is the magnitude of trans border infiltration. How many

personnel of the BSF are associated with arms smuggling? They have been entrusted with protecting our borders! What are the specific allegations against them? I hope the hon. Minister will kindly inform us about all these things while replying to this debate. I support this Bill but I will again urge upon the Government not to use the BSF, which was primarily constituted to protect our borders, for suppressing the peoples' movements, the workers movements and other legitimate democratic movements in the country. This must be seriously considered. Our is a democratic country and the use of BSF for suppressing peoples' democratic movements will only vitiate the atmosphere. The Govt. must keep that in mind. Thank you, Sir.

[English]

SHRI RAJ MANGAL PANDE (Deoria) : I rise to support this amending Bill which is really a very laudable one, provided the purpose for which this amendment is being presented here in this House, serves its full implications and purpose.

This Parliament meets for about six months a year to conduct its business and hundreds of laws are enacted every year and to my knowledge, there is hardly a law which has not undergone substantial changes, either in the form of some additions or some proviso being added to it. But the fact is that when these people were tried by the ordinary law, then the situation of crime was not so bad as we are having it at present. So, the one question that could be put to the Government or anybody in charge of administration is how is it that when the accused of all offences were tried by the ordinary courts or by the Special Magistrate Courts or by the Magistrates of First Class, then the crime situation was not so serious and the people were not used to behave that way as they are doing at present? With every amendment that we are going in for, the rate of crime is increasing and there is no guarantee that even with this amendment, the crimes in the BSF like collusion in smuggling and intrusions into our territory and all that with mala fide intentions,

could stop. Because we have many other laws which curb these things but in spite of it, the crimes have increased and are on the increase. The only point that is to be considered is ; how to educate our society and our people so that the sense of security in the minds of the people and those who are used to commit such offences may be prevented either by use of force or by some such device which may inculcate in them a sense of education that in the interests of the nation and in the interests of the social order that such crimes are stopped and which will help in raising the standard of human behaviour and our social order because the other countries who have taken lessons from us and whose spiritual integrity was not so high as we had, are now more advanced either in spritual standards or in standards of integrity and we who were once the inspiring force to the world are now lagging behind. This should cause great concern to us.

Now, with all the rules and regulations that we are going in, we do not think that there should be a remarkable change in the BSF set up unless the machinery to implement all these laws are such, so competent, so efficient and so honest as to see that the laws are implemented and enforced with all its sincerity and with all the rigours that it demands. There is no dearth of law to curb all these crimes but in spite of it, if the crime is on the increase, then we have only to think that it is not the law which alone can stop the crime. It is something more and that something more is the will of the people, the will of the Government, the will of the politicians and the will of the people who constitute the nation. Now it is for each one of us and it is our onerous duty to see to it that these things do not recur either in the shape of BSF or even in the military organisation.

Now is it the BSF alone to be blamed ? Is it not there in the military force where also there are many cases of this nature and many colonels and Major Generals have been tried and convicted and many cases are there still on the list ? So, it is not just by enactment of a law or

amendment of a law that we can stop the crime. Something more is required and that something more is the will, the political will of the Government, the political will of the Parliament. We here in the Parliament talk of many things but outside the Parliament, in some way or the other, we are also as much a factor to contributing to all these offences as anybody else because somehow or the other we help them, we encourage them, we shield them and we protect them. So, in my humble opinion, it is not the law alone or a substantial change or amendment of the law that will go a long way to stop the crime either in the BSF or in any other organisation. Of course, the situation in the Punjab is a clear example that the BSF on the border have not been so alert or have not done their job so nicely as was expected of them. But all the same our total national character has gone a little bit down. You may take the case of Army, politicians, ordinary policemen and even those who have been given exemption in Income Tax limit. Now, there is an impression that our hopes could be belied as these people might not come forward with a clean hand to file their returns.

So, when the national character has gone down, it is not the law alone which will be able to effect the necessary change but what is required is education, political will and concerted effort by all those who constitute the nation. I support the Bill but the Bill by itself will not enforce the law. The machinery has to be tightened. If the implementation machinery is not tightened then nothing will happen.

**SHRI SHYAM LAL YADAV** (Varanasi) : Mr. Deputy Speaker, Sir, the present amendment is not very material in the sense that it does not give details about the re-organisation of the Force or its duties or its performance. The only aspect that it wants to cover is trial of BSF personnel for offences that are covered under the Criminal Law (Amendment) Act and because it has been found that these personnel are likely to commit some offences which usually are called civil offences and which are pro-

[Shri Shyam Lal Yadav]

vided under the Criminal Law (Amendment) Act to be tried by a special judge.

My submission is that BSF is not a military organisation. It does not have that type of hierarchy or discipline. The entire conception of Military, Navy and Air Force is quite different from the BSF. The composition of BSF itself is a 'khichri'. People from different Services are brought in BSF. In the higher positions, particularly, Indian Police Officers are brought in. What will be their position? Will they be tried under the new provisions or by the rules framed under their own Service. The lower rank personnel in this Force will be bound by this law. This law, I think, makes a little difference. It abridges their right to seek the help of lawyers from outside or to seek the transfer of cases from one court to the other if they found the trial not being fair or prejudicial. So, all these impediments are there.

The discipline of the Force is not like that of Military. The Minister may explain why it should be placed at par with military personnel. In the Defence personnel there is a hierarchy from the Chief of the Army Staff to the lowest rank. If you build this Force on those lines and also enforce that discipline then it is a different matter. What we see is that BSF is not only on the border but it also discharges other duties at times of need and emergency. Its composition is not that of Defence personnel. So, the trial of cases should not be like that. Civil courts should have some right otherwise their right of fair trial will be prejudiced. Further, I do not think that BSF has got that elaborate arrangement as they have got in the military. It is a mixed force and as I said, the respect which the police personnel get in the country is well-known to us. The confidence of the people on the impartiality and the behaviour of the Police in different States is not so high as it should be and the people in general do not have that much confidence in them as they have in the military, Air Force or Navy personnel. The Police do not command that. Therefore, my submission is if this law is amended, their

right will be abridged. Otherwise they will have more facilities and assistance. In the case of the Supreme Court judgement that has been referred to in the Statement of Objects and Reasons, that judgement pertains to the personnel in the army and that judgement comes into conflict with the Army Act. It was but natural that that should have been amended as it was done in the case of army personnel. But that judgement I think, is not applicable in the present case, that is, in the case of B.S.F. and the Security Force Court's jurisdiction should be made applicable only to small offences concerning their service or discipline, but not serious offences because the duties that are cast upon the B.S.F. as it has been enumerated in the Statement of Objects and Reasons have been provided in the rule itself, that is, only to prevent trans-border crimes, unauthorised entry into or exit from the territory of India and secondly also to prevent smuggling and any other illegal activities. These duties are also discharged by the ordinary police, by the Coast Guards also and by the officers of the Customs and Excise Department also. These duties are discharged not only by the B.S.F. but by other agencies also. If this principle applies in the case of B.S.F. then why should it not be applicable in the case of other people also? They will also say that they should have their own courts and have their own method of trial. Moreover, the B.S.F. is not a big force like the Navy or Army where it involves having their own courts. Therefore, the example cited here is not proper in the case of B.S.F. It will give some special powers to the officers who are coming from the ordinary police force mostly. The personnel from this service only go to a certain level, upto the level of Superintendent of Police or something like that. Now, you are taking officers from the Police and not from the military service. Why don't you take officers from military also because the people in the police are rejected people? They have not created confidence in the people. Why do you import these incompetent officers in the B.S.F.? Why not bring personnel from the army, Ex-servicemen who have created great confidence in the general

public. They have that sense of discipline and they have that sense of impartiality and they are not brought here. The B.S.F. have got semi-military duties. If the personnel from the army are brought in here instead of Police, it would be better and they would be more efficient, more honest and they will discharge duties more efficiently.

**SHRI K. RAMACHANDRA REDDY** (Hindupur); Mr Deputy-Speaker, Sir, so far as this Bill is concerned, I don't quarrel with the amendment, but I quarrel with the Government with respect to its form, its inefficiency, lack of perspective and all other things in bringing forward this Bill before this House.

In the Statement of Objects and Reasons, it has been stated :

"In the recent past, cases have come to notice where personnel of the Border Security Force have shown connivance with smugglers and infiltrators after accepting consideration in the form of money or goods."

This is a very sweeping allegation against the Border Security Force. If the Border Security Force was so bad, so awful, what was the Government doing all this time? Have they booked these persons for offences of corruption, and if so, what was the impediment for their trial by the special courts? Why has this legislation been resorted to? It has not been made clear in the Statement of Objects and Reasons.

To my mind this legislation is piecemeal and confusing. Sweeping remarks have been made against the Border Security Force. In this way, I do not think, they will be in a position to check the offences whatever they may do.

As I said, the whole thing is very confusing. Previously, people charged with offences of illegal gratification etc. used to be tried under the Criminal Procedure Code, Sections 161 to 165A. Then, in 1952, the Government thought that the

regular procedure of trial by the regular courts was not sufficient and they wanted special courts, and for that the Criminal Law Amendment Act, 1952 was passed. Then, in 1965, they thought that this law was not sufficient, and they wanted to take away from the purview of this Act offences pertaining to army and navy personnel etc. and they made another law. Now, they have come forward with this Bill saying that the Acts of 1952 and 1965 are not sufficient and they want to take away from the purview of this law offences committed by Border Security Forces. Is this not confusing? What is the difficulty that the Government has encountered in enforcing the present law? Are the special courts not doing the work, or are they are not sufficient to punish the offenders? All these questions have not been answered.

As a lawyer, who has been practising for the last thirty-two years on the criminal and civil side, I can say that we are suffering from too much of legislation, and very poor implementation. It is not that we do not have laws, but we are not able to properly implement them. That is why, Government is resorting to this sort of legislation in a piecemeal, haphazard and confusing manner. This must be avoided. Why don't you bring forward a comprehensive legislation in order to punish people in all walks of life, who indulge in illegal gratification? Why have different laws for different sets of people? Why don't you bring forward a comprehensive legislation to cover all categories of people?

As far as this law is concerned, I am not able to understand it. Even though I do not quarrel with the amendment, I am not in full agreement with the way the Bill has been brought. Why has this been brought, what are the objects and reasons—all these things have not been told. They must remember that we are suffering from too much of legislation, and we must try to have less number of laws, but we must ensure their proper implementation. You must bring forward a comprehensive law with a prospective view. I hope, the Law Minister would consider this aspect and enlighten us.

THE MINISTER OF STATE IN THE MINISTRY OF PERSONNEL AND TRAINING, ADMINISTRATIVE REFORMS AND PUBLIC GRIEVANCES AND PENSION AND IN THE DEPARTMENT OF CULTURE (SHRI K.P. SINGH DEO) : Mr. Deputy-Speaker, Sir, first of all, I would like to thank the hon. Members from both sides of the House for their unanimous support to this amendment, although some of the Members have made some very weighty suggestions and added riders to their speeches. Some hon. Members have given bouquets as also brick bats to the Border Security Force. They have also referred to the training, morale, discipline, conditions of service, pay and allowances and utilisation for law and order situations. Sir, I would like to take this opportunity to just mention again—even at the fear of being pulled up by Shri Indrajit Gupta for reading out something, I can only say that I do not have a computerised memory like that of our very distinguished parliamentarian Shri Indrajit Gupta....

SHRI INDRAJIT GUPTA : I only objected to his reading out something which has already been provided to us. He can certainly read out what has not been provided.

SHRI K.P. SINGH DEO : I do not take umbrage to what he has said. I have taken it in the spirit in which he has said it. I am willing to learn from the hon. member, who is a very senior member and I shall certainly try to satisfy him next time, when I move another Bill or Amendment. Sir, as far as hon. members are concerned they can make various general statements, verified or unverified, which I cannot afford to do at the risk of being contradicted or at the risk of being pulled up or at the risk of being also faced with a privilege motion and I cannot put Government's stand in any other manner, but in the correct stance. Therefore, I shall have to refer to my notes and I do not wish to rely on my memory alone.

The Border Security Force came into being on the 1st of December 1965.

Upto November, 1965, the policing of international borders was entrusted to the armed police battalions of the concerned State Governments maintained out of central grants and the training, mobility and effectiveness of those battalions varied from State to State. This is exactly what the hon. member Shri Yadav referred to as 'kichiri'. But this was 20 years back, in 1965. Therefore, in order to bring about uniformity in these forces and to have direct control over them, the Border Security Force came into being from the 1st of December 1965, where a large number of State armed battalions were subsequently merged into a newly created Central Force. The objectives and the emphasised functions of the Border Security Force under the Border Security Force Act 1968 and the Border Security Force Rules, 1969 were—(1) promote a sense of security among the people living in the border areas; (2) prevent trans-border crimes, unauthorised movement into or exit from the territory of India; and (3) prevent smuggling and any other illegal activity.

Therefore, the Force is deployed on the land frontiers of the border areas, starting from Jammu and Kashmir till the Eastern Sector, which may be in the periphery of the constituency of our hon. member, Shri Indrajit Gupta. As far as the reverain or the maritime areas are concerned, it is not the function of the Border Security Force.

SHRI INDRAJIT GUPTA : BSF is patrolling the area.

SHRI K.P. SINGH DEO : I said the land frontiers.

Sir, under the Criminal Law Amendment Act, 1952 all cases of corruption and misuse by official position for private gains are triable by special judges, notwithstanding anything contained in the court of Criminal Procedure or in any other law. The offences specified are those punishable under Section 6(1) of the Criminal Law Amendment Act, to which every hon. member has made a reference. Practically all members have made a reference to Section 161 of the

IPC, which is—public servants taking gratification other than legal remuneration, in respect of an official act; Section 162 of IPC—taking gratification in order, by corrupt or illegal means, to influence public servants; Section 163 of the IPC—taking gratification for exercise of personal influence with public servants; Section 164 of the IPC, abetment of public servants in offences defined under Sections 162 or 163 of the IPC; Section 165 IPC public servants obtaining valuable things without consideration from persons concerned in any proceeding or business transactions by such public servants, Section 165(A) IPC abetment to offences defined under Section 161 or 165, and Section 5 of the Prevention of Corruption Act in the criminal misconduct. So it was only in 1961 in the case of *Major E.G. Barsey vs. State of Bombay* it was held by the Supreme Court in view of the language of Section 7 of the Criminal Law Amendment Act 1952. The special judge had exclusive jurisdiction to try any such offences and the mere fact that any such offences might also be an offence under the Army Act would not be of any relevance to a case where the general Act in expressed terms confers jurisdiction of a particular tribunal in respect of specified offences to the exclusion of anything contained in any other law. Therefore the Ministry of Defence felt that the exclusion of jurisdiction of the Courts Material in these cases was bound to affect indirectly the discipline and efficiency of the armed forces personnel. Trials by Civil Courts in these cases were not practicable, as such trials can only be unduly protracted, resulting in the witnesses and records getting tied up. The practices followed by Service Headquarters was to have cases tried by the Courts Martial, if only service personnel are involved and to leave them for trial by Criminal Courts if both service personnel and civilians were involved. Therefore the Criminal Law (Amendment) Act 1952 was amended through an ordinance in 1965 and replaced by the Criminal Law Amendment Act 1966 to save the jurisdiction, exercisable by the Court Martial or by other authority under the military, Naval or Air Force Laws and to validate the trials held. So

in this case the reference to Military Law, Naval Law and Air Force Law has been questioned. But this is the usage in usual parlance and this has also been reflected in the Supreme Court judgement in these *Major E.G. Barsey's* case. So, I hope, that clarifies why the words "Army Act Navy Act and Air Force Act" have not been used and why the word 'law' has been used.

Sir, I mentioned that the Border Security Force was created in December, 1965 for policing the borders of India. And in order to have the higher standards of discipline in the force, the Border Security Force Act was passed by Parliament in 1968. This Act was somewhat akin to the Army Act, 1950. And what is sought to be done now is only to add that word "BSF" after the words "Air Force Law", that is, to bring it in consonance with the Military Law and Naval Law and Air Force Law, but somehow much also has been done about nothing and lot of criticisms or comments have been passed on the BSF, about its functioning; about its discipline; about its competency; and about its effectiveness. Sir, in my humble opinion such a general statement is neither conducive to morale nor the efficiency of a force. Hon. Members keep on doing this without substantiating any of the comments which they have made because B.S.F. might have erred in one or two places as being illustrated by Shri Indrajit Gupta, but by and large it has been doing very effective work, wherever it has been deployed, whether side by side with the armed forces in the 1971 war or whether during the peace time when we have had no action with the enemy forces, but may be with hostile elements and therefore to run it down, I do not think it is conducive either to morale or effectiveness for improvement of the force. Therefore, Sir, I would like to refute it with all the emphasis at my command, these general comments which have been made. Government has come to this House with the amendment, because in the recent past i.e. in 1982, cases have come to notice where the personnel of the BSF have shown connivance with the smugglers and

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infiltrators, after accepting consideration (*Interruptions*) in the form of money or goods.

If I do not come to Parliament and say the truth, I will be hauled up; if I conceal, again I am being hauled up. Then I really do not know what the hon. Members want. They do not want me to be truthful... (*Interruptions*)

I never objected to anything they said; neither did I do a running commentary. May I expect the same courtesy from the hon. Members?

PROF. MADHU DANDAVATE : Let him have a parallel development of thinking, of what to reveal and what to conceal.

SHRI K.P. SINGH DEO : I have revealed everything; I have concealed nothing. Neither am I scared of revealing to the hon. House what should be revealed in the national interest.

SHRI INDRAJIT GUPTA : Was any action taken since then?

SHRI K.P. SINGH DEO : I am coming to that, if you kindly allow me to proceed. Therefore, this amendment has been sought, so that the trials can be done summarily as well as swiftly, so as to maintain discipline and efficiency of the Force, because it is deployed in the border areas, and the apprehensions about a long-drawn-out trial by Special Judges which will be detrimental to the efficiency of the fighting forces—about which many of the Members spoke—can be taken care of.

The Border Security Force has a system called Security Force Court, which is similar to the Court Martial in the Army; and in 1983, trial by Security Force Court numbered 94; in 1984, 140; and in 1985, 71. Summary Punishments have been, in the corresponding years, 2210, 2178 and 1372—this year.

Summary Punishments are of various degrees, unless you want me to read out the entire Act.

An hon. Member said that it was a very small Force; therefore, this is redundant. I would like to say that there are published figures which have been laid in the Houses of Parliament regarding the size of the armed forces. At the moment, the size of the BSF is 90,000. This is also published. So, this is not a small Force. We are bringing in this amendment, so that the very point which the hon. Members have made, on the effectiveness, honesty as well as discipline of the Armed Forces and the Border Security Force are maintained at a very high degree.

May I come down the points which have been made by the hon. Members? The first hon. Member who spoke on today, said that Government should carry out a study on the various para-military forces, and that a Committee should look into the overlapping of it. Since, for the BSF, the cadre controlling authority is the Home Ministry, I shall certainly convey the suggestions of the hon. Members to them, it, to see whether they could examine this aspect of setting up a Committee...

Shri Tripathi mentioned about Nepal, and he welcomed this amendment. Then Shri S.N. Sinha wanted to know whether there have been any arrests, and whether there were connivance and collusions, and whether these were serious. It was because they are serious that we have come forward with this amendment; and I would like to mention that there were 47 cases in which this sort of a thing has come to our notice since 1982. This is 1985; therefore, not an unduly long time has gone in bringing in this amendment. Out of these cases, all were convicted; and 32 persons have been dismissed from service. In 1965, when it came into force, we could not have had hindsight that this sort of thing will happen, because this was to be disciplined force which was formed from various small forces, and, therefore, this is the reason why we came forward with the

amendment now only when it come to our notice from 1982 onwards. Shri Sinha also said, it is a fighting force, and, therefore, the morale, the discipline and maintenance of this force is of the highest importance. I agree with him 100 per cent. Then he also mentioned about induction of IPS Officers. Shri Yadav mentioned about getting in military officers and also IPS Officers. Now, the present form of recruitment is direct recruitment in the rank of a Constable upto the Assistant Commandant from the open market, that is direct recruitment. Other officers in the rank of DIG and above are taken on deputation both from the army as well as from the Indian Police Service, and for the rest of the ranks like Commandant and Additional DIG, the appointments are made from promotion of its own cadre. So, every force likes to have its own cadre. So is with the BSF. So, there is a variant.

Some members want that people should be inducted from the army and the IPS ; some other members want that it should have its own cadre. Therefore, it is a matter of opinion. I am sure, the Home Ministry is seized of the matter and they are going ahead with it.

Shri Raju has welcomed the amendment and has appreciated it and has given his whole-hearted support and has asked for a comprehensive Bill on CRPF, BSF, RPF and ITBP. He also referred to the ARC Report by Shri Hanumanthaiah. I am sure, the Home Ministry will also look into it and consider his point.

Shri Shantaram Naik objected to why the word 'military law' has been issued. I have said this is because of the language in usage, and I am sure—he is a knowledgeable person in the legal profession—he will appreciate it, and I shall convey to the Law Ministry whether they can see whether CRPC can change its usage in the drafting language which he has suggested. He has also mentioned about the modality involved in trapping. I will not refer to anything here regarding that. I am sure, the Home Ministry will look into it.

I have answered Shri Indrajit Gupta's point that it was over due. This incident came to our notice in 1982 and it started recurring, and therefore we first got the opportunity in 1985 and we have brought this amendment. I have also mentioned what action has been taken so far of the people who have come to our notice.

**SHRI INDRAJIT GUPTA :** How many of them were of the officer rank ?

**SHRI K.P. SINGH DEO :** I do not have the data readily available, But I can look it up and let you know if you so desire.

Shri Virdhi Chander Jain also welcomed it. I am grateful to him for having suggested that for their cadre and morale, they should be given improved pay and allowances and perquisites and welfare measures. I can only agree with him and say that government is committed in improving the conditions of service of our para military and armed forces, and I shall certainly expect him to help the government in passing it through whenever such proposals come to the House.

**PROF. N.G. RANGA :** Especially housing conditions !

**SHRI K.P. SINGH DEO :** Housing, accommodation, children education, boarding facilities. These are the things about, which the Prime Minister has directed the various Ministries to look into and we are exercised on this latter.

Shri Vyas said about separate training. BSF, as you know, is being trained in Tikampur where they have got their academy, and they are separately trained apart from the armed forces personnel or the police personnel.

Shri Anil Basu has also referred to the amenities.

As I said, Government is committed to improve the conditions of service, their morale and integrity.

[Shri K.P. Singh Deo]

Shri Raj Mangal Pande also, while supporting the Bill, asked what guarantee was there that it would stop. It is a question which is far beyond me and I think, even this House. In spite of so many legislations the crimes continue to be committed and now the criminal world is also replete with people of intelligence and obvious and diabolical means and therefore, our efforts will be to equip our para-military forces and Police force with the proper training and wherewithal of modern times so that they can tackle effectively this very intelligent and sophisticated criminal mind which is at work to create problems for us and to destabilise the country through external aggression or internal disturbances.

I have answered most of the points raised by Shri Yadav, I think. Again, I would like to emphasise that it is not correct to say that the BSF officers do not command respect and that they do not have honesty and integrity, and that they are incompetent. There may be some stray cases. I would like to ask, which organisation does not have some black sheep or incompetent officers in its ranks. Even our own fingers are not all equal. Even our hands, both the hands, do not do equal work, unless one is an ambidextrous.

Shri Reddy does not have any quarrel with the amendment though he says that his quarrel is with the Government. He only says that in his 32 years of legal practice, he has found that there is too much of law. Not having had the experience of the law courts, I would not like to join issue on that.

Once again, I would like to take this opportunity to thank this hon. House and the Members for their willing support and the Government has taken note of the very weighty suggestions which we shall examine and implement them if they are found worthy.

MR. DEPUTY-SPEAKER : The question is :

“That the Bill further to amend the Criminal Law Amendment Act, 1952, be taken into consideration.”

*The motion was adopted.*

MR. DEPUTY-SPEAKER : We shall now take up Clause by Clause Consideration of the Bill.

Mr. Mohanty, are you moving your amendment or are you withdrawing it ?

SHRI BRAJAMOHAN MOHANTY (Puri) : I beg to move—

Page 1, lines 6 and 7,—

for ‘the brackets, words and figures “(including the Border Security Force Act, 1968)” shall be added.’

*substitute—*

‘the words “or the Border Security Force Act, 1968;” shall be added’ (1)

MR. DEPUTY-SPEAKER : I shall now put amendment No. 1 to Clause 2 moved by Shri Brajamohan Mohanty to the vote of the House.

*The amendment No. 1 was put and negatived.*

MR. DEPUTY-SPEAKER : The question is—

“That Clause 2 stand part of the Bill.”

*The motion was adopted.*

*Clause 2 was added to the Bill.*

MR. DEPUTY-SPEAKER : The question is—

“That Clause I, the Enacting Formula

and the Title stand part of the Bill.”

*The motion was adopted.*

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

SHRI K.P. SINGH DEO : I beg to move :

“That the Bill be passed.”

MR. DEPUTY-SPEAKER : Motion moved :

“That the Bill be passed.”

SHRI BRAJAMOHAN MOHANTY (Puri) : It is unfortunately that I have been denied the opportunity to explain the purpose of my amendment. I suggested some improvement in the draft. As a matter of fact, it has been negatived, otherwise, the Minister might have considered to accept it.

So far as the Section for which this amendment is going to be adopted, I am afraid the Bill should have been more comprehensive.

First thing is that the amendment is prospective in operation. What does it mean? It means that if any offence was committed yesterday, it will be governed by the existing Section 7 of the Criminal Law and not by this amendment. I feel that it should have been given retrospective effect; otherwise the offence committed in 1982 will not be governed by this Act. That is the limitation in this Bill.

Secondly, the marginal note of Section 11 should have the consequential amendment. There the Border Security Force Act 1968 should have been added and amended.

Thirdly, so far as the Air Force Law is

concerned, it does not stand in genetic position in relation to BSF Act 1968. So, instead of ‘including,’ it should have been ‘or’.

I would like the Minister to clarify these points.

SHRI K. RAMACHANDRA REDDY : The 1952 Criminal Law Amendment Act, subsequent Ordinance of 1965 and then Amendment of 1966 take away the jurisdiction of the ordinary courts from the purview of the ordinary law. This amendment of 1952 vests jurisdiction in a Special Judge. The present amendment takes away the BSF from the purview of the 1952 Amendment. If that is so, the jurisdiction of the original Cr.P.C. is restored. So, there is a conflict as to whether this Act is to be followed or the BSF Act of 1968 is to be followed. Instead of resorting to this sort of amendment, you could have amended 1968 BSF Act thereby introducing a clause ‘Notwithstanding anything contained in any other Act, this Act will prevail’.

SHRI K.P. SINGH DEO : Sir, it does not take away the jurisdiction. The only thing is that such types of offences like corruption and the reasons which have been brought forward, can only be tried by a special court and a special judge. We are only making it in consonance with the Army Act, the Navy Act and the Air Force Act. This is only an enabling Bill to allow court marshals of the security force of the BSF to try such offences.

MR. DEPUTY-SPEAKER : The question is :

“That the Bill be passed.”

*The motion was adopted.*