

(Prof. Madhu Dandavate)

This Parliament should be taken into confidence. They should tell us what are the facts. If at all everything that I have seen actually is proved to be wrong, I will be the happiest person. But if it is proved to be correct, it will be a story of agony and an anguish.

There is no obligation according to the rules that the Minister should make some statement. But the matter is so serious that, I think, he should make a statement.

I would conclude by referring to one tragic episode. I met some sisters there belonging to the Muslim community and they told me the way they were harassed, their property looted and their children beaten. I told them that I will raise this issue in Parliament and I will appeal to the Prime Minister. She is not merely the Home Minister, she is not merely the Prime Minister, but she is a mother. I appeal to her motherhood, in all sincerity, and I would request her that she should take cognizance of these facts and that some one should be deputed to enquire into the matter. Through you, Sir, I would request the Minister concerned to make some statement in this connection.

SHRI S. M. BANERJEE (Kanpur) : Sir, kindly allow me to make a submission. While supporting Prof. Madhu Dandavate's contention, I may point out that we gave the Call Attention Notice on the first day itself, on the so-called riots whether in Aligarh or in Banaras. Some Members of Parliament met the Chief Minister also. They pointed out what happened in Banaras, what happened in Ferozabad, about P.A.C. atrocities. This may not be a communal riot; only a communal tinge may be there. But it is a fact that the atrocities committed by the P.A.C. men are unheard of. I would request the Minister, through you, Sir, to make some statement to restore confidence in the minorities.

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI K. C. PANT) : Ordinarily, I would hesitate to make any statement because this is a matter concerning the State Government. But my hon. friend has referred to many specific instances. I think, it is necessary for me to dispel the impression that the State Government is not making adequate enquiries

into the matter. As a matter of fact, the I.G. of Police along with the Commissioner was deputed by the State Government to enquire into these incidents in Ferozabad and the I.G. of Police, along with other Commissioner, was deputed to enquire into the incidents in Banaras.

Certain M.Ps visited Ferozabad and Banaras and brought to the notice of the State Government as well as the Central Government the nature of some of the incidents that had taken place. The State Government thereupon informed us that in 28 cases in Ferozabad and 20 odd cases in Banaras where specific allegations had been made, the UP CID was holding an inquiry, and in view of the sentiments expressed by various hon. Members and others, the UP Government asked us to depute one of our senior officers to make a further inquiry along with their Chief Secretary. So, we sent a Joint Secretary from the Home Ministry to Ferozabad and the Chief Secretary joined him and they also held a joint inquiry and we have yet to receive a report from them. In due course, these two officers will also go to Banaras to make a further inquiry.

12.42 hrs.

DIPLOMATIC RELATIONS (VIENNA CONVENTION) BILL—Contd.

MR. SPEAKER : Dr. H. P. Sharma was on his legs.

DR. H. P. SHARMA (Alwar) : Yesterday, I tried to place before the House the necessity of the inviolability of the accredited representative of a nation so that he could discharge his duties freely. In that context I had also said that he also needed immunity from the criminal and civil jurisdiction of the host country. The Vienna Convention grants total immunity from the criminal jurisdiction but immunity from civil jurisdiction is granted only in a modified form. It follows from this that if this intercourse is to be fruitful, the envoys have also to be extended immunity from the Police jurisdiction...

श्री हुकूम खन् ब कछबाय (मुरैवा) :
अध्यक्ष महोदय, मैं आपकी व्यवस्था का बहुत हूँ। सदन में गणपूर्ति नहीं है।

MR. SPEAKER : Let the bell be rung...

Now, there is quorum the hon. Member may continue.

DR. H. P. SHARMA : I was saying that the envoys have also to be extended immunity from the Police custody. There is one facet which creates regular problems on this question of Police custody. That is the violation of the traffic laws of the host country. While, on the face of it, it does not appear to be a very important question, but when we consider that when it is repeated over and over again, it certainly creates bad feeling between two nations. I would just like to cite the case of New York. In New York there are over 5000 to 6000 accredited diplomats. If you can visualise 5000-6000 cars, zooming through the streets of New York and parking where they will, certainly it creates a very difficult situation. In such cases, the usual practice is to request the diplomatic community to employ what is called intelligent restraint. The restraint is not legal restraint as such but it is intelligent restraint which means that the envoys have to respect the traffic rules and other similar rules of the country.

A few words about the customs privileges. Most of the nations grants the envoys the facility of importing goods free of import duties. But most writers agree that this immunity does not rest on the mandatory rules of international law. It is more a case based on international comity and courtesy. In our own country we have been faced with the abuses of this Act. Rules had to be made to curtail the abuses of the law. We are not the only country which had done so. There are other countries like Canada. The import of the cars is not allowed there unless there is a certification of necessity from the heads of the mission. In the U.K. and in France also the envoys are not permitted to sell their cars, but they are supposed to take their cars back. In our country we have also followed the practice of putting similar restraints that they can either take their cars back or sell them through the S.T.C.

While we have talked so far about the privileges and immunities that are essential for the functioning of the accredited representatives, there is also

the question of the security and welfare of the host State. If the envoys in any way violate or abuse their privileges and indulge in activities that go against the security of the State, the host State is perfectly in order to protect its interests. One of the most celebrated cases along this line was the Canadian Case of *Rose versus the King*. The stolen documents from the Russian Embassy were allowed to be presented before the court even though the documents of that kind can be a matter of privilege. They were allowed to be placed before the court and in that case the court came out very clearly that, where it becomes a question of the security of the State *versus* the privileges of the envoys, it is the security of the State which will receive priority. There were some very important issues raised in that case. The judgment said that diplomatic immunities are not absolute, but they are relative. The other one is this. Diplomats do not have unlimited scope for exercising their rights but are bound by two fundamental rules. The first is that they owe their fidelity to the State which sends them. The other one is, they also have to honour and respect the sovereignty of the host State and whenever this test is violated, whenever this power is violated, then, it is perfectly legitimate to interpret that he has already disavowed his privilege of inviolability. I say this because in the post-war year, there were so many cases where the question of security was involved, it did create extensive problems. Now we are at least on some kind of agreed basis that whenever the two are in direct conflict, the security of the State will always prevail.

Then there is the doctrine of the practice of reciprocity which has provided the basic guidelines of State practice after World War II. In following this practice, the States declared the envoys of other countries *personae non gratae*. They have used reciprocity in closing of libraries, halting of mission publications, imposition of travel bans and imposition of customs bans. The Soviet Union has clearly stipulated that reciprocity will be the only basis for its extending privileges to diplomatic couriers and exemptions from duties, taxes and baggage inspections. The courts have also put their stamp of endorsement on the principle of reciprocity. I want here again to

[Dr. H. P. Sharma]

cite a case which received extensive attention and which was a matter of public debate and debate in Parliament in the United Kingdom.

There, the question had been raised that the Soviet Union was not extending to the British Mission personnel in Moscow the same privileges that the UK was extending to the Russian personnel in London. A committee was asked to go into the question in depth, and Lord Somerville was made the chairman of that committee and he came out with a report and that was adopted and Parliament took cognizance of it and passed the Diplomatic Immunities Restriction Act of 1955. What I am trying to point out is that this question of inviolability of the accredited representatives is not a blanket right, it is not an absolute right but it is modified by a few considerations, one of which is security and the other is reciprocity. This position was never seriously challenged, and now it forms more or less a universally accepted part of international concourse.

I would now like to say a few words about the amendments that have been made to the Bill. There are no substantive amendments. All that the amendments seek to do is to strengthen the Government's hands by way of reciprocity in taking any action which they may consider appropriate to take in order to protect their own interests.

The question has been raised in this House as to what was the rush or even the necessity for incorporating the articles of the Vienna Convention in the law of the land. It has been said that not doing so would have given us or the nation more flexibility of action and response. It has also been said by Shri H. N. Mukerjee that it is our attempt to be goody-goody with all other nations that had prompted us to sign the international convention on diplomatic relations. With all due respect to him, I would say that this is not only unwarranted but unfair too, that every time the Government signs an international convention and brings forward a Bill, they should be put on the defensive and a sort of *prima facie* case should be sought to be made out that they have been trying to be goody-goody in the eyes of the Super Powers. As I have said,

that is not only unwarranted but unfair too.

It has also been said that even the United States has not incorporated these articles in her domestic laws. I stand corrected on this when I say that the USA does have legislation guaranteeing the inviolability of foreign mission personnel. I would like to quote just one statute in this connection. Revised Statute No. 4062 of the US Laws says :

"Whoever assaults, strikes, wounds, imprisons or offers violence to the person of an Ambassador or other public Minister in violation of the law of nations shall be fined not more than \$5000 or imprisonment not more than three years or both.

Whoever in the commission of any such act uses a deadly or dangerous weapon shall be fined not more than 10,000 dollars or imprisonment not more than ten years or both...."

What I want to point out is that this country does not take the cue for its action or inaction from what the USA does or does not do. We signed the convention on its own merits. Even there, as I have said, the USA does have that kind of law on its own statute-book.

In conclusion, I would like to say that this Bill does not bring any revolutionary changes. It only tries to put in a single statute the statement of the relevant rules and notifications that our Government have issued from time to time. This Bill which has the Vienna Convention as its base does not create or introduce any new or startling innovations; all that it does is to remove doubts and to develop the law and provide a uniform basis for the practice of law.

I commend this Bill for the acceptance of the House.

SHRI R. D. BHANDARE (Bombay Central) : Having found support from all sides to the Bill, I think it is not necessary for me to further support it. In fact, it has been supported by all, including Prof. H. N. Mukerjee. But it is also a fact that while supporting

it he made one or two observations not in keeping with his support. He asked why we should be so goody as to appear to the world that we are behaving like good boys. I think that criticism has no basis and no validity. As my hon. friend, Dr. H. P. Sharma, has already explained the position, the very basis of the codification of the Vienna Convention on Diplomatic Relations is that we have in our municipal law various ordinances, notifications etc. spread over in different Acts. All that we have done is to codify them. That is the purpose of this legislation.

Since it has been supported by the whole House, I also give my unstinted support to it

MR. SPEAKER: There are only 25 minutes left for this Bill.

The Minister may reply after the lunch recess.

THE DEPUTY MINISTER IN THE MINISTRY OF EXTERNAL AFFAIRS (SHRI SURENDRA PAL SINGH): Yes, Sir.

12.57 hrs.

The Lok Sabha adjourned for Lunch till Fourteen of the Clock.

The Lok Sabha reassembled after Lunch at Four minutes past Fourteen of the Clock.

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

DIPLOMATIC RELATIONS (VIENNA CONVENTION) BILL—*Contd.*

THE DEPUTY MINISTER IN THE MINISTRY OF EXTERNAL AFFAIRS (SHRI SURENDRA PAL SINGH): Mr. Deputy-Speaker, Sir, I am grateful to the hon. Members for their observations and comments which they have made during the course of the debate on the Vienna Convention Bill. Sir, as the Members have themselves said, this is a very simple and non-controversial Bill and its main objective and purpose is to give effect to the Vienna Convention to which India is already a party, and no legislative policy of any importance is involved in the Bill.

The House has given almost unanimous support to the Bill, and this, I

presume, is due to three reasons. Firstly, as the hon. Members are aware, the Bill was referred to the Select Committee, and during the deliberations of the Select Committee, this Bill was very thoroughly discussed; all the points were thrashed out, and the various suggestions and viewpoints put forward by the Members of the Committee were very well considered by the Government and the reply was given by the Government which, by and large, satisfied all the Members of the Committee. Secondly, Members also felt that this Treaty or the Vienna Convention was a successful treaty inasmuch as it provided a sound basis for the conduct of international relations in a dignified and orderly manner. For this reason it is essential that the Convention should be given the force of law in our country for its smooth implementation. Thirdly, a treaty like this, which affects rights of our citizens and which also imposes certain financial burdens on the State, cannot automatically become the law of the land; it has to be given the force of law by Parliament and it is for this purpose that this Bill has been brought forward.

We had of course been implementing the Vienna Convention through various methods like executive orders, notifications etc. But we found it to be an unsatisfactory arrangement. A number of difficulties arose which we were able to circumvent but we felt that the time had come when we should put such an enactment on the statute book.

During the course of the debate there was an overwhelming support to this measure, though one or two points were raised to which I shall refer now. Shri Somnath Chatterjee supported the Bill and he also described very ably why it was necessary to have a Bill like this, and said that privileges and immunities should be given to diplomats so that they can function properly. I am thankful for his support to this Bill.

Shri Mohanraj Kalingarayar while supporting the Bill raised two points. One was regarding the delay in ratifying and bringing forward this Bill. The Convention was adopted in 1961 and we ratified it in 1965. There is a gap of about 4 years. A large number of countries ratified it after India did; from that point of view

[Shri Surendra Pal Singh]

one cannot say that there has been a long delay. Before ratifying such a treaty the Government had to study it properly, before binding itself to it in a formal way it is normal for any Government to take 3-4 years to study the full implications. You will also appreciate that the period 1961-63 was not a happy one for us. We were busy with some other matters, and so we could not devote time to this matter. That was a contributory factor. Out of 104 countries which have so far ratified it, a large majority of them ratified it after India did. We are in the first half of the list of those who ratified it. Countries like Canada, Australia, Italy, Austria, Chile, Denmark and a host of other countries had ratified the Vienna Convention after India did.

In regard to the delay in bringing forward this implementing legislation, that was also basically for the same reasons, which I have enumerated for the delay in ratification. We had to see the enactments brought forward by other countries, what practical difficulties came in their way and how they circumvented those difficulties before we brought forward our own measure. Now we have studied the laws of some other countries, gained some experience and we have come forward with this legislation. So, I do not think much delay has taken place.

The second point raised by hon. Member was about the attitude of our government towards other countries which have not become parties to this Convention. As I have made quite clear this Bill is intended to apply to missions of countries which are parties to the Vienna Convention. Regarding non-parties, I should like to invite the attention of the hon. Members to clause 3 of the Bill which provides that the Bill will apply to the missions of only such non-parties to the Convention as have entered into a special agreement with the Government of India. If, therefore, India has diplomatic relations with a country, which is neither a party to the Vienna Convention nor has entered into any special agreement with India, our relations regarding privileges and immunities of diplomatic representatives will be governed by the international custom on the subject.

Coming to Professor Mukerjee, though he generally supported the Bill when speaking in this debate, somehow he does not feel very happy about it. In fact he has been criticising this Bill from the very beginning. Even though he has given his support, and even though he feels fully convinced that there is a need for bringing forward this legislation, somehow or other he does not feel very happy about it. He has a lurking fear in his mind that perhaps the Government of India is not able to, or is not willing to, take appropriate measures in response to any breach of this Convention by some other countries. He has gone so far as to say that we are trying our very best all the time to prove to the world that we are a very good and well behaved people that we are always offering our second cheek or the other cheek and that we are very meek. May I say in all humility that all these fears in the minds of the learned professor are unfounded and not really based on any firm proof? The Government of India deals in an appropriate way with cases of breach or misbehaviour with diplomats of our country in any part of the world. It is true that we maintain a certain amount of decorum and we do not behave in the same way as some countries have done sometimes because the standard of our behaviour is quite different from the standard of behaviour of some other countries. We are a civilised and cultured country and our response and behaviour is sometimes different from that of other countries. But that is no reason to feel that if there are any breaches or misbehaviour towards our diplomats abroad we are not in a position to retaliate or take reciprocal action. We always do that.

Professor Mukerjee in his speech said that India has never, even once, declared any foreign diplomat *persona non grata*. For his information I would like to mention that we have taken action against a number of foreign diplomats in our country.

Taking the Pakistan Mission, in September 1963 as many as four functionaries of the Pakistan High Commission were asked to withdraw from our country. A senior air force officer, a junior air force officer and two others were asked to withdraw from the country immediately for certain acts

which they had committed which were contrary to the Vienna Convention. In November 1963 the Government of India approached the Government of Pakistan for the withdrawal of their Second Secretary, one assistant and one driver. Later on, in December 1964, the Pakistan Second Secretary was withdrawn from New Delhi at our request. In January 1971 we declared their First Secretary *persona non grata*. So, Professor Mukerjee was not quite correct in saying that we have not taken any action in the past.

SHRI H. N. MUKERJEE (Calcutta-North-East) : In wrong point of time.

SHRI SURENDRA PAL SINGH : In the case of China also we took some action. Two of our officers were not treated properly in Peking. We retaliated and we asked for the withdrawal of two Chinese officials from their embassy here.

So, it is not correct to say that we are not taking action. But this much is true that we do not use very harsh or abusive language as is used by some other countries against us. That does not mean that we are weak or incapable of taking retaliatory action.

The general fear in the mind of Prof. Mukerjee is that by enacting this legislation, we are conferring some additional privileges and immunities on foreign diplomats, that we are placing our diplomats in other countries at a disadvantage and that all that we are doing is more than what we are committed to under the Vienna Convention. These are really unfounded fears. By becoming a member of the Vienna Convention, by ratifying it, it is our duty to fulfil all the obligations under it as far as practicable to the best of our ability. In this Bill, we are neither giving anything more nor less than what we are already committed to. So, such fears in the mind of the hon. Member are not really justified.

The whole thing is based on reciprocity and, if I may say so, on the principle of "Do unto others what you would like others to do unto you". If anything happens to our diplomats, if anything is done against them, the House may rest assured that we shall also take appropriate action.

I am grateful to Shri Sharma for giving full support to the Bill. While supporting the Bill, after elaborating a number of points, he said something about foreign diplomats obeying the laws of the country, respecting the laws of the country. That is incumbent upon them under article 41 of the Vienna Convention. All foreign diplomats in our country are supposed to respect the laws of the country. By and large, they have always been doing so. There is no question of not showing any respect to the laws of the country. So far as the question of our security and the question of foreign diplomats' privileges and immunities are concerned, if the two are in a clash, certainly, we give priority to national security. Obviously, the national security is upper-most. If any diplomat does or says anything which is likely to jeopardise our national security if anything is done against our national security, we have got ample powers to take action against that diplomat.

Sir, these are the points that the hon. Members made to which I have replied. With these words, I commend this Bill to the House.

MR. DEPUTY-SPEAKER : The question is :

"That the Bill to give effect to the Vienna Convention on Diplomatic Relations (1961) and to provide for matters connected therewith, as reported by the Select Committee, be taken into consideration."

The motion was adopted.

MR. DEPUTY-SPEAKER : There are no amendments whatsoever. I will put all the different clauses and different parts of the Bill to the House.

The question is :

"That clauses 2 to 11, the Schedule, Clause 1, the Enacting Formula and the Title stand part of the Bill."

The motion was adopted.

Clauses 2 to 11, the Schedule, Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI SURENDRA PAL SINGH :
I move :

"That the Bill, as reported by the Select Committee, be passed."

MR. DEPUTY-SPEAKER : The question is :

"That the Bill, as reported by the Select Committee, be passed."

The motion was adopted.

14.18 hrs.

SUPREME COURT (ENLARGEMENT OF CRIMINAL APPELLATE JURISDICTION) AMENDMENT BILL

THE MINISTER OF STATE IN THE MINISTRY OF LAW AND JUSTICE (SHRI NITIRAJ SINGH CHAUDHARY) : Sir, I beg to move :

"That the Bill to amend the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, as passed by Rajya Sabha, be taken into consideration "

Till 9th August, 1970, the citizens of this country did not have a right to go in appeal to the Supreme Court if there was a sentence of imprisonment for life or for not less than 10 years. Now, the provision is :

".....an appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court—

- (a) has on appeal reversed an order of acquittal of an accused person and sentenced him to imprisonment for life or to imprisonment for a period of not less than 10 years ;
- (b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to imprisonment for life or to imprisonment for a period not less than 10 years ;"

This Bill came on the statute book because of the persistent efforts of Shri Mulla who was a Member of this House, and is now a Member of the Rajya Sabha. When this Bill was passed, the State legislature of Kashmir had not passed a resolution as required by article 134(2) of the Constitution to enable the Govt. to act. Therefore, provisions of this Bill could not be made applicable to the State of Jammu and Kashmir.

After the passing of the Bill, they have now passed a resolution and have sought that this Bill be made applicable to the citizens living in the State of Jammu and Kashmir. This Amendment Bill before the House is to confer the same right on the people living in the State of Jammu and Kashmir as is conferred on the people living in the rest of India.

With these words, I commend the Bill for consideration of the House.

MR. DEPUTY-SPEAKER : Motion moved .

"That the Bill to amend the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, as passed by Rajya Sabha, be taken into consideration."

SHRI MADHURYYA HALDAR (Mathurapur) . By this Bill the Government desires to extend the appellate jurisdiction of the Supreme Court to the State of Jammu and Kashmir. That is the reason

The Bill seems to be very simple and innocent. But Kashmir enjoys some special status and some privileges in relation to other States of the Union. And this status and privileges have been provided to this State by certain provisions in the Constitution and this special status and privileges have been a point of suspicion to some political parties and a subject of criticism or rather envy to some States of this country. What are the reasons for this suspicion and what are the reasons for this envy ?

As regards envy, the State of Jammu and Kashmir enjoys some special status which the other States of the country do not enjoy and furthermore, the other States of the country have been demanding more power in the hands