

group politics, party politics and other things. It is expected to be an agent of the Ministry for routing of certain expenditure and for promotion of the co-operative movement.

Shri U. M. Trivedi: Are you running a charitable society so that people will go and attend its meetings for mere out-of-pocket expenses? Is it a charitable institution?

Shri S. K. Dey: There are still people in this country—we are very happy—who are prepared to champion a worthy cause by taking out-of-pocket expenses.

Shri U. M. Trivedi: Call it a charitable society, and we all will go.

Shri S. K. Dey: All co-operatives are expected to be that. In this country, Sir, all office-bearers in co-operative institutions, even today, at least the bulk of them, work in an honorary capacity.

Shri U. M. Trivedi: And then they will cut each other's throat.

Shri S. K. Dey: Then, we shall examine the point made by Shri Gupta.

Shri Inder J. Malhotra: My name is Malhotra and not Gupta.

Shri S. K. Dey: I am sorry. We shall examine the question with reference to Jammu and Kashmir.

As for the clauses in the Bill being undesirable and unprogressive, as the hon. Member, Dr. Singhvi, mentioned yesterday and repeated today, I believe a lot of the so-called undesirable features of any, can be corrected by the rules of procedure which we shall be very careful in framing. So, I move:

“That the Bill, as amended, be passed”

Mr. Speaker: The question is:

“That the Bill, as amended, be passed”

The motion was adopted.

ASSAM RIFLES (AMENDMENT) BILL

Mr. Speaker: The House will now take up the consideration of the Assam Rifles (Amendment) Bill.

The Prime Minister and Minister of External Affairs and Minister of Atomic Energy (Shri Jawaharlal Nehru): Sir, I beg to move:

“That the Bill further to amend the Assam Rifles Act, 1941, be taken into consideration.”

This is a very simple Bill and I do not think I should take up the time of the House to go into the details. The first object is that the Assam Rifles Bill should apply to a larger area than Assam itself. In fact, even now the Assam Rifles are functioning round about Manipur and other parts which are not in Assam. Therefore, it is only fair that this should apply to that larger area. So, instead of specifying particular places where they should function and this should be applied, we have stated that the Act will apply to the whole of India. Naturally, the Assam Rifles are usually stationed in the north east.

The second amendment deals with certain protection, certain powers and functions in these areas. These are difficult areas. Here I am not referring to Nagaland, because it hardly applies to Nagaland. Because, in Nagaland other measures apply and the army is there. But in other areas which have not been declared for the purpose, the Assam Rifles cannot function adequately without these powers.

I find that there are some amendments to the Bill. I have considered them, but I cannot accept any of

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them because they take away the protection given to these people, take away their authority to some extent which it is necessary in those places.

As a matter of fact, the rules and procedure that apply are the Criminal Procedure Code. But we cannot rigidly apply the Criminal Procedure Code to those areas, because it will create difficulties. So, special provision is made in clause 3 of the Bill for departures from the regular procedure.

Mr. Speaker: Motion moved:

"That the Bill further to amend the Assam Rifles Act, 1941, be taken into consideration."

Shrimati Renu Chakravartty: (Barakpore): Mr. Speaker, as far as the amendment goes in its efforts to give powers of police officer to the riflemen on duty in NEFA, Nagaland and other border areas, the amending Bill seems all right. But there are one or two points which I would like the hon. Prime Minister to clarify.

On the question of conferring magisterial powers on the Commandants and Assistant Commandants there seems to be a certain amount of fear in the minds of people in Nagaland and NEFA. They feel that it is much better that the riflemen who are actually going to carry out the police duty come under the civilians and the magisterial powers should be wielded by the civilian authorities. As a matter of fact, I am told that in Nagaland they have already applied for the setting up of a police force. I believe the Ministry has considered it and will probably be giving its consent to it. If this be so, it will mean that a certain section of those who will be carrying out Police work will be under the civil authority while another section, that is, the Riflemen under the Assam Rifles, will be under the authority of the military Commandants and the Assistant Commandants. There is, I believe, in these areas a sort of feeling between the military and the semi-military powers

which are the Assam Riflemen. As a matter of fact, there is a growing estrangement between the two. The men of the Assam Rifles are the people who bear the brunt in the border areas. They have to face all the difficulties of the situation there and they do not enjoy the same benefits which the military does. As it exists now, the giving of magisterial powers to the Commandants and the Assistant Commandants may lead to certain bad results. Therefore since we are developing to a large extent the civil authority under those who are loyally co-operating for bringing Nagaland back to peace and within the orbit of the Indian Union, it is better that we allow these people to function under the civil authority as far as possible. Therefore this question of conferring magisterial powers on the Commandants and the Assistant Commandants is a point which needs some clarification as to why it is being brought about.

Regarding the question of giving the powers of a Police officer to the Assam Rifles, this will apply not only to those who will be functioning in NEFA, Nagaland and other border areas but will also apply to all places, that is, wherever the Assam Rifles will be functioning whether it is Tripura, Manipur or any other part of India. Here again, there will be a proper civil authority functioning. There will also be the Police force there. So, again here you will be giving a semi-military organisation full powers of a Police officer. Whether that will be right or not will have to be looked into.

But, on the whole, I think that in the peculiar circumstances of the border areas of NEFA and Nagaland where there are no regular Police forces as yet, until such time as the regular Police force comes into existence this power of search and arrest may be given. This is what I would like to point out, that is, as soon

as there is a regular Police force established there whether the Assam Rifles should continue to have the powers of a Police officer and whether magisterial powers should be conferred on the Commandants and the Assistant Commandants or whether they should remain with the magistracy, that is, with the civil courts that exist in NEFA, Nagaland and these areas, must be considered carefully.

Mr. Speaker: I think I should call the hon. Minister now.

Shri U. M. Trivedi: (Mandsaur): No, Sir.

Mr. Speaker: When no hon. Member stands up what should I do?

Shri U. M. Trivedi: I had sent a chit saying that I would wish to speak on this.

Mr. Speaker: Someone should rise in his seat so that I can call him.

Shri U. M. Trivedi: I am sorry.

Sir, the position to be considered about the Assam Rifles (Amendment) Bill is whether we should have a consolidated law for controlling the various armed forces of India appointed by the Government of India. The Central Government has got authority under the Assam Rifles Act to control the appointment to the Assam Rifles and virtually that flows from the provision contained in the Seventh Schedule, List I, entry 2. This creates a good deal of difficulty in the administration of law. Article 33 of the Constitution of India prevents the application of fundamental rights where the question of the armed forces is concerned. On the one hand, we have this civil police force whose personnel is not discharging the duties of the military, or the Navy or the Air Force, yet, it is governed by the term Armed Forces of India. This question of these Armed Forces of India came to the forefront during this election for the first time. During this election, a move was made to

secure votes for the ruling party from the so-called Armed Forces, namely the Central Reserve police forces and the Assam Rifles. The personnel number somewhere about 30,000. All these 30,000 votes were votes for the ruling party. Because, the Commandant concerned and the Assistant Commandant concerned saw to it that the postal ballot paper was filled up in his presence. No rifleman, no sepoy, no soldier would dare to displease the Commandant.

The particular question that comes before me is the provision of article 136 of the Constitution by which any order made under any law which governs the Armed forces is not appealable even in the Supreme Court of India. It creates a sort of conflict. I know, notwithstanding such provisions, somehow, some advocates do succeed in side-tracking these provisions because the Assistant Commandant and the Commandant are designated as Second class and First class magistrates which is being now done here in this case. Therefore, it is meet and proper that the Government should recast the provisions whereby this Police force has been created. This police force must not be classified as the Armed Forces of India. It is this classification which must change when this amendment is being brought. The object of the amendment is, to my mind, not a desirable one. Assistant Commandants are not trained in the administration of law. The Commandants are neither so trained. The net result is this. Here is a soldier alleged to have done any harm to another soldier. The clause says:

“Notwithstanding anything contained in the Code of Criminal Procedure, 1898, the Central Government may invest any Commandant or Assistant Commandant with the powers of a Magistrate of any class for the purpose of inquiring into or trying any offence committed by a rifleman

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and punishable under this Act or any offence committed by a rifleman against the person or property of another rifleman or of any person acting with or assisting the Assam Rifles."

My whole objection patently is against this provision. I know of several cases because I live at a place where the Central Reserve Police has its headquarters. This difficulty always arises. One rifleman or one soldier is not liked by the Assistant Commandant. A fake case is made out. He makes a complaint that this man has stolen my cow, has stolen my goat, has taken watch, anything. This trial comes before the Assistant Commandant because this loss has been done to another rifleman. I hope, Sir, that you are following my line of argument. The phrase here is 'any offence committed by a rifleman against the person or property of another rifleman...'. Now, any type or any kind of offence that could be committed could be committed by one rifleman against another; then, the Commandant or the Assistant Commandant will sit in judgment. His judgment will be the judgment of a biased person. He decides what should be done, and he sends the rifleman to jail. Obstructions are created, and sometimes very successful obstructions are there that this sentence which is awarded by the Commandant or the Assistant Commandant, although it may be that of a person functioning as the magistrate under the law prevailing in the Armed Forces, is not challengeable even in the Supreme Court, what to talk of the ordinary courts or the sessions courts.

The drafting of this Bill is not so very bad as that of the Bill which we had yesterday. But the operation of the law which is proposed in the present Bill will require deep consideration, with this object in view namely that biased officers, or officers who would be naturally biased, should

not sit in judgment between man and man. In the Army Act, there is a very nice provision that even the slightest bias in a court-martial will disqualify the man who sits as the court-martial, or will disqualify even the judge-advocate. But here, the disqualification will not apply. Therefore, I submit that this may be taken note of by the hon. Law Minister who now seems to be in charge of this Bill, in place of the Prime Minister, and I hope that he will do his best to correct it.

Shri Hem Barua (Gauhati): The Assam Rifles are a para-military organisation, and I would pay a compliment to the boys constituting this organisation, who have done commendable service, particularly in the NEFA and other trouble-spots of the far-eastern regions of India. Whenever there is an abnormal situation anywhere, whether it be in the NEFA or in Nagaland, the services of the Assam Rifles are requisitioned, and they have laid down a very fine record of service for so long. That is why I want to congratulate the boys that constitute this organisation, particularly.

Now, this gives scope to our tribal young men to get into the defence services, in a sense. They get the training ground in the Assam Rifles. During the last World War, under the British regime, the tribal people of the hills of Assam played a decisive part all over the world. They were in the defence services, all over the world, and they were encouraged to be there. But, then, the Assam Rifles, somehow or the other, played the part of an organisation that gave the basic training. That is why I want to congratulate, at the outset, the boys who constitute this service.

The present Bill is a very simple one, but I have my grave doubts about investing the Commandant and the Assistant Commandant with these powers. The Assam Rifles functioned in the hill areas, in the NEFA or

in Nagaland, where there were troubles, and where there was no administration such as we have here in the rest of the country. Under those abnormal conditions, certain abnormal laws or abnormal measures had to be adopted, and that was why possibly these measures were adopted. Thus, the Commandant was all in all, or the Assistant Commandant was all in all, I want them to have the powers, so far as the discipline in the services is concerned. But when it comes to a suit of a criminal or civil nature, I do not think that the power should vest with the Commandant or Assistant Commandant.

There is another thing. In the hill areas, particularly in Nagaland, I know there are our jawans, army people, functioning. What about these people? When the civil authorities functioned there—they even now function to a great extent—when the Nagaland or Naga Hills was a part of the State of Assam, I know of army officers telling me about certain benefits the Assam police operating in the Naga hills enjoyed but which the boys belonging to the defence services were denied. For instance, the police officers or policemen working under the auspices or authority of the civil authorities when Nagaland was a part of Assam, enjoyed certain hill allowances for working there. But then the boys who have been working there to quell the hostile activities were denied this privilege. Naturally enough, I came across army men telling me that they were denied these benefits and they should get them. I would say there is some sort of mental agitation among them on this score.

If we have two organisations engaged in a similar type of work but enjoying different privileges, naturally enough there would be some sort of mental agitation. I do not think there was any physical agitation, but there was a mental agitation. If, and

it is bound to be, police forces are going to be constituted for this area, for instance, in NEFA, where we are going to have a police force if not today, tomorrow, and in Nagaland as soon as it comes into being—and I welcome the coming into existence of Nagaland as early as possible—when they would have their own police force, and then the benefits or advantages that the police forces enjoy are denied to the Assam Rifles men, naturally enough there might be some sort of mental agitation.

I say that this power vested in the Commandant or Assistant Commandant to try cases would impose a sort of diarchy even in the areas where the Assam Rifles men, particularly, are operating, for instance, in Nagaland. There is a clause by which Government seek to extend the ambit of the Assam Rifles and make these rules applicable to the whole of India. But what about the rest of India? In the rest of India, there is a well-ingrained civil authority. When this power is given to the Commandant or Assistant Commandant to try cases concerning the Assam Riflesmen it might so happen that this power might at times come into conflict with the civil power, and there might be some difficulty. So far as the hill areas are concerned, there might not be any difficulty for the present—but even there I visualise difficulty. But in the rest of India where civil authorities function, there would be a sort of diarchy operating. Therefore, Let the civil rules—because the Assam Rifles is only a semi-military organisation—operate in their case also so that we might bring them on a par with the rest of the citizens of India, in NEFA or Nagaland, wherever they might be.

In conclusion, I would once again pay my compliments to the young men constituting the Assam Rifles who have done a commendable job in the hilly areas of our north-eastern region.

Shri A. C. Guha (Barasat): Mr. Speaker, Sir, I think there will be general support for this Bill, particularly in view of the disturbed conditions prevailing on the Assam border and in some places even within Assam. The Assam Rifles force occupies a peculiar position. It is neither a police force nor an army; it is somewhat in between the two. So there seems to be some anomaly as regards its functions and privileges. In some cases—I think in most cases—the members of this force act as soldiers of an army battalion. But sometimes they have to do some police work also. The recent escape of two batches of Naga hostiles from the Assam border to East Pakistan has, I think, brought in a certain amount of criticism on the Assam Rifles as also on the soldiers operating there. Considering the conditions in the Assam border, the existence of the Naga hostiles and also the hostile attitude of Pakistan, it is necessary that the Assam Rifles should be strengthened and given adequate powers to render the service expected of them.

At the same time, it should be remembered that the Assam Rifles Act was passed in 1941, during the second world war. Any enactment passed then relating to the Assam border which was a very much active border during those days must have been passed on the consideration of the war conditions prevailing there. So I think the Act operating so long requires some reconsideration at the hands of Government. It should be considered whether the powers and privileges under the Act should be modelled on normal conditions or the Assam Rifles Act which was passed under war conditions in 1941 should continue as it is.

The House will remember that in 1941 there was a great danger of invasion from the eastern side of India—I should not say that there was great danger, because I think many of us were then welcoming an invasion from that side. Anyhow, in the background of those conditions,

this Act was passed. Now, though there are no war conditions there similar to those during the second world war, conditions on the Assam border are very much disturbed. Armed incursions from Pakistan on that border are frequent now. That is why I think certain modifications should be made and new powers given to the Assam Rifles so that they may operate properly.

In the Statement of Objects and Reasons, it has been mentioned that as the riflemen have to operate outside Assam and as they do not enjoy the powers of ordinary policemen, this Bill is intended to give them certain special powers. It says:

“The riflement are posted for duty in the NEFA, Nagaland and other border areas where there are no regular police forces. During the discharge of their duties, it is necessary for them to make searches, arrests etc. To enable them to make searches, arrests etc., it is proposed to confer on them the powers of a police officer”.

Nagaland is going to be converted into a separate State by an enactment of this House including a Constitution amendment. But as far as NEFA is concerned, it continues to form a part of Assam, at least notionally. I do not know whether there would be any legal difficulty for the riflemen to operate in NEFA as policemen. Anyhow, I think today or tomorrow NEFA will have to be separated from Assam. That is the presumption or assumption of this Bill. So, I support the provision to give extended powers to the riflemen, and also the powers to be given to the Commandant and Assistant Commandant for the trial of any offending rifleman in the course of his duty. That is a very essential thing if this body is expected to work as a disciplined military force.

13.00 hrs.

Before concluding, I would like to draw the attention of the Government

as also of the Minister in charge to section 12 of the existing Act, which reads:

“The Central Government may, as regards the Assam Rifles, make such orders and rules consistent with this Act.”

But these rules are not placed on the Table of the House. It is the convention now that the rules made under every Act are laid on the Table of the House. Though there is no amendment to that effect, I hope the Government will adhere to the convention in this case also, and that you, Mr. Speaker, as the custodian of the privileges of the House, will see to it that this provision of subordinate legislation is brought under the control of this House, so that the rules framed under section 12 may be laid on the Table of the House.

With these few words, I support this Bill.

Shri Tyagi (Dehra Dun): I am completely in support of the proposal this Bill contains. I do not think there is any valid objection to the practicability in working of these clauses.

My hon. friends who are not aware of the army discipline might perhaps feel that some additional powers given to the Assam Rifles might be misused. That might be a doubt in the minds of many, but factually speaking the army is strong not only because of its training, but primarily because of its self-sufficiency as far as discipline is concerned. If cases of indiscipline that occur in the army were to go to outside courts, and if soldiers were given the privilege like ordinary citizens to approach civil and criminal courts in every case, the discipline will be gone altogether, these cannot be any discipline in the army. Therefore, armies are kept absolutely self-sufficient as far as their internal discipline is concerned. It is for this reason that the army is strong. Human psychology is such that they are better

disciplined and a better-knit group, speaking psychologically, if they are self-sufficient from all points of view. So, in the army, the authorities provide them with food, with clothes, every little need of a soldier is met by the army itself.

Shrimati Renu Chakravartty: The Assam Rifles' conditions are different from those of the army. They do not get all the benefits of the army.

Shri Tyagi: That is what I am coming to.

Therefore, actually speaking, the army is strong because there is no outside influence or outside interference in its discipline. It is for this purpose that the Minister has rightly thought of giving power to the Army Commanders to enquire into cases of indiscipline within the force.

This is a police force, no doubt. It goes out into an area which has mostly a difficult terrain, and particularly now when Paikstan is hurling all sorts of threats both from the east and the west, it is very appropriate that this Assam Rifles must be strengthened from the point of view of their rights, privileges and authority. In that terrain it is not possible for a soldier to get a warrant of arrest from a magistrate. A magistrate is not easily available. On the spur of a moment, culprit might escape into the wild terrain. If you have to surround his house and search, how can you wait for a magistrate to give you a warrant? Therefore looking to the type of duties they are expected to perform—they are practically soldiers for all purposes—they must be garbed with all police powers, and therefore these powers are rightly given.

My hon friend perhaps objected to the idea of magisterial powers being given to Commandants and Assistant Commandants to try any offences committed by the subordinate soldiers. After all, we have to care for the liberties and the privileges of the

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citizens also. We cannot allow a policeman to go amok and do anything unlawful to the citizens, because the primary care of this House is to protect the rights of all citizens, and it is for this purpose that authority is given to Commandants and Assistant Commandants to try those soldiers, so that the soldiers might know that if they commit any excess on the citizens they will be tried immediately and punished. That must be always before them. It is a sanction with the officers to proceed in the affair in a legal manner so that the soldiers may not act against the law. For this purpose, the magisterial powers must also be with the senior officers, so that the soldiers might not go amok. There may be cases of shooting going on by rebels, or outsiders, Pakistanis, for instance, infiltrating, and action may have to be taken. So, there must be some curbs. They should not be given the fullest liberty to go any way they choose, or start shooting any man. It is very essential that when the soldiers are given greater liberties, there must be greater curbs also in the use of those rights. I think the proposals contained in this Bill are very well-balanced, and I think it will add to the efficiency of the Assam Rifles.

I have some experience of the Assam Rifles. I know they have got a very bright history of service rendered in the past. They are really a very disciplined force. For all practical purposes they are in army, and their discipline is as good as the discipline of the army, but because they have to perform these duties and functions of the nature of the police, these police powers must be given to them, so that they may be more effective, and in the interests of the security of the border areas of the country, these powers must be given. I support this Bill.

Dr. M. S. Aney (Nagpur): May I ask a question of Shri Tyagi. Shri Trivedi has stated that so far as the misconduct of the soldier against any outsider is concerned, he has no ob-

jection to the appointment of the Commandant as a magistrate. His main objection is that in a dispute between one soldier and another soldier, the advantage which he gets under military law of an appeal against the court martial is not provided for here, it is denied here. He wants that point to be cleared.

Shri Tyagi: That is already there. In the Assam Rifles Act there is a provision for appeals. If a junior official gives a punishment, it is not final; the soldier can go to the senior officer. Discipline can be maintained only if these disciplinary proceedings are vested in the Assam Rifles themselves. If they were to go outside authorities they will become as bad as the civil administration is becoming. Everybody has got a right to appeal here and there.

Shri D. C. Sharma (Gurdaspur): Mr. Speaker, Sir, no child of India can claim ignorance of the splendid role that the Assam Rifles have played in the security of this country, especially the defence of our border. I feel that no Member of Parliament can say that the record of those persons who constitute the Assam Rifles has been of such a nature as not to make every Indian feel grateful to them. I, therefore, approach this Bill with feelings of pride and thankfulness; and I think that is the prevailing climate in this House also when they are dealing with this Bill.

Now, what are these Assam Rifles? There are some persons who say that they are like the Army; there are other persons who say that they are like the Police. I feel that the Assam Rifles are the bulwark of our safety on the border and they partake of the characteristics of both these units of defence in our country.

Shri Hari Vishnu Kamath (Hoshangabad): Para-military.

Shri D. C. Sharma: They are the Army plus and the Police plus. It

speaks very highly and creditably of the work they have done so far that we are extending their powers beyond the borders of Assam. If their record had not been very good, I think, we would not have come forward with this Bill. Their services are now in demand not only in Assam but also everywhere; and, therefore, we are trying to give them those powers which they will need in the discharge of their duties.

What are the powers that we give them? We are trying to see that they do not suffer from any legal disabilities when they go to work outside Assam. For the purpose of the administration of the Assam Rifles we have 3 categories of persons, the Commandant, the Assistant Commandant and the Rifles. It is a regular hierarchy here as there are in other services, in the Army or in the Police. I feel that due weight is given to these cadres so far as privileges are concerned. The Commandant is going to have those powers which are worthy of him and the Assistant Commandant is going to have the powers which he requires. At the same time, the riflemen are also going to get some powers so that they can deal with those problems which arise in the course of the discharge of their duties.

The fact of the matter is this. These persons have to work in those areas where normal conditions do not prevail. Somebody has been talking about dyarchy, dyarchy between the Assam Rifles and the Police. I think that dyarchy is to be found more in the imagination of the hon. Member than elsewhere. These people work in those areas where work is very difficult and when normal policemen and normal security persons cannot work. Therefore, the question of dyarchy will not arise in the case of these men. Therefore, I believe to give them some powers and privileges is not to give them powers and privileges at the expense of the police or any other person. It is just to arm them with those powers by means of

which the effective discharge of their duties becomes possible. There is no dyarchy involved in this and they are not going to be opposed to the police or opposed to any other body. So this is not treading upon the toes of any other force in this country.

It is necessary that they should be able to discharge their duties to the persons amongst whom they are placed. They have to do their onerous duties. Therefore, they have the ordinary powers of arrest and certain other things. It is not only that. They have not only to preserve order where they are but they have also to observe discipline among themselves. It is therefore said in the Statement of Objects and Reasons—

“To facilitate the inquiry and trial of offences committed by riflemen, it is also proposed to confer magisterial powers on the Commandants and Assistant Commandants.”

There are some persons who have taken objection to this. They have said that whenever such duties are performed, there is an element of bias involved in it. I feel that the question of bias can be imported into any human relationship. There is no human relationship known in this world which cannot be accused of bias. Husbands have been accused of bias. Wives have been accused of bias; sometimes fathers have been accused of bias in favour of some children. So, bias is a weakness which is inherent in human nature. And, I do not think anybody in this world can claim that he is free from bias of one kind or other. But I must say that when we look at the records of the courts martial and the records of the judicial decisions of the Army people and also the Assam Rifles, we come to the conclusion that they have been as free from bias as it is humanly possible. Whereas the normal human being suffers from so many different kinds of bias, these persons are there only suffering from one pull and that

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is the pull of keeping the security of their country and the pull of doling out justice to those persons who are risking their lives, who are undertaking very difficult jobs under their command. Their loyalty to the staff, their loyalty to the country are such things that will minimise the element of bias to the most infinitesimal point. Therefore, I think, the importation of bias into this relationship is something which is not wholesome.

But, I would like to make one suggestion. These persons are doing their duty under very difficulty and trying circumstances. All honour to them. When we are saddling them with difficult duties, we must also look to the aspect of their privileges. I do not say that they do not have enough privileges. They have some privileges. But I feel that corresponding privileges should be given to them, corresponding with the increase in their duties. I hope the hon. Minister in charge of the Bill will look into that aspect and will see to it that the Assam Rifles do not suffer in this respect in comparison with any other similar body of men who are doing similar work.

As Shri Guha pointed out the rules which are going to be framed under this Act will be laid on the Table of the House as is the normal practice so that if some of us want to raise any discussion on that we should be in a position to do so. With these words, I welcome this Bill and I send my regards to all those persons who are trying to guard our borders and are doing a difficult job splendidly well in the best traditions of our army and of our country.

श्री यशपाल सिंह (कैराना) : अध्यक्ष महोदय, जो यह बिल हमारे सामने आया है उस की स्पिरिट में मुझे कोई एतराज नहीं है। लेकिन मैं यह समझता हूँ कि जब हम जुडी-शिअरी और एग्जिक्यूटिव हर जगह अलग करने जा रहे हैं तो कोई कारण नहीं है कि

आसाम राइफल्स के मामले में हम एक्सेप्शन करें। दूसरे यह भी है कि नागालैंड की जनता, जिस के रिप्रेजेंटेटिव्स यहां पार्लियामेंट में बैठे हुए हैं और जो बकायदा भारत का अंग है, उस के अन्दर एक पुलिस आफिसर को जुडीशिअरी के अख्यारात दे देना कुछ भला मालूम नहीं होता।

मैं यह चाहता हूँ कि हिन्दुस्तान की रक्षा हो और देश के हर एक मनुष्य के अन्दर यह भावना पैदा हो कि उस के अधिकार सुरक्षित हैं। नागालैंड में जो लाखों की तादाद में हमारे लोग हैं उन्हें यह मौका मिलना चाहिये कि वे यह सोचें कि इन्साफ उन्हें मिलेगा और अधिकार उन के उन को मिलेंगे। ऐसी हालत में यह समझ में नहीं आता कि हम क्यों एक पुलिस के आफिसर या आर्मी के आफिसर को यह अधिकार दें कि वह जब भी और जहां जाँ चाहे गोलियाँ चला सके। इसलिये मेरी दख्वास्त यह है कि वहां की जनता का सहयोग पाने के लिये और नागालैंड का विश्वास सुरक्षित रखने के लिये हम वहां की जुडीशिअरी और एग्जिक्यूटिव को अलग अलग रखें। नागालैंड में इस वक्त हमारे विश्वासपात्र लोगों की, वफादार लोगों की, तादाद ज्यादा है। उन के प्रेम और विश्वास को सुरक्षित रखने के लिये भी यह जरूरी है कि हम वहां पर जुडीशिअरी और एग्जिक्यूटिव को अलग अलग रखें।

इस मामले में मेरी दख्वास्त है कि जहां तक आसाम की और नागालैंड की हिफाजत का ताल्लुक है, उस सवाल में हम सब लोग एक हैं, लेकिन जो जनता हमारी है उस में हमें विश्वास पैदा करना पड़ेगा। साथ ही यह भी है कि जब हमें एक बहुत बड़े शत्रु के खिलाफ लड़ना है तो छोटे छोटे मसाल को गुडविल से, प्रेम से, सद्भावना से हम को तय करना पड़ेगा। इसलिये आवश्यक है कि वहां के हर एक मनुष्य में यह स्पिरिट पैदा

की जाये कि जो राष्ट्र विरोधी तत्व हों उन को वहाँ के लोग खत्म कर सकें। लेकिन इन्साफ करने के अधिकार को कभी भी फौज या पुलिस के आदमी को नहीं दिया जा सकता। दोनों के अलग अलग दिल दिमाग हैं, उन की अलग अलग ट्रेनिंग हैं, दोनों के अलग अलग संस्कार हैं। इसलिये इस आदरणीय सदन से मेरी दुर्बास्त यह है कि पुलिस को या फौज को जुडीशिअरी के अख्यार न दिये जायें।

जहाँ तक इस विधेयक की स्पिरिट का ताल्लुक है, मैं सहमत हूँ और मुझ से पहले जो माननीय सदस्यों ने कहा है, उस से भी मैं मुत्तफिक हूँ, लेकिन एक मैजिस्ट्रेट के अख्यार मैजिस्ट्रेट के पास रहने चाहियें और पुलिस के अख्यार पुलिस के पास रहने चाहियें।

Shri J. N. Hazarika (Dibrugarh):

Sir, I fully support this Bill because by this Bill we are going to extend the services of the Assam Rifles not only in the border areas in Assam but in many other places. I think this Bill is already delayed. This Act was passed in 1941 in order to see that the eastern borders are carefully secured. Now we have got troubles not only in that border but also in the northern border and, therefore, the extension of its services is very much needed.

Secondly, Assam Rifles is a police force as well as a military force. It is military in the sense that it is working for the security of that area and it is police because it goes to the aid of the civil authorities for keeping the normal law and order. That is why there is no justice in denying them this kind of power given to the police officer. So, this provision is most welcome so that the commandant or the assistant commandant could settle disputes specified in the Bill. There will be more discipline and more strength in the Assam Rifles. Therefore, I support the provision granting this power as envisaged in the Bill. I support the Bill and request the House to pass it.

The Minister of Law (Shri A. K. Sen): Mr. Speaker, before I say anything else, may I express the gratitude of the Government for the almost universal appreciation of this House for the splendid work done by the Assam Rifles and in the most trying circumstances. I have no doubt that when this deep appreciation is conveyed to the members of the Assam Rifles they will appreciate the same in the spirit in which it has been expressed here. We wish them well and I have no doubt that this House will assist them in the best possible way whether by altering the existing Act in a suitable manner or otherwise so that the difficult work they have to handle not only in Assam but in the periphery is done faithfully and to a successful conclusion.

May I say that most of the rather sceptical remarks of certain hon. Members have, I think, been made as a result of lack of understanding of the purpose and scope of the alterations suggested in the Bill. The second clause is absolutely necessary. There has been no criticism against that clause because the Assam Rifles are today operating in Nagaland and in NEFA and tomorrow possibly in other areas and, therefore, it is absolutely essential that the Act must apply to the whole country instead of being confined to Assam only. Alteration of section 10 has been necessitated simply because of the fact that today the operations are not conducted by the commandant or the assistant commandant in person everywhere. In the olden days there were hardly any operations undertaken which were not conducted under the direct supervision either of the commandant or of the assistant commandant. But today the ordinary members have spread in most places and they operate without the commandant or assistant commandant being present in person. So, they have to carry out many orders on their own responsibility and according to the strict law of torts which obtains in this country as in other countries they would be liable, possibly, to claims and mere citation

[Shri A. K. Sen]

of a lawful order would not be enough. That would have been enough if the assistant commandant or the commandant was present. Under the Act as it stands at present that protection to the ordinary rifleman who has to perform onerous duties was absent. It is, therefore, most necessary that the immunity that is granted to the commandant and the assistant commandant should in all fairness be extended to the ordinary infantryman who is called the rifleman under the Act, who performs most of the important duties today. I have no doubt that when that is appreciated no objection could be raised to it.

What is it that we intend to extend to him? First of all, there are the privileges which are granted under section 125 of the Indian Evidence Act and also the other provisions like sections 42 and 43 of the Police Act which were extended to the commandant and the assistant commandant. Section 125 of the Evidence Act prevents the extraction of any evidence from a rifleman or a policeman with regard to the source of information. This is most important. When they have to operate on secret information in disturbed areas, it is of the utmost importance that the sources of information should not be disclosed. That is why under section 125 of the Evidence Act, it was not competent for a magistrate or a police officer to compel to disclose his source of information and that immunity is extended to the ordinary rifleman because he has to act on that information received from many friendly sources in disturbed areas like Nagaland where he has to operate. Then, in any suit or proceeding, the commandant could receive complete immunity by citation of the lawful order, but the riflemen could not. Now, that power is extended to the riflemen under sub-section (2) of section 10 of the original Act.

Then we provide the necessary corollary that such plea may be proved by the production of the warrant

or order. Just merely by producing a warrant or order he shows the lawful authority and gets immunity which was originally extended to the commandant and the sub-commandant only.

Then, under sub-section (4) we extend the immunity of sections 42 and 43 of the Police Act which was extended only to the commandant and the sub-commandant. This puts a limit of time within which proceedings shall be brought. This is in line with the Public Authorities Protection Act obtaining in England so that a public officer performing difficult duties may not be under the threat of prosecution or subject to a civil proceeding hanging over his head for years; and before evidence can be obliterated or evidence will disappear, a reasonable limit of time is set for the launching of any proceeding against all such officers. We have the Public Authorities Protection Act; we have the Judicial Officers' Protection Act and various other Acts which provide us with a particular time-limit within which proceedings are brought. This was originally available to the commandant and the sub-commandant only. We now extend it to the others.

The whole thing has been necessitated by reason of the fact that today the operations are so widespread that it is impossible for the commandant and the sub-commandant to be present in person everywhere, and the ordinary rifleman is to take over the duty of the commandant in many areas. It is the altered nature of the duties which has necessitated the extension of the original immunities available only to the commandant and the sub-commandant to the ordinary infantrymen.

With regard to section 10A, all that we have provided is that the commandant and the assistant commandant who have the power to enter upon an adjudication will be invested with powers of a first-class magistrate.

In trying offences against the Act itself by members of the forces, let us not confuse it with offences which are committed outside the forces. That would be open—the civil and criminal acts—to the ordinary courts. This is in answer to the hon. Member, Shri-mati Renu Chakravartty who raised a little apprehension with regard to that. With regard to the offences committed under the other provisions, the ordinary courts shall function. These adjudications are in relation to the offences under sections 6 and 7 of the Act itself, where the members of the forces are made liable for breaches of discipline, disobedience of the lawful orders and other acts of commission and omission which are made punishable for the purpose of preserving discipline of the forces. When an ordinary infantryman refuses to obey lawful orders the punishment is up to transportation for life. With regard to these offences the forum for adjudication is, like the martial law tribunal, the commandant and the sub-commandant of the force itself. It is there, therefore, that we have given him the power of the first-class magistrate.

Some of the amendments are designed to convert them into a court and make them liable to the proceedings under the Criminal Procedure Code. That would be impossible to work out because like all martial law courts, they have to follow all the necessary essentials of a regular court and yet they must be governed by the Criminal Procedure Code, and that will make them subject to the incidence of the provisions of the Criminal Procedure Code, such as revision and various other fetters that will make it impossible for such tribunals to function.

These are my submissions and I commend the motion for consideration of the Bill to the acceptance of the House.

Mr. Speaker: The question is:

“That the Bill further to amend the Assam Rifles Act, 1941, be taken into consideration.”

1339 (A) LSD—7.

The motion was adopted.

Mr. Speaker: Now, the House will take up clause-by-clause consideration of the Bill.

Dr. L. M. Singhvi (Jodhpur): Sir, I am aware that it is possible under the rules of procedure for the Speaker, either when there is no amendment or when the Speaker may deem fit, to allow the clause-by-clause discussion on the same day on which the motion for consideration is made. But I submit, and this I submit particularly because yesterday a similar point of order was raised in this House.

Rule 75, the language of which is clear, is intended to debar any clause-by-clause discussion of the Bill on the same day on which a motion for consideration under rule 74 is made. Now, it is true that in case when an amendment is not made or when the Speaker may so desire or may consider it proper under rule 88, in his discretion, may allow a clause-by-clause discussion on the same day, but since the normal rule of procedure under rule 75 is that a clause-by-clause discussion will not take place on the same day, the Speaker must say that notwithstanding the normal rule of procedure under rule 75 he allows a clause-by-clause discussion on the same day.

I submit that rule 75 actually covers the normal rule of procedure and rule 88 is an exception or adaptation of it. Since the exception has been put into operation, the Speaker may say that notwithstanding the ordinary rules of procedure he allows a clause-by-clause discussion under rule 88.

Shri Tyagi: In that case the Speaker has got the right to allow it.

Mr. Speaker: In the first place, the hon. Member must realise that at least the Speaker has the power to take up clause-by-clause consideration, and because I have called up the next stage, and took up clause-by-

[Mr. Speaker]

clause consideration, there cannot be any objection to that.

Secondly, I do not agree with the hon. Member that rule 75 debar discussion on clauses on the day on which general discussion is held. He has put that interpretation on the wording of rule 75. He will kindly look into it, and to the stage where we are. The heading indicates what we have to do. It says, "Discussion of principle of Bill". The emphasis is not on the day on which any motion referred to is taken up for consideration. But the emphasis is, and the objective is, on the day when it is taken up for consideration or on any other day to which it might be postponed and consideration might be had, on the nature of the discussion; that is, what discussion shall it be. It would be only on the general principles of the Bill and the details of the Bill shall not be discussed during that stage. This is the objective of this rule 75. Of course, because the words "on the day" are written, it might be interpreted that it is intended that on that very particular day, further progress of clause-by-clause consideration might not take place. But if we just see the whole arrangement of the rules, we will come to this conclusion that here we are only on the discussion. After rule 75, we come to "Persons by whom motions may be made" and then "Notice of amendments". Finally, it is under rule 86 that we come to the stage of mode of moving amendments. It says:

"When a motion that a Bill be taken into consideration has been carried, any member may, when called upon by the Speaker, move an amendment to the Bill...."

After that, clause 88 provides that,

"Notwithstanding anything contained in these rules, the Speaker may, when a motion that a Bill be taken into consideration has been carried, submit the Bill, or any part of the Bill, to the House clause-by-clause."

Therefore, the interpretation which the hon Member put on rule 75 is not the correct one that when the general discussion is over, we cannot discuss it clause-by-clause on the same day. That was not the intention of that rule. If there is any misapprehension on account of the words "on the day", that is amply laid at rest by rule 88, which gives the power to the Speaker to take up the Bill clause-by-clause. So, when I take up clause-by-clause, there ought not to be any question about that.

Shri Tyagi: In that case, yesterday's ruling by the Deputy-Speaker was also quite in order, there was nothing objectionable.

Mr. Speaker: There is no objection to that.

Dr. L. M. Singhvi: I wish to submit that the very reason which you mentioned that the words "on the day" are not to be emphasised because of what is contained in rule 88 and rule 90, may be adduced in favour of my point, because if this was the normal procedure, no exception need be incorporated. From the fact that an exception has been provided, it is very clear what the normal procedure is. After all, the expression is "on the day". A day will mean a day and it will not mean the period of discussion on the same day.

Mr. Speaker: What it means to me I have said and I have given the decision. Now, we take the Bill clause-by-clause.

Mr. Speaker: The question is:

"That clause 2 stand part of the Bill".

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3- (Substitution of new section for section 10)

Mr. Speaker: Shri Bade has given notice of some amendments, but he

is not present. Is Shri P. R. Patel moving his amendments?

Shri P. R. Patel (Patan): Yes, Sir. I am moving amendments Nos. 5 and 6. I beg to move:

- (i) Page 1, line 16, after "authority" insert "or in discharge of duty" (5)
- (ii) Page 1, line 20, after "the act" insert "or evidence" (6)

Mr. Speaker: Does he want to say anything?

Shri P. R. Patel: I do not want to say anything. But I would say one thing....

Mr. Speaker: Would that one thing not be included in anything?

Shri P. R. Patel: The idea in amending section 10 of the main Act is to give protection to the riflemen. To remove any suspicion, I want to add the words "or in discharge of duty", to give more protection to the rifleman. That is the only idea behind it and I hope the Minister will accept it.

Shri Hari Vishnu Kamath: Sir, I submit that there is a curious inconsistency between the provisions of sub-clause (2) and sub-clause (3) of the proposed new section 10. A close look at both these sub-clauses will substantiate the point I am about to make. Sub-clause (2) provides that,

"(2) In any suit or proceeding against a Commandant, Assistant Commandant or rifleman for any act done by him in pursuance of a warrant or order of a competent authority,—

mark the words "competent authority"—

"it shall be lawful for him to plead that such act was done by him under the authority of such warrant or order."

Sub-clause (3)—the last portion, the tail-piece of this sub-clause reads like

this. I would rather read the whole sub-clause:

"Any such plea may be proved by the production of the warrant or order directing the act, and if it is so proved, the Commandant, Assistant Commandant or rifleman, as the case may be, shall thereupon be discharged from liability in respect of the act so done by him, notwithstanding any defect in the jurisdiction of the authority which issued such warrant or order."

Mark these words again: "Notwithstanding any defect in the jurisdiction of the authority". Sub-clause (2) makes it clear that it should be a competent authority. The word 'competent' is very well defined in law. Competent means not only competent in terms of powers, but also competent in terms of jurisdiction. Unless the authority has powers vested in it with regard to jurisdiction as well as power, it is not a competent authority.

Sub-clause (3) says that the person has got to produce a warrant or order to prove to the court or the investigating authority that whatever act was done by him was done in pursuance of a warrant or order issued by a competent authority. But sub-clause (3) goes further and says "notwithstanding any defect in jurisdiction", which means it is not a competent authority.

Mr. Speaker: It would be declared under the rules that such and such authority would be competent authority and would exercise jurisdiction within such and such areas. Supposing a competent authority having jurisdiction in a particular area, by mistake, issues a warrant for an area which is not within his jurisdiction....

Shri Hari Vishnu Kamath: How can he be competent for that area?

Mr. Speaker: It was a competent authority to issue warrant for a particular area.

Shri Hari Vishnu Kamath: 'Competent' means competent in all respects. How can it be partly competent and partly incompetent?

Mr. Speaker: A magistrate has jurisdiction within a territorial limit. He can make a mistake by issuing a warrant outside it. That would be a mistake. He has no authority to do it. He has no jurisdiction to do it.

Shri P. R. Patel: Then it would be an illegal warrant.

Mr. Speaker: Maybe, but the person who exercises functions under that warrant must be absolved of the responsibility. The question is to safeguard and provide protection to the rifleman. Suppose the competent authority makes a mistake. The rifleman is to be protected, because he *bona fide* obeys the order of the Commandant or whoever issues it. That rifleman must be protected, whatever action you might take against the man who was not competent to issue the order. So far as the rifleman is concerned, he has not done any fault. If he has obeyed the orders under the *bona fide* belief that the man superior to him has authority to issue that order, he should not be punished, whatever other proceeding may be taken against the man who has made that mistake.

Shri Tyagi: My friend seems to have misunderstood it. The authority is not in any way relaxed in sub-clause (3). It says, "notwithstanding any defect in the jurisdiction". Suppose the authority issues a warrant and he is to arrest somebody. But that man absconds to some area which is not within the jurisdiction of that authority. He has to run and arrest that person in the other area. Therefore, the warrant was duly issued by a proper authority, but the jurisdiction regarding the area in which it has to operate may change.

Mr. Speaker: That would be a different thing altogether. If the warrant

only authorises the rifleman to arrest a man in one particular area and the man has gone to the other area, then the rifleman cannot proceed further, because it would then mean that he goes beyond the powers given to him by the warrant.

Shri Tyagi: What I was submitting is this. Suppose a warrant was issued, say, in a Pargana and the man concerned absconded beyond that Pargana or jumped a few yards on the other side. So long as the warrant was issued by a proper authority, the change of jurisdiction has been given.

Mr. Speaker: If the warrant says that he must be arrested and apprehended within that Pargana, the rifleman would not go outside it. If he goes, then he goes beyond the powers given to him by the warrant. But if the warrant says that such and such a man is to be arrested wherever found, then the warrant is issued beyond the jurisdiction or competence of that authority. In that case, certainly, the rifleman should not be punished. He should not be punished if there is a defect in the warrant. Simply because he has obeyed the orders issued by the competent authority and the authority was not competent to issue such a warrant, he should not be punished.

Shri Hari Vishnu Kamath: Mr. Speaker, Sir, you will be pleased to see, and the House will also appreciate, that this clause (3) is wide in its application. It does not apply to riflemen only. It applies to Commandants, Assistant Commandants and others, who are fairly superior officers, who may commit acts in pursuance of a warrant or order issued by some other higher authority. I do not know under whom a Commandant will be functioning.

Mr. Speaker: Whoever might be acting to execute that warrant will be safeguarded. He will be protected. If the competent authority is somebody else, then the executing autho-

rity will be safeguarded and protected in case there is some defect in the warrant so far as the jurisdiction is concerned.

Shri Hari Vishnu Kamath: Doubt still lingers in my mind, Sir, whether we can, in that case, still retain the words "competent authority" in sub-clause (2).

Mr. Speaker: Let us hear the Law Minister and see whether he can remove the doubt of the hon. Member.

Shri A. K. Sen: Mr. Speaker, Sir, what you have said is perfectly right. This is a well known provision, of giving immunity to officers and men who have to act under orders of superior authorities and who cannot question the jurisdiction of such superior authorities each time there is a warrant or an order. Apart from the question of warrant or order, let us take the question of a requisition. It authorises the requisitioning of property not being household effects or implements of trade or agriculture. Let us say that a magistrate issuing the order of jurisdiction directs a Commandant or a rifleman to take possession of certain goods which happen to be household goods or implements of agriculture. They cannot say that the magistrate has no jurisdiction to order the requisitioning of articles of agriculture or articles of trade. Yet he does so. Can the rifleman question him? A rifleman has to carry it out. When he is hauled up in a judicial proceeding for damages, he shows the warrant or order. Then there is a complete discharge so far as he is concerned. This is in order to restrict the English Law of Torts which applies in this country, where the citation of superior authority is no defence. That is why there is the Judicial Authorities Protection Act. Shri Kamath has been a judicial officer himself. He knows that he has immunity under the Judicial Authorities Protection Act which, even if he passed an order without

jurisdiction, gave him immunity provided he acted *bona fide*.

Shri Hari Vishnu Kamath: That is not on all fours with this.

Shri A. K. Sen: This is on all fours, because the magistrate would be guilty if he acts without jurisdiction according to Torts but for that immunity.

Even now the Judicial Authorities Protection Act remains as a good piece of law, otherwise no judicial officer can function if he is made liable as in Torts for every act where he oversteps his jurisdiction. That is the point, Sir, and, if I may say so with all respect, you explained it, and I do not know why Shri Kamath who while acting as a magistrate himself having enjoyed the immunity throughout should have any doubts now.

Shri Hari Vishnu Kamath: That is old history. I did not do any such act.

Shri A. K. Sen: Even if he did he would not have been made liable.

Shri Priya Gupta (Katihar): That is why Shri Kamath left the post.

Shri A. K. Sen: This simple provision of immunity is necessary.

Regarding Shri Patel's amendments, if you look at page 1, line 20, you will find that it is completely out of place if we add the word "evidence". When the production of the warrant or order gives the immunity, where does evidence come in? There is no evidence here. The order itself is the evidence.

His next amendment on page 1, line 16, is also, you will find, out of place. The whole of this section is meant to cover cases of vicarious liability where the officer or the rifleman concerned acts on the order or warrant of a superior. There is no question of any discharge of duty here.

Shri Lahri Singh (Rohtak): The words "in good faith" should be put in here.

Shri A. K. Sen: I am very sorry, Sir, the hon. Member has not tabled any amendment. Good faith is written into such things, as you know it yourself. Any act done in bad faith takes out the provision for immunity and the officer pleading immunity cannot avail himself of the immunity if it is proved that he acted in bad faith. Bad faith removes all immunity, that is the central principle of law, and that need not be cited here.

Shri Lahri Singh: The defect may arise somewhere. The words "good faith" must be added here. It should read: "notwithstanding any defect in the jurisdiction of the authority which issued such warrant or order in good faith". Otherwise it will become very difficult to control such things. You cannot give such an unlimited authority. If you do not add these words, knowing fully well that he has not got the authority a person may do it.

Mr. Speaker: We are here protecting the men who execute the warrant and not those who issue it.

Shri Lahri Singh: When a man goes to execute the warrant he may get into some conflict and he may be murdered there. What will be the position then. That is why I say that the words "good faith" must be added here.

Shri Tyagi: How can a rifleman know that the warrant has been issued in good faith or in bad faith?

Shri Lahri Singh: The authority which issues the warrant must do it in good faith.

Mr. Speaker: We are not concerned here with the competent authority, whether its powers are *bona fide* or *mala fide*. We are only concerned with those people who are to carry out the warrants.

Dr. M. S. Aney: The riflemen must act in good faith. Because he acts in good faith he enjoys the immunity. If he does not act in good faith he can have no immunity at all.

Shri Hari Vishnu Kamath: May I, Sir, request you again to remove another little doubt which is in my mind with regard to....

Shri Tyagi: He is so full of doubts that it is difficult to remove them.

Shri Hari Vishnu Kamath: It is good that all doubts are removed before an Act is passed, because as the Gita says: "संशयात्मा विनश्यति" whoever has got any doubt, unless that is removed....

Mr. Speaker: But Gita presumes that the one who removes his doubts shall have faith in it.

Shri Hari Vishnu Kamath: All of us have got faith in the Gita.

Now, with regard to the proposed amendments to clause 10 of the parent Act—the last two sub-clauses of this clause 3 of the Bill—clauses 10A(1) and (2)—, the first sub-clause seeks to confer powers on the Central Government to invest any Commandant, Assistant Commandant or rifleman with any of the powers or duties conferred or imposed on a police officer or any class or grade by any law for the time being in force. The next one proceeds to confer powers on the Central Government by investing any Commandant or Assistant Commandant—no rifleman here; that is proper—with the powers of a Magistrate of any class for the purpose of inquiring into or trying any offence committed by a rifleman.

14 hrs.

Now, with regard to the second one, I would like to ask, before I proceed to the first, whether Government proposes to invest any of these Commandants or Assistant Commandants with, say, the powers of first class magistrates, because they

are not well-versed in magisterial matters and they are not experienced magistrates. It is wrong to invest a raw Commandant with the powers of a first class magistrate. I hope the Minister will realise and appreciate that the powers of a first class magistrate should not be conferred on a raw person who has not had the experience of a third class or second class magistrate. I wonder whether the Minister can give an assurance on behalf of the Prime Minister, who is in charge of the Bill....

Shri Tyagi: What about honorary magistrates?

Shri Hari Vishnu Kamath: They begin as third class, become second class and then first class magistrates. They do not straightway become first class magistrates.

Mr. Speaker: He might come to his main point.

Shri Hari Vishnu Kamath: I would like to know if he can—perhaps he can; I do not know; I suppose he is fully in charge now—give an assurance here that there is no such intention of conferring powers far in excess of that for the time being enjoyed by the particular person, either Commandant or Assistant Commandant. It will be wholly unfair to confer very high magisterial powers on a person who has no experience of any magisterial work at all.

Coming to the other point, I hope it is far from the intention of the Government to confer both police powers and magisterial powers on the same person, though within the ambit of these provisions the Government can do whatever it likes. The same Commandant or Assistant Commandant can be chosen, if he is a favourite of the Government, if he is in the good books of the Government, and invested with both police powers and magisterial powers. It does not debar the Government from conferring both powers on a parti-

cular person. I would request for a guarantee from the Government here—not merely an assurance but a guarantee—that the same person will not be invested with both police and magisterial powers, because under sub-clause (1) he can be invested with police powers . . .

Mr. Speaker: What are these powers being conferred for? For what objective? They are not to try civilians or do something of that nature. This is for the internal discipline between riflemen, as is done in the army or anywhere else. They must have those powers because they will have to deal with their subordinates and they have to maintain discipline. This is only for that purpose. Why should the hon. Member fear that they will not be able to rightly exercise their powers, so far as their subordinates are concerned? They are quite competent to exercise those powers.

Shri Hari Vishnu Kamath: I am very grateful to you for the light you have thrown on this matter.

Mr. Speaker: If it is light at all.

Shri Hari Vishnu Kamath: But the difficulty is—it will not be a major difficulty—so far as the army is concerned, there is a set law and salutary conventions and practices developed governing these matters. But here we are legislating in a manner which has created and produced certain obscurities, and those obscurities should be removed. Now, the Assam Rifles may function as you have stated earlier, anywhere in the whole of India, even in Bengal.

Mr. Speaker: I have not been able to throw any light. So, I would ask the Law Minister to do it.

Shri Hari Vishnu Kamath: Let him throw it, if he can.

Shri A. K. Sen: I do not know if I can discharge this heavy responsibility of dispelling the doubts which

[Shri A. K. Sen]

appear to be springing from a recital of the Gita. I think it will require Lord Krishna himself to dispel such doubts.

Shri Hari Vishnu Kamath: Gita removes doubts. You have not read the Gita.

Shri A. K. Sen: With great respect to Shri Kamath, I may say that I have read it a thousand times.

Shri Hari Vishnu Kamath: Then why do you say that doubts emanate from the Gita? Gita dispels doubts; does not create doubts.

Shri A. K. Sen: I know.

Mr. Speaker: I ought to confess that there must not be any dispute about whether one has read it so thoroughly.

Shri Hari Vishnu Kamath: Sir, on a point of order.

Mr. Speaker: Why should there be a quarrel on that?

Shri Hari Vishnu Kamath: The Minister says that it has arisen on account of reading of the Gita. It is wholly wrong. He is not right. Gita does not create doubts at all.

Mr. Speaker: Order, order.

Shri A. K. Sen: I was going to say that the doubts of the Gita were dispelled by Lord Krishna. None of us can arrogate to ourselves that high position. Therefore, let us confine ourselves to doubts more mundane.

Mr. Speaker: But Shri Kamath does not assume that he is Arjun.

Shri Hari Vishnu Kamath: I may like to be Arjun, but first, who will be Sri Krishna here? I would like to know that.

Shri A. K. Sen: What is in his mind God alone knows. We can only

know his mind from what he says. But he has been expressing nothing but doubts on a matter which, in my humble submission, admits of no doubt, as you have rightly pointed out.

Shri Hari Vishnu Kamath: You are a Minister and, therefore, you have no doubts.

Shri A. K. Sen: Sir, as you have stated, these powers have been conferred only for the purpose of adjudicating the breaches of discipline and such other matters enjoined by the Act for the purpose of preserving the discipline of the force and to ensure that this force acts as an efficient semi-military force. That is all. And for this purpose I am afraid, we shall be absolutely wrong if we think that others will be better suited to judge than these officers themselves under whom they act and they have to act. Therefore, in my submission, the Act rightly gives powers to these officers to determine the offences and to give the necessary punishment. Take the Martial Law Courts. How are these officers, who are not trained lawyers or trained magistrates, as Shri Kamath was once, called upon to adjudicate upon offences which would even justify the award of death penalty, which are done very often? And these officers discharge their duties admirably. If on any points of law they need guidance, the Judge-Advocate-General is called upon to assist them. So also here I have no doubt that no assurance is needed to be given, either on behalf of the Prime Minister or myself, or the Government, because the public and this House, I have no doubt, have greater confidence in the Government than Shri Kamath that they would not call upon such officers as would not be capable of discharging these responsibilities.

Shri Hari Vishnu Kamath: Let us hope so.

Shri A. K. Sen: After all, these are our own people, our own infantrymen, our own officers. We have as much concern for them as anybody else.

With these words, I request that these amendments may not be pressed.

Shri P. R. Patel: I would like to withdraw my amendments.

Mr. Speaker: Has the hon. Member the leave of the House to withdraw his amendments?

Some hon. Members: Yes.

The amendments Nos. 5 and 6 were, by leave, withdrawn.

Mr. Speaker: The question is:

"That clause 3 stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill.

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

Shri A. K. Sen: On behalf of the Prime Minister I beg to move:

"That the Bill be passed."

Mr. Speaker: The question is:

"That the Bill be passed."

The motion was adopted.

14.09 hrs.

EXTRADITION BILL

Mr. Speaker: The House will now take up consideration of the Extradition Bill.

The Minister of Law (Shri A. K. Sen): On behalf of the Prime Minister, I beg to move:

"That the Bill to consolidate and amend the law relating to the extradition of fugitive criminals be taken into consideration."

14.09½ hrs.

[MR. DEPUTY-SPEAKER in the Chair.]

It will be remembered that this Bill was introduced and referred to a Select Committee in the last Parliament.

The Joint Committee submitted its report and the Bill underwent revision as a result of the suggestions made in the Joint Committee. The suggestions made were not of a very basic character excepting with regard to the deletion of the offences which were specified separately for Commonwealth countries. The Joint Committee thought that the same offences should hold good with regard to the Commonwealth countries as with regard to the rest of the world so that, it will be remembered, the old odious crime of treason which was specified as applicable to extradition for Commonwealth countries might be omitted altogether from the list of extradition offences.

The Law Commission which went into the subject felt that the extradition law of this country needed immediate revision. We had been so long governed by two separate Acts of the British Parliament with regard to this matter. The first was the Extradition Act passed by the Parliament in England and the second was the Fugitive Offenders Act which was also passed by the Parliament in England. With regard to the Fugitive Offenders Act it was held by the Supreme Court in 1955 that that Act no longer applied after India became independent because it only applied to British possessions and India was not a British possession.

With regard to the Extradition Act, this was practically impossible of application because it only applied to such countries as were specified by Orders in Council by the British Crown and we would certainly not be governed any more by Orders in Council passed by the British Crown. It was, therefore, thought imperative that the law of extradition should be consolidated and a new law should