AMENDMENT TO ANDHRA PRADESH RICE (INFORMATION, INSPECTION AND SEIZURE) ORDER

The Deputy Minister of Food and Agriculture (Shri A. M. Thomas): I beg to lay on the Table, under sub-section (6) of section 3 of the Essential Commodities Act, 1955, a copy of Notification No GSR 1019, dated the 5th September, 1959 making certain amendment to the Andhra Pradesh Rice (Information, Inspection and Seizure) Order, 1958 [*Placed in Library See* No LT-1613/59]

FINANCIAL COMMITTEES, 1958-59 (A REVIEW)

Secretary: I beg to lay on the Table a copy of the 'Financial Committees, 1958-59 (A Review)'

MESSAGE FROM RAJYA SABHA

Secretary. Sir, I have to report the following message received from the Secretary of Rajya Sabha —

'In accordance with the provisions of rule 97 of the Rules of Procedure and Conduct of Business in the Rajya Sabha, I am directed to enclose a copy of the Miscellaneous Personal Laws (Extension) Bill, 1959, which has been passed by the Rajya Sabha at its sitting held on the 7th September 1959'

BILL PASSED BY RAJYA SABHA LAID ON THE TABLE

Secretary I lay on the Table of the House the Miscellaneous Personal Laws (Extension) Bill, 1959, as passed by Rajya Sabha

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CORRECTION OF ANSWER TO STARRED QUESTION NO 219

The Deputy Minister of Food and Agriculture (Shri A. M. Thomas): Sir, while replying on the 7th August, 1959, to supplementary questions arising out of Starred Question No. 219 by Sarvashri Assar and Pahadia and Shrimati Ila Palchoudhuri regarding foodgrains from USA, I had stated "50 per cent will be under Indian Flag vessel and the rest under vessels of their flag" in answer to a supplementary question by Shri Assar whether all the goods will be brought to India by Indian ships or by foreign ships

The correct reply to this supplementary question should have been:

> "50 per cent will be under non-US flag vessels and the rest under vessels of their flag"

Shri Tangamani (Madurai) With your permission, may I put a question? How much out of these 50 per cent. of the foodgrains imported to India from USA is carried by Indian vessels, that is vessels carrying Indian flags?

Shri A M Thomas I have not got the exact information here I only wanted to correct the earlier answer to say that under PL 480 50 per cent would be carried by ships flying their flags

Shri Tangamani. Out of the other 50 per cent, how much will be Indian?

Shri A. M. Thomas. I cannot say that now

Mr. Deputy-Speaker We will now take up the next item

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12 18 hrs

CRIMINAL LAW (AMENDMENT) BILL

The Minister of Law (Shri A. K. Sen) I beg to move

> "That the Bill further to amend the Criminal Law Amendment Ordinance, 1944, as passed by Rajya Sabha, be taken into consideration"

[Shri A. K. Sen]

This is really a consequential amendment to an Ordinance which was passed in the Defence of India Act days. Under the Government of India Act, an Ordinance was passed called Ordinance No. 38 of 1944, enabling expeditious attachment of property procured by contractors having contracts with Government by dishonest means, namely, bribery, criminal breach of trust and so on. That Ordinance had provided the duration of the period of attachment. At that time, the hon. Members will recall, the Supreme Court was not in existence and, therefore, there was no criminal court of appeal like the Supreme Court. The final court of criminal appeal was the High Court. Therefore, the period of attachment was designed to be made co-extensive with the pendency of proceedings in the High Courts so that immediately after proceedings in the High Court terminated attachment also terminated. Now what happened was that under the Ordinance several prosecutions were launched. Some of them are still proceeding. One ended in conviction of the accused to fourteen years imprisonment and also penalty which was recoverable out of the attached property attached under the Ordinance. The High Court on appeal set aside the order of conviction on a technical ground, namely, that there was a misjoinder of charges.

Now, there was an appeal preferred to the Supreme Court on a certificate granted by the High Court itself. But as the original Ordinance did not provide for the attachment to continue even after the termination of High Court proceedings difficulties have appeared which will also appear in regard to the other prosecutions which are pending because under the Ordinance, as hon. Members will see from the extracts annexed to the Bill—they are extracts from the Ordinance itself—the duration of the attachment pending the proceedings in the High Court is specified. The proceedings in the High Court are also specified there in section 2, clause (2) of the original Ordinance, namely,—

> "(a) where such proceedings are taken to the High Court, whether in appeal or on revision, the date on which the High Court passes its final orders in such appeal or revision, or
>
> (b) where such proceedings are not taken to the High Court, the day immediately following the expiry of sixty days from the date of the last judgment or order of a criminal court in the proceedings."

What we are seeking to do by the amendment is to include proceedings in the Supreme Court after the termination of the proceedings in the High Court also within section 2, so that the attachment may continue pending proceedings in the Supreme Court and in case the Supreme Court restores the original order of conviction the attachment may not in the meantime get vacated and the properties may not be disposed of. In fact, if the properties are disposed of pending the proceedings in the Supreme Court then the whole purpose of the Ordinance will be frustrated as the properties will go out of the hands of the accused and there will be no means to recover the penalties which would be restored if the Supreme Court restores the judgment of the original court. That is why in section 2 of the original Ordinance we are proposing the amendment indicated in clause 2 of the amending Bill, namely,—

> "For the purposes of this Ordinance, the date of the termination of criminal proceedings shall be deemed to be—
>
> (a) where such proceedings are taken to the Supreme Court in appeal, whether on the certificate of a High Court.."

This is one of such cases; the other cases are still pending in the trial courts—

"whether on the certificate of a High Court or otherwise, the date on which the Supreme Court passes its final orders in such appeal; or

(b) where such proceedings are taken to the High Court and orders are passed thereon and—

(i) no application for a certificate for leave to appeal to the Supreme Court is made to the High Court, the day immediately following the expiry of ninety days from the date on which the High Court passes its final orders;"

Then, in cases where leave to appeal has been refused by the High Court, the date is fixed and where a certificate for leave to appeal has been granted by the High Court but no appeal is lodged in the Supreme Court, it is fixed as the day immediately following the expiry of thirty days from the date of the order granting the certificate. Then, it provides—

"Where such proceedings are not taken to the High Court, the day immediately following the expiry of sixty days from the date of the last judgment or order of a criminal court in the proceedings."

In fact, I now find that immediately after the setting up of the Supreme Court under our Constitution and investing the Supreme Court with criminal appellate jurisdiction, both under articles 134 and 136 of the Constitution, we should have really amended Ordinances like this where the duration of the proceedings taken under the Ordinance was made co-extensive with the duration of the proceedings in the High Courts because after the Supreme Court have been superimposed it is necessary that the attachment proceedings should continue during the pendency of the Supreme Court proceedings and pending final determination of the matter by the Supreme Court.

The difficulties have now come to the forefront and it has now become necessary to amend the Ordinance. Therefore I submit that it is a measure which is absolutely necessary for safeguarding the properties under attachment from being alienated pending the proceedings in the Supreme Court not only in the particular case concerned but also in all the other cases which are pending trial under the Ordinance. I, therefore, submit that this motion be accepted.

Mr. Deputy-Speaker: Motion moved:

"That the Bill further to amend..

Shri Mahanty (Dhenkanal): Sir, may I.....

Mr. Deputy-Speaker: I am anticipating that. But let me first place the motion before the House.

Shri Mahanty: I am raising a point of order that we should not proceed with this Bill any further. Out of sheer courtesy we have listened to the hon. Law Minister. My humble submission is.....

Shri A. K. Sen: A point of order does not show courtesy to anyone.

Shri Mahanty: I said that out of sheer courtesy we have heard the hon. Law Minister without interrupting him. The point of order is that we cannot proceed further.....

Mr. Deputy-Speaker: But let the motion be placed before the House first. I will then ask him to raise it.

Motion moved:

"That the Bill further to amend the Criminal Law Amendment Ordinance, 1944, as passed by Rajya Sabha, be taken into consideration."

Shri Mahanty: I do not wish to speak on the Bill. My point is merely a point of order I should better preface it with a remark I am aware that you have been pleased to rule time and again that the *ultra vires* or *intra vires* nature of a piece of legislation may not be considered by you You do not take the responsibility for it But

Mr. Deputy-Speaker: That apart, the same point of order was raised by the hon Member the other day

Shri Mahanty: The same point of order was raised, but unfortunately there was no satisfactory reply to it because the hon Law Minister did not prefer to reply to those points

Shri A. K. Sen. Which one?

Mr. Deputy-Speaker: He is coming to that

Shri Mahanty. That was in regard to the International Monetary Fund Bill with which the Government came to amend an Ordinance by legislation

Now, my point of order comes under articles 372 of the Constitution It comes under article 372(2) The fact remains that here by this legislation the Government is seeking to amend an Ordinance which was passed in the year 1944, that is, three years before India attained independence

Shri A. K. Sen Article 72 did you say?

Shri Mahanty. Article 372(2)

This Ordinance was enacted under the India and Burma (Emergency Provisions) Act, 1940, which means that it takes away the limitation

Shri A. K. Sen: It is not 1940 It is 1946 It is a misprint

Shri Mahanty: That is immaterial for my purpose

Mr. Deputy-Speaker: He is only correcting it

Shri Mahanty: I thank him for the correction But that is immaterial for my purpose

What I am trying to submit is that there are two very significant aspects of it The first is that this Ordinance was enacted under the India and Burma (Emergency Provisions) Act, 1946, which takes away the limitations imposed on these Ordinances by section 72 of Schedule IX of the Government of India Act, 1935, namely, that they have to be ratified within a period of six weeks The India and Burma (Emergency Provisions) Act takes away that limitation That is number one That point has to be remembered Therefore it continued to be a valid piece of legislation It was a valid piece of law even though it was an Ordinance and it was not ratified subsequently But then on the 27th January, 1950, that is, a day after the Indian Constitution came into force it was provided under article 372(2) of the Constitution that—

> "For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment, as may be expedient" etc

Now, my submission is that even though it continued to be a valid piece of legislation after the 26th January, 1950, this law has not been brought in accord with the provisions of the Constitution, namely, article 123 of the Constitution, because Parliament has never ratified it Secondly, the President has also that power to bring any valid piece of legislation into accord with the provisions of the Constitution only for a period of three years You may kindly see article 372(3) which says·

"Nothing in clause (2) shall be deemed—

(a) to empower the President to make any adaptation or modification of any law after the expiration of three years from the commencement of this Constitution;"

Therefore here is a legislative enormity that is being perpetrated. Government should have come to this House in 1950. They could have come in 1951, or in 1952. They have waited for these long, long years. Now, because some flaw has been detected somewhere, what they are going to do is that they want to amend the ordinance by a piece of legislation, which, I maintain, at least the Constitution, according to my humble understanding, does not empower the Government, much less this House

It is true we cannot consider the *ultra vires* or *intra vires* nature of the Constitution, but your power is limited within the four corners of the Constitution You reign supreme inside this House, but you reign supreme within the four corners of the Constitution

Since this does not fulfil any of the provisions of article 372 of the Constitution and since Government is seeking to amend an ordinance by a piece of legislation, I maintain it is illegal, it is a piece of legislative encroachment into all the accepted canons of the Constitution Therefore, this should be referred back and we should not proceed any further with this Bill before this point is disposed of

Shri Sadhan Gupta (Calcutta East): May I say something on the point of order? I think the point of order is based on a little misunderstanding of the scope of the ordinance-making power and also of the scope of article 372(2) The ordinance was made, not under the Defence of India Act as the hon. Law Minister put it, but under the Ninth Schedule to the Government of India Act 1935, which re-enacted certain provisions of the previous Government of India Act. Under that schedule.

Shri A. K. Sen: I did not say it was done under the Defence of India Act; I said it was done in the Defence of India Act days.

Shri Sadhan Gupta: You also said this Look into the proceedings.

Shri A. K. Sen: I might have made a mistake, because the ordinance itself says it was done under section 72 of the Ninth Schedule.

Shri Sadhan Gupta: Under section 72 of the Ninth Schedule there was no question of ratification by any legislature. The ordinance could be made and it remained in operation for six months and could be extended for six months on each occasion.

Now, the India and Burma (Emergency Powers) Act did away with the limitation of six months in the case of certain ordinances and made it permanent So under article 372 it is the very first clause, the hon. Member will find, that it keeps in force all laws which were in force previous to the coming into being of this Constitution on 26th January 1950. Therefore that ordinance remained in force.

Now the question is whether it should have been brought in, into conformity with article 123 of the Constitution, and submitted for ratification of the legislature. In my submission that is not the intention of article 372(2); because, article 372(2) really was intended for adapting the laws to the new situation created by the Constitution One or two examples will suffice for this. For instance, in most Acts there were provisions about the power of the "provincial Government" for doing something. Now, after the coming into operation of the Constitution, there was no longer any provincial Government; there were State Governments. Therefore, for the words "provincial Government" the words "State Government"

[Shri Sadhan Gupta]

had to be substituted. Similarly, other changes had to be made in view of the coming into being of the Constitution. That is why article 372(2) provided that adaptations must be made in the laws which remained in force after the operation of the Constitution and fixed a three year term. And I take it that in the course of the three years whatever was necessary—in the ordinance itself or adaptation, if anything was necessary—must have been done. It was done in the case of the other laws, for instance in the case of the Indian Penal Code and so on. That must have been done.

Mr. Deputy-Speaker: Wherever it was necessary it ought to have been done, not that it was incumbent and in every case it was to be done.

Shri Sadhan Gupta: It has been done. . .

Shri A. K. Sen: It has been done, Sir.

Shri Sadhan Gupta: The question here is whether it was necessary to provide for ratification. In my submission it was not, because it was not an ordinance made under article 123 of the Constitution but it was an ordinance made under section 72 of the Ninth Schedule to the Government of India Act which did not provide for ratification. And an ordinance made under section 72 of the Ninth Schedule need not be brought up for ratification under article 123 of the Constitution. So I submit that the Bill is perfectly competent and may be proceeded with.

Shri A. K. Sen: I am very obliged to Shri Sadhan Gupta who has said exactly what I was going to say and who has also corrected a mistake, if I had made one, namely if I had given the impression that this ordinance was passed under the Defence of India Act. It was not. It was done under section 72 of the Government of India Act, after the declaration of emergency.

Frankly speaking, I have not been able to understand the points raised by the hon. Member Shri Mahanty. But so far as I have been able to follow him I shall answer his objections. His first objection is that it is really an ordinance, which requires ratification by the President, after the commencement of the Constitution. Well, let us clear that ground first, because in my submission that objection really arises from a few misunderstandings on the position regarding this ordinance and also on the position regarding ordinances promulgated by the President under article 123 of the Constitution

This ordinance originated as an ordinance under section 72 of the Ninth Schedule to the Government of India Act It would have ceased to be operative after six months from the official declaration, at the end of the emergency, under the Government of India Act, like many other ordinances which were passed during the Defence of India Act days under section 72 of the Ninth Schedule to the Government of India Act. But because many of these ordinances were regarded as being useful, it was thought necessary by the British Parliament to pass an Act continuing these ordinances even after the expiration of the period of emergency under section 72 of the Ninth Schedule to the Government of India Act.

Shri Naldurgkar (Osmanabad) There is no period of emergency but a period of six months from the date of the promulgation.

Shri C. R. Pattabhi Raman (Kumbakonam): It was amended between 1940 and 1946.

Shri A. K. Sen: Let us not go into the whole history of it. The hon. Member may take it from me that that is the correct position. And there has to be an official declaration at the end of the emergency. It was done in 1946 and the name of the Act which made it a permanent measure was the India and Burma (Emergency

Provisions) Act, 1946 by which many of the ordinances passed under section 72 of the Ninth Schedule to the Government of India Act were virtually made permanent measures. It required an Act of Parliament, because under the Government of India Act it was not possible to make it permanent by a law passed by the Indian Legislative Assembly in those days. Therefore a British Act was necessary to make this a permanent statute, though it still went on under the name of ordinances. This is one of those ordinances which became permanent measures under the India and Burma (Emergency Provisions) Act of 1946. So that, when the Indian Independence Act of 1947 came, they were continued in operation by virtue of the Indian Independence Act which continued in operation the existing laws. And, after the commencement of the Constitution, by means of article 372(1) this, along with other ordinances made permanent, were continued in operation even after the commencement of the Constitution.

The position of these measures was that they were permanent statutes in our statute-book. They might have been called ordinances or by some other name. They were not, let us be clear, ordinances passed, after the commencement of the Constitution, by the President under article 123. The Constitution is not retrospective but prospective. An ordinance under article 123 requiring ratification could only be passed after the commencement of the Constitution, which was 26th January 1950. Therefore this was not an ordinance of that species at all. It did not require ratification. There was no question of the President ratifying it. The scope of adaptation under article 372(2) is quite well understood. Adaptation must be one which is warranted by the necessity of modifying the language of the statute which is continued in operation, statutes which were in operation before the Constitution, so as to fit in with the political and governmental structure of the Constitution.

Shri Mahanty: Will the hon. Minister kindly interpret the meaning of the words 'the provisions of this Constitution?

Shri A. K. Sen: It means all the provisions.

Shri Mahanty: The provision is article 123. It is not a political structure here; we are not concerned with any political structure.

Shri A. K. Sen: With due respect to the hon. Member, I must say that I have not been able to follow him. Perhaps, it is my fault, but I think the matter is as clear as crystal, so far as we are concerned, that there is no question of ratifying an ordinance which is a permanent measure. There is a question of adapting it, no doubt because as Shri Sadhan Gupta has rightly pointed out, you will find that the original ordinance contained provisions like:

"It extends to the whole of British India....". There is no British India after the Constitution. So, that was adapted and struck out. Further, it read:

> ".... and applies to British subjects and servants of the Crown.".

That was struck out, because there were no servants of the Crown and no British subjects, after the Constitution. Then, the words 'Provincial Government' occurred. Those were struck out by the 1950 Adaptation Order and also by the Act of 1951, and the word 'State' was substituted. That happened with regard to adaptation of most of our Acts before the Constitution. This too suffered adaptation, as it must, after the Constitution. But I do not know how clause 2 of article 372 is relevant for this purpose. With adaptations made under the Adaptation Order of 1950 and Act 13 of 1951, this Ordinance has stood as it is today. How can we amend it, if we want to amend it? It is a permanent measure. It can be amended only by

[Shri A K. Sen]

two processes, either by an ordinance passed by the President or by an Act of Parliament So far as passing an ordinance by the President is concerned, that is out of the question, because the Houses are in session, and normally we do not amend any permanent measure by an ordinance unless it is absolutely necessary Therefore, the only other method is to amend it by an Act of Parliament, and that is precisely what we are seeking to do

Therefore, I submit with due respect to the hon Member who has raised the point of order, that his point is hardly of any substance

Mr. Deputy-Speaker The other day also, the hon Member had raised the same point Then too, I had decided that there was no force in his point of order

It is agreed that this was not an ordinance under article 123 which required ratification or the passing of an Act by this Parliament It was really an ordinance under section 72 of the Ninth Schedule of the Government of India Act, and then the British Parliament had passed an Act which has been referred to

The confusion arises when it is named ordinance That creates a misunderstanding, and the hon Member has that in his mind, and he asks, if it is an ordinance, how it can be replaced by an Act of this Parliament, because it ought to have ceased long ago But as has been just now argued by Shri Sadhan Gupta as also by the hon Law Minister, it was a regular statute on our statute-book, though they had named it as an ordinance, yet it was a regular law on our statute-book and not an ordinance which ought to have been ratified by any legislature

Therefore, today, what we are doing is this, we are not amending any ordinance passed under article 123 of this Constitution, but a regular statute that is already on our statute-book, and that is perfectly justified and authorised, and we can do it So, I see no force in that point of order

Shri Sadhan Gupta. I rise to support this Bill for obvious reasons The main reason which has prompted this Bill is to keep alive a certain ordinance which as you have just pointed out, and as the Law Minister has pointed out, was made part of our statute-book by an Act of Parliament of the UK The reason for keeping alive that ordinance was that certain Government officials by devious means had amassed a large fortune, taking advantage of the war situation

The Statement of Objects and Reasons attached to this Bill refers to the Burma Government which was functioning from Simla in those days I know of cases where there was a Burma refugee organisation, and large sums of money were misappropriated by different persons, each particular accused misappropriated lakhs of rupees, one particular accused had misappropriated possibly about Rs 70 lakhs to Rs 80 lakhs I do not know the amount involved in the case referred to in the Statement of Objects and Reasons But the cases would involve fairly large sums of money, which Government officials had been able to secure by corrupt means, taking advantage of the position in which they were placed and the emergency situation which had arisen in those days

It is but fair to the country and it is but proper that this kind of improper gains, to put it very mildly, should be seized and should not be allowed to be enjoyed by the persons who made them

The difficulty arises, as the hon Law Minister has explained, because the ordinance as it then stood only contemplated the High Court as the end of the proceedings, and naturally so, because except in rare cases, in those days, there was no appeal beyond the

High Court; of course, there might have been an appeal to the Privy Council, but that was very exceptional and in criminal cases, the Privy Council rarely entertained any appeal and so, apparently that was not thought of Now, the High Court proceedings were taken as the final proceedings, and, therefore, the provision was made that the attachment would terminate when the proceedings terminated in the High Court That would mean that when the High Court had decided the matter and set aside the conviction, the attachment would end, and if the attachment ends, then the accused persons would be in a position to dispose of their property, and, therefore they would secure and take possession of the property dispose of the property and get the advantage of the gains they had made That must be prevented We have now an appeal to the Supreme Court, and appeals might be admitted, because as a matter of fact criminal appeals are admitted more readily by the Supreme Court than by the Privy Council, so, if it is admitted and ultimately, the conviction of the accused persons is upheld the conviction that might have been ordered by the trial court is upheld then in such a case, it would be the height of anomaly to enable them to dispose of the property The penalties would not be recovered and they would be all the better for the corruption they had perpetrated while they were in office It is to prevent this eventuality that this kind of Bill becomes necessary Therefore, there are no two opinions as to the necessity of the Bill, there cannot be two opinions as to the necessity of enacting it and keeping alive the provisions of the Ordinance

But some ancillary questions arise Now, what is the reason for the great delay in the cases? As a lawyer, I can quite appreciate that there may be certain reasons for prolonging a case even for, say, 7 or 8 years It is, of course, a little unusual in criminal matters, it is quite usual in civil matters In my personal case, for instance, one suit which I had instituted in 1945 ended only about a month or two ago This happens. But in criminal cases, it is a little unusual to have such protracted proceedings

This Ordinance was promulgated in 1944 and I take it the Burma Government had shifted to Burma about that time—may be a little later, about 1945 or 1946, I am not sure of the date 13 years have passed since then The immediate necessity for bringing this Bill before us relates to something which happened when the Burma Government was functioning in Simla—if I have not misunderstood it What is the reason why for 13 years this prosecution had not concluded? There may be good reasons But *prima facie*, it seems to be a very unsatisfactory state of affairs, and I am sure the hon Law Minister will explain how this kind of thing could take place, how many such proceedings are still pending and for what number of years, and what has been responsible for holding up these proceedings so long Normally, I should think that before the coming into operation of this Constitution, all these proceedings should have been finished But what is the reason that all these proceedings have been delayed?

I hope a satisfactory answer will be given so that we know where we are, and we know whether anyone is to blame and if so, who, or whether anyone is not to blame With these words, I again support the Bill and hope the House will accept it

Shri Mahanty Normally I would not have paid much attention to this Bill had not its genesis been of a very peculiar character, the more so when this entire legislation is being enacted today to meet certain situations which have arisen in a State known as East Punjab whose political background is too well-known to the House

Having listened to Shri Sadhan Gupta, I came to feel as if only contractors made money during the

[Shri Mahanty]

second world war and that too only in the State of East Punjab. It is a well-known fact that not only contractors but many persons in many other walks of life have minted tons of money also. Therefore, it is not the ends of social justice, the ends of political justice and the ends of administrative justice that are going to be served by this kind of vindictive witch-hunting of certain contractors. But what is more important in this case is to consider whether Parliament and legislative properiety could abet this kind of vindictiveness. Cases were instituted and the High Court had discharged them because of the misjoinder of charges. Evidently, it proves that the cases were weak. I do not hold any brief for any contractor. But it is a well-known fact that many people in many walks of life have minted money during the second world war.

Therefore, I would like to know what was the genesis of this. Of course, I may be in a minority of one. That does not matter, but in the fitness of things, I should like to record my protest against this House being asked to give its seal of approval to a piece of legislation whose genesis is so unique in its character. We do not know what is the background, who these contractors were, what were the charges against them, what were the judgments on account of which due to the misjoinder of charges they were let off. What is being sought to be done is merely to keep their properties attached. The East Punjab Government has now moved the Supreme Court in appeal, and what is being sought to be done today is to keep the properties of these persons under attachment. We do not know what will be the outcome of these proceedings. It may be that the High Court had adjudged them not guilty; it may be that the Supreme Court may also do so. But what is meant by this—I may be wrong; I will be very happy if I am proved wrong—and what is being sought to be done is merely to bring some kind of legislative oppression, the tyranny of law, to bear on the persons who have been adjudged not guilty by the High Court. I do not say that they are not guilty; they may have been guilty.

Therefore, if it is said that the ends of administrative and political justice should be brought to bear upon such cases, let us simplify our procedure under the Criminal Procedure Code. That is what Shri Sadhan Gupta has been asking for. Let us simplify it as they have done in People's Courts. Let us try cases on the public pavement, let hands be raised as to whether the accused is guilty or not and let us proceed that way. But if you are going to have the rule of law, I ask in all seriousness: Is this the rule of law? What is the peculiar social, cultural or political background of the State of Punjab?

The other day someone was telling me that in East Punjab the bus routes are not being nationalised because those routes are owned by a particular community which says. 'Let all the urban property be nationalised in Punjab', because the urban property belongs to another community. Therefore unless we know the genesis, unless we know about these cases, we have a lurking suspicion that here by this means one set of people are trying to injure or bring under some victimisation another set of people My only grievance is that for that, the law should not be an abettor; law should not abet this kind of vindictiveness.

Therefore, my grievance is still lingering in spite of all that has been said. In all fairness, the House should have information about the genesis of this. Why are the Government fighting shy of this? What is the High Court judgment? Why did the High Court adjudge them not guilty? I think we are within our rights to know all these things before Government come to this House to amend an Ordinance by a piece of legislation.

There is another thing. The hon. Law Minister stated that he did not understand me. I do not know if there is anything wrong with the acoustics of this House. I think I speak in a fairly pitched voice. Is it that something is wrong with the acoustics or something is wrong with his..

Mr. Deputy-Speaker: Why should he go into that?

Shri Mahanty: I am not going to press the point?

Mr. Deputy-Speaker: What is the point he wants to raise?

Shri Mahanty: I am not going to press any point But since he said that he did not understand me and also said something on the basis of that 'non-understanding', I was trying to explain. I think I owe a personal explanation. I do not know if of late my voice has become hoarse, but I believe I speak in a quite clear voice I have been accustomed to speak like that

Shri C. K. Bhattacharya (West Dinajpur) What he said was that it was perhaps due to his own fault that he could not understand the hon Member's point.

Mr. Deputy-Speaker: That is what I have put to the hon. Member Why should he take offence at that?

Shri Mahanty: I am not taking offence May be it is my fault as well.

Mr. Deputy-Speaker: Why labour it?

Shri Mahanty: It may be my fault as well.

Mr. Deputy-Speaker: That point has been settled. I have given my ruling He should abide by that. Now what is it that the hon Member wants?

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13 hrs.

Shri Mahanty: Now, what I am trying to say is this that this is not in accordance with the provisions of the Constitution.

Mr. Deputy-Speaker: Was this not exactly the point of order that he raised?

Shri Mahanty: That was on various other grounds. The particular ground referred to article 372(2) which the hon. Law Minister said that he could not understand me. Naturally, he did not touch that particular point to which I drew the attention of the House Sir, I am in your hands. .

Mr. Deputy-Speaker: I have already given my decision and that should be a closed chapter. Now, if the hon. Member has to say anything else he can do so

Shri Mahanty: I have nothing more to add except to say that this is a lingering grievance that Government should have made known the genesis of this case. We should have known what was the judgment of the High Court It has a peculiar social, cultural and communal background.

With these words I oppose this Bill with all the force at my command.

Shri Supakar (Sambalpur): Mr Deputy-Speaker, Sir, the Statement of Objects and Reasons of the Bill states that the main object of the Ordinance is to prevent the disposal of the attached property pending final disposal of the criminal proceedings and so it is desirable to amend the definition so as to continue any attachment of property pending the decision of the Supreme Court in cases where proceedings may be taken to that court. This is the main object of the Bill.

But, as the Bill is worded, I doubt whether it will serve the purpose for which it is being enacted. It is said in the Bill that it shall be deemed to have come into force on the 26th day of January, 1950 though it is being

[Shri Supakar]

brought before the House in September, 1959. Clause 2 says:

> "For sub-section (2) of section 2 of the Criminal Law Amendment Ordinance, 1944, the following sub-section shall be substituted, namely —"

Now, I have grave doubts whether, by merely stating that for sub-section (2) of section 2 the amended clause shall be substituted, it will give retrospective effect to the clause so as to prevent the disposal of the attached property. I hope that when the Law Minister replies he will explain whether, by merely stating in clause 1 that it shall be deemed to have come into force on the 26th day of January, 1950, and not in the clause itself, it will make clause 2 of this Bill retrospective.

Coming to the facts on which this Bill is said to be based, I have to make certain comments. It has very often been stated that special tribunals are set up to expedite trials of cases because our ordinary courts take too much time to dispose of cases—and specially criminal cases—because their hands are otherwise full. Apparently, to expedite the disposal of these criminal cases, they were given over to the East Punjab Special Tribunal which was set up for this purpose.

You know the War ended in 1945 and the Burma war a little earlier Evidently the alleged offences must have taken place some time in the year 1944 or 1945. It has taken nearly 15 years to dispose of only one case out of the several in the High Court We are told in the Statement of Objects and Reasons that the State of Punjab has now obtained leave to appeal to the Supreme Court We are yet to know what time it will take for the case to be disposed of in the Supreme Court. There are other cases which are yet to be disposed of by the High Court.

It will be for the Supreme Court to say and it is not for us to make any comment whether it will be justified or not to keep the attachment pending, even if the special tribunals set up for the purpose of expediting these criminal cases take as long as 15 years—of course including the High Court stage—to dispose of the cases On the presumption that because there have been prosecutions launched, therefore, the accused persons must be presumed to be guilty until they are proved otherwise by the High Court or by the Tribunal or by the Supreme Court. Therefore, these properties have to remain attached for decades—more than a decade at least in the present case

This Bill is an illustration to show what amount of delay is involved even in cases of the special tribunals This is an illustration for the necessity to bring forward a special Bill to deal with a few cases which, I believe, could have been disposed of otherwise than by taking recourse to legislation by Parliament and which, perhaps, would have been managed through the ordinary process of criminal law by proper application to the High Court and the Supreme Court in the matter of preventing the disposal of attached property

It gives us some pain to have the necessity of having special legislation to meet a few cases, however important they may be

Shri C. K Bhattacharya: Sir, I will make only a minor suggestion and it is this. Will the provision that is now being made for the appeal to the Supreme Court cover the period where leave to appeal to the Supreme Court is refused by the High Court and the application is made to the Supreme Court for special leave? The language of the provision is:

> "where such proceedings are taken to the Supreme Court in appeal,"

Does it mean cases where appeals have been admitted by the Supreme Court or does it also cover the period where appeals have not yet been admitted but applications have been made for special leave to appeal because the High Court has not given leave to appeal. I am not sure whether it covers that period. Of course, the hon. Law Minister may make it clear. But, I think, this should be made clear that it also covers the period commencing from the date when the High Court has refused leave to appeal till application has been made to the Supreme Court for special leave, and the Supreme Court has pronounced its opinion on that application. That period should also be covered in these proceedings, where such proceedings are taken to the Supreme Court in appeal. It is not clear here whether it covers that period also.

Shri A. K. Sen: Sir, I was rather struck by Shri Mahanty's severe condemnation of this Bill, the reasons for which I had been rather at pains to discover. He has said that it is witch-hunting against the contractors and persecuting them and so on. The only purpose of this Bill is to preserve the properties that are attached, so that pending the final determination of the result of the criminal proceedings taken against the persons concerned the properties may be in proper custody. That is the whole purpose of the Bill. We are not witch-hunting or trying to impose any additional liability or any additional infirmities on the persons concerned. If the Supreme Court reverses the judgment of the High Court, it would not have been proper to allow the accused persons to fritter away the properties now under attachment so that the penalities, if restored, would be incapable of being realised. I am sure the hon. Member does not desire that and that is the result which will follow if this Bill is not accepted by the House. The moment the attachment is vacated, I have no doubt as to what will happen to this property. Even if the Supreme Court two or three years later restores the conviction and the penalties, the Government will not be able to recover a single penny. I agree with the hon. Member, Shri Supakar, that the proceedings had taken rather too long a time and it is the desire of all of us that proceedings, especially in criminal cases, should be speeded up. In this particular case, the orginal tribunal passed its judgment on the 31st of March, 1949, imposing the penalties and sentencing the persons concerned. But the High Court passed its judgment on the 15th of January, 1959, just less than ten years by about two months. It took 9 years, 10 months. I cannot speak for the High Court or why the delay has taken place. We know the various methods by which the trials are delayed. I agree with the hon. Member that the delay has been extra-ordinary. This appeal which has ultimately been disposed of on merely technical grounds should not have taken ten years to be disposed of. But, unfortunately, that has been so. But after the High Court judgment, the State has moved quite quickly. So far as the Government is concerned, it applied to the Supreme Court for continuing the attachment. The Supreme Court rightly held, if I may say so with respect, that they had no power to extend the period of statutory attachment. If it were an ordinary attachment, they could have prolonged it. But they have held that this attachment was under a special law and the law having prescribed the duration, it was not open to the Supreme Court to extend its duration.

Shri Supakar: Is it not open to him to fritter away the property in the time between the order passed by the Supreme Court saying that they could not continue the attachment and the bringing up of this Bill here?

Mr. Deputy-Speaker: Therefore, it is deemed to have come into force earlier.

Shri A. K. Sen: That is precisely the reason why we are giving retrospective effect from the date of the Constitution. During this vacuum, the attachment would have been affected. The hon. Member is quite right. So far as the delay in the High Court is concerned, it was ten years. It is not for me to explain. It is really for the Court to look into it and find out whether such delays should be allowed to occur in future or not.

Shri Mahanty: The House should have an explanation.

Shri A. K. Sen: We cannot explain for the High Court why it took ten years.

Shri Mahanty: Somebody must place these things before us.

Shri A. K. Sen: The High Court would take note of all these observations and the Government can communicate to the High Court the feelings of this House on this particular matter. That is all that we can do. We do not desire to dictate to the High Court as to how they should decide. All that we can do is to communicate the desire of the House and the entire country that these cases should not take so much time.

Shri Harish Chandra Mathur (Pali): This House has been taking steps to see that these arrears are cleared. Conferences are held. Perhaps the arrears are due because there are not enough Judges. There are thousands of cases in the Allahabad High Court which are more than five years.

Shri A. K. Sen: I do not know. From 1949 to 1959, the work of the Punjab High Court was not very heavy.

Shri Harish Chandra Mathur: The Allahabad High Court has got a large number of cases more than five years old.

Pandit Thakur Das Bhargava (Hissar): Two cases went to the Supreme Court to my knowledge which were decided after seven years.

Shri A. K. Sen: These are wider questions. But I think the Government has been during the last two years communicating the desire of this House and also the whole country that the cases should be disposed of fairly quickly and I think the Punjab High Court has speeded up its work during the last two years. Four more additional Judges have been appointed and the work has been speeded up. That is a different matter altogether. This is no reason for objecting to this measure.

Mr. Deputy-Speaker: The question is:

> "That the Bill further to amend the Criminal Law Amendment Ordinance, 1944, as passed by Rajya Sabha, be taken into consideration."

The motion was adopted.

Clause 2.— *(Amendment of Section 2).*

Shri Naldurgkar: Sir, I beg to move:

Page 2, lines 4 and 5,—

> *for* "date of the refusal of the certificate", *substitute* "last date which is prescribed for submitting an application for special leave to appeal to the Supreme Court".

Sub-clause (ii) of clause (2) says:

> "An application for a certificate for leave to appeal to the Supreme Court has been refused by the High Court, the day immediately following the expiry of sixty days from the date of the refusal of the certificate."

Sir, there is no provision for the extension of the time that is prescribed

[Shri Naldurgkar]

for leave of appeal to the Supreme Court It is going to be a permanent statute and my amendment seeks to remedy that defect It does not do any harm also

Shri A. K. Sen: It is not necessary If this Bill came before this House first, I would not have minded even accepting this amendment but now if it is accepted, it will have to go to the other House We cannot do it this session So, I would request the hon Member to withdraw this amendment as it is not necessary The Government feels that within sixty days, it can act

Mr Deputy-Speaker. Is the hon Member pressing his amendment?

Shri Naldurgkar: No Sir

The amendment was, by leave, withdrawn

Mr Deputy-Speaker The question is

"That clause 2 stand part of the Bill"

The motion was adopted

Clause 2 was added to the Bill

Mr Deputy-Speaker The question is

"That clause 1 the Enacting Formula and the Title stand part of the Bill"

The motion was adopted

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

Shri A. K Sen: Sir, I beg to move

"That the Bill be passed"

Mr Deputy-Speaker: The question is:

"That the Bill be passed"

The motion was adopted.

13·22 hrs

MOTION *RE* REPORT OF COMMISSIONER FOR LINGUISTIC MINORITIES—*contd*

Mr. Deputy-Speaker: The House will now take up further consideration of the following motion moved by Shri B N Datar on the 8th September, 1959 namely —

> That this House takes note of the Report of the Commissioner for Linguistic Minorities for the period 30th July, 1957 to 31st July, 1958, laid on the Table of the House on the 8th May, 1959"

There is also further consideration of the amendments that have been moved

The Minister of State in the Ministry of Home Affairs (Shri Datar): Sir may I know how much time is left?

Mr Deputy Speaker. The time now available is 1 hour and 35 minutes, that means we will go up to 3 00

Shri Supakar. When will the hon Minister be called?

Mr Deputy-Speaker He will conclude by 3 00

Shri Supakar. When will he begin?

Mr. Deputy-Speaker. That will be known just now

Shri Datar: Sir, at about 2 30 I shall begin to reply

Mr. Deputy-Speaker: All right.

Some Hon Members rose—

Mr. Deputy-Speaker: Shri D C. Sharma—Hon Members shall be brief now.

Shri D. C Sharma (Gurdaspur): Sir, my normal unit of time is 45 minutes in a class room I shall be in your hands.