House recommends to the Government—

(i) to make a clear-cut category-wise statement as to what projects in various fields are finally to be included in the re-phased Plan and what are to be postponed:

(ii) to announce by way of a policy statement that a two-year breathing time will be given at the end of the Second Plan to the nation to recover from the stresses and strains of the two Five Year Plans;

(iii) to announce by way of a policy statement that deficit financing will not be permitted to exceed Rs. 800 crores and that even the core of the Plan, if necessary, would be re-phased to keep within the limits of Rs. 800 crores of deficit finance;

(iv) to make strenuous efforts to prevent rise in food prices and articles of domestic consumption;

(v) to give all-out aid to hard-currency earning exports; control credit facilities; encourage flow of foreign investments; and

(vi) to assure the nation that during the remaining Plan period there will be no fresh major tax imposition on the middle and poor classes."'

The motion was negatived.

Mr. Speaker: The question is:

'That for the original motion, the following be substituted, namely:—

"This House having considered the Second Five Year Plan in relation to the current economic situation, is of the opinion that the failure of the Government to take prompt and adequate measures to check the deteriorating agrarian situation and its vacillating policy in regard to the foreign exchange reserve, has created difficulties for the successful implementation of the Plan." '

The motion was negatived.

Mr. Speaker: The question is:

'That for the original motion, the following be substituted, namely:—

"This House having considered the Second Five Year Plan in relation to the current economic sitution, is of the opinion that—

(i) more emphasis should be laid on agriculture;

(ii) cottage industry should be given priority; and

(iii) emphasis should be laid on organising village Panchayats." '

The motion was negatived.

All the other substitute motions[*] were, by leave, withdrawn.

NAVY BILL

Mr. Speaker: The House will now proceed with the clause-by-clause consideration of the Navy Bill.

The time allotted for this Bill is 10 hours, of which 5 hours and 42 minutes have been taken; so a balance of 4 hours and 18 minutes are left.

Clause 12.—(*Validity of enrolment*)

Mr. Speaker: I find no amendments tabled to this clause. I shall put it to vote.

The question is:

"Clause 12 stand part of the Bill."

The motion was adopted.

Clause 12 was added to the Bill.

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[*]The following substitute motion moved by the late Shri Tyabji on the 13th September, 1957, was deemed to have been negatived under the direction issued by the Speaker:—

"That for the original motion, the following be substituted, namely:—

"This House having considered the Second Five Year Plan in relation to the current economic situation, is of the opinion that steps be taken to improve the position regarding foreign exchange and to avoid deficit financing'."

Clause 13—(*Oath of Allegiance*)

Shri Easwara Iyer (Trivandrum): Sir, I beg to move:

Page 7, line 37—

after "established" *insert* "and to the Union of India."

In moving this amendment I submit to the consideration of the House that the taking of oath is not merely a technical or a formal matter. Taking of oath means that he bears allegiance to the country and a breach of that oath will constitute him as a traitor to the country. So that I cannot understand why loyalty to the country is not also made a subject matter of the oath.

Clause 42 says—

"Muntiny means any assembly or combination of two or more persons subject to naval law with the common object of,—

* * * * *

(d) seducing any person subject to military naval or air force law from his allegiance to the Constitution or loyalty to the State or duty to his superior officers;"

Here it has been provided that mutiny means seducing a person subject to military, naval or air force law from his allegiance to the Constitution or loyalty to the State. Therefore, I would commend to the hon. Minister that this addition may also be made in the form of the oath, because oath is a very solemn matter and its solemnity should not be destroyed by taking away the allegiance to the Union of India.

Mr. Speaker: Amendment moved:

Page 7, line 37—

after "established" *insert* "and to the Union of India."

The Deputy Minister of Defence (Shri Raghuramaiah): Sir, I am very glad that the question of loyalty to the Union has been emphasised so much by the mover of this amendment. The oath prescribed in the present clause follows the general pattern of the oath prescribed for Ministers of the Union, Members of Parliament, and so on under Schedule III to the Constitution of India. Allegiance to the Constitution implies naturally loyalty to the country. It is difficult to conceive of disloyalty to the Constitution which will not also mean disloyalty to the country.

Shri Easwara Iyer: It can be there.

Shri Raghuramaiah: Of course, certain words have been put in the definition of mutiny. But that, Sir, is a specific provision. When we prescribe an oath it must cover all cases and following the pattern of the III Schedule to the Constitution, we thought that the present definition is sufficient. I would, therefore, submit that there is no need for the amendment.

Mr. Speaker: I shall now put amendment No. 13 to vote.

The question is:

Page 7, line 37—

after "established" *insert* "and to the Union of India".

The motion was negatived.

Mr. Speaker: The question is:

"That clause 13 stand part of the Bill."

The motion was adopted.

Clause 13 was added to the Bill.

Clause 14—(*Liability for service of officers and seamen*)

Shri Easwara Iyer: I beg to move:

Page 8, line 8—

after 'No officer' *insert* 'or seamen'.

This is a consequential amendment. Sub-clause (2) reads:

"No officer shall be at liberty to resign his office....."

This amendment seeks to bring seamen also within the ambit of this provision.

Mr. Speaker: What about amendment No. 15?

Shri Easwara Iyer: That is also for the same purpose.

I beg to move:

Page 8, line 16—

after 'Officers' *insert* 'Seamen and'.

Mr. Speaker: Amendments moved:

(i) Page 8, line 8—

after 'No Officer' *insert* 'or seamen'.

(ii) Page 8, line 16—

after 'Officers' *insert* 'Seamen and'.

Shri Raghuramaiah: There are two provisions in this clause and what the hon. members want is there already in sub-clause (2). The first part of this sub-clause reads:

'No officer shall be at liberty to resign his office except with the permission of the Central Government'.

and the second part reads:

"no seamen shall be at liberty to resign his post except with the permission of the prescribed officer.".

The only difference is as regards the authority which will have to accept the resignation. In the case of seamen, it has been considered that it would be quite sufficient to leave it to the prescribed officer; it may be the Chief of the Naval Staff or any other officer as may be prescribed according to the circumstances of the case. It might cast a heavy burden on the Central Government and take a lot of their time if they were to go and examine necessarily every case of resignation by a seaman. That is all the distinction. Therefore, I submit that the amendment is not necessary.

Mr. Speaker: I shall now put amendments Nos. 14 and 15 to vote.

The question is:

Page 8, line 8—

after "No officer" *insert* "or seamen".

The motion was negatived.

Mr. Speaker: The question is:

Page 8, line 16—

after "Officers" *insert* "Seamen and".

The motion was negatived.

Mr. Speaker: The question is:

"That clause 14 stand part of the Bill".

The motion was adopted.

Clause 14 was added to the Bill.

Clause 15.—(*Tenure of service of officers and seamen*).

Shri Easwara Iyer: I beg to move:

Page 8—

after line 29, *add*:

"Provided that no officer or seaman shall be discharged, dismissed or reduced in rank unless opportunity is given for the said officer, or seaman to show cause."

This amendment seeks to add a proviso to clause 15 whereby no officer

[Shri Easwara Iyer]

or seaman shall be discharged, dismissed or reduced in rank unless an opporuntity is given to him to show cause against such dismissal or reduction in rank. This is a very elementary rule of natural justice, and that is also embodied in article 311 of our Constitution.

Now, although the Fundamental Rights available to citizens have been restricted or abrogated to a certain extent, so far as this Bill is concerned, yet I say that this would not come within the ambit of those Fundamental Rights, but it is only the rule of natural justice embodying the principle of *aude alterem par tem.*

Quite apart from the fact that the officer who is subjected to the punishment is or is not given an opportunity to argue the case, at least, I submit, an opportunity for submitting a written explanation in case of proposed dismissal or proposed reduction in rank or removal from service may be given. The proviso seeks to achieve that purpose. I do not think the Minister will have any objection to this amendment.

Mr. Speaker: Will that not come under the phrase 'Subject to the provisions of this Act and the regulations made thereunder'?

Shri Easwara Iyer: That is a case of dismissal or discharge by taking disciplinary action against him. But in cases where he has committed offences within the provisions of the enactment, he is entitled to trial. But this enactment has not provided for any notice being given prior to his dismissal or removal from service.

Mr. Speaker: Amendment moved:

Page 8—

after line 29, *add*:

"Provided that no officer or seaman shall be discharged, dismissed or reduced in rank unless opportunity is given for the said officer, or seaman to show cause."

Shri Raghuramaiah: The hon. Member referred to article 311 of the Constitution. Of course, the article is specific but it only applies to members who are civil servants of the Union. This may be compared with article 310 where there is a specific reference to members of the Armed Forces. So, the Constitution does not contemplate the application of the provisions of article 311 to the Armed Forces.

Apart from that, in cases where there is a specific charge, it is triable by a court martial, and there is abundant opportunity given to the accused to defend himself. My hon. friend is no doubt referring to cases covered by clause 15. Although the normal rule is that under the regulations any person who is to be discharged or removed from service should as far as possible be given an opportunity to explain—it will be so, and that is the position in actual practice—yet, it would not be feasible in a matter like this to make it a statutory obligation, because there may well be cases where it will not be in public interest to disclose why a particular person is being discharged. They may be very rare cases. But the requirements or the Armed Forces are such that it would not be feasible or advisable for Government to be handicapped in this matter. That is the reason why Government are unable to accept this amendment.

Mr. Speaker: I shall now put amendment No. 16 to vote.

The question is:

Page 8—

after line 29, *add*:

"Provided that no officer or seaman shall be discharged, dismissed or reduced in rank unless opportunity is given for the said officer, or seaman to show cause."

The motion was negatived.

Mr. Speaker: The question is:

"That clause 15 stand part of the Bill".

The motion was adopted.

Clause 15 was added to the Bill.

Mr. Speaker: I believe Government must send for the Whip, so, that the voices may be louder. I am guided by voices, not by division. If the voices are absent, it is rather strange.

Shri Raghuramaiah: I shall do that.

Shri Braj Raj Singh (Firozabad): There is no quorum, I think.

Shri V. P. Nayar (Quilon): Let us not inconvenience our more fortunate colleagues.

Mr. Speaker: During the lunch hour, we do not insist on quorum, unless any hon. Member says he challenges the division.

Clauses 16 to 18

Mr. Speaker: Now, since there are no amendments to clauses 16 to 18, I shall put them together to vote.

The question is:

"That clauses 16 to 18 stand part of the Bill".

The motion was adopted.

Clauses 16 to 18 were added to the Bill.

Clause 19.— (*Restrictions respecting right to form associations, freedom of speech, etc.*)

Shri Easwara Iyer: I beg to move:

(i) Page 9—

after line 38, *add*:

"Provided that it shall be lawful for any person subject to naval law to be a member of any organisation of a scientific, literary or cultural character or of any organisation the membership of which is limited to officers or seamen of the Indian Navy."

(ii) Page 10, lines 7 and 8—

omit "or for such other purposes as may be specified in this behalf by the Central Government."

The first amendment seeks to add a proviso to clause 19.

Mr. Speaker: Amendments moved:

(i) Page 9—

after line 38, *add*:

"Provided that it shall be lawful for any person subject to naval law to be a member of any organisation of a scientific, literary or cultural character or of any organisation the membership of which is limited to officers or seamen of the Indian Navy."

(ii) Page 10, lines 7, and 8—

omit "or for such other purposes as may be specifid in this behalf by the Central Government.".

Shri V. P. Nayar: A few moments ago, I heard the Deputy Minister telling us that he was quite surprised to find how allegiance to the Constitution was being pressed from this side. I should really be surprised if the Deputy Minister does not find his way to accept this amendment. After all, what does it contemplate?

I know my hon. friend as a person who loves all the arts. I know his love of music. If he does not come forward to accept this amendment, it only suggests that apart from the organisations which are detailed here, the personnel of the Naval Forces will not be able to join a society, institution, association or organisation that is not recognised as part of the Armed Forces of the Union or is not of a purely social, recreational or religious nature.

I would very humbly suggest that no harm could ever be hoped to be done to the Navy or to its personnel by accepting this amendment, because it does not contemplate any change in the first sub-clause.

[Shri V. P. Nayar]

One can understand the anxiety of Government to prevent seamen or personnel of the armed forces from joining any political association....

Mr. Speaker: Here (a) refers to political association.

Shri V. P. Nayar: One can understand why in (a) an attempt is made to prevent seamen from joining any association with any political colour or when it has anything to do with trade union activities. That is not a matter which we want to interfere by an amendment. But as regards (b), it is very necessary that these seamen who have to go out into the sea and live a sort of isolated life, should have facilities for recreation.....

Mr. Speaker: I am not able to follow the hon. Member. In (b), two categories are put—such of the institutions as are not recognised as part of the armed forces of the Union or those that are not of a purely, social, recreational or religious nature. Would not all these come under that?

Shri V. P. Nayar: How?

Mr. Speaker: There is nothing preventing it.

Shri V. P. Nayar: The Central Government can give special sanction to any member to join an association that is not recognised as part of the armed forces or is not of a purely recreational or religious nature.

Mr. Speaker: This comes under the latter.

Shri V. P. Nayar: We want only to amplify it because it is vague. Whether a cultural organisation as such would come within the purview of a society as defined in (b), is a matter of doubt and we want to be more explicit on the point. There could possibly be no harm at all to anybody or to the services or to the country if a soldier or sailor is allowed to participate in, for example, a histrionic troupe, a dramatic club or a music society. Any organisation which is primarily intended for the benefit of its members in the matter of cultural activities should not close the doors to a class of men belonging to the Navy.

Similar is the case with scientific organisations. I do not know whether this will come under any of the categories mentioned here. I think it will not. What is the harm if a member of the Navy joining an association, say, a horticultural society, which has neither political nor trade union activities? Does it come within the purview of the definition given here? It is a matter of doubt and we want to have it clarified and that is why, we submit this amendment. I hope the hon. Minister will have no difficulty in accepting the amendments which will only enable seamen to have greater participation in social activities around them.

Shri Raghuramaiah: The hon. Member certainly does understand our difficulties; only he does not want to appreciate them. There is, if I may submit, nothing in this clause which *suo moto* debars all scientific and other organisations, to which reference has been made. The scope of clause 19(b) is only this, that in the case of purely social, recreational or religious associations, there is no need for any specific permission, but in the case of all other organisations, scientific, cultural or whatever it is, the Central Government retain to themselves the power to examine in each case whether it is really scientific, whether it is really cultural or something else. For instance, in the case of a dramatic club, if it is only dramatic and nothing more than that, the question may not arise.

So the structure of the sub-clause is such that there is no complete ban

on anything. The only thing is that the Central Government reserve to themselves the right to examine each case when it arises and decide whether to accord permission or not.

Shri V. P. Nayar: Just a minute ago, the hon. Minister stated that in the matter of acceptance of resignation, the Central Government should not be burdened with requisitions from various seamen. Here the number will be more.....

Mr. Speaker: Suppose there is a drama staging the theme of one State against another.

Shri V. P. Nayar: That has not happened.

Mr. Speaker: It may eulogise the totalitarian or democratic way of life or the fascist way of life.

Shri V. P. Nayar: There are other provisions for that. When we were discussing clause 14, the hon. Deputy Minister was kind enough to say....

Mr. Speaker: The hon. Member has already spoken.

Shri V. P. Nayar: Let me explain. He has not quite understood the point.

Mr. Speaker: Both the hon. Member and the Minister know English perfectly well.

Shri V. P. Nayar: I do not have any such claim.

Mr. Speaker: But we are talking in English. I will put amendment Nos. 17 and 18 to vote.

The question is:

Page 9,—

after line 38, *add*:

"Provided that it shall be lawful for any person subject to naval law to be a member of any organisation of a scientific, literary or cultural character or of any organisation the membership of which is limited to officers or seamen of the Indian Navy."

The motion was negatived.

Mr. Speaker: The question is:

Page 10, lines 7 and 8,—

omit "or for such other purposes as may be specified in this behalf by the Central Government"

The motion was negatived.

Mr. Speaker: The question is:

"That clause 19 stand part of the Bill".

The motion was adopted.

Clause 19 was added to the Bill.

Clauses 20 to 26 were added to the Bill.

Clause 27—(*Deductions from pay etc., not to be made unless authorised*)

Shri Easwara Iyer: I beg to move:

Page 12—

after line 27, *add*:

"Provided that any deduction shall not exceed one-third of the total monthly emoluments of any officer or seaman during a period of 30 days".

Mr. Speaker: I shall now put this amendment to vote.

The question is:

Page 12—

after line 27, *add*:

"Provided that any deduction shall not exceed one-third of the total monthly emoluments of any officer or seaman during a period of 30 days".

The motion was negatived.

Mr. Speaker: The question is:

"That clause 27 stand part of the Bill".

The motion was adopted.

Clauses 27 was added to the Bill.

Clauses 28 to 30 were added to the Bill.

Clause 31— (*Liability for maintenance of wife and children*)

Shri Supakar (Sambalpur): I beg to move:

(i) **Page 15**—

omit lines 27 to 30.

(ii) **Page 15**—

for lines 31 to 34 *substitute*:

"(5) Deduction may be made from the pay and allowances of such persons on whom the process is served such sum of money as may be prescribed to enable that person to attend the hearing of the proceedings and to return to his ship or quarters after such attendance".

These two amendments are interrelated. First of all, clause 31, as it stands, becomes altogether meaningless unless it is amended. If we try to find out the simple meaning of this clause as it stands, it boils down to this: a person subject to naval law shall not be liable to maintain his wife and children, legitimate or illegitimate I say, this because we find that under the provision as it stands, a person subject to naval law, in order to be saddled with the duty or liability to maintain his wife and children, has to be provided with certain facilities under the procedure provided. First of all, when a person files a suit or case for maintenance against a seaman or officer, as the case may be, he or she, that is, the plaintiff or applicant, has to deposit, before the suit is filed, the money necessary for the seaman or officer to meet the travelling expenses from the naval establishment or ship—it may be in a foreign place—to the place where the case is filed. Also his return journey has to be paid for. This involves a lot of expenditure It has also been provided that there can be no *ex-parte* order or decree in such cases.

So it boils down to this: that unless the person who starts the case is prepared to pay the heavy expenditure necessary for the officer or the seaman to go from his station to the place where the wife or child has filed the case, and then go back to his station, the proceedings cannot go on.

You know that in most cases of maintenance, the plaintiff or the applicant, as the case may be, is a pauper. He or she, in 99 cases out of 100, has not the money even to pay the small expenditure that is necessary and that is why there is a claim for maintenance. To expect in such cases the applicant or the plaintiff, as the case may be, to bear the heavy expenditure is to nullify the provision and to say that unless a sum of money as may be prescribed to enable to attend the court and return is paid along with the summons, the service will not be sufficient and since the service is not sufficient the case cannot proceed and even that a decree passed in such cases or the order will not be effective is to nullify the effect of the clause altogether Therefore, it is necessary to do away with this proviso which says that it must be a condition precedent for the service of summons for the applicant or the plaintiff to pay such a sum of money as may be prescribed It will only deprive the person who is suing for maintenance of his right to do so. It is necessary that this condition precedent should not be insisted upon But, in proper cases it may be provided that deductions, if there is a decree passed in favour of the wife or children, may be made from the pay and allowances of the seaman or the officer. That would be the proper procedure and that would make some meaning.

13-32 hrs.

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

It may be argued by the hon. Deputy Minister that there may be many cases where without sufficient cause a suit for maintenance may be filed There may be frivolous cases. But, it is well-known that even in cases where a pauper goes to court and files a case there is ample provision under Order XXXIII of the Code

of Civil Procedure to protect the interest of the Government and to avoid frivolous litigation. Of course, if the pauper loses the suit, the Government has ultimately to incur some loss. But that is unavoidable in some cases and the amount of loss to be borne by Government is practically negligible in ordinary cases.

In such cases, I think, if the amendment which I have suggested be accepted, there is no reason to apprehend that there will be frivolous litigation claiming maintenance In such cases the courts will apply their judgment and see that the seamen or the officers, as the case may be, are not unnecessarily harassed. If there is a *prima facie* case, of course, it has to be tried and if it is found ultimately that the seaman or the officer is not really liable for maintenance and that the claim is not sustainable, in that case, there is some loss to Government. I believe that in the interests of justice that is the best thing to do and the loss that may ultimately fall on Government would be very negligible. Having regard to the essential need to have a provision like the one in clause 31 of this Bill, I think Government will find their way to accept these amendments.

Mr. Deputy-Speaker: Amendments moved:

(i) Page 15—

omit lines 27 to 30

(ii) Page 15—

for lines 31 to 34 *substitute*:

"(5) Deductions may be made from the pay and allowances of such persons on whom the process is served such sum of money as may be prescribed to enable that person to attend the hearing of the proceedings and to return to his ship or quarters after such attendance."

Shri Easwara Iyer: This clause does not prevent the wife or the child, legitimate or illegitimate, from getting the maintenance which is legitimately due to them. My friend would see that so far as the execution of a decree or order passed for maintenance is concerned he thinks that the pay of the seaman or the officer should always be made liable. I would think that the seaman's pay or the officer's pay is something which is absolutely necessary so far as he is concerned, particularly when he has got to be on the high seas and the efficiency of the service depends upon the pay—not that I am opposed to the wife or the child getting their maintenance.

What this clause says is this. It puts an embargo on the decree being executed under all circumstances. The decree may be executed against his property if he has got that. And, in that case, where the officers of the Navy or the Naval authorities feel that the pay should be made liable for the maintenance of the wife or the child, then, they need not go to court. The authority could be approached. So, there is nothing inequitable in this provision as contained in clause 31. I would think that the efficiency of the service demands that the provision for attaching the pay through court is not necessary.

Even in civil cases, as you know, there are limitations prescribed under the provisions of the Code of Civil Procedure where the pay of a government servant is not attachable subject to a certain minimum. Here is a person who is serving in the Armed Forces, and his pay should be protected. Even the pay of a civil servant is not attached if it is within a particular minimum.

I regret that I have to oppose the amendment that has been moved.

Shri Raghuramaiah: As the hon. Member who spoke before me pointed out, there are other provisions in this Bill which give quick and ready relief to women and children, legitimate or illegitimate who are in need of maintenance. There is clause 31 (2) (a) which provides the relief. The person concerned can approach the Central Government or the Chief of Naval Staff and make out a case. If

[Shri Raghuramaiah]

there is a genuine case, then, certainly, they will act under that clause.

Now, what is suggested is that in regard to proceedings relating to a suit, that is to say, where a person does not resort to the very expeditious and cheap procedure in 31(2)(a) and files a suit in court for maintenance or starts a legal proceeding then the plaintiff should be in a position to have the naval party summoned from any distance, wherever he may be on the high seas or other place however remote and that the cost incurred by such a party should be deducted out of his pay. I may submit that it will tax the person concerned very heavily besides upsetting the service arrangements and so on. It is because of this difficulty that provision has been made for a remedy which is cheap, expeditious and sufficient for the purpose. In view of that I submit that there is no need for this amendment.

Shri Supakar: May I reply?

Mr. Deputy-Speaker: The right of reply is to the Minister when an amendment is moved. I shall now put amendments 45 and 46 to the vote of the House.

The question is:

Page 15,—

omit lines 27 to 30.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 15,—

for lines 31 to 34 substitute—

"(5) Deductions may be made from the pay and allowances of such persons on whom the process is served such sum of money as may be prescribed to enable that person to attend the hearing of the proceedings and to return to his ship or quarters after such attendance."

The motion was negatived.

Mr. Deputy-Speaker: Now the question is:

"That clause 31 stand part of the Bill."

The motion was adopted.

Clause 31 was added to the Bill.

Clauses 32 and 33 were added to the Bill.

Clause 34.— (*Misconduct in action by certain officers*)

Shri Supakar: Sir, I beg to move:

Pages 16 and 17—

for lines 35 to 44 and 1 to 9 respectively, substitute:

"34. Every person subject to this act, being in command of any of the Naval Ships, vessel or aircraft or naval establishment, who,

(a) fails to use his utmost exertion to bring into action any such ship, vessel or aircraft which it is his duty to bring into action; or

(b) surrenders any such ship, vessel, aircraft or establishment to the enemy which is capable of being successfully defended or destroyed; or

(c) in the course of any action by or against the enemy improperly withdraws from action or from his station or fails in his own person or according to his rank to encourage the persons under his command to fight courageously; or

(d) fails to pursue an enemy whom it is his duty to pursue or to assist to the utmost of his ability any friend whom it is his duty to assist shall,

if he has acted traitorously, be punished with death;

if he has acted from cowardice be punished with death or such other punishment as is hereinafter mentioned; and

if he has acted from negligence or through other default, be punished with imprisonment for a term which may extend to seven years or such other punishment as is hereinafter mentioned."

Clause 34(a) as it stands says:

"Every flag officer, captain, commander or commanding officer subject to naval law, who upon signal of battle or on sight of an enemy which it may be his duty to engage, does not use his utmost exertion to bring his ship into action....."

To my mind this creates a difficulty. Modern time makes this clause rather out of date. These are days of scientific warfare. In the last century or in the previous ages, when an enemy ship came into sight, it was possible. But these days, with modern scientific instruments and new inventions, with radars and so on, indication of the exact position of the ship is given long before it is in actual sight. It is absurd to say that an officer of the ship will be taken to task only if he has failed to do his duty when the enemy ship has come in sight. The enemy ship will take the initiative, in that case, and destroy our own ship. It is therefore desirable to do away with this sub-clause and do away with the necessity of waiting till the enemy ship is in sight.

The amendment suggested by me is rather inspired by the latest amendment of the British Naval Discipline Bill that was taken into consideration last year—in 1956. The British law was like ours before it was changed. But, they found from experience in the Second War that it was undesirable.

Sub-clause (b) of my amendment reads: "surrenders any such ship.....being successfully defended or destroyed". Sometimes, the naval officers feel that it is no longer possible to defend the ship and in such cases the scorched earth policy has to be followed. That is preferable to surrender to the enemy because otherwise the enemy gets a dangerous advantage. It may be possible to scuttle the ship or destroy it when it is no longer possible to defend it. If an officer deliberately surrenders a ship in such circumstances, he may also be liable to be punished.

Now, it is rather unfortunate that in amending our Navy Act we have not taken into consideration the latest amendment to the Navy Act by the British Parliament. It is rather unfortunate that we have not learnt by their experience and by the latest thing that has been adopted by the British Parliament, but have gone in for the older law. It is well known that we passed the Army Act and the Air Force Act in the year 1950, it was thought that because the United Kingdom Parliament was examining their Navy Act—at that time the Committee known as Pilcher Committee appointed at that time to go into the necessity of improvements in the Bill and incorporate the amendments suitable to modern trends of scientific advancement was sitting—we might wait for some time till the British Parliament had amended their Naval Discipline Act to suit modern conditions. But although the British Parliament proposed certain amendments in the light of the modern conditions, and although the Select Committee Report was available in our country, we have not profited by those proceedings.

It may be that we are satisfied with our secondhand ships like the "Liberty" ships and second-hand aircraft carriers because we have not sufficient funds.

Mr. Deputy-Speaker: Second-hand ships do not require second-hand Bills.

Shri Supakar: That is what I am submitting. What I am submitting is

[Shri Supakar]

that there is no necessity to have a second-hand or rather an old Bill which does not take into consideration the modern conditions and scientific advancement. It costs no money to have an up-to-date act. I believe that the hon. Deputy Minister will accept my amendment.

Mr. Deputy-Speaker: Amendment moved:

Pages 16 and 17,—

for lines 35 to 44 and 1 to 9 respectively *substitute*:

"34. Every person subject to this act, being in command of any of the Naval Ships, vessel or aircraft or naval establishment, who,—

(a) fails to use his utmost exertion to bring into action any such ship, vessel or aircraft which it is his duty to bring into action; or

(b) surrenders any such ship, vessel, aircraft or establishment to the enemy which is capable of being successfully defended or destroyed; or

(c) in the course of any action by or against the enemy, improperly withdraws from action or from his station or fails in his own person or according to his rank to encourage the persons under his command to fight courageously; or

(d) fails to pursue an enemy whom it is his duty to pursue or to assist to the utmost of his ability any friend whom it is his duty to assist shall,

if he has acted traitorously, be punished with death;

if he has acted from cowardice be punished with death or such other punishment as is hereinafter mentioned; and

if he has acted from negligence or through other default, be punished with imprisonment for a term which may extend to seven years or such other punishment as is hereinafter mentioned."

Shri Raghuramaiah: Mr. Deputy-Speaker, Sir, I do not think it would be permissible for me, or the House would like me to disclose the nature of our ships, their condition etc. It is certainly a matter which cannot be discussed in this manner. I have only to say that our ships, whatever be their background and history, are certainly good enough and fit enough to defend the country when the occasion arises.

Regarding the amendment which my hon. friend has suggested to clause 34, he seems to think that we have lost sight of modern conditions in the world. But I may submit that the modern conditions of the world themselves show that the clause would be quite sufficient as it is worded, because it is not as though somewhere there is a declaration of hostilities and nobody knows about it. In these days of wireless and so on, the moment there is a declaration of hostility everybody will know who is the enemy and orders will be issued as to what should be done and what should not be done. Any disobedience of those orders will naturally come under the purview of the various clauses of the Bill. When there is a signal of battle or there is indication that there is declaration of hostilities, then action has to be proceeded with. With regard to sight of a ship my friend knows only the mere physical sight. But with the help of radar and other things one can see as far as 40 to 80 miles away in the high seas.

Therefore, all these things have been considered and it was thought that the clause as worded is quite sufficient to cover all those contingencies. I would, therefore, submit that the clause as worded is quite sufficient and the amendment is not necessary.

Mr. Deputy-Speaker: I shall now put amendmant No. 42 to the vote of the House.

The question is:

Pages 16 and 17—

for lines 35 to 44 and 1 to 9 respectively, *substitute*:

"34. Every person subject to this act, being in command of any of the Naval Ships, vessel or aircraft or naval establishment, who,

(a) fails to use his utmost exertion to bring into action any such ship, vessel or aircraft which it is his duty to bring into action; or

(b) surrenders any such ship, vessel, aircraft or establishment to the enemy which is capable of being successfully defended or destroyed; or

(c) in the course of any action by or against the enemy, improperly withdraws from action or from his station or fails in his own person or according to his rank to encourage the persons under his command to fight courageously; or

(d) fails to pursue an enemy whom it is his duty to pursue or to assist to the utmost of his ability any friend whom it is his duty to assist shall,

if he has acted traitorously, be punished with death;

if he has acted from cowardice be punished with death or such other punishment as is hereinafter mentioned; and

if he has acted from negligence or through other default, be punished with imprisonment for a term which may extend to seven years or such other punishment as is hereinafter mentioned."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 34 stand part of the Bill."

The motion was adopted.

Clause 34 was added to the Bill.

Clause 35 was added to the Bill.

Clause 36.– (*Delaying or discouraging the service, deserting post, etc.*)

Shri Easwara Iyer: Sir, I beg to move:

Page, 17 line 27,—

omit "or discourages".

Mr. Deputy-Speaker: The question is:

Page 17, line 27,—

omit "or discourages".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 36 stand part of the Bill."

The motion was adopted.

Clause 36 was added to the Bill.

Clauses 37 and 38 were added to the Bill.

Clause 39.— (*Correspondence, etc. .. with the enemy*).

Shri Easwara Iyer: I beg to move:

Page 18—

omit lines 19 and 20.

Mr. Deputy-Speaker: The question is:

Page 18—

omit lines 19 and 20.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 39 stand part of the Bill."

The motion was adopted.

Clause 39 was added to the Bill.

Clause 40.— (*Improper communication with the enemy*)

Shri Easwara Iyar: I beg to move:

Page 18, lines 26 and 27—

for "without any traitorous intention"

substitute "with traitorous intention"

Mr. Deputy-Speaker: The question is:

Page 18, lines 26 and 27—

for "without any traitorous intention"

substitute "with traitorous intention"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 40 stand part of the Bill."

The motion was adopted.

Clause 40 was added to the Bill.

Clause 41 was added to the Bill.

Clause 42.— (*Mutiny defined*)

Shri Easwara Iyer: I beg to move:

(i) Page 19, line 1—

for "two" *substitute* "five"

(ii) Page 19, line 4—

omit "contempt for or"

(iii) Page 19, lines 4 and 5—

omit "or embarrassing"

Mr. Deputy-Speaker, Sir, throughout this Act, I regret to say, there has been a vagueness so far as definitions of offences are concerned. One such example is regarding the definition of the term "mutiny". "Mutiny" is defined as:

> "Mutiny means any assembly or combination of two or more persons subject to naval law with the common object of—
>
> (a) disobeying or resisting lawful naval authority;
>
> (b) showing contempt for or insubordination to or embarrassing lawful naval authority;
>
> (c) undermining naval discipline in a ship or among a body of persons subject to naval law; or
>
> (d) seducing any person subject to military, naval or air force law from his allegiance to the Constitution or loyalty to the State or duty to his superior officers;
>
> and includes mutiny in the regular Army or Air Force or any forces co-operating therewith."

Now, I take the definition as contained in sub-clause (b) which says that if any officer or any seaman shows contempt, insubordination or embarrassment to naval authority. In fact, I have been searching through the entire enactment to find out the definition of the term "naval authorities". Does it mean any naval officer or the Commander-in-Chief or the Chief of Naval Staff? I have been at pains to know what exactly is the meaning of the term "embarrassing a lawful naval authority". It depends upon the subjective satisfaction of the officer concerned. After this legislation has been enacted, when it comes before a Tribunal and when the Tribunal is put to the necessity of finding out whether a particular act of a subordinate is embarrassing to a naval authority, it will find itself in a very difficult situation.

14 hrs.

For example—I request you to pardon me for saying this—if two naval seamen, who concern themselves in various activities, find that a naval officer has got a pretty wife and pays not too casual attention to her, which will perplex or embarrass that officer. Will it be termed as mutiny so as to involve him in a very serious offence?

Mr. Deputy-Speaker: That will embarrass the husband and not the naval officer.

Shri Easwara Iyer: Suppose the husband happens to be the naval officer.

Mr. Deputy-Speaker: That will embarrass her husband.

Shri Easwara Iyer: That becomes an embarrassment to the naval authority. You will find that the 'naval authority' may mean anybody in the Navy. It is just like the term "embarrassing the Government" in the Government Servants' Conduct Rules. Here, the naval authority is not defined. It is the entire navy. It may even mean a petty naval officer.

We are legislating with respect to offences that may be committed by seamen. So, the offence has to be defined with a certain amount of precision. The definition here is vague, incoherent and ambiguous. This is a case of ill-drafting. When we are put to the necessity of interpreting these definitions we will find that it is more or less a headache, not merely to the Judges who decide the cases, but also to the counsels appearing on behalf of the defendants.

I would, therefore, respectfully submit that the term "embarrassment to lawful naval authority" is unnecessary and superfluous, particularly when we find that the definition is wide enough to include any case of putting hurdles before the naval authority. So, I request that the term "or embarrassment" may be omitted.

Mr. Deputy-Speaker: Amendments moved:

(i) Page 19, line 1—

for "two" *substitute* "five".

(ii) Page 19, line 4—

omit "contempt for or"

(iii) Page 19, lines 4 and 5—

omit "or embarrassing".

Shri V. P. Nayar: This is an amendment through which we seek to modify a provision which involves capital punishment.

Mr. Deputy-Speaker: I am not objecting to your support. I just wanted to know whether there will be speech on every amendment.

Shri V. P. Nayar: When there is a provision in the Statute, we have to be extra cautious about its implications. Otherwise, the very object of these penal provisions will be defeated by courts of law which, as you know, put a rather beneficial construction upon such words which have no specific definition. That is the real difficulty.

We do not want to have the term "embarrassing the lawful naval authority" for the reason submitted by my hon. friend here. I am at pains to know what is really meant by "embarrassment". In the matter of construction of words in penal provisions one has to be extra careful. What is the guide? We do not happen to have English as our language. When English is the language here, probably the question of the ordinary meaning of certain words used in enactments may not be matters for reference to the dictionary. In our case, so long as English is not our language, when a word used in a Statute, and more so in a penal provision, is a matter of little doubt to us in regard to its scope and implication, our safest guide is to find out the meaning as given in some dictionary, which is a standard dictionary.

What is embarrassment? If it is the object of the hon. Minister to bring within the scope of "mutiny" almost every conceivable act, then I agree with him that the word should be retained. But here, when we consider the question of "mutiny", more so when mutiny shall be punished with death, should we not have words in our enactments which are very clear and unambiguous? Should we not include only acts which are equally atrocious as those which are enumerated there? That is the point. I looked into the Chambers Dictionary, which is a standard dictionary.

Shri Jaipal Singh (Ranchi—West—Reserved—Sch. Tribes): What about Oxford Dictionary?

Shri V. P. Nayar: A man from Oxford would like to use the Oxford Dictionary. I have never been to Oxford. So, the Chambers Dictionary came in handy. I find that the word "embarrassment" has a meaning which will certainly take away from the category of offences any act which causes any embarrassment. Embarrassment means perplexity or confusion or difficulty in money matters. I grant that under section 42 there must be a common objective. Common objective should be established. But where is the criminal import of the common objective? Suppose two naval ratings get together and find that one superior officer is or is about to commit something unholy and they want to see that the officer has known that the two ratings have seen it. There is a common object, the common object being that at least by making their presence felt by the officer, he must lose his face. In that case, the requirement of this provision is fully met. If, therefore, two naval ratings choose to appear before an officer—because, as was pointed out, naval authority has not been defined—in a none too happy circumstance, it certainly causes embarrassment to the officer. Whether he is a husband or not is not the question. It causes embarrassment to him and such embarrassment, under the strict construction of this provision, would amount to the commission of an act which is punishable with death. Could there be anything more ridiculous. When we define certain offences which are punishable with the highest penalty which can be given, then the State should not have a word which is of doubtful meaning.

As I pointed out, I was refreshing my memory as to what the interpretation ought to be in the matter of such words, more so in penal Statutes. I think Maxwell is a very safe authority on English. If it is Hindi word, the ordinary sense of it is understood by all of us and we need not refer to dictionary. Some time ago the Chair made the observation that both of us understand the English language. I said I have no claims to that. Does the hon. Minister think that embarrassment will confine within its operation only certain acts, in the ordinary sense in which we understand it from the dictionary and that this will not afford an opportunity for mischief?

Therefore, we do not want the term "or embarrassing the lawful authority" for two reasons, namely (a) lawful authority is nowhere defined, and (b) the term "embarrassment" is so vague that it can be interpreted in any way one likes.

Shri Naushir Bharucha (East Khandesh): May I point out that this is an offence which is punishable with death. That is why it is absolutely necessary to examine all points of view. As you have properly remarked, the instance which my hon friend has pointed out, does not fit in. The embarrassment in that particular case was in his capacity as a husband, not as a naval officer. But there may be instances, for instance, where some seamen may play pranks which may place a naval officer or a naval authority in a very embarrassing position. We do not want these things to be regarded as mutiny punishable with death. Two seamen may conspire together definitely out of boyish pranks to see that a particular naval officer while taking salute or doing something is embarrassed. In that case, it is definitely covered by this. What I would suggest is this. The language should be worded in this way: "insubordination or embarrassment in the exercise of lawful authority". What is actually meant by embarrassment? Embarrassing lawful naval authority. What they want is that in cases of emergency or in the case of normal duty, the naval authorities must not be baffled in what they want to do. What is contemplated is, they must not be embarrassed in the exercise of naval authority. I think the language should be really worded in that way, if we have to remove all such cases which might otherwise be roped in without very serious charge. Let us appreciate

the fact that there is no appeal even in cases of sentence of death by court-martial. Therefore, it behoves us all the more to examine the implications of every word, particularly when we constitute and create a new type of charge of such a serious character. If our language is so loose that it ropes in what normally we would not have even dreamt of as being within the purview of such a section, it would lead to difficulties. I would therefore appeal to the hon. Minister to consent to this section being held over. In the meantime, he may consult and a little later the section may be taken up again.

Shri Raghuramaiah: Mr. Deputy-Speaker, I am glad the hon. Member Shri V. P. Nayar gave out the dictionary meaning of the word 'embarrassment'. That makes my work also very easy. He referred to perplexity and confusion that would be caused. If two or more persons were to conspire, pre-meditate and decide to do something which is going to embarrass or perplex or cause confusion to the person in authority or in command, it is a very serious matter, I would submit, in regard to Armed Forces. What is more, it is not true that every case of mutiny it is punishable with death. I would invite attention to clause 43 where it says, 'shall be punished with death or such other punishment as is hereinafter mentioned'.

Shri Easwara Iyer: Also it says, 'utters words of sedition or mutiny'.

Shri Raghuramaiah: It means any of the lesser punishment cases in the scale of punishments under the Act. It is not correct to say that irrespective of the gravity of the offence, every one will be punished with death in every case. Shri V. P. Nayar knows that there are lighter veins of embarrassment. I myself was a little embarrassed when he spoke about lovalty to the country. There is no section of this House which in any way less particular about loyalty to the country. When he mentioned it however it was a kind of embarrassment. But that is in the lighter side of life. The point is, what is the degree of embarrassment. If there is a conspiracy to embarrass. perplex, confuse those in lawful authority and if that is going to create a serious situation, I submit that serious notice will have to be taken.

Mr. Deputy-Speaker: This is the complaint of Shri V. P. Nayar. If this embarrassment can be caused by simply his talk of loyalty to the country, it may be a minor case, because, he thinks it was a minor case.

Shri Raghuramaiah: It depends on the circumstances. Whether it is a minor or a major embarrassment, it is an embarrassment which cannot be tolerated in the Armed Forces when it is a question of carrying out lawful orders.

Shri V. P. Nayar: Why not give a lesser punishment? By all means provide a separate punishment for embarrassment Do not give the punishment of death for it.

An Hon. Member: Don't call it mutiny.

Mr. Deputy-Speaker: In every case of embarrassment, the punishment of death would not be awarded. A lesser punishment is permissible and that would be given. That is what the Minister says.

Shri Raghuramaiah: After all, the court of enquiry or whoever is going to deal with such cases will bear in mind what is the degree of punishment that should be meted out. I oppose these amendments.

Mr. Deputy-Speaker: I shall now put the amendments Nos. 38, 39 and 40 to the vote of the House.

The question is:

Mr. Deputy-Speaker: The question is:

Page 19, line 1—

for "two" *substitute* "five".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 19, line 4,—

omit "contempt for or".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 19, lines 4 and 5,—

omit "or embarrassing".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 42 stand part of the Bill."

The motion was adopted.

Clause 42 was added to the Bill.

Clause 43.—(*Mutiny punishable with death*)

Shri Supakar: I beg to move:

Page 19,—

for lines 34 and 35 *substitute*:

"(i) if the mutiny is accompanied by violence or threat of violence or takes place in time of war or if all or any of the persons taking part therein are on or under orders for active service, be punished with death or any other punishment hereinafter mentioned;

(ii) in any other case, be punished with imprisonment for a term which may extend to two years or any other punishment hereinafter mentioned."

Sir, you will see, I have sought to make a distinction between cases of an emergent nature where a punishment of death may be called for. These are cases where a mutineer actually threatens violence or uses force or violence with a mutinous intention. Punishment of death may be awarded. Even in other minor cases where there is a serious emergency like a war or when they are on active service or there is an emergency and they are engaged in some battle, or they are doing some duty, or even they are ordered to go on active service, it may be proper to award a sever punishment like death. But, in cases where there is no emergency, where there is no order for active service or where there is no violence as was contemplated in the illustration cited by my three hon. friends who spoke on clause 42, where it may be more or less of an innocent charater or in innocent circumstances or in innocent times, it is desirable that some distinction should be made and punishment should be lighter.

While giving his reply to the discussion on clause 42, the hon. Minister said that there is not only the death sentence provided in case of mutiny, but there are other punishments also provided. It may not be apparent or evident to the officers serving in the court-martial always to have an exact determination of the gravity of the offence or the seriousness of the insubordination or embarrassment caused to the lawful naval authority. So, it is necessary, desirable, to provide that in cases of serious nature, where there is war or there is emergency or there is violence, a serious punishment should be awarded and in other cases, a lighter punishment of imprisonment for two years and a lesser punishment may be given.

So, I hope that this amendment will be accepted.

Mr. Deputy-Speaker: The hon. Member has moved only amendment No. 47, and not amendment No. 43?

Shri Supakar: I have moved only amendment No. 47, and not amendment No. 43.

Mr. Deputy-Speaker: Amendment moved:

Page 19—

for lines 34 and 35 *substitute*:

"(i) if the mutiny is accompanied by violence or threat of violence or takes place in time of war or if all or any of the persons

taking part therein are on or under orders for active service, be punished with death or any other punishment hereinafter mentioned;

(ii) in any other case, be punished with imprisonment for a term which may extend to two years or any other punishment hereinafter mentioned."

Shri Easwara Iyer: I beg to move:

Page 19—

(i) *omit* lines 25 and 26,

(ii) *omit* line 33.

This clause deals with the punishment to be awarded for mutiny. Unfortunately, my amendment to the previous clause was not accepted. So, as the definition of mutiny stands now, it includes embarrassment of a lawful authority. The Minister said that a lesser punishment could be given in that case, and there was nothing to debar the giving of a lesser punishment for crimes committed which were of a lesser magnitude.

But, I would respectfully ask: Why should we give a very dignified definition for a lesser offence? Supposing, in the Indian Penal Code, murder is to be defined as including the killing of a mosquito, and it is also to be said that a day's penitence is sufficient in that case, can it be contended that so far as the killing of a mosquito is concerned, it may amount to murder, although we could give a lesser punishment? A very grave offence such as mutiny is defined, and when I say that embarrassing a lawful authority shall not be brought within the ambit of mutiny, the plea that it can be given a lesser sentence seems to me to be rather paradoxical. Why should it not be defined as disobedience to lawful authority? Another clause could be added, for defining that offence.

We find in sub-clause (h):

"utters words of sedition or mutiny."

What it would amount to is that if a naval rating speaks some words which are embarrassing to a lawful authority, he can be given the punishment of death. He can be sentenced to death, not that he is going to be sentenced to death; possibly, he may be given fifteen or twenty days' punishment. But, nevertheless, a court martial is not debarred by this provision from giving the maximum sentence. It is certainly legal to do so.

Now, the words here are 'utters words of sedition or mutiny.' What exactly do they mean? My humble submission is that since we have accepted a definition of the word 'mutiny' which is rather wide, including embarrassing of a lawful authority, sub-clause (h) may be deleted.

Mr. Deputy-Speaker: Amendment moved:

Page 19—

(i) *omit* lines 25 and 26.

(ii) *omit* line 33.

Shri V. P. Nayar: As I submitted to you, the wording of clause 42 (b) is rather unhappy, because it includes ambarrassment. The words 'embarrassing lawful naval authority' are themselves bad. But what is contained in the next clause is even worse.

The Minister, while replying to me, said that even the statement that I owed allegiance to the Constitution embarrassed him. Knowing very well that I did so six years ago, one cannot expect that balance of mind.

Shri Raghuramaiah: May I say that I was referring to his emphasis on loyalty to the Union of India. I was referring to the amendment which was moved sometime back.

Shri V. P. Nayar: That, I suppose, is the very thing for which we either take the oath or make the affirmation. It is loyalty to India. And loyalty to India is loyalty to the Constitution. Even that statement was embarrassing to the Minister. He himself is a lawful authority because he is a Minister. When that is so even in his case, how can we expect his balance and judgment in the subordinate officers working under him? Now, here is a speech in Parliament. Both of us, Shri Easwara Iyer and I have had a discussion on this.....

Mr. Deputy-Speaker: Shri V. P. Nayar is not a seaman.

Shri V. P. Nayar: I am coming to that. In that sphere of activity, my hon. friend and I worked with the common object of not causing any embarrassment, but making a point has embarrassed the Minister.

In a ship, for example, when there is a meeting of the officers and the ratings to discuss some of the problems, two or three ratings may join together and say something which is real, which may cause embarrassment Now, what is the object of punishment? If it is not for deterrent purposes, then there is nothing at all in punishment. And if you want to give a deterrent, should the deterrent of death be put before the rating for such a small offence as uttering a word? Strictly construed, it would amount to this. For instance, when the boys meet in the mess, they may pass any remark—maybe, they do not have the common object of creating a confusion—which may in a little way embarrass the lawful authority. We know that all the superior officers cannot be expected to have the wisdom or the balance and judgement of my hon. friend Shri Raghuramaiah, in the same field in which they work together. It may be that some utterances might lead to some embarrassment, embarrassment of some kind or the other. If they are brought within the mischief of this particular clause.....

Mr. Deputy-Speaker: Unfortunately, at this moment, both sides are causing me embarrassment.

Shri V. P. Nayar: That is all the more the reason why I plead that that word should not be there.

Mr. Deputy-Speaker: I would appeal to both sides to avoid that.

Shri V. P. Nayar: That only adds strength to my argument. If you, Sir, get embarrassed, then there is no question of officers not getting embarrassed at all.

Shri Raghuramiah: May I say that this particular clause in relation to which this word 'embarrassment' occurs has already been adopted?

Mr. Deputy-Speaker: That could only be done if both sides avoid using such expressions. We have very many clauses to go through still, and the time is limited.

Shri V. P. Nayar: I submit with respect that nothing is more important than this particular provision.

Mr. Deputy-Speaker: Quite right. But time should not be spent on extraneous things.

Shri V. P. Nayar: You have certainly the right to pull me up whenever I go astray.

Pandit Thakur Das Bhargava (Hissar): That is also very embarrassing.

Shri V. P. Nayar: Kindly read the sub-clause (h). It is not necessary that two or more persons should get together with the common object of embarrassing and then committing an act. No specific act is necessary at all here. Mere utterance would do. Two or more persons with common object may get together in the deck of a ship and do something. Then, both the persons are brought within the mischief of this clause,

to be visited upon with capital punishment. Can you think of anything like this? I do not say for a moment that if it is an embarrassment, they should be allowed to go free. Not at all. But is this the proper punishment? Even when an overt act is not committed, even when an act is limited only to the speaking of a word or two, should he have this deterrent? Should he have the feeling that if he uttered this, then he would be liable to the sentence of death? Maybe, the tribunal or the court martial may not sentence him. All the same, the deterrent is there in him. Should we, therefore, include these words?

I, therefore, submit that the Minister may reconsider the position and take away the words from these clauses.

Pandit Thakur Das Bhargava: At this stage, I feel it embarrassing to sit down without uttering a word or two on this clause.

Shri V. P. Nayar: We were embarrassed to speak.

Mr. Deputy-Speaker: If there is embarrassment all round, then what is the Chair to do?

Pandit Thakur Das Bhargava: The only thing that the Chair can do is to take away the word 'embarrassment' altogther. In fact, this is not the only word. I have gone through this Bill thoroughly, and as I submitted at the time when the motion for consideration of the original Bill was under discussion, there were many other words which were not clear even to a lawyer, what to speak of an ordinary man. In the succeeding clauses also, there are many words which—if I am not regarded as showing any embarrassment or as being disrespectful or insubordinate to the two Ministers who are lawyers themselves—will not be clear even to the Ministers themselves.

Now, in a state of law in which the meanings are not clear to the persons who are to be governed by that law, I feel that if they do anything they are not to blame. The difficulty is this. In 1950 when we enacted our Army Act and Air Force Act, we felt then also that there was an atmosphere in the Select Committee and whole Parliament in which people had fear psychosis. We were afraid of everything. Whether it was the Army, or the Navy or the Air Force, discipline was the sole word.

I was a Member of the Select Committee at that time, and I remember how our Chairman, Dr. Ambedkar, behaved on that occasion. I feel that the feeling of 1950 has not been obliterated so far; even now in enacting this Bill we feel the same thing. We are shy of everything; if a word, as contained in the English Act, is taken away, we think we will be committing something wrong. It may be that in subsequent years we might improve it, but here I see things which ordinarily no lawyer would agree to being enacted.

What is this word 'mutiny' and what is 'sedition'? Under other laws, two people at least have to join to comit the crime. Here only one person is enough; the words are "Every person who utters words of sedition or mutiny". May I humbly ask what are the words 'sedition' and 'mutiny', which are here condemned? The word 'mutiny' has been defined here, that is, when two or more persons combine with the common object of doing something. You will be pleased to note that from (a) to (g), there are certain acts of omission or commission which form the subject-matter of mutiny. But what is 'uttering mutiny'? This is simply perplexing.

Now what is 'sedition'? So far as sedition law is concerned, we had section 124A of the IPC. Then you

[Pandit Thakur Das Bhargava]

remember that some cases were taken to the High Court and Supreme Court. I refer to Master Tara Singh's and other cases. Then when we enacted our Constitution, we omitted the word 'sedition'. I was one of those who gave notice of a motion that the word 'sedition' be omitted from the Constitution. The rulings given by the High Court and the Supreme Court were such as to give occasion to our amending the Constitution itself. When we amended the Constitution, even then we did not define 'sedition'. Even now, I would beg of the hon. Minister to tell me the meaning of the word 'sedition'. It is nowhere defined yet. In the amendment that we passed, the whole thing was left in an undefined condition.

I have complained several times in this House about this matter Let us adopt some provision so far as this is concerned But up to this time, nothing has been done, and we do not know the meaning of the word 'sedition'. But what I know is this, that so far as sedition is concerned, so far as we understand 'sedition' today, in our law, in the English law and in the American law, sedition cannot be committed by words alone. A person may say anything, but to commit sedition, it has to be accompanied by some act Otherwise, sedition is not committed.

We have read in English history that if a person just said something in 1832 or thereabouts that he wanted reform, he was sentenced to a long term in jail or transported. We know of our own history. If a person uttered 'swaraj' in 1906, we knew what happened. Subsequently, we know what happened. Are we in 1957 going to have the same thing? If any person just utters the words of sedition or mutiny, is he to be considered as having committed sedition or mutiny?

What is the word 'sedition'? Who knows what constitutes sedition? Even the Supreme Court Judges dreaded treading upon this ground. I do not know how seamen would know the meaning of this. We do not know the meaning of these words. I challenge any person in this House to tell me the meaning of 'sedition'. On the other hand, we are going to enact everything here.

I find there are other words also used, 'cleanliness', 'decency', 'cowardice', 'neglect' etc. These words are incapable of being defined; they are not defined anywhere.

The court martial can certainly award the sentence of death. The hon. Minister tells me that there is some other punishment provided. But where is the rule that death sentence will not be awarded? It depends upon the temperament of the persons constituting the court martial. If you allow this sort of thing, there may be certain army officers who may use this power to award the maximum penalty.

Therefore, we should make our law fool-proof I also stand in the same category along with Ministers and other Members of Parliament. We want discipline to be maintained. I do not think that anything should be done which will in any manner affect the rigour of discipline which the hon Minister wants the naval forces to display. At the same time, there is a limit to this. After all, we must not go on enacting things which we do not understand. Unless and until I know the full meaning of the words 'sedition', how can I agree to it? I would rather like that you define what is sedition. You have defined mutiny. But you have not defined 'sedition' in this law.

Therefore, I would beg of the hon. Minister to kindly take these words away. If you kindly look to clauses 42 and 43, you will find that except (h) in clause 43, they are all acts—whoever joins, whoever begins, whoever endeavours etc. I can understand this. All these have reference

to acts or omissions. But simply saying the word 'sedition', without knowing what 'sedition' is, something which does not become sedition.

Shri Naushir Bharucha: May I point out that there is no quorum in the House while we are discussing such an important clause creating a new offence punishable with death?

Pandit Thakur Das Bhargava: My hon. friend knows that we have been having only 25 from the beginning today.

Mr. Deputy-Speaker: The bell is being rung—Now there is quorum. The hon. Member may proceed.

Pandit Thakur Das Bhargava: I was inviting your attention to the fact that in clauses 42 and 43, except in (h) of clause 43, particular acts are mentioned. All are specific acts except (h). For example, failing to give information about mutiny is a very serious thing; same is the case with inciting people to do certain acts. All these are acts which we fully understand. But what do we see in (h)? It says 'utters words of sedition or mutiny'. I am objecting to this very seriously. This is not a thing in which any act is to be done. Merely uttering 'sedition' may not be sedition. We know how 'sedition' has been interpreted in the various rulings. Are these gentlemen, the court martial people, experts in knowing the meaning of the word 'sedition'?

As I have submitted, we do not know what is 'sedition'. Even the Judges do not know now. When the Supreme Court gave its ruling, it held 124A to be invalid. Thereafter we passed the law amending the Constitution and nullyfying the effect of Supreme Court rulings leaving the whole law in a fluid condition. Thereafter we have not done anything in the matter.

Therefore, I would say that we do not know the exact meaning of these words. The word 'sedition' has been left undefined. I would request him to kindly take away the word 'sedition'. Suppose a person merely utters the word 'sedition'. What would happen? Unless there is a mutiny, merely saying 'sedition' will not affect matters in any way. If it was followed by a mutiny with untoward consequences, then I could understand it. But merely saying 'sedition' is something the interpretation of which may differ according to the 'length of the foot of the court martial officers, as they say about recent of equity 'according to the length of the foot of the Chancellor'.

Under these circumstances, I would request the hon. Minister to kindly take away these words. The word 'mutiny' and other incitements etc. would come under the other portions from (a) to (g), but the word 'sedition' should come nowhere there. So you should take away the word 'sedition' which was taken away from our Constitution also.

Shri Jaipal Singh: Mr Deputy-Speaker, Sir, I regret I find myself unable to agree with the opposition here. May I first confess that I am not in a position, never will be in a position, legally to cross swords with my revered friend, Pandit Thakur Das Bhargava? But, on his own admission, certain words are indefinable and they are undefined. Therefore, I would humbly submit that it is because of that very fact that they have not been defined here also.

I think that in assessing the penal clauses of this Bill, we have to bear in mind the other two Acts. This the third and the last Bill is on the same pattern, as I said the other day, as the Army Act and the Air Force Act. When we are discussing clause 42, we would have done well to have borne in mind clauses 37 of those previous two Acts.

A great deal of emphasis has been laid as though penalty were only the

[Shri Jaipal Singh]

penalty of death. But I would that hon. Members see that it is not death only but there is also something else less than death. All these penalties have to be pronounced by courts-martial and, I think, we are being unfair to ourselves in our exercise of common sense in not appreciating the fact of the composition of the courts-martial. How are they composed? They are composed of Indian citizens with the same amount of common-sense, with the same sense of fairplay and justice as ourselves; composed of officers; let us hope they are not different from us. Their sense of justice is no less than ours. I have to stress this because in this debate, as in the debates of 7 years ago, I felt the same thing. There is still animus against the Armed Forces. I am an incorrigible optimist in my respect for the Armed Forces and that is why I have to repeat it here again. They are no longer a mercenary force; they are Indian nationals, just as patriotic as anyone of us here whose duty it is, as it is the duty of all of us, outside and inside this House also, to mete out justice.

It is very important that I should stress this point because if we have no faith in the personnel to which is committed the administration of justice in the Armed Forces, then, this Bill as well as the last two Acts that we enacted 7 years ago, they are all useless. Then, everything had better go to the criminal court or a civil court or everything had better go to the Supreme Court. As I have said previously, I want again to emphasise the fact that no officer is a worthy officer if he cannot command the confidence of the men that he commands. Then there is no basis of justice.

We have heard this afternoon some hon. Members saying as though punishment automatically means the punishment of death. Well, if that is the case, I am certainly prepared to agree with the opposition that has been put up in regard to clause 42.

Coming to 43, a distinction has been made that utterance is not an act. I humbly submit that if we are to substitute this phrase with 'preaches sedition or mutiny' it would be right. I agree with my honourable and revered friend that 'sedition' may not have been defined. I am incapable of defining it. It is incapable of definition in this particular Bill or other Acts. My hon. friend talked of 'a word of sedition'. Here it is, 'words of sedition'. If I were to substitute that by 'preaches sedition or mutiny'.....

Shri V. P. Nayar: Can you give two words of sedition?

Shri Jaipal Singh: I am not seditious nor am I mutinous. But I am very anxious that there should be no distinction between normal times of peace and other times of emergency as has been brought out by my hon. friend here. He imagines that a particular act or crime becomes something different because it is in normal times, and in times of emergency it becomes something else. In that sense, I would oppose his amendment because the same thing should be there under the two circumstances.

I do not think I need stress my point any further. The thing is that the whole set-up is being assessed in the background of discipline. Discipline at no stage must deteriorate. Discipline is the point, whether it is the case of an emergency or normal peace time; because, if there is a little loosening of discipline, the whole fabric collapses.

I need not, I think, develop my points any further. I regret I cannot support the opposition.

Shri Raghuramaiah: I am sorry that.....

Mr. Deputy-Speaker: I have been seeing one hon. Member has been standing there for minutes. I should like he sits down.

Shri Dasappa: He is the Chairman of the Joint Committee.

Mr. Deputy-Speaker: Is the Committee holding meetings here?

Shri Raghuramaiah: Sir, I was saying that I am sorry that Pandit Thakur Das Bhargava for whom I have great respect has thought it fit to condemn this and say that it is a copy of the English Act, and that we are reluctant to depart from the English text and so on. I submit that it is not true more particularly in the case of this clause. We have departed from the relevant section of the English Act and I would ask my hon. friend to peruse that section. Of course, my hon. friend is right that there is no definition of sedition in this Bill but the Indian Penal Code does cover cases of sedition in section 124A. (*Interruptions*). It is true that the word sedition does not occur in the body of that sector. But it has always been understood that sedition means what is contained in section 124A. So many judicial pronouncements have proceeded on that assumption. We have amended the Constitution and I am advised that section 124A of the Indian Penal Code is still valid.

As regards words of mutiny I would like to submit a point which I have already mentioned. It is not the single act of a single individual with a very innocent intention that comes into the picture at all. I would draw the attention of the House too to the wording of clause 42.

> "Mutiny means any assembly or combination of two or more persons subject to naval law with the common object of—"

The important thing is the common object. How does a common object come in unless people think about it and plan about it? Whatever may be said in other branches of life in the case of the Armed Forces, we cannot with equanimity conceive of a joint action by two or more persons to do any one of these very serious acts contemplated in clause 42. I would, therefore, respectfully submit that there is no vagueness about it. There is no question of blindly copying the English Act in this matter. There is nothing more than what is required in the circumstances of the case considering the security of the country, the discipline of the Armed Forces and so on.

After all, mutiny is a serious thing. Even so, the clause does provide for various categories of mutiny which are grave, which are less grave and even with regard to punishment it says, punishable with death or such other punishment as hereinafter mentioned. This, read with subsequent clauses in the Bill, shows clearly that not in all offences it is obligatory to impose the punishment of death. It depends upon the gravity of the offence. All the same mutiny and sedition are very serious and cannot be treated lightly.

Shri Dasappa (Bangalore): May I know why the marginal notes should not be changed. We can have 'punishment for mutiny' instead of saying 'Mutiny punishable with death'.

Shri Raghuramaiah: If we add the word 'etcetera' .....

Shri Naushir Bharucha: In legislation, you cannot use that word.

Shri Dasappa: Punishment for mutiny is just the proper marginal heading to that clause.

Mr. Deputy-Speaker: There could be no harm in that.

Shri Raghuramaiah: I have no objection.

Mr. Deputy-Speaker: I shall now put the amendments to the vote of the House. The question is:

Page 19—

for lines 34 and 35 *substitute*:

"(i) if the mutiny is accompanied by violence or threat of violence or takes place in time of

[Mr. Deputy Speaker]

war or if all or any of the persons taking part therein are on or under orders for active service, be punished with death or any other punishment hereinafter mentioned;

(ii) in any other case, be punished with imprisonment for a term which may extend to two years or any other punishment hereinafter mentioned"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 19—

(i) *omit* lines 25 and 26

(ii) *omit* line 33.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 43 stand part of the Bill."

The motion was adopted.

Clause 43 was added to the Bill.

Clause 44 was added to the Bill.

Clause 45— (*Striking superior officer*)

Shri Easwara Iyer: I beg to move:

Page 20, line 6—

for "his superior officer" *substitute* "any officer or seaman".

Mr. Deputy-Speaker: I shall put amendment No 19 to the vote of the House. The question is:

Page 20, line 6—

for "his superior officer" *substitute* "any officer or seaman".

The motion was negatived.

Mr. Deputy-Speaker: Now, the question is:

"That Clause 45 stand part of the Bill."

Pandit Thakur Das Bhargava: I wanted to say a word in regard to clause 45.

Mr. Deputy-Speaker: He ought to have stood up.

Pandit Thakur Das Bhargava: I did stand up but you were looking into the papers. I do not want to trouble you now. I will speak at the end.

Mr. Deputy-Speaker: The question is:

"That Clause 45 stand part of the Bill."

The motion was adopted.

Clause 45 was added to the Bill.

Clause 46 was added to the Bill.

Clause 47— (*Disobedience and insubordination*)

Shri Easwara Iyer: I beg to move:

(i) Page 20—

omit lines 24 to 26.

(ii) Page 20—

omit line 29.

Mr. Deputy-Speaker: The two amendments are before the House and I shall put them to the vote of the House. The question is:

Page 20—

omit lines 24 to 26.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 20—

omit line 29.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That Clause 47 stand part of the Bill".

The motion was adopted.

Clause 47 was added to the Bill.

Clause 48 was added to the Bill.

Clause 49— (*Desertion*)

Shri Easwara Iyer: I beg to move:

Page 21, lines 6 to 9—

omit "or who at any time and under any circumstances when absent from his ship or place of duty does any act which shows that he has an intention of not returning to such ship or place".

Mr. Deputy-Speaker: I shall put amendment No. 7 to the vote.

The question is:

Page 21, lines 6 to 9—

omit "or who at any time and under any circumstances when absent from his ship or place of duty does any act which shows that he has an intention of not returning to such ship or place".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That Clause 49 stand part of the Bill"

The motion was adopted.

Clause 49 was added to the Bill.

Clause 50 and 51 were added to the Bill.

Clause 52— (*Drunkenness*)

Shri Easwara Iyer: I beg to move:

Page 21, lines 33 and 34,—

for "drunkness" *substitute*: "disorderly behaviour due to intoxication".

I wish to say only a word. The question of being guilty of drunkenness depends upon the degree of drunkenness. A man may be drunk but not loose his capacity for doing things in an orderly manner. So, I want this to be substituted, to be more precise.

Mr. Deputy-Speaker: Amendment moved:

Page 21, lines 33 and 34—

for "drunkness" *substitute*: "disorderly behaviour due to intoxication"

Shri V. P. Nayar: May I ask one question? When we were discussing the provision about sedition, the hon. Minister referred to the I.P.C. and said that sedition had been defined in section 124(a) of the I.P.C Drunkenness here constitutes an offence by itself. In no other law that I know of does it constitute an offence nor is it defined My revered friend, Pandit Thakur Das Bhargava, may be able to help us In certain areas, consumption of alcohol is an offence. A person is to have consumed alcohol because the bulbs of his eyes bulged and he was smelling alcohol and all that. Drunkenness not having been defined in any manner, how do you punish for drunkenness? What is drunkenness as distinct from intoxication from having consumed alcohol?

Shri Supakar: I beg to move my amendments Nos. 48 and 49:

(i) Page 21, line 34—

before "shall" *insert* "whether on duty or not"

(ii) Page 21—

after line 38 *add*:

"(2) for the purpose of this section a person is guilty of drunkenness if owing to the influence of alcohol or any drug whether alone or in combination with any other circumstances he is unfit to be entrusted with his duty or with any duty which he might be called upon to perform or behaves in a manner likely to bring discredit to the navy."

[Shri Supakar]

After my first amendment, it would read:

"Every person subject to naval law who is guilty of drunkenness, whether on duty or not, shall...."

I submit that both these amendments were taken from the British model. They try to do away with the vagueness of the word drunkenness as used here. I feel that if a man who is on duty, or even if he is not on duty, is found drunk and behaves in a manner likely to bring discredit to the navy then he should be punished because in other Acts, as Shri Nayar pointed out, there may not be any punishment for drunkenness. But when a person is assigned certain responsible duties as in the Army, Air Force or the Navy, if he is found to be drunk, he cannot be entrusted with any serious duty. As it is, the clause is vague and I have tried to define it by the sub-clause which I propose to insert. I believe that this is a satisfactory definition of the drunkenness.

Mr. Deputy-Speaker: Amendments moved:

(i) Page 21, line 34—

before "shall" *insert* "whether on duty or not".

(ii) Page 21—

after line 38 *add:*

"(2) for the purpose of this section a person is guilty of drunkenness if owing to the influence of alcohol or any drug whether alone or in combination with any other circumstances he is unfit to be entrusted with his duty or with any duty which he might be called upon to perform or behaves in a manner likely to bring discredit to the navy."

15 hrs.

Shri C. R. Pattabhi Raman (Kumbakonam): Sir, I am also labouring under the same difficulty. The word "drunkenness" as it now stands will really imply all the nuances of the Prohibition Law. I am sure, Sir, you are aware of it. In good many parts of the country where there is prohibition proof is usually let in of people smelling of drink. Most police officials come and say that they smelt drink. That may sound very queer. I do not think in the Naval Law we are going to stop drinking. At least that is not envisaged at present. We may come to a stage when we may stop drinking. "Drunkenness and disorderly behaviour" is a legal phraseology. The moment a sailor goes beyond the border of a decent behaviour, after having one or two cups, then he comes within the clutches of the law; otherwise a mere drink will not make him culpable. I do not know whether I have made myself clear. "Drunkenness" here will really imply all the various fine shades that are introduced as a policy for stopping drinking. It is not the policy for the Army and Navy at least for the time being. Therefore, I do not know whether the Minister would be pleased to consider this aspect and say only "disorderly behaviour". "Drunkenness" there would mean bringing in all the prohibition offences that are now taken cognizance of by the various criminal courts.

Mr. Deputy-Speaker: Shri Jaipal Singh.

Shri V. P. Nayar: Let us hear him.

Mr. Deputy-Speaker: Without his giving an indication I intended to call him.

Shri Jaipal Singh: I feel very strongly about drunkenness. By nature I am very accommodating. I do not expect everyone to accept my standard of good living. I regret that although I have not submitted a Minute of Dissent I have now, Sir, if you will permit me, to state that I do not agree with this "advance", with this so-called democratic proletarian "advance" that is alleged to have been

made in this Navy Bill by the Joint Committee by having bracketed the officers with the non-officers.

I do think that the ratings deserve more kindness from us. I am saying this because I come from a tribal area, and I am proud to say that there are quite a good few tribal people who are in the Indian Navy. Prohibition has failed dismally in the tribal tracts, and it will continue to fail regardless of what we may enact here or elsewhere.

I am all for drink, but I am all against drunkenness. Let there be a difference drawn. When you are fighting in the heights of Zojila Pass and the like vegetarianism and prohibition is not going to help us. Let us accept this fact. I am not going to force my way of living on others. But I would like others to appreciate that they should not force their way of thinking, their way of philosophy and all that on me. That is all that I say.

I do think I have a right even at this hour to appeal to the Treasury Benches, despite the recommendations of the Joint Committee, that this equating factor of the officers and others being equally punishable, equally subject to this particular clause, be removed. Why I say this is this. It is a patent fact in this country, whereas people who are better paid can buy better drinks people who are not so well paid, unfortunately, have to drink cheap drinks. Very often they drink something and they do not know that it is the bad drinks which affect them. It is very simple for the ratings to get drunk, and in their case the crime of drunkenness as is sought to be painted here is not of the same gravity as the drunkenness of the officer.

I would humbly appeal to this House not to brag about this democratisation of the officers with the ratings, but rather realise the fact that punishment has to be in accordance with the responsibility that a particular person bears. So I would really like to divorce the officers from the ratings in regard to this particular penal clause. And, as my hon. friend, who knows very well legally and otherwise the consequences of drunkenness, has pointed out . . . . (*Interruption*)— Sir, have I said anything unparliamentary?

Mr. Deputy-Speaker: The only difficulty was that the hon. Members could not follow and appreciate what that "otherwise" was.

Shri Jaipal Singh: Well, anything that is not legal is "otherwise". The point is, here the expression is: "if the offence is committed on active service". The offence is there only while the particular person is on active service. Therefore, the question of prohibition laws, which once resounded throughout the country, really do not apply because the particular person has to be in actual active service.

So I would appeal to him, if I may use an expression which is not often used here, to my Hon. friend over there, to think again and think hard and not put the ratings and others on a par with the officers. Let the punishment be commensurate with the responsibility which a particular officer has to bear. Let us not invoke democracy, equalisation of punishment and the like because it does not bear well in this particular context.

Shri Dasappa: There is the other punishment if he is not on active service.

Mr. Deputy-Speaker: He wants to distinguish between officers and ratings, a definite punishment for each of them.

Pandit Thakur Das Bhargava: My friend just told us in very eloquent words that these officials of court martial belong to our society, they understand our men, they fully understand the liabilities of persons

[Pandit Thakur Das Bhargava]

who are serving, they also know the society etc. May I just appeal to him to just consider this very point from the same point of view? After all they are our own officers and they fully understand our people.

Shri Jaipal Singh: Sir, I am very proud to have converted my hon. friend.

Mr. Deputy-Speaker: Only if he listens a little more.

Pandit Thakur Das Bhargava: I only want that he stands converted to his own views and the very argument he used in regard to this word "sedition". The very same argument he will appreciate now. I think he will agree with me that instead of converting me he stands converted to my view.

Apart from that, I quite see his point. I for one do not like that this clause 52 should be utilised for the purpose of enforcing prohibition. So far as intoxicants are concerned, we have got a particular article in our Constitution. We also know the policy of the Government of India in that matter. At the same time, I do not want that this section should be used for the purpose of enforcing prohibition on people of the way of thinking of my hon. friend. He is quite right there.

At the same time, in so far as the question of equality between ordinary seamen and officers is concerned, I am sorry I have to join issue with my friend again. Drunkenness in the case of seamen will not be half so harmful as drunkenness in the case of officers. We all know that when a person is fully drunk, he may behave in a disorderly manner, though in the case of habitual drunkards it may be a little bit less. But, drunkenness in the case of an officer will be much more harmful than in the case of an ordinary sailor. Though there is the question of equality, if I am left to myself, I would say that the officer must be given more severe punishment than an ordinary seaman.

Mr. Deputy-Speaker: Both of you agree that there should be difference. For which class severe punishment should be given, that will come later. For the present, both of you agree that there should be different punishments for officers and ratings.

Pandit Thakur Das Bhargava: There is no harm in providing more punishment for officers.

Shri Jaipal Singh: In the Bill as it originally stood, only an officer was punishable. Now both of them have been bracketed together or, as the hon. member puts it, it is the other way round now.

Pandit Thakur Das Bhargava: An officer has to be punished more severely. My friend was saying that if a peg is given to an officer, he will show more bravery and courage.

Shri Jaipal Singh: I did not say so

Pandit Thakur Das Bhargava: He spoke about vegetarians also. I join issue with him there. It is entirely wrong to say that those persons who do not drink will not be brave Those who will not drink can in no way be said to be less brave. I come from an area in which no person takes meat or drinks. Most of them go to the army also. So, I can say from personal experience that those persons from our area who do not drink and who do not take meat are as brave as any other soldier of our country. So, the contention of my friend that a person must drink and take non-vegetarian food in order to become brave is entirely wrong.

Shri Raghuramaiah: I will take up the last point first. Under the clause, as it stands, the equality of punishment meted out to officers and others is only a seeming equality, if I may

say so. Actually, there is a difference. The clause undoubtedly gives the maximum punishment of two years in both cases for those who are in active service. In other cases the maximum punishment is six months. The relevant section is 82(4) which gives a proper idea as to what a punishment of imprisonment implies in the case of an officer *vis-a-vis* one who is not. Section 82(4) says:

> "The punishment of imprisonment for a term not exceeding two years may in all cases be accompanied by a sentence of dismissal with disgrace or dismissal from the naval service:
>
> Provided that in the case of officers, unless the sentence of dismissal with disgrace is also awarded, such sentence of imprisonment shall involve dismissal from the naval service."

Therefore, the position is that when a punishment of imprisonment is imposed on an officer under clause 52, automatically, under the provisions of clause 82(4) the officer stands dismissed. It is not so in the case of seamen. Therefore, there is a difference. The improvement which the Select Committee made is this. Under the clause as it stood when the Bill was introduced and before it went to the Joint Committee, the punishment in the case of an officer was dismissal with disgrace. It did not involve imprisonment. Now, after the amendment, it has been enhanced to include not only dismissal, but also imprisonment.

As regards the other amendment, the term referred to was "disorderly behaviour". The difference in the views expressed by hon. Members itself shows how difficult it is to give an exhaustive definition. With reference to the point raised by my hon. friend, Shri Pattabhi Raman that there must be a definite disorderly behaviour I may submit that in certain circumstances you can create a very complicated, difficult and dangerous situation by merely putting your legs on the chair. It need not necessarily be a positive disorderly behaviour. You can create all the complications and dangers when you are, say dead drunk or just moving about without understanding what is going on. This expression, in the same way as other expressions like cowardice and so on, will be properly interpreted in the armed forces. Nothing is gained by trying to restrict the scope of the expression which is very well understood.

Mr. Pattabhi Raman was saying that under the State prohibition laws even 'smell' is an offence. Well, we do not happen to have the same interpretation here. May I say that there is no question of smell alone here. Under a State Prohibition Act, even the possession of liquor is an offence? The consumption of liquor may be only up to the tip of the tongue. It may not have even gone to the palate. It does not matter. Even touching the liquor that way may be sufficient to make it an offence under the State Acts.

Here the expression is drunkenness. What is drunkenness is a matter well-understood. The clause also provides more severe punishment in the case of officers than in the case of ratings, as it should be. Therefore, I submit that the amendments may be rejected.

Mr. Deputy-Speaker: I shall now put amendments 8, 48 and 49 to vote.

The question is:

Page 21, lines 33 and 34—

for "drunkenness" *substitute* "disorderly behaviour due to intoxication".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 21, line 34—

before "shall" *insert* "whether on duty or not".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 21—

after line 38, *add*:

"(2) for the purpose of this section a person is guilty of drunkenness if owing to the influence of alcohol or any drug whether alone or in combination with any other circumstances he is unfit to be entrusted with his duty or with any duty which he might be called upon to perform or behaves in a manner likely to bring discredit to the navy."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 52 stand part of the Bill".

The motion was adopted.

Clause 52 was added to the Bill.

Clauses 53 to 83 were added to the Bill.

Clause 84— (*Arrest without warrant*)

Shri Supakar: I beg to move:

'Page 32—

omit lines 7 to 11.'

The purpose of my amendment is to omit sub-clause (2) of clause 84. While moving this amendment, I am very much conscious of the necessity of maintaining strict discipline in the armed forces. If you read this sub-clause along with clause 45, which now forms part of the Bill, you will see that there is a contradiction in the law. You will see that in clause 45, it has been provided:

"Every person subject to naval law who commits any of the following offences, that is to say,

(a) strikes or attempts to strike his superior officer; or

(b) draws or lifts up any weapon against such officer; or

(c) uses or attempts to use any violence against such officer;

shall be punished....."

In this sub-clause, it is said:

"A person subject to naval law may arrest without warrant any other person subject to naval law though he may be of a higher rank who in his view commits an offence punishable with death, or imprisonment for life or for a term which may extend to fourteen years."

You will see that so-called offences punishable with death or imprisonment for life or for a term which may extend to 14 years, in many cases, are not quite definite. In many cases, they are questions of subjective interpretation. What a person considers to be sedition, for example, may not be so in the opinion of another person. Take, for example, the question of embarrassment to which a lot of reference has been made just now by the Members who spoke on the earlier clauses. To say that a person subject to naval law may arrest without warrant when he finds that another officer of a higher rank is committing a certain act which he, according to his own standard of judgment, may consider to be sedition or an offence punishable with death, but which when it goes before court-martial, for example, the Members sitting in court-martial may think that that is not an offence punishable with death or imprisonment for life or for a term which may extend to 14 years, is not proper. They may think that it is a small offence. Then, the person who has arrested the person who is a superior officer, comes under the mischief of section 45. It is better for the sake of maintaining strict discipline in the Navy to do away with this sub-clause. We may say that if a person finds that a superior officer is committing a certain act which may be a serious offence, it should be his duty to report to an officer who is senior to such person who is committing such an offence. It would be dangerous to

provide here that he may take, what I may say, the law into his own hands and thereby create grave indiscipline in the Navy.

Mr. Deputy-Speaker: Amendment moved.

'Page 32—

omit lines 7 to 11.'

Shri Raghuramaiah: I may say at the very outset that discipline is not a one way traffic and good behaviour is applicable to all persons of the Services whether they are officers or other ranks, whether superior officers or subordinate officers or otherwise. But, the situation contemplated in clause 84(2) is one where a person is found committing a serious offence. It may well be that in a particular case, the superior officer is found committing an offence. Power is given to any one who is present there to arrest him. Of course, he does so with all the risk that it involves depending on whether it is a genuine case or not. The power must be there. We cannot say that only persons in subordinate positions will be guilty of offences and, therefore, power should be given only to officers to arrest and not *vice versa*. Even under the ordinary law of the land, under the Criminal Procedure Code, there are circumstances where any person can arrest. Therefore, I submit that this is a very salutary provision and it should be there. No amendment seems necessary.

Mr. Deputy-Speaker: I shall now put amendment No. 44 to the House.

The question is:

'Page 32—

omit lines 7 to 11.'

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 84 stand part of the Bill."

The motion was adopted.

Clause 84 was added to the Bill.

Clauses 85 to 92 were added to the Bill.

Clauses 93 to 146

Mr. Deputy-Speaker: Amendment No. 24?

Shri Easwara Iyer: I am not moving.

Mr. Deputy-Speaker: New clause 146-A?

Shri Easwara Iyer: I am moving that.

Mr. Deputy-Speaker: The question is:

"That clauses 93 to 146 stand part of the Bill."

The motion was adopted.

Clauses 93 to 146 were added to the Bill.

New Clause 146A

Shri Easwara Iyer: I beg to move:

Page 55—

after line 24 *insert*:

"146A. All sentences passed under this Act shall be appealable to such courts having jurisdiction to hear and decide appeals from such sentences as if such sentences are passed by courts of competent criminal jurisdiction under the Code of Criminal Procedure."

This amendment relates to the subject of appeals from sentences of court-martial tribunal. This matter has been dealt with at great length in this House. The hon. Minister was not kind enough to accept our arguments regarding the position of appeals from a court-martial. Once again, I would request the hon. Minister to consider whether it is not desirable to have a sentence of death or sentence of life imprisonment being subject to the scrutiny of a higher tribunal like a High Court or Supreme

[Shri Easwara Iyer]

Court. I would say that particularly in view of the fact that the procedure prescribed for the trial of a prisoner before court-martial is different from the procedure prescribed under the Criminal Procedure Code. A provision may be made so far as some accused are concerned that their case may be subject to the scrutiny of a higher tribunal. I do not wish to deal at great length once more with regard to this matter. But, I would only request the hon. Minister that this clause 146-A which I am proposing as an additional section may be incorporated in the enactment.

Shri Supakar: In supporting the provision for an appeal from court-martial decisions, several arguments have been put forward in this Parliament. I want to say that apart from other considerations we find that the Government have taken on themselves the power of revising the cases of punishment by suspension of sentences and considering those cases from time to time. If you look at clause 164 sub-clause (1) you will find that the Central Government or the officer who by virtue of the foregoing section or section 150 has power to issue an order of committal may suspend the sentence, may consider the case at any time and shall at intervals of not more than three months reconsider the case. The case may be reconsidered by the Central Government or the committing authority or the prescribed officer and if on such reconsideration, it appears to the Central Government or the committing authority or such prescribed officer that the conduct of the offender since his conviction has been such as to justify a remission of the sentence, the Central Government or the committing authority or such prescribed officer shall remit the whole or part of it.

The Defence Minister who is unfortunately absent from India, laid great stress in his reply to the initial debate, on this salutary feature of this Bill where it is stated that these persons who are punished have this advantage over the ordinary criminals who are punished by criminal courts inasmuch as their cases may be reviewed from time to time by the Government and if their conduct improves and if they behave properly, their sentence may be remitted from time to time.

But what happens when a man is sentenced to death is that he is executed, and once he is executed, he is dead, and he cannot get the advantage of this salutary provision. So, it is all the more necessary that at least in those cases where the person is sentenced to death, and he has not got the advantage of his case being reviewed at an interval of three months, there should be some sort of a court of appeal This appellate Court may not consist of High Court judges or advocates who go to the High Court or to the Supreme Court, but it may consist of persons who have some judicial background, that is, persons who have been judicial officers or advocates of ten years' standing. If that is done, then persons who are sentenced to death will have at least one more opportunity for having their cases heard once again. That at least would do some justice, and make some difference between the living and the dead.

When a person is condemned to death, he does not have the special advantage or special consideration that is shown to persons who are sentenced to imprisonment and who, therefore, have the chance of their cases being reviewed from time to time at an interval of not less than three months. So, let us provide for some court of appeal at least in those cases of capital nature.

Mr. Deputy-Speaker: Amendment moved:

Page 55—

after line 24, *insert*:

"146A. All sentences passed under this Act shall be appeala-

ble to such courts having jurisdiction to hear and decide appeals from such sentences as if such sentences are passed by courts of competent criminal jurisdiction under the Code of Criminal procedure."

Shri C. R. Pattabhi Raman: I was wondering whether I could have your indulgence just to think aloud on this matter a little bit I just want to say this.

The wording used by my hon. friend on the opposite side may not be quite proper, perhaps. But I feel that Government should be pleased to consider, or, at any rate, bear this in mind that countries with a big military and naval tradition behind them, such as England, Australia, Canada and America have from 1950 onwards thought it fit to have a board. They call it only a board; they are not calling it anything more than that, because, to have or to drag in judges and so on would make it more complicated.

I am wondering whether it would not be advisable to make every man in the fighting forces feel that at no time would any injustice be done to him, and that he can always appeal to a board. If that attempt too fails, then that is a different matter. But some such board should be there. Of course, the functioning of the board can be suspended during an emergency.

It should not be left open to any man in this country to say—and quite often, people do come out and say—'Because I belong to this part of the world, or because my nose is long, or because I am dark, I have got this punishment. The man who punishes me belongs to some other place; he is yellow, he is slightly white-haired and so on. That is why I am being punished' and so on. We should not give any room for any of these thoughts and meaningless differences to lurk in the minds of the fighting forces. So, I would suggest that the Minister may be pleased to consider the creation of such a board.

After all, in all those countries to which I have referred, the personnel of the board is usually appointed in consultation with the Lord Chancellor, in the case of England, and some high judicial functionary in other places They are all people with some legal equipment. When I say lawyers, others may interrupt me and ask why I want to bring in lawyers and judges here. After all, you must remember that lawyers are not one whit less patriotic, not one whit less disciplined than any other person in the world. We are all for the country. We do not cease to be patriotic citizens simply because we are lawyers We are not just money-making machines

So, I do feel that it may be advisable to make every man feel that no injustice will be done to him and that there will be a board to which he can appeal as a last chance, a board consisting of just two or three men We may not slavishly copy what obtains in other countries. But I feel that there should be some such board

I wonder whether the Minister will bear this in mind, and if not now, at least some time or the other, give some thought to it.

Shri Dasappa: I also join my little voice in support of the stand taken by my hon. friend Shri C. R. Pattabhi Raman. I somehow feel that this beautiful piece of legislation which has my wholehearted and warm support just suffers from a—I would not say, taint, but—lacuna, in so far as it does not accept the well-known policy of providing for an appeal in a severe case such as the one that has now been put forward, namely death or imprisonment for life.

The Minister was pleased to explain the position. But there was nothing in his speech which could convince me. I wonder if there is any one hon. Member of this House who stands convinced by his reasoning.

Mr. Deputy-Speaker: That would be decided by votes, not by this conviction.

Shri Dasappa: I think you are perfectly right. Conviction, of course, is one thing. Sometimes, true to the discipline which my hon. friend expects from his Naval Forces, a certain attitude has got to be taken, and we have got to go with the majority. Otherwise, democracy would not function. But it is always open in a democracy to carry conviction to the majority and convert them to our view. The minority can convert the majority to the view of the minority.

My hon. friend was saying that a tribunal or an appellate tribunal could be anything. But we find in U.K. the sole appelate authority is the Lord Chief Justice of England. The position there is:

> 'In the United Kingdom, the Courts Martial (Appeal) Act, 1951, provided for right of a first appeal to the Courts Martials Appeal Court consisting of the Lord Chief Justice of England and other judges of the High Court, Lords Commissioners of Justiciary and other legal men. This appeal shall lie both on points of fact and law.'.

This is very important. And we find further:

> "Further, there is a right of second appeal to the House of Lords on points of law'.

Now, why is it that they have come to this conclusion? Is it the result of some fancy on the part of those people, or is it the result of a long experience in the handling of these court martial cases?

Pandit Thakur Das Bhargava: Tradition.

Shri Dasappa: As I said, I know of court martial cases. I do not say that they are all angles in the court martial. I know of certain court martial cases where things have gone wrong merely because of certain prejudices. I am sorry I have got to say this, but the fact is that it is not that these prejudices are the monopoly of the non-Armed-Forces people only. They are there sometimes in the Armed Forces also, though it is true that the Armed Forces do not suffer from certain prejudices.

But I ask: Where is the safety or security in a case where things go wrong because of certain prejudices? India, I am sorry to say, is yet to be emotionally integrated. In a case where admittedly that fine emotional integration among the various people inhabiting this country has not yet come about—it is in the process; I am glad to say that we are much better off today than we were before, in spite of certain evidences here and there to the contrary—the appeal would be the only safeguard which legislation can provide. I would like to know why the Minister is against such a provision.

I am unable to understand this. Suppose we do provide for a thing like that. What is the harm that it will do? Would it cause any unnecessary delay or anything like that? As my hon friend said, if it is in a state of emergency, practically most of these pieces of legislation may have to be suspended in a state of emergency. But we are not talking of cases of emergency.

Therefore, I think it would be all for the better if the hon. Minister could make up his mind to accept a provision, which may be worded in his own way with any safeguards which he may choose to incorporate in it, which would allow for appeal. That would certainly make this piece of legislation most welcome to the House.

Shri Raghuramaiah: As I said the other day, Government have given this matter their most careful consideration. It is certainly a very important matter. It is a matter which has been considered at all levels, and Government are satisfied that the present provisions in the Bill may stand. There are, if I may submit, very good reasons.

In the first place, it is true that in other countries like U.K. they have made some provisions regarding appeals. We do not know the exact experience which they have had all these years. After all, it is only recently that in the U.K. the Naval Act has a provision of this kind in it. We do not know where it has Act has gone wrong and why they thought it necessary.

In our country, as I mentioned the other day, there has been no case of grave miscarriage of justice, at any rate none of which Government are aware. The machinery that has been in existence has proved quite satisfactory. We have in the first place, a Judge Advocate General who has qualifications comparable to those of a High Court Judge, reviewing every case. After that, it has to go to the Chief of the Naval Staff and in certain circumstances, to the Central Government.

Cases like death sentences have been lightly referred to. As I mentioned, there has been no case of imposition of death sentence since 1954. I have already given the statistics. We have a happy family going on nicely with no instance of grave injustice brought to notice. If you were to impose a separate huge complicated machinery, what would be the position? Even in ordinary civil law, we talk of delays of law, miscarriage of justice by mere elongation of the administration involved in that and so on and so forth.

Take the case of a man who commits an offence on high seas. Is he to be told: 'All right. You wait till we go back and the appeal is decided'. We have to go by what is our experience. After all, our forces have only just begun to build up.

Shri Dasappa: In any case, he can appeal to the Government—to the Central Government or to the Chief of Naval Staff.

Shri Raghuramaiah: Government can certainly be more quick about these things. I am sure that my hon. friend, who is a lawyer, will agree that reference to court will certainly be a little more complicated and likely to involve more delay than reference to the Central Government.

The important point is that our experience so far has been that the system has worked well. No case of grave miscarriage of justice has been brought to our notice. What is more, to the salutary provisions contained in the present Bill the Joint Committee was pleased to insert a provision giving the right of hearing to the aggrieved person when the matter is being reviewed by the Judge Advocate General. That is a very helpful provision. As I mentioned, in cases of death sentences, confirmation of the Central Government is absolutely necessary.

Considering all these things, it has been felt that no additional provision need be made in this matter. I am glad that my hon. friend has himself admitted that in certain cases, in matters concering discipline and so on, certain restrictions are necessary—I think some reference has been made by Shri Dasappa to the Members. He referred to discipline and the requirements of discipline. I am glad he made that distinction; that becomes very vital for the consideration of the question under discussion. This is a matter which has also relevance to discipline, and we cannot deal with it lightly. Whatever be the experience of other countries, our experience has been that the present provisions are sufficient. It is in this view and not treating it in any light manner that Government have come to the conclusion that the present provisions may stand as they are.

Shri Bimal Ghose: Is Shri Dasappa convinced now?

Mr. Deputy-Speaker: I shall now put amendment No. 25 to vote.

The question is:

Page 55—

after line 24, *insert*:

"146A. All sentences passed under this Act shall be appealable to such courts having juris-

[Mr. Deputy-Speaker]

diction to hear and decide appeals from such sentences as if such sentences are passed by courts of competent criminal jurisdiction under the Code of Criminal Procedure."

The motion was negatived.

Clauses 147 to 149 *were added to the Bill.*

New Clause 149A

Shri Easwara Iyer: I beg to move:

Page 56—

after line 6, *insert*:

"149A. No sentence of death under this Act shall be executed unless the said sentence has been confirmed by a High Court of competent jurisdiction as if such sentence has been passed by a court of Sessions".

It is with a certain sense of disappointment that I am forced to move all these amendments. I would say that it is a case where I have been making repeated attempts to find a place for appeals regarding cases of sentences inflicted upon the poor ratings or officers who have been condemned.

In this amendment, I am only concerned with the question of sentences of death.

[PANDIT THAKUR DAS BHARGAVA *in the Chair*]

15.46 hrs.

At least regarding sentences of death, let the correction be made. I am a little bit perturbed when I find that offences have been very loosely defined, when something embarrassing to the naval authorities may constitute offences like mutiny for which the death punishment is being given. When all these cases are there, it is subject to the scrutiny of a person who may not be well versed in legal matters. So, I would say that even when the court martial consists of every intelligent persons having a sense of justice, as my hon. friend here was pleased to say, even when persons who are well versed in naval matters constitute the court martial, still the question of interpreting these in the light of the definition that has been given in the Act is difficult. I would earnestly make one more attempt to convince the Minister that in cases at least of grave offences for which there is a sentence of death passed, it may be subject to the scrutiny or correction of confirmation of the High Court or Supreme Court. That prompts me to move this amendment.

Mr. Chairman: Amendment moved:

Page 56—

after line 6, *insert*:

"149A. No sentence of death under this Act shall be executed unless the said sentence has been confirmed by a High Court of competent jurisdiction as if such sentence has been passed by a court of Session."

Shri Tangamani (Madurai): I would like to add a few words on amendment No. 26. Clauses 147—149 deal with sentences of death. They have been left as they are and absolute power has been given to the court martial. The only safety valve mentioned by the hon. Minister when he was replying previously is that they have to receive certain orders from the Central Government. But the practice as adumbrated in the Criminal Procedure Code in this country has always been that whenever a particular person is sentenced to death by a competent court, it is reviewed by a higher judicial authority, particularly the High Court. Whenever a person is sentenced to death under section 302 of the IPC, there is always what is called a referred trial before the High Court. The referred trial is more or less compulsory, an appeal which is open to the accused. It is more in the nature of referring it by way of a second trial. Whenever a death sentence is passed by the sessions court, the

order always reads: "This death sentence is subject to confirmation by the High Court".

In confirming the sentence of death the High Court peruses the entire evidence and it is much more than an appeal. Only after the sentence of death is confirmed it is executed. The High Court has got perfect freedom to interfere with the sentence. They can impose a lesser sentence or acquit the accused.

Amendment 26 reads as follows:

> "No sentence of death under this Act shall be executed unless the said sentence has been confirmed by a High Court of competent jurisdiction as if such sentence has been passed by a court of Sessions."

It has, in other words, put what has been the practice in this country. What has been allowed to ordinary civilians should not be denied to them. No doubt, it is true that these naval ratings have got to be under stricter discipline but in the case of the death sentence at least there should be equality as between civilians and the naval ratings.

With this I commend this amendment to the House.

Shri Raghuramaiah: May I say, Sir, that nobody is more interested in the life of the persons belonging to the Armed Forces than the Government themselves, naturally. And that is why specific provision has been made, requiring confirmation by the Central Government—in cases of capital sentence. Also as I mentioned, for the last so many years capital sentences have not been there in regard to naval personnel. But, anyhow, the safeguard is there and such cases will be considered with all care and caution. And, I cannot conceive of any authority which will do it more effectively and more interestedly than the Central Government. For this reason, the amendment may be rejected and the clause as it is now may be voted.

Mr. Chairman: I will now put the amendment to the vote.

The question is:

Page 56—

after line 6, *insert*:

> "149A. No sentence of death under this Act shall be executed unless the said sentence has been confirmed by a High Court of competent jurisdiction as if such sentence has been passed by a court of Sessions."

The motion was negatived.

Clauses 150 *to* 159 *were added to the Bill.*

New Clause 159A.

Shri Easwara Iyer: Sir, I beg to move:—

Page 59—

after line 17, *insert*:

> "159A. No sentence shall be passed nor any punishment inflicted under this Act unless the person affected had been given an opportunity to show cause against such sentence or punishment."

Mr. Chairman: The question is:

Page 59—

after line 17, *insert*:

> "159A. No sentence shall be passed nor any punishment inflicted under this Act unless the person affected had been given an opportunity to show cause against such sentence or punishment."

The motion was negatived.

Clauses 160 *and* 161 *were added to the Bill.*

New Clause 161A

Shri Naushir Bharucha: Sir I beg to move:

Page 60—

after line 4, *add*:

"CHAPTER XV-A

161A. Notwithstanding anything contained in this Act, where any person subject to naval law

[Shri Naushir Bharucha]

considers himself aggrieved by a finding or sentence of any Court martial, where such sentence is of imprisonment extending to six months or more, or any punishment inflicted falls under clauses (a), (b), (c), (d), (e), (h) and (m) of section 81, an appeal shall lie to the High Court from such finding or sentence. Provided that, where an appeal has been so preferred and dealt with on merits of the case, the person so aggrieved shall not be entitled to any judicial review of the same proceedings."

Sir, this is a new clause which I propose. It relates to appeal. The only difference is that whereas in previous amendments a direct appeal was sought to be given in all cases as of right but here only in particular cases. The amendment reads:—

"Notwithstanding anything contained in this Act.....

Shri Raghuramaiah: I already gave notice that this covers a point which has already been disposed of.

Mr. Chairman: I saw that. May I know how this has been disposed of? This provides for a specific matter. It has not come up for discussion before.

Shri Dasappa: The idea is a appeal lying to the High Court.

Mr. Chairman: Here it is regarding sentences of six months and more and this has not been discussed.

Shri Naushir Bharucha: Sir, the idea underlying is this. One can understand Government's objection to all cases coming in appeal before the High Court. That may not be desirable. There are graver offences and graver sentences. It is very necessary that the appeal must go to the High Court. Therefore I have suggested a provision on the analogy of the provision in the Criminal Procedure Code where a sentence exceeds six months. There may be created a class of appealable cases and this amendment seeks to do it.

am not quite convinced by the hon. Minister saying that in the last 3 or 4 years no death sentence has been inflicted. If he is feeling that it is such a happy family, why retain the life sentence at all? Why not abolish it if he has got confidence? The fact is we are not having a law for the time being. We do not know times will change or what will happen.

The next point is that it is wrong to say that there is adequate provision regarding death sentence because the Government comes in. Any lawyer will know that in appeal the court is entitled to go into the facts of the case and not merely into law. We doubt very sincerely the efficiency of any Government because when we say confirmation by Government it really comes down to some Secretary of some Department. Will he have the legal acumen that he can bring to bear on it as a High Court Judge would. It is no disrespect to any Secretary to say that he lacks that legal acumen, because he has not got it. Therefore, I submit that the life of an individual must not be held so cheap as this and an appeal must be provided.

There are numerous cases where a conviction by a Sessions Court has been set aside and the accused has been acquitted in appeal because there has been a misdirection to the Jury. Lawyers and Judges who have grown grey in that particular profession commit mistakes of misdirecting the Jury and on grounds of misdirection the accused have been acquitted. How much more, therefore, it is necessary that in cases where a tribunal consists of virtually non-legal members, except perhaps for the Judge-Advocate-General, and how much more likely it is that there will be errors, not only of misdirection but in admission of relevant evidence, in weighing the evidence, in applying the law to the facts of the case? Therefore, I submit that it it is an unimaginable thing to my mind that the life of an individual

should be left to the mercy of people who we know are by profession not competent to sit in judgement over a legally complicated case. Therefore, I say that Government must seriously consider this question, namely that in certain cases there must be an appeal preferred to the High Court.

Why does Government fight shy of the High Court? We know to a certain extent that the High Court Judges have not upheld the law that is made by Government and very often Government does not approve of the decision of the High Court. If a person is legally convicted the High Court is not going to say, 'All right, let him off' for the fun of it. Why is Government afraid of High Courts? I want to know that. It is not a question of a rough and ready method of dealing quick justice. You are quickly liquidating people who may be innocent and quickness is also no substitute for sound justice. Let that be the point that the Government should bear in mind. In all legislation, we are witnessing a tendency now-a-days to exclude the jurisdiction of the High Courts. That tendency has got to be checked. I submit that this is a fit and right occasion when the lives of our boys either in the Army or the Navy or the Air Force should not be subjected to the whims and caprices of a single individual.

16 hrs.

The hon. Minister has said that after hundreds of years of experience, in 1950 in England, they found it necessary to create a special law. They have created a special Act called the Courts Martial Appellate Court Act of 1951. If people, after hundreds of years, have become convinced that appeals are necessary, my hon. friend here wants to take a leap in the dark. Why not follow the experience of people who, after hundreds of years, have come to a right conclusion? What is extraordinary under the law in England or in India that appeals are good there and bad here. Is life there more precious and here worthless? Is that the contention? Surely, what an experienced power, a naval power essentially, England has done, we ought to follow; it is a good example in the right place. Whenever it suits the Government we copy England. If you have to copy, why not copy the good provisions? I hope the Government will take this fact into consideration.

Shri V. P. Nayar. A vain hope!

Mr. Chairman: Amendment moved:

Page 60,—

after line 4, *add*:

"CHAPTER XV-A

161A. Notwithstanding anything contained in this Act, where any person subject to naval law considers himself aggrieved by a finding or sentence of any Court martial, where such sentence is of imprisonment extending to six months or more, or any punishment inflicted falls under clauses (a), (b), (c), (d), (e), (h) and (m) of section 81, an appeal shall lie to the High Court from such finding or sentence. Provided that, where an appeal has been so preferred and dealt with on merits of the case, the person so aggrieved shall not be entitled to any judicial review of the same proceedings."

Shri Achar (Mangalore): I do not think that the Government feels shy to allow the matter to go to the High Court. All the same, I too would like to support Shri Bharucha. Who is better fitted to act as an appellate Judge? Is it the executive Government or the High Court Judge or the Supreme Court Judge? I do not want to agree with Mr. Bharucha that the Government is trying to avoid a decision by the High Court. But the real point is this. Who is better fitted to appreciate real questions of law that may arise? Is it not better that a trained Judge should look into the papers and come to a conclusion? Law also is a very technical subject, just like engineering or any other technical matter. It is not even the Minis-

[Shri Achar]

ters or the executive people who give a final decision in technical matters. It is a technical man who has to decide. Similarly, law also is a technical subject. To appreciate the fact and know the situation exactly and appreciate the law question involved, a High Court or a Supreme Court Judge is better. I appeal from that point of view to the Deputy Minister to allow this one amendment so that on a question of life and death in matters like this the matter may be viewed not by the executive or even by the Government but by a trained Judge.

Shri Raghuramaiah: Sir, one of the suggestions or insinuations made is that this indicates the line of action which the Government is taking and that they are excluding the jurisdiction of the Courts gradually. There is no indication whatever in this. Even in the Army, and the Air Force Acts of 1950, there has been no provision of the kind suggested. It is not as if the Government are not aware of all the difficulties of the situation. Even the Constitution contemplates a separate treatment in regard to the Armed Forces. Look at the clause permitting restrictions on some of the fundamental rights. When you are considering the armed forces, we cannot forget that it is a special situation requiring special measures. Sometimes we have been charged with copying the British model. I said, when such a charge was made, that we were not going on copying anything just for the fun of it. In every case, we see whether a particular measure adopted is necessary and I have been taking all the pains to convince the House about the situation. There has been no case of grave miscarriage of justice brought to our notice. Then again, there is a person with the qualifications comparable to that of a High Court Judge to review these cases. Government is also not without its legal officers and there is the Ministry of Law. Over and above the judicial review of the Judge Advocate General if the Government finds it necessary, it can obtain legal opinion certainly.

I may not repeat all that I have been saying in regard to these matters. I would like to make it quite clear that Government is no less anxious that justice should be done in these cases. They are satisfied that as matters now stand, we may leave them where they are.

Mr. Chairman: I shall now put amendment No. 51 to the vote of the House.

The question is:

Page 60,—

after line 4, *add*:

"CHAPTER XV-A

161A. Notwithstanding anything contained in this Act, where any person subject to naval law considers himself aggrieved by a finding or sentence of any Court martial, where such sentence is of imprisonment extending to six months or more, or any punishment inflicted falls under Clauses (a), (b), (c), (d), (e), (h) and (m) of section 81, an appeal shall lie to the High Court from such finding or sentence. Provided that, where an appeal has been so preferred and dealt with on merits of the case, the person so aggrieved shall not be entitled to any judicial review of the same proceedings."

Those in favour of this amendment will say 'Aye'.

Some Hon. Members: Aye.

Mr. Chairman: Those who are against may say 'No'.

Some Hon. Members: No.

Mr. Chairman: The Noes have it.

Shri Naushir Bharucha: The Ayes have it. It is an important matter and we can have a division.

Mr. Chairman: I am not opposed to division. Let the lobbies be cleared.

16.10 hrs.

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

Mr. Deputy-Speaker: I shall now put amendment No. 51 for the insertion of New Clause 161A to the vote of the House.

The question is:

Page 60,—

after line 4, *add*:

"CHAPTER XV-A

161A. Notwithstanding anything contained in this Act, where any person subject to naval law considers himself aggrieved by a finding or sentence of any Court martial, where such sentence is of imprisonment extending to six months or more, or any punishment inflicted falls under Clauses (a), (b), (c), (d), (e), (h) and (m) of section 81, an appeal shall lie to the High Court from such finding or sentence. Provided that, where an appeal has been so preferred and dealt with on merits of the case, the person so aggrieved shall not be entitled to any judicial review of the same proceedings."

The Lok Sabha divided: Ayes 21, Noes 68.

Division No. 2] **[16.12 Hrs.**

AYES

Banerjee, Shri S.M.
Bharucha, Shri Naushir
Choudhury, Shri S. C.
Dige, Shri
Elias, Shri M.
Gaikwad, Shri B.K.
Ghosal, Shri
Ghose, Shri Bimal
Godsora, Shri S.C.
Iyer, Shri Easwara
Jadhav, Shri
Manay, Shri
Menon, Dr. K. B.
Mukerjee, Shri H. N
Nayar, Shri V. P.
Panigrahi, Shri
Parmar, Shri K.U.
Soren, Shri
Tangamani, Shri
Yajnik, Shri

NOES

Ambalam, Shri Subbiah
Arumugham, Shri R. S.
Bahadur Singh, Shri
Bangshi Thakur, Shri
Barupal, Shri P.L.
Basappa, Shri
Basumatari, Shri
Bhagat, Shri B. R.
Birbal Singh, Shri
Chandra Shanker, Shri
Chettiar, Shri R. Ramanathan
Daljit Singh, Shri
Dasappa, Shri
Das, Shri Ramdhani
Dindod, Shri
Gaekwad, Shri Pateshinghrao
Ganapathy, Shri
Gounder, Shri K.P.
Gupta, Shri C.L.
Himatsinka, Shri J.N.
Ram Rai, Shri
Jinachandran, Shri
Jogendra Sen, Shri
Joshi, Shri A.C.
Kasliwal, Shri
Keshava, Shri
Krishna, Shri M.R.
Majithia, Sardar
Maniyangadan, Shri
Mehta, Shrimati Krishna
Nair, Shri C.K.
Nehru, Shri Jawaharlal
Padam Dev, Shri
Palchoudhuri, Shrimati Ila
Pattabhi Raman, Shri C.R.
Prabhakar, Shri Naval
Raghunath Singh, Shri
Raghuramaiah, Shri
Raj Bahadur, Shri
Ramakrishnan, Shri
Rameswamy, Shri K.S.
Ram Subhag Singh, Dr.
Raut, Shri Bhola
Reddy, Shri Ramakrishna
Reddy, Shri Rami
Roy, Shri Bishwanath
Rungsung Suisa, Shri
Sadhu Ram, Shri
Samanta, Shri S.C.
Sen, Shri A.K.
Sharma, Shri D.C.
Sharma, Shri R.C.
Siddananjappa, Shri
Singh, Shri Babunath
Singh, Shri D N.
Singh, Shri T.N.
Sinha, Shri Gajendra Prasad
Sinha, Shri K.P.
Sonawane, Shri
Subbarayan, Dr. P.
Tewari, Shri Dwarikanath
Thimmaiah, Shri
Thirumala Rao, Shri
Umrao Singh, Shri
Upadhyaya, Shri Shiva Dutt
Varma, Shri B.B.
Wadiwa, Shri

The motion was negatived.

Clauses 162 to 188 were added to the Bill.

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

Shri Raghuramaiah: Sir, I beg to move:

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

Mr. Deputy-Speaker: Motion moved:

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

पंडित ठाकुर दास भार्गव (हिसार) : जनाब डिप्टी स्पीकर साहब नैवी बिल जिसको शुरू में आनरेबिल डिफेंस मिनिस्टर ने नैवी कोड के नाम से याद किया था आज पास होने जा रहा है । जहां तक इसके नैवी कोड होने का ताल्लुक है मैं ने कंसीडरेशन स्टेज पर अर्ज किया था कि यह नैवी बिल है नैवी कोड नहीं है और अब मैं फिर दोहराता हूं कि यह नैवी कोड नहीं है । उसके वास्ते बहुत माकूल वजूहात मौजूद हैं । इस बिल के अन्दर बहुत सी ऐसी बातें नहीं हैं जिनकी कि कोड के अन्दर होने की उम्मीद हो सकती है । इनवेस्टीगेशन का क्या कायदा होगा, एवीडेंस लेने का क्या कायदा होगा, एवीडेंस की नकलें दी जायेंगी या नहीं, रिक्रूटमेंट किस तरह होगा, क्या क्वालीफिकेशन्स होंगी ये सब बातें इस के अन्दर दर्ज नहीं हैं और उनका फैसला रेग्यूलेशन्स से होता है । इसके अन्दर कोई ऐसी खराब बात नहीं है कि हमको शरमिन्दगी हो कि इसके बजाय हमारे पास नैवी कोड नहीं है । यह नैवी बिल और रेग्यूलेशन मिलाकर हमारे पास एक मुकम्मल चीज मौजूद है गो कि नैवी कोड हमारे पास नहीं है । और भी कई मुहकमों में मुकम्मल कोड मौजूद नहीं हैं लेकिन यह खराबी की बात नहीं है । लेकिन अच्छा होता अगर नैवी कोड होता और उसमें सब चीजें मुकम्मल तौर पर दर्ज होती ।

16.16 hrs.

[SHRI C. R. PATTABHI RAMAN *in the Chair*]

मैं समझता हूं कि आने वाले वर्षों में इस कमी को पूरा कर दिया जायेगा और नैवी वाले यह कोशिश करेंगे कि एक मुकम्मल नैवी कोड देश के सामने मौजूद हो जिसमें नैवी के मुताल्लिक सब बातें दर्ज हों ।

मैं इस जिम्न में जनाब की खिदमत में और कुछ बातों को पेश करना चाहता हूं जिनकी हम कमी महसूस करते थे और समझते थे कि उस कमी को दूर कर दिया जायेगा । लेकिन वे कमियां इस वक्त पूरी नहीं की गयी हैं । लेकिन इसने हमें कोई दुःख नहीं है । आज हमारी नैवी एक नैवी है, हम अपनी कमी को पूरा कर लेंगे । दूसरे मुल्कों के अन्दर जहां सैकड़ों वर्षों से बराबर नैवी चली आ रही है उन्होंने उन चीजों को मुकम्मल किया है । हम दर अस्ल इस बात में खुशकिस्मत हैं कि हम एक ऐसी गवर्नमेंट के मातहत थे, जो मैरीटाइम कौमों में सब से मशहूर कौम थी । इस वजह से हमें नैवी के मुताल्लिक जिन चीजों का वुरसा मिला वह ऐसी कौम का तजर्बा था जो बहुत अर्से तक मैरीटाइम पावर के तौर पर रही है और जिसने बहुत नुमायां काम किये हैं । इसलिए मैं शर्मिन्दा नहीं हूं कि हमारा नैवी बिल अंग्रेजों के नैवी बिल के मुताबिक है । चुनाचे जब कुछ आनरेबिल मेम्बर साहिबान ने यह शिकायत की कि मिनिस्टर साहब ने अंग्रेजी कानून की नकल की है तो मैं मुत्तास्सिर नहीं हुआ । मैं समझता हूं कि अगर किसी कौम की अच्छी बात है तो उसे हमें कबूल करना चाहिए और अगर किसी कौम की बात अच्छी नहीं है तो वह चाहे जितनी पुरानी ही क्यों न हो हमको कबूल नहीं करनी चाहिए । हमारे पास नैवी कोड नहीं था और न ही हो सकता था । अब हमारे पास जो चीज है उसको हम अपने तजर्बे से धीरे धीरे मुकम्मल बना लेंगे ।

एक खास चीज जिस पर बहुत से मेम्बर साहिबान ने जोर दिया वह अपील का प्रावीजन था जो कि इस बिल में नहीं है लेकिन गवर्नमेंट ने इस चीज को मंजूर नहीं किया । मैं समझता हूं कि यकीनन इसमें अपील का प्रावीजन होना चाहिए था और इसका न होना इस बिल में एक सख्त ब्लाट है । लेकिन ताहम जो वजूहात हमारे मिनिस्टर साहब ने ऐसा न करने की दी हैं उनके फोर्स को हम रिकागनाइज करते हैं । जो उन्होंने आखिरी वजूहात दी वे मेरे वास्ते तो काफी नहीं थी लेकिन उनके नुक्ते खयाल से जो मिलिटरी और नैवल ट्रेडीशन्स के पीछे पड़े हुए हैं ठीक हो सकती है । हाउस उसको खुद जज करे । इसके अलावा इस बिल में कई बातें ऐसी कर डाली गयी हैं जिनके बारे में उम्मीद थी कि मिनिस्टर साहब उनके बर्खिलाफ करेंगे । लेकिन मैं आनरेबिल मिनिस्टर साहब को और सिलेक्ट कमेटी को कुछ बातों के लिए बधाई देता हूं । उन्होंने कुछ अच्छे क्यू लिये हैं और अंग्रेजी कानून से कुछ अच्छे दफात समे शामिल किये हैं । मसलन डूंकिननैस का कानून हमारे सामने आया, मसलन और कई चीजें आयी जैसे कि अगर कोई सुपीरियर आफिसर अपने सबार्डिनेट के साथ नादाजिब सलूक करे तो उसको भी सजा हो सकती है । चन्द चीजों में जो पहले नैवी ऐक्ट के प्रावीजन थे कदम कुछ आगे बढ़ा है गो कि जितनी हमारी तवक्को थी उतना आगे नहीं बढ़ा है । नैवी में या एअर फोर्स में या आर्मी में ट्रेडीशन पर बहुत ज्यादा जोर दिया जाता है । मैं देख रहा हूं कि गवर्नमेंट उजलत में कोई काम नहीं करना चाहती । गवर्नमेंट कंजरवेटिज्म से काम ले रही है क्योंकि इस में डिसिप्लिन का खास सवाल है, वरना मैं यकीन नहीं कर सकता कि रघुरामैया साहब जो जब इस तरफ बैठते थे तो हर एक चीज को इतना क्रिटिसाइज करते थे इस तरह के बिल की कैसे हिमायत कर सकते थे । और कैसे कृष्ण मैनन इस तरह के प्रावीजन्स को हमारे सामने रख सकते थे । मैं समझता हूं कि यह कंजरवेटिज्म खासतौर नैवी, एअर-फोर्स और आर्मी के ट्रेडीशन्स को ध्यान में रखकर अख्तियार किया जा रहा है और इस तरह के सेफगार्ड रखे जा रहे हैं जो चाहे हम लोगों को मुनासिब न लगते हों लेकिन जो कि गवर्नमेंट को और उन लोगों को जो इस काम के माहिर हैं मुनासिब मालूम होते हों । इसलिए मैं गवर्नमेंट को इस बारे में क्रिटिसाइज करना मुनासिब नहीं समझता कि उसने यह चीज अच्छी की या बुरी की ।

जहां तक फंडामेंटल राइट्स का सवाल है यह सही है कि खुद कांस्टीट्यूशन मेकर्स ने दफा ३२ के अन्दर एक सेफगार्ड रख दिया है और कहा है कि पार्लियामेंट को अख्तियार है कि कितना फंडामेंटल राइट दें और कितना न दें । अंग्रेजों के मुल्क में जो कि आजादी का गहवारा है वहां भी सीमैन को वे राइट्स हासिल नहीं हैं जो कि हमने अपने बिल में नहीं रखे हैं । तो फिर इसमें क्या ताज्जुब है । यह एक ऐसा आर्गेनाइजेशन है कि जिसका पहला उसूल डिसिप्लिन है, बीच का उसूल डिसिप्लिन है और आखिरी उसूल डिसिप्लिन है । उस के वास्ते अगर हम अपने बिल में उन तजर्बात को लायें जो कि अंग्रेजों के तजर्बात हैं तो मैं नहीं समझता कि हम कोई बेजा बात कर रहे हैं । यह ठीक ही हुआ कि महज फंडामेंटल राइट्स के स्लोगेन्स के पीछे पागल होकर हमने उन चीजों को इसमें नहीं रखा जो कि तजर्बे की बिना पर ठीक नहीं समझी गयीं । सिर्फ उतने राइट को एबरोगेट किया है जितना कि जरूरी था, बाकी एबरोगेशन कहां है । जो लोग यह कहते हैं कि सीमैन को इस बिल के अन्दर फंडामेंटल राइट नहीं हैं वे सही नहीं कहते ।

[पंडित ठाकुर दास भार्गव]

लेकिन मुझे मिनिस्टर साहब मुआफ करेंगे अगर मैं अदब से अर्ज करूं कि कई एक चीज ऐसी हैं जो कि फंडामेंटल राइट्स से भी बाला हैं। कुछ ऐसी चीजें हैं जो कि फंडामेंटल राइट्स की भी फंडामेंटल हैं उन पर हमें सोच बिचार करके इस ला में दाखिल करना चाहिए था। जिस वक्त कि यह बिल कंसीडरेशन स्टेज में था उस वक्त भी मैं ने अदब से अर्ज किया था और कहा था कि इस ला को क्रिमिनल ला की तरह समझना चाहिए और वैसा ही बनाना चाहिए। मैं यह तो नहीं कहता कि इसको आप सिविल ला की लाइन में ला दें लेकिन आयन्दा के लिए बतौर बीज के मैं यह चीज अर्ज करना चाहता हूं कि जितने एक्सेप्शन्स कि इंडियन पीनल कोड में मौजूद हैं और जो कि फंडामेंटल राइट्स के भी फंडामेंटल हैं उनको आहिस्ता-आहिस्ता इस ऐक्ट में दाखिल किया जाये।

इस ला में आप ने रफ एंड रेडी जस्टिस का उसूल रखा है। मैं उसके खिलाफ नहीं हूं। लेकिन इसमें अफसरान को और कोर्ट मार्शल के जजान को बहुत से आरबिट्रेरी अख्तियारात दे दिये गये हैं जो कि क्रिमिनल ला में नहीं होने चाहिएं। जब आपको यह नहीं मालूम कि एक आफेंस के रिक्विजिट क्या हैं तो आप उसकी डेफिनीशन नहीं कर सकते। आप सिर्फ यह कहते हैं कि कोर्ट मार्शल के आफिसरों के खयालात के मुताबिक जो जुर्म हो वही जुर्म समझा जायेगा। क्या यह चीज गलत नहीं है? यही इस में आरबिटरेरीनैस है। मुझे उम्मीद है कि इस तरफ हम और कदम बढ़ायेंगे, जिससे जहां तक ह्यूमेनली पासिबल हो और साथ ही इस बात का ख्याल रखते हुए कि हम ने डिसिप्लिन कायम रखना है और रफ एंड रेडी जस्टिस करना है, इस किस्म की आरबिटरेरीनैस को हटा दिया जाये।

जनाब को याद होगा कि इस हाउस के सामने एक बड़ी अहमियत का सवाल आया था और वह सवाल था एडमिरैल्टी का और आर्मी कौंसिल का। मैं इस वक्त उस मामले पर ज्यादा जोर नहीं देना चाहता हूं। न ही मैं अपने आप में, अपने दिल में, यह सरटेन्टी पाता हूं कि हमारे लिए क्या मुनासिब होगा। इस लिए इस सिलसिले में मैं ज्यादा बाजे तौर पर कुछ बयान करने से परहेज करता हूं। ताहम मैं यह अर्ज करना चाहता हूं कि हम ने जो आरगनाइजेशन बिरसे में पाई थी, उस में कमांडर-इन-चीफ सुप्रीम समझा जाता था। लेकिन बाद में उस सिस्टम को तब्दील कर दिया गया और एक सिविलियन को वह रुतबा दे दिया गया। आज डिफेंस मिनिस्टर ही इस नेवी का सब से बड़ा अफसर है। अंग्रेजों की जितनी भी अच्छी चीजें हैं, वे हम ने ली हैं और यह एक दरुस्त बात है। इस सिलसिले में हमको इस बात का भी ख्याल रखना चाहिए कि आर्मी, नेवी और एयर फोर्स, इन तीन आरगनाइजेशन्ज में इतने आदमी हैं और अगर हम अपनी अल्टीमेट कौंसिल में फौजी अफसरों का—और उन के जरिये इन सारी फोर्सिज का—आखरी अख्तयारात में दखल नहीं देते, तो वे यह फील नहीं कर सकते कि हम एक ऐसे आरगेनिज्म के पार्ट एंड पार्सल हैं, जिस में हमारी भी आवाज सुनी जाती है। मैं ने दुनिया के इस किस्म के दूसरे कांस्टीच्यूशन्ज नहीं देखे हैं। अगर यह साबित हो कि हमारा सिस्टम वैस्ट है, तो फिर इस को छोड़ना चाहिए, लेकिन जहां तक मेरा ताल्लुक है, मैं एडमिरैल्टी और आर्मी कौंसिल के इस सिस्टम से मुतमईन नहीं हूं। जब तक कि आप इस को तब्दील न करें, तब तक तो आप को इस बात का अख्तियार है कि आप किसी तरह चलते रहें, लेकिन आखिर में गवर्नमेंट को इस सारे मामले को कूलनैस से देखना चाहिए और यह नुक्ता-ए-नजर अपने सामने रखना चाहिए कि हमारे पास वैस्ट आर्मी, नेवी और एयर फोर्स रहे।

मैं ने पहले भी अर्ज किया था और अब फिर मैं अर्ज करना चाहता हूं कि अब हम को वजूद में आए दस बरस हो गए हैं। मैं यह नहीं कहता कि हम को हर एक बात में अंग्रेजी कानून और अंग्रेजी ट्रैडीशन के पीछे चलना चाहिए, जो कि हमारे मुल्क के जीनियस और बिल के मुताबिक नहीं है, लेकिन जो अच्छी चीजें है, उन को अपना लेने को मैं इमीटेशन नहीं कहता। वह इमीटेशन नहीं है, बल्कि वह तो राइट कोर्स है। मैं मिनिस्टर साहब के इस नजरिये से मुतफ़िक हूं कि जो दूसरों की अच्छी बातें हैं, उन को हम रखेंगे और जो अच्छी नहीं हैं, उन को हम नहीं रखेंगे। हमारे मिनिस्टर साहब बार बार आर्मी बिल और एयर बिल का हवाला देते हैं कि उन में सेडीशन की डेफ़िनीशन यह है और म्यूटिनी की यह है और यह कि उन में भी अपील की प्राविजन नहीं है। इस बार भी हम ने इन बातों को सुना है और एप्रिशेट भी कर लिया है, हालांकि इस वक्त मैं उन वजूहात में नहीं जाना चाहता हूं, जिन की बिना पर मिनिस्टर साहब कहते है कि अपील की जरूरत नही है। उन्होंने एक वजह यह पेश की है कि चूंकि वहां पर आज तक बे-इन्साफ़ी नहीं हुई है, इस लिए अपील की प्राविजन रखने की कोई जरूरत नहीं है। मुमकिन है कि बे-इन्साफ़ी नहीं हुई होगी और इस के लिए वह मुबारकबाद के मुस्तहक हैं। लेकिन इस सिलसिले में क्या मैं पूछ सकता हूं कि जहां तक मौत की सजा का ताल्लुक है, बे-इन्साफ़ी नहीं हुई होगी, लेकिन क्या सारे केसिज में आज तक इन्साफ़ होता रहा है। मैं सिर्फ मौत की सजा के बारे में अपील नहीं चाहता हूं। जहां तक जुडिशल रीव्यू आफ़टर दी मन्चस का ताल्लुक है, वह एक मजाक है। अपील तो वह देखने के लिए भी जाती है कि किसी आदमी ने शुरू में जुर्म किया था या नहीं। सिविल ला में तो कोई इस तरह के रेस्ट्राइट नहीं दे सकता है कि हर तीसरे महीने जुडिशल रीव्यू हो। यह प्राविजन तो इस कानून की सख्ती को दूर करने के लिए—इस कानून में हर बात के लिए दो से दस बरस की सजायें रखी हुई हैं, जैसे कि सिविल ला में छोटी छोटी बातों के लिए जुर्माना कर दिया जाता है — रखा गया है। मै एक मिनट के लिए भी यह मानने के लिए तैयार नहीं हूं कि यह अपील का प्राविजन सिर्फ़ मौत की सजा के लिए हो। मै चाहता हूं कि वह हर एक आदमी के लिए, हर एक केस के लिए—सिवाय पैटी केसिज के—रखा जाय। सिविल ला में हम ने तीन तीन अपीलें रखी हुई हैं, ताकि किसी भी जगह ग़लती का इमकान न रहे। यह हो सकता है कि आम तौर पर कहीं बे-इन्साफी न हुई हो, लेकिन यह एक वाकया है कि जिस के साथ बे-इन्साफ़ी होती है, वह उसको कभी भूल नहीं सकता है। मैं जेनेरल अपील चाहता हूं।

मैं उम्मीद करता हूं कि मिनिस्टर साहब इस बारे में ग़ौर करेंगे और आईन्दा हमें इस किस्म की मिसाल न देंगे कि १९५० में क्या हुआ। १९५० में क्या हुआ, इस का असर बड़ी देर से हमारे दिमागों पर तारी रहा है और वह आज तक दूर नहीं हुआ है। इस देश में यह आम ख्याल है और इस हाउस का यह कानसेनसस आफ़ ओपीनियन है कि हम को अपील का प्राविजन जरूर रखना चाहिए। इस मामले पर हम वोट किस तरफ़ देंगे, यह एक दूसरी बात है। मैं यह अर्ज करना चाहता हूं कि जब हम दूसरा बिल लायेंगे, तो हमारी बहुत उम्र हो गई होगी और इस लिए हम इस सिलसिले में ठीक ठीक फ़ैसला कर सकेंगे।

मैं ने पिछली दफा भी कहा था कि यह असर न रहे, लेकिन सिलेक्ट कमेटी में भी और उसके बाहर भी यही असर मौजूद रहा और हमारी गवर्नमेंट और मिनिस्टर साहब की राय तब्दील नहीं हुई और चेंज आफ़ हार्ट

[रंडित ठाकुरदास भार्गव]

नहीं हुआ और यह हाउस बेबस रहा है और उस बेबसी में आप के साथ को-आपरेट करने के लिये तैयार है । लेकिन हमें याद रखना चाहिये कि यह बेबसी हमेशा नहीं रहेगी । लोग बड़े नालां है । अपील का प्रविजन बड़ा इन्नाकुअस है, लेकिन आप ने उस पर भी अमेंडमेंट मन्जूर नही की है । मैं इस कद्र नालां नही हूं, क्योंकि जो वजूहात आप ने दी हैं, वह आपके नुक्ता-ए-नजर से ठीक है, वे हम को अपील करें या न करें ।

मैं ने शुरू में अर्ज किया था और अब मैं उस को रिपीट करना चहता हूं कि यह सारा नेवी बिल एक फीयर साइकासिस के मातहत तैयार हुआ है । आईन्दा हमारा एपरोच इस से बेटर होना चाहिये—ह्यूमेन एपरोच तो वह हमेशा ही रहा है और रहेगा । मैं यह बात भी मानने के लिये तैयार नही हूं कि हमारी फ़ोर्सिज के आदमी उन के अफ़सरों को उतने अजीज नही हैं, जितने कि वे इस पार्लियामेंट को हैं । जैसा कि श्री जयपाल सिंह ने कहा है, हमारे आफिसर हिन्दुस्तानी हैं, जो सब बातों को समझते है । अब अंग्रेजों का जमाना नही रहा । हम ने आई० एन० ए० के ट्रायल्ज को देखा है । इस में किन्ही आदमियों का या आफ़िसर्ज का सवाल नहीं है । जो उसूल हैं, प्रिंसिपल्स हैं, वे आदमियों से ऊपर हैं । जो कुछ हम कह रहे हैं या जो कुछ हम चाहते हैं, वह हमारे अफ़सरों के लिये वोट आफ़ नो-कांफ़िडेंस नही है, वह तो इन्सानी फालिबिलिटी के लिये सेफ़गार्ड है । आईन्दा इस किस्म की बेगनेस नहीं रहनी चाहिये और हमारा कानून ऐसा न होना चाहिये, जिस को हम में से कोई भी न समझे ।

एक अंग्रेज ने एक पब्लिक प्रासीक्यूटर को इस लिए अदालत से निकाल दिया कि वह पान चबा रहा था, और कहा कि 'यू आर अनक्लीन', हालां कि हमारे यहां पान का चबाना एक आम बात है । इसी तरह किसी अंग्रेज के यहां कोई साफ़ा टोपी पहन कर नहीं जायेगा, बल्कि उन को उतार कर जायेगा, लेकिन अगर किसी देसी आदमी की अदालत में साफ़ा टोपी न हो, तो उसको बे-अदबी समझा जाता है । मुख्तलिफ स्टैंडर्ड और मुख्तलिफ़ विचार होते है । आप को भी क्लीनलीनैस और डीसेन्सी का कोई स्टैंडर्ड कायम कर देना चाहिए । जो हमारे मौजूदा अफ़सर हैं, वे न तो पूरे अंग्रेज रहे हैं और न ही पूरे इंडियन बन पाए हैं । वे कोट-पतलून भी पहनते हैं और अचकन पायजामा भी पहनते हैं । लेकिन आहिस्ता आहिस्ता हिन्दुस्तानी जीनियस और हिन्दुस्तानी तौर-तरीके हमारे यहां आ रहे हैं । हिन्दुस्तान में जो हवा इस वक्त है, जिस को हमारे प्राइम मिनिस्टर साहब और डिफ़ेंस मिनिस्टर साहब ने पैदा किया हुआ है, उस को हमें पहचानना चाहिए । हमारा जो सिपाही है, जो सीमैन है, वह पुराना नहीं है, जो कि आप के हर एक हुक्म को बगैर सोचे समझे मान जायेगा । वह तो रीजन की कटौती पर आप की हर एक बात को देखेगा । अगर आप इन बातों को साफ़ नहीं करते तो कानशसली या अनकानशसली बहुत गलतियां हो जायेंगी । मैं इस वास्ते अदब से अर्ज करूंगा कि अब वक्त आ गया है जब कि हम अपने आप को एसर्ट करें, अपनी जीनियस अपनी सिविलिजेशन और अपने खयालात के मुताबिक इन सब चीजों पर नजरसानी करें । आज नजरसानी नहीं होती लेकिन मैं समझता हूं कि दो चार वर्ष के अन्दर यह नजरसानी जरूरी हो जायेगी और उसी वक्त के वास्ते मैं ने चन्द एक बातें अर्ज की हैं । इन अल्फ़ाज के साथ मैं इस बिल की इस वजह से सपोर्ट करता हूं कि बहुत सी बातों में आपने तबदीली की है जो कि हमको तरक्की की तरफ़ ले जाने वाली हैं ।

इसके अलावा मैं अपनी फ़ोर्सेज में आर्मी, नेवी और ऐयर फ़ोर्स में वह सारे पापुलरली बेस्ड नोशंस-जस्टिस को पूरे तौर पर लगाने को तैयार नहीं हूं क्योंकि उनकी एक खास अहम पोजीशन है। इस वजह से मैं आपकी इस बात की कद्र करते हुए कि आप अपने ट्रैडिशंस को मजबूत करना चाहते हैं और उन पर क़ायम रहना चाहते हैं और किसी हद तक ट्रैडिशंस पर कायम रहना ठीक भी है अलबत्ता उस हद तक जब तक कि हम एक कंजरवेटिव न बन जायें क्योंकि उस हालत में तो हम दकियानूसी हो जायेंगे और ज़माने की रफ़्तार में पीछे पड़ जायेंगे। इन दोनों चीजों को खयाल में रखते हुए हमें आगे बढ़ना है। आपने जो इस बिल में कोशिश की है उसका खैर मक़दम करता हूं।

Mr. Chairman: Shri Dasappa:

Shri A. S. Saigal (Janjgir): I was not here so far. I would request you to give me some time so that I may be able to express my views in the third reading stage.

Mr. Chairman: He will get his opportunity. I have called Shri Dasappa.

Shri Dasappa: I have great pleasure in congratulating the hon. Deputy Minister on the very excellent way in which he has piloted this very important measure through this House. This Bill, as it has emanated after discussion, here, is virtually passing through this House without any changes, that is, as it emanated from the Joint Committee. That, no doubt, is a matter on which the hon. Minister may well congratulate himself, and I also offer him congratulations on behalf of myself and many of my colleagues.

I am sure that this indicates one thing, that the Joint Committee has brought to bear upon its task a great amount of diligence and consideration; that partially accounts for the fact that the Bill is now emerging as it has come out of the Joint Committee.

I do not want to go into details or traverse the ground which has already been covered in the clause by clause discussion. I feel it is a historic measure that we are now passing through our House. It reminds us of our ancient past. No doubt, as an important link of our defence, the Navy certainly stands supreme. There is no doubt that it is going to perform that great function. On that account alone, we must say that this is a very important measure. But I view it from a much broader point of view. It reminds us of the fact that we were once a great sea-faring nation, and invariably that fact is associated with the existence of a strong and powerful Navy.

You have seen that every nation which has built up a strong naval force has also a very strong and big maritime fleet. In days past, our ships carried not only rich merchandise but our culture and religion to the far corners of the world. For some unknown reason, we have not been able to keep pace with that measure of advance that somehow or other western countries have done. That has created the backwardness of the country. And, today, I hope a new chapter will commence. Just as in the days of old we held the high seas, so, in future our ships and our boats will be going on the high seas, not only carrying our merchandise but our culture and philosophy and the great mission which I think is ours. It is in that context that I am happy to join with my hon. colleagues in congratulating the Ministry on this measure.

There are certain aspects of it which may have to be reconsidered in the light of the experience that we gain in implementing this measure. I have also indicated.....

Mr. Chairman: May I interrupt the speaker. I would just request him to note that by 20 minutes after five we will complete the 10 hours allotted for the Bill, and it is hoped that the Bill will be passed today. The Minister will wind up and two other Members

[Mr. Chairman]

from the Opposition have also desired to speak. So, I would request the hon. Member to be as brief as possible. I am sorry to interrupt him.

Shri Dasappa: You are perfectly right, Sir. I do not want, as I said, to mention any of the detailed provisions of the Bill. But, I would refer to one or two things. As Pandit Bhargava said, there is room for consideration with regard to the provision for appeals. I do not want to labour that point.

As regards the constitution of the Board of Admiralty our Navy is still in its infancy and I do not think it is necessary for us at this stage to have a very complicated hierarchy of officers for constituting the Board of Admiralty. I am afraid we have already progressed from the stage when we had only one Commander-in-Chief to the position that now we have three Chiefs, one for the Army, one for the Air Force and a third for the Navy. I am glad the hon. Minister assured us that wherever these matters are to be considered there is a meeting with the concerned officers of the Army so far as Army matters are concerned, with the officers of the Air Force so far as Air Force matters are concerned and with the officers of the Navy with respect to Navy questions. That is a good enough assurance for us and I am glad that he has given that assurance to us.

Where matters of all-India importance come all the three arms of our Defence Forces are concerned. I am glad of the assurance that all the concerned Chiefs will be there for necessary deliberations and decisions. That, I think, ought to satisfy those who are thinking of the Board of Admiralty.

I do not want to take much of the time of the House and I welcome the measure.

Mr. Chairman: I will now call Shri Bharucha and after him Shri Saigal and Shri Jaipal Singh and then Shri Easwara Iyer. I hope they will be ready.

Shri Jaipal Singh: I am ready, Sir.

Shri Naushir Bharucha: I shall be extremely brief and I shall touch only on those points which have not been touched so far.

The third reading of a Bill affords us an opportunity to have an overall perspective of the legislation that we are about to enact into law. The central clause of this Bill is clause 5 which deals with the constitution of the Naval Force. If we turn to this clause, it surprises us in its simplicity, vagueness and legal defect. All that it says is that the Central Government may raise and maintain a regular Naval Force and also a Reserve or Auxiliary Naval Force. In other words, under the law, authority is delegated to the Government to legislate on the principles and policies which will go into the constitution of this Naval Force. May I know whether this House has got its own views as to on what principles and on what policies a Naval Force should be constituted? For instance, the other day, an Admiral announced that the purpose of the Navy was to safeguard the trade route and defend the coastline. Is it the intention of this House that we should leave it to the Admirals to define the purpose of the Navy and not put it down in the legislation itself so that the Government might understand the size and the type of the Navy that we that got to create? On what principle is Government going to proceed when it wants to constitute a naval force? We have not defined the purpose of the naval force in the Bill? For what purpose is the Government going to constitute the Navy? To meet an emergency in case of a Third World War? Are we going to have a Navy powerful enough? Does the House want to throw on the Central Government that responsibility so that it may constitute a Navy capable of meeting any threats including guided missiles

in case of a war? Or, are we confining ourselves, as pointed out by the Admiral, to the objectives of guarding the trade routes or merely policing the coastlines? We do not know.

The Bill does not prescribe. The Goverment has got no directive and no indication from the House to go on. In other words, I am sorry to say that this House has abdicated its power to put down the principles and policies in the Bill before giving the Government the authority to constitute a naval force.

The hierarchy of commands are not prescribed. We do not know whether the Navy is going to be constituted by divisions as in the Army. It is open to the Government to do anything as it likes. The other day we passed the Railway Protection Force Bill. We prescribed the hierarchy: Havildar, Chowkidar and so on. It was because it was going to be a force. But in the Naval Force, there is no prescribed hierarchy and we leave it to the Government to prescribe that.

Take also the question of relation between the Army, the Air Force and the Navy in times of emergency. What is going to be the overall position? Who is going to be the controlling authority: the Army Commander or the Air Force Commander? The Bill says nothing whatsoever. It is doubtful, unless a legal duty is cast by law, if for instance an Admiral will obey a particular authority in times of emergency. When the question of insubordination arises or mutiny or whatever it is he can say that there is no legal duty cast on him. Assuming that an officer normally will carry out all the orders, why is it that the House leaves so many gaps in the Bill? Is it not our duty to see that the major principles at least are prescribed?

We are talking of an auxiliary naval force. What type? Is it the intention of the House that boys and girls in the colleges should be trained? We have given absolutely no indication whatsoever.

I would not be surprised if clause 5 is challenged before a court of law and it says that the Parliament has no power to delegate legislation like this without laying down the principles. What is the essence of delegated legislation? Legislation can only be delegated to prescribe procedural and minor matters and not the principles themselves. In fact, the House has abdicated its jurisdiction to prescribed principles. The House has no power to abdicate that jurisdiction.

Therefore, my submission is that it is a big and serious defect that we have left altogether the Central Government in the dark about the principles. What is the Central Government going to do? What is going to be the size of the navy, the type of equipment or anything? How can you say unless you know the purpose for which you are going to create that naval force? Even if you want to construct a building, you will first ask: for what purpose is that building going to be used? Is it a school, theatre and so on? So, we have grievously erred in that respect.

Secondly, I do not desire to add anything to the very powerful appeal my hon. friend, Pandit Thakur Das Bhargava, made in connection with the appeals which ought to have been provided for. I do hope that a time may come when the Government will appreciate the fact that at least for all the three Services combined there should be a separate Appellate Court created. I refuse to believe that by giving the right of appeal there is going to be delay. It is much better for a man condemned to death that he will get justice which is delayed rather than he is quickly dispatched. Therefore, I submit that I do hope that the powerful plea which my hon. friend has put in will not fall on deaf ears.

There is another small point, but really it has got its intrinsic value. We have prescribed, and we have done well in prescribing them, the

[Shri Naushir Bharucha]

qualifications of the Judge Advocate-General and the Deputy Judge Advocate-General. We have not provided in this the security of tenure which alone can give them independence. The Judge Advocate-General and others are so much tied down under the administrative and executive side that they will not have that independence which a judiciary alone can exercise. What gives independence to the judiciary? It is the security of tenure. The man cannot be removed from his post because he gives a judgment against the Government. That security of tenure is not included in this. I do not know what can be done at this very last stage. Nothing can be done. But I hope the Government will bear this point and if they feel that there is some substance in that they will not hesitate to bring an amending Bill in this House.

श्री अ० सिंह० सहगल: सभापति महोदय मैं आपका बहुत मशकूर हूं कि आपने मुझे थर्ड रीडिंग के समय में बोलने का मौका दिया । मैं जब यह बिल हाउस में चल रहा था गैरहाजिर था लेकिन जिस वक्त यह बिल सेलेक्ट कमेटी में गया हुआ था उस वक्त मैंने अपनी राय सेलेक्ट कमेटी के मेम्बरों के पास भेज दी थी । मैं कह नहीं सकता कि सेलेक्ट कमेटी में जो हमारे मेम्बर साहबान थे उन लोगों ने मेरी उस राय पर क्या गौर किया । मुझे अभी आते ही जब यह मालूम हुआ कि उस बिल की थर्ड रीडिंग स्टेज है तो मैं ने सोचा कि मैं भी इस सम्बन्ध में जो अपनी राय है वह संक्षेप में हाउस के सामने रख दूं ।

इस अवसर पर इस बिल का जो चैप्टर १८ है Judge Advocate General of the Navy and Officers of his Department मैं इस Appointment of the Judge Advocate General of the Navy and his subordinate officers, इस एपैलेट कोर्ट के ऊपर अपनी राय देना चाहता हूं । मैं जानता हूं कि थर्ड रीडिंग के मौके पर मैं कोई बहुत ज्यादा बातें हाउस के सामने नहीं रख सकता लेकिन मैं इतना कहूंगा कि यह जो आप ने १६८ क्लाज में जज ऐडवोकेट जनरल रक्खा है उसमें होगा यह कि जो आदमी जिस डिपार्टमेंट का होगा वह अपनी राय आजादाना तौर पर बिलकुल साफ साफ जाहिर नहीं कर सकेगा और इसी बात को महेनजर रखते हुए मैंने यह सुझाव दिया था कि जिस तरीके से सुप्रीम कोर्ट के जजेज होते हैं उसी तरीके से वहां पर भी जजेज मुकर्रर किये जायं । जो जजेज मुकर्रर हों वह उसी डिपार्टमेंट के हों कोई जरूरी नहीं है लेकिन उनके पास में यदि अच्छे आदमी हों तो बराबर उनको वह डिपार्टमेंट में रख सकते हैं । लेकिन इसी के साथ ही साथ हमें इस चीज को भी नहीं भुला देना चाहिये कि डिपार्टमेंट से आदमी लेने में एक खामी रहती है । अब थोड़ी देर के लिये मान लीजिये कि एक शख्स का कोर्ट मार्शल होता है और चाहे कोर्ट मार्शल का फैसला गलत रहा हो या सही लेकिन उस डिपार्टमेंट के आदमी को अनुशासन के अन्दर रहते हुए उस निर्णय को मान्यता देनी होती है । इसलिये मैं समझता हूं कि आज जब कि हमको अपनी स्वतंत्रता प्राप्त किये हुए दस वर्ष हो गये तो आज की परिस्थिति में हमको ऐसी व्यवस्था वहां पर करनी चाहिये कि अगर कोर्ट मार्शल किये गये लोगों के साथ किसी किस्म का अन्याय हुआ है तो वह वाजिब न्याय पा सकें और उनके साथ इंसाफ हो सके । इसके लिये बहुत जरूरी था कि उन लोगों के लिये हम एक सुप्रीम कोर्ट की तरह से एक कोर्ट मुकर्रर करते ।

इसके साथ ही मैं यह चाहूंगा कि हमारी मिलेटरी के जो तीनों विंग्स हैं अर्थात् आर्मी, नेवी और एयर फोर्स इन तीनों के लिये एक ही जज सुप्रीम कोर्ट की तरह

का मुक़र्रर किया जाता और वह कोर्ट सारे अपील सुनता ऐसा करना ज्यादा लाभप्रद सिद्ध होता। हर विंग के लिये अलग अलग मुक़र्रर करना वाजिब नहीं।

दफ़ा १७० में जो आपने यह रक्खा है कि चीफ आफ दी नैवेल स्टाफ़ हर डिपार्टमेंट के लिये अलग-अलग जज एडवोकेट्स डैजिगनेट करेगा अर्थात् नैवी का अलग, एयर फ़ोर्स का अलग और आर्मी का अलग, तो मेरा कहना है कि इन तीनों को मिला कर एक ही को सुप्रीम कमानडर बना दिया जाय जो कि तीनों का मालिक हो और यह अलग-अलग रखना मैं समझता हूं कि यह बुद्धिमानी की चीज नहीं होगी इस में पैसा आधा खर्च होता है। आपके सामने अन्य देशों के उदाहरण मौजूद हैं। यनाइटेड किंगडम का उदाहरण ले लीजिये। जिसके आधार पर हम चले हैं वहां पर अपीलों की सुनाई विभ तरीके से होती है। इसलिये म आप से फिर प्रार्थना करूंगा कि मेरे सुझाव को स्वीकार किया जाय।

इसके अतिरिक्त में मंत्री महोदय का ध्यान चैप्टर २ में धारा ५ की तरफ दिलाना चाहता हूं। उसकी ओर अभी जो मेरे मित्र मरूचा जी ने सदन और माननीय मंत्री का ध्यान आकर्षित किया है और उस सम्बन्ध में अपने विचार प्रकट किये हैं उनसे मैं बहुत कुछ सहमत हूं। चूंकि इस समय वक्त नहीं है कि मैं आक्सिलरी नैवेल फ़ोर्सेज पर विस्तार से कुछ कह सकं इसलिये इस अवसर पर मैं उसकी बाबत कुछ न कहूंगा। लेकिन में इतना इस अवसर पर जरूर कहूंगा कि आज भले ही आप इसको कर सकें और जाहिर है कि यह बिल बहुत जल्दी पास होने जा रहा है लेकिन आपको अगर आज नहीं तो कल इस सुझाव पर गौर करना पड़ेगा कि हम क्यों न सुप्रीम कोर्ट की तरह से तीनों विंग्स के लिये एक ही सुप्रीम जज मुक़र्रर करें। अगर आप अपने डिपार्टमेंट और फ़ोर्स के आदमियों से बात करेंगे तो आपको मालूम होगा कि वह भी इसी ख्याल के हैं। यहां से बैठ कर आप उनकी असली राय को नहीं जान सकते और इसके अलावा वह अपनी सही सही राय प्रकट करने से डरते भी हैं क्योंकि वह आर्मी डिस्प्लिन में बंधे हुए हैं और वे सामने आपके आकर इस तरह कहने की हिम्मत नहीं कर सकते लेकिन अगर प्राइवेट में उनसे बात की जाय तो वह भी यही राय देंगे और वह यही कहते हैं कि ऐसा न करके हमारे साथ अन्याय हो रहा है लेकिन वह इसके लिये अपनी आवाज़ नहीं उठाते क्योंकि उनको सदा इस बात का डर बना रहता है कि अगर उन्होंने आवाज़ उठाई तो उन से बन्दूक रखा ली जायेगी और उनका कोर्ट मार्शल कर दिया जायेगा।

अन्त में मैं और अधिक न कह कर फिर एक बार मंत्री महोदय से निवेदन करूंगा कि वह इस सुझाव पर गम्भीरता से गौर करें और अगर आज सम्भव न हो तो आगे चल कर इस चीज को लागू करने के लिये सोचें। इतना कहने के बाद मैं सभापति महोदय. आपको एक बार फिर धन्यवाद देता हूं कि आपने मुझे बोलने का अवसर दिया।

Shri Jaipal Singh: I think we have to congratulate ourselves in seeing this Bill through. With its acceptance, we have now completed the third stage. But I do hope that Government will not take it as the last stage in this continuous process of legislation.

The three Acts for the three Services have, for the time being, been kept separate for specific reasons. It is now for the Government to see how these three Acts compare with each other *inter se* and how improvements by way of amendments can be made: I do hope that Government will bear that in mind. This Bill and the other two Acts, just because they have been passed by this House, are not perfect. There is plenty of room for improvement in them. It is only through experience we shall

[Shri Jaipal Singh]

know what improvements have to be made. Because, improvements are bound to come, as we gain experience, as we become more and more true to our own characteristics and to our own culture, as Pandit Thakur Das Bhargava has put it quite rightly.

Our armed forces are, numerically in terms of years, young. Overnight as it were, what was a mercenary force became a national force. And it is a great compliment to our armed forces that in the change over, in the tremendous revolution that has taken place the armed forces overnight it were, serving under one former regime, overnight became an army of patriots. How the armed forces have adapted themselves? This process of adaptation has to be a continuous process. It will have to be not merely in the external shapes. As has been pointed out by my friend, Pandit Thakur Das Bhargava as we go along, we shall know what befits us, what is alien to us and where corrections have to be made. For example, the very uniform that is worn by the armed forces requires change. Other countries are changing them. There is nothing fast and rigid; nothing that is permanent; changes there must be. So also in the matter of the administrative set up. Earlier I said that you would have to examine very carefully the administrative set up in other countries as to whether those things will suit us or not. But, this is not the time, in my view, for the setting up of the Admiralty or Air Council or Army Council. But, I think it would be as well for the Government to examine how and when we might proceed towards that direction. May I again appeal to the Government to lose no time in bringing into existence something like the Navy League in the U.K., which as I said previously, has an enormous membership of civilians throughout the country. The Navy League undertakes to educate the country, as it were, on naval problems of the country. While I emphasise the question of bringing about the Navy League and making it a country-wide organisation of civilians as well as Navy personnel, I would also urge that the same thing may be done in regard to the Air Force and the Army also.

17 hrs.

Some of us do not always appreciate the fact that the Navy today has a two-fold character. It is not merely the ships. In the Navy also there is the aviation wing. There is, as it were, half the Air Force, if I may put it that way, although it is not literally tied to the Indian Air Force as such, in the Navy. There are problems in the matter of improving legislation hereafter.

Lastly, I would like to pay my tribute to all the Armed Forces for the way they have conducted themselves. Here, in this House, we have not always been appreciative of their difficulties and during the Budget, somehow or other, some of us, not all of us, I think have exceeded our bounds in depicting the Armed Forces in the light they are not in. I think they are doing a very fine job. One hon. Member said that perhaps, this House is delegating too much authority to the Central Government. I would like to point out to him that every year, the Budget has to be presented to this House. It is this House that has to pass the Budget Demands. It is for this House, in passing the Budget Demands, to decide what the quantum of our Armed Forces shall be. So, from beginning to end, the authority is all the time with us. There is no question of any unlicensed delegation of authority to the Central Government. The Central Government has to depend on this House for everything. So, while we pass this Bill,—we have passed the other two Acts—I am conscious of the fact that the Government has to come back to this House again and again and seek the opinion, verdict of this House in regard to the composition of the

Armed Forces. It is for this House to tell the Government as to what is right and what is wrong and where changes have to be made. I have great pleasure in supporting the passage of this Bill.

Shri Easwara Iyer: Mr. Chairman, I shall be very brief. But, I regret to say that I cannot share the optimism put forward by Shri Dasappa and Shri Jaipal Singh.

17.05 hrs.

[MR. SPEAKER *in the Chair*]

I would say, viewing this as a piece of legislation coming forward with a lawyer's eye, that this piece of enactment, if passed into law, will go down into our statute-book as a standing example of incoherent ill-drafting, if I may say so, with very ambiguous definitions. The enthusiasm for discipline has been allowed to run riot, if I may say so, for bringing within the ambit of the definitions any actions which may become an offence. As my hon. friend, Pandit Thakur Das Bhargava said—he spoke in Hindi, but I could follow a little bit—that even a person coming with an unclean dress can be punished. What exactly is this unclean dress? The fact whether one wears an unclean dress or a clean dress is left to the subjective satisfaction of the superior officer.

Shri Naushir Bharucha: Some M.P.'s might be convicted under that.

Shri Easwara Iyer: Then there is another expression 'indecent words'. What exactly is the standard of decency? Whether standing here and speaking these words will amount to decency or not is not clear; I am unable to understand. That is also left to the subjective satisfaction of the superior officers.

I need not go again and again to the definition of the word 'munity'. It is wide enough to bring within its ambit any action or anything spoken by any naval officer or any naval rating.

Quite apart from that, there is the question of drunkenness also. A person may be drinking anything. If I may speak as a lawyer, what exactly is meant by drunkenness? Is it a state of mind or a state in which the man finds himself physically? A person may drink liquor; or he may drink coffee; or he may drink tea. What exactly is meant by drunkenness? Drunkenness is nowhere defined in this Bill. It is left to be decided by the court martial, the composition or the constitution of which is also left in very vague terms.

Again, when we plead for a provision for appeal, it is stated that in order to reduce delay in procedure, it is only desirable that such provisions should not be there. I do not mean to say that this is an enactment which is a copy of the U.K. enactment, because the Minister may take objection. But I may say that if we have borrowed anything good from the U.K. Act, we have not borrowed the salutary principle of appeal which is provided there. Possibly, if I were a cynic, I might be tempted to say that it is the monkey instinct in man to tear up beautiful things.

So, if this enactment goes into our statute-book, it will be a case where we shall see that the future working is found beset with dangerous and explosive results. I believe it was Justice Holmes who said 'Life of law is not logic but experience'. From that date, it has been our misfortune, perhaps, to leave everything to experience and say that experience will prove whether this enactment has any lacuna left in it, and if there is, then we shall correct it. Why should we not correct it now? Why is it not expedient to correct it now?

The Defence Minister, while moving the Bill for consideration put forward the theory that this is a proclamation to show that India is emerging as a great naval Power. In spite of this enactment and in spite of this piece of legislation, India is going to emerge as a naval Power.

[Shri Easwara Iyer]

It is not this enactment, but the brave boys who have occupied positions in the Navy, who are going to make India a naval Power. This enactment, when it goes into our statute-book, is going to curtail their enthusiasm. This is going to make them slaves to their superior officers, and fetter their liberties. I would say that, quite apart from the Fundamental Rights, there is absolutely no right conferred on them, so far as this enactment is concerned.

Shri Raghuramaiah: Mr. Speaker, Sir, with one exception—I am referring to the last speaker—I am very grateful to Members for having generally accorded their very generous measure of support to this Bill. I can of course understand the exception. I presume he is one of those who would rather not have a Bill of this nature at all but would leave everything at loose ends, the Army, the Navy and the Air Force, in disorganised state.

Shri Dasappa: And create chaos.

Shri Raghuramaiah: From the very beginning; hon. Members have paid particular attention throughout the discussions here and in the Joint Committee to the sense of discipline, service and loyalty of our armed forces. That is a thing which we are all proud of. During the debate, I am glad that well deserved tributes have been paid to this.

It is possible to improve drafting here and there. In fact, the Joint Committee took a lot of pains to improve it. To call this an ill-drafted measure, takes my breath away. I do not know what is the standard of drafting of my hon. friends opposite (*Interruption*). Anyhow, drafting is a small matter; what is more important is the real spirit of the enactment and whether the words convey what is meant.

I am surprised that various charges are made oftentimes that this is a copy of the British Act. When I point out the particular instances where we departed from that, then I am charged that we have departed from a salutary practice. What is the criterion of a salutary practice? After all, we have to see what is the present position, what are our present requirements, whether our policy has succeeded so far or is there any lacuna left. In the matter of appeal, I have taken great pains to point out that so far, since independence nothing has happened which convinces Government that the present provisions are not sufficient. Every precaution is taken to ensure that there is justice. I have mentioned so often during the course of the debate that there has been no case of gross injustice brought to the notice of Government. It may be that U.K. or other countries may have their own special reasons as to why they have come to a particular conclusion. But to insist that without knowing what is the necessity for it, without feeling the pressure of it, we should just rush in to copy some measure which has been adopted in UK, is not very fair.

It is not as though Government have closed their mind in regard to any particular matter, much less in regard to appeals. Government do appreciate the anxiety behind it. But the point is that the imperative necessity of it has not been brought home to Government. Government are satisfied that the provisions in the Bill in regard to appeals are, for the moment, satisfactory and sufficient. The moment that Government themselves feel convinced that these provisions are not sufficient and that administration of justice is in jeopardy, that would be time enough to amend this Act, the Army Act and the Air Force Act. But as matters stand now, I submit there is no case for it.

I am happy that we are now coming to the last stage of passing this Bill. I am sure that our Navy and we have some of the finest young men in it, will have a great future before them and that all the good things said in this House will be a matter of tremendous encouragement to them.

There was a question of Indianisation raised. It has been made clear on the floor of the House from time to time, and I may repeat for the information of the House, that we have gone a long way towards Indianisation. At the time of the partition, there were about 240 British officers and in July 1949 there were 89. At present, we have only 5 and it will not be very long before we would have Indianised completely and absolutely.

After all the Naval wing, as I mentioned the other day, is a wing that takes the largest time to build. It is not the building of a ship. It is the question of training personnel to man the ships and equipment. Even a trained person when he is put on a new ship and new equipment has got to learn all about that ship and that equipment. These are some of the factors that we have to face.

So much has been said about definitions and so on. There are so many things which are understood in the Army, the Air Force and the Navy which may not be understood in the same sense or in the same measure in ordinary common parlance. Many aspects of discipline are dependent on the manner in which traditionally a certain course of conduct is understood. A particular word may look strange to us but, certainly, it is understood well in the Armed Forces or the Navy or the Air Force. It would not be right to tinker with those well-established words. That is why, wherever it is necessary we have defined. Whereever it is well understood, wherever, in actual practice, it has not worked any hardship, it has been left to bear the meanings which they have acquired.

Mention has been made about the co-ordination of the Armed Forces and Government. I would like to say a word about it. We have developed a system for the last 10 years. I refer to the Defence Minister's Committee for the Armed Forces, the Defence Minister's Committee for the Air Force and the Defence Minister's Committee for the Navy. These are have been recommended, if I understand aright, by no less a person than Lord Ismay, a person considered as the great authority on the administration of the Defence machinery in U.K., and whose services were later, at some stage, requisitioned even by the Government of the United States. He has gone through the whole structure and then made a recommendation. So, it is not as if we had just pitched upon a fanciful thing and started work. For the last 10 years it has been given a trial.

In every one of these Committees, there are the representatives of Services concerned. For the Navy, you have got, apart from the Defence Minister and the Deputy Minister and the Secretary, the Chief of the Naval Staff. He is always at liberty to bring such technical officers as are required so that at every stage even in regard to matters of policy there is a discussion and there is the greatest amount of co-ordination between the Chief of the Naval Staff on the one hand and the officers of the Secretariat on the other and the Defence Minister. But, as I mentioned the other day, the final responsibility for the formulation of the policy and for the implementation of that must rest with the Defence Minister and quite rightly so, because the Defence Minister is the authority that is responsible to Parliament and the rights and powers of Parliament in this regard are supreme.

Before I close, I would like to thank once again the hon. Members for the co-operation which they have given in this matter and for all the kind things they have said of our Armed Forces and for the measure of support they have given in regard to the various clauses.

Mr. Speaker: The question is:

"That the Bill, as amended be passed."

The motion was adopted.