STATUTORY RESOLUTION DKSAPPROVING THE CODE OF CRIMINALPROCEDURE (AMENDMENT)ORDINANCE, 1990

CODE OF CRIMINAX, PROCEDURE (AMENDMENT) BILL, 1990—Contd.

SHRIMATI JAYANTHI NATARAJAN: Sir, I was making my objection to the proposed new section 166A of this Bill. I have givm notice of an amendment that this provision should be deleted. My main objection is that under this provision, the new section 166A, the criminal courts have been sought to be equated with the investigating officers. Sir, I would like to point out that there is already another provision proposed in this very Bill, namely, 166A (2), which says:

> "... if, in the course of an investigation into an offence an application, is made by the investigating officer or any officer superior in rank to the investigating officer that evidence may ne available in a country or place outside India, any Crimin&i Court may issue a letter of request to a Court or an authorty in that country or place.

My submission is that this prevision will -----

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): There is one thing I would like to point out. Of course, the Prime Minister is here. But when the first speaker from this side is speaking, the Home Minisier should be present here. He may please be called.

SHRIMATI JAYANTHI NATARAJAN; Anyway, he was not listening.

SHRI V. NARAYANASAMY (Pondicherry): Everybody is interested in Punjab...

SHRIMATI JAYANTHI NATARAJAN: The poinl I am making is that it is totally contrary to the principles of jurisprudence and it is extremely dangerous to equate the criminal course with investigating officers. They have the power to guard the rights and privileges of the citizens of the country and are put on part with the investigating officers.

The second power of this is already there in provision 166(2) Courts have been given the power and any officer can approach and ask for the power so that the invesigation can be proceeded with. I will in no way hamper the proceedings. The only conclusion that I can draw is, by this amendment the Government wants to avoid the scrutiny of the courts and tney want to fuction through police. This is extremely dangerous. The provision is . already there for the courts to go into this matter and it will not hamper the investigations in any way. This amendment only enables a police officer to do the same thing. The inescapable conclusion that can be drawn is that there are certain cases where for the reasons of harassment or whatever other reasons, the Government wants to avoid the scrutiny of the court. They want straight to go to the police officer and [as]k him to function. We all know what happened to Mr. Jain, By this amendment we will make a laughing stocx of ourselves not only inside the country but in the whole world. I say this for two reasons. First of all, there is absolutely no principle of reciprocity. On the one hand wc are saying that a sub-Inspector of Police and officer in charge of a police station can issue request to anybody for purposes of collecting evidence, and on the other hand from other parts of the world their request has to be directed to the Central Government. No other country in the world will accept an amendment like this. They are going to make a laughing stock of themselves in the whole world. it won. t stand for a minute. There is no principle reciprocity.

The second extremely important point is that I have a serious objection to these words "to record his statement". To record a statement is completely wrong. In all the provisions of the criminal law the words that are used are: "Evidence of a witness has to be reduced to writing". "Reduced to writing" means that it is the verbatim transcript of what the witness has said. The reason why the Home Minister wants to change it to 'record bis statement' is that record means simply summary of what the witness has said and you have to trust this police officer. I have a serious objection to this. It is totally contrary to the entire evidsat-. vy scheme of th? Criminal Procedure Code as it stands today. "Reduced to writing protects the witness. For this purpose the entire evidentiary scheme cf thu Criminal Procedure Code is protected by article 21. It is a precious r'i'er by which no citueri can be deprived of his life and liberty except according to the procedure established by law. We have various checks and balances in law.

[THE DEPUTY CHAIRMAN in the Chair]

The Criminal Procedure Code has been structured in such a manner that if any witness or any citizen is unhappy with particular proceedings of a court, there is a provision of appeal. We can go to the next higher court and then to another higher court. This entire article 21 gives the protection. Now if we allow a sub-inspector of police to seek evidence from another country without going through any court whatsoever, we are totally depriving the citizens of India of the protection of our courts, our la vs. We have absolutely no control over the procedure by which in those foreign countries evidence is collected. We have no control over it. The citizens will have no right to appeal to anybody. It is a method by which evidence is collected ex parte, behind the witnesses' black. There will be no evidentiary value. Therefore, I feel that there is absolutely no justification *to* have this amendment. Even for political expediency the political purposes can be ' served by the provisions of the existing law. The provision for proceeding with an investigation with' all seriousness is already there. And the new provision by which courts have been given the powers!. Our stand is that the police officers should not be given the power tc conduct investigations as you will be imperilling the right's of oiti-Jens of this country, because we all know that very often, to put the kind of interpretation on it, police officers are not known to be very particular about a system which they follow in collecting the evidence. Therefore, it is a cardinal principle that it is the courts of this country that should protect the citizens and. d there is absolutely no reason by which you can deprive the citirens of the protection of the courts. I do not think any court in the country will uphold such a law for a minute.

Finally, I want to point out what this provision of letterogatory means. I want to read from the actual meaning given in the Chambers Ordinary Dictionary:

> Letter of r-jqusst or letterogatory means an instrument by which a court of one country asks that of another to take certain evidence on its behalf.

Then you have the Stroud'; - Judicial Dictionary which says;

> Letter of request is a document from a diocesan court asking the assistance of another ecclesiastical tribunal in a matter within the ttig-«izanct «f that c«urt.

[Shrimati Jayanthi Natarajan]

This is used mainly for ecclesiastical purposes.

Then Blacks Judicial Dictionary say*:

> Letter ogatory—A request by one court to another court in an independent jurisdiction, that a witness be examined upon interrogatories I sent with the request. The medium whereby one country speaking through one of its e< urts, requests another country actirfg through its own courts aud by methods of court procedure peculiar thereto and entirely within the latter's control to assist the administration of justice in the former country.

There is absolutely no provision, there is no history, there is no precedent by which letters of request "an be used to arm the hands of police officers. It is only the courts which are to be entrusted with these powers. And it is for this reason that we are opposed tooth and nail to the provision by which draconian powers ere sought' to be given to the police.

In conclusion, I want to say what I have already said when I started that it was really the previous Government which put into motion seriously the investigations into the Bofors deal. If the Home Minister has contrary information that the Ordinance was actually used in a manner by which investigations into Bofors were stalled, I demand that he should share that information because this House has a right to know. I have read his answer in the Lok Sabha and he need not refer to that at all. Madam, I am not going to speak separately on my amendments. I commend to the House that my amendment, namely section 166A(i) by which draconian powers are given to the police, be dropped, deleted and the consequential amendments be also carried out.

Thank you.

Statement by Prime Minister
Visit to Namibia --—

THE PRIME MINISTER (SHRI VISHWANATH PRATAP SINGH): Madam Deputy Chairman, I had the privilege of visiting Windhoek from the 50th to the 21st March, to participate in the celebrations of Namibia's independence.

There could not have been a more befitting occasion for my first visit abroad as Prime Minister than to witness Namibia's proud and joyous emergence as a sovereign, independent' State. It was a memorable experience for all of us to le part of a historic occasion which marked the end of colonialism in Africa and the retreat of apartheid to its final crumbling bastion in South Africa.

The presence of our multi-Party delegation in Namibia demonstrated that India's principled and unwavering commitment to the anti-apartheid, anti-colonial struggle transcerd Party affiliations and ideologies. This is not just our national policy, it has been a part of our national psyche since the days of our own freedom struggle.

Immediately after the mid-night hour, India established diplomatic relations with Namibia, withdrew all sanctions and established a resident High Commission. We shared in that moment of great elation of the people of Namibia, who had struggled valiantly for 23 long years for their independence, under the banner of SWAPO and the leadership of President Sam Nujoma.

India is proud to have been in the forefront of the international effort to assist the Nanv. bian people in their quest for freedom We extended moral, material and political support to SWAPO during its days of exile. In the transition phase to independence, India made available to the United Nations Transition, Assistance Group the services of a military peaca keeping contingent, police monitors and election supervisors. I am happy to