

[Secretary-General]

and also the name of the Member of Rajya Sabha so appointed to the Joint Committee, "(may be communicated to this House."

THE ANTI-APARTHEID (UNITED NATIONS CONVENTION) BILL, 1981

MR. DEPUTY CHAIRMAN: We now take up further discussion on the Anti-Apartheid (United Nations Convention) Bill, 1981.

डा० रघु प्रताप सिंह (उत्तर प्रदेश) : आदरणीय उपसभापति जी, मैं आपका हृदय से आभारी हूँ कि जो आपने मुझको रंगभेद विरोधी (संयुक्त राष्ट्र कन्वेंशन) विधेयक, 1981 पर अपने विचार प्रकट करने का अवसर दिया है। मैं उसका समर्थन करने के लिए खड़ा हुआ हूँ।

मेरे दल के पूर्ववक्ताओं ने जिन बिन्दुओं पर विस्तारपूर्वक चर्चा की है, मैं उसकी पुनरावृत्ति नहीं करना चाहता। अतएव, मैं अपने को केवल इस विधेयक के भावपक्ष तक ही सीमित रखना चाहता हूँ।

श्रीमन्, यह मेरे लिए सौभाग्य का विषय है कि महान् भारत के इस महान् संसद में मानवता के चरणों में कुछ श्रद्धाके पुष्प अर्पित करने का अवसर प्राप्त हुआ है। श्रीमन्, मानव-मानव में भेद, चाहे वह जाति के नाम पर हो, चाहे रंग के नाम पर हो, चाहे धर्म के नाम पर हो, चाहे सम्प्रदाय के नाम पर हो, चाहे वह किसी भाषा के नाम पर हो, क्षेत्र के नाम पर हो, लिंग या वर्ण के आधार पर हो, यह सभी प्रकार का भेदभाव मानवता का अपमान करना है और उसको कलंकित करता है। मानव-मानव के मध्य यह जो भेद का कारण है, यह अमानवीय है और यह मानवता के लिए अभिशाप है। अतएव, इस अति अपराध की सजा दिया जाना सर्वथा उचित और न्याय संगत होता है।

श्रीमन्, महान् भारत का महान् संस्कृति में हमारी संस्कृति है— वसुदेव कुटुम्बकम्— कि जैसे एक कुटुम्ब में रंग का प्रश्न नहीं उठता है, उसी प्रकार जब हमारी संस्कृति में रंगभेद के लिए कोई स्थान नहीं है, तो फिर हमारी संस्कृति में तो रंगभेद की कल्पना भी नहीं की जा सकती। हमें इस महान् संस्कृति पर गर्व है।

श्रीमन्, रंगभेद के विरुद्ध सर्वप्रथम भारतवासी जगत महात्मा गांधी ने आवाज उठाई और यह आवाज मानवता की आवाज बन कर संयुक्त राष्ट्र संघ में पहुँची और संयुक्त राष्ट्र संघ से यह कन्वेंशन का स्वरूप प्राप्त कर के इस सम्मानित सदन में आई है। मे समझता हूँ कि सम्मानित सदन के दोनों पक्ष इस का हृदय से स्वागत करेंगे क्योंकि यह आवाज भारत की आवाज है और यह आवाज मानवता की पुकार है।

श्रीमन्, भारत के सर्वप्रथम प्रधान मंत्री पंडित जवाहरलाल नेहरू ने अपने संपूर्ण जीवन में रंग-भेद के विरुद्ध आवाज उठाई। उसी परंपरा में हमारी लोकप्रिय प्रधान मंत्री श्रीमती इन्दिरा गांधी ने उस आवाज को सदैव बुलंद किया है। इस कार्य से विश्व समुदाय में भारत का मस्तिष्क बहुत ऊँचा हुआ है। उन्होंने यह सिद्ध कर दिया है कि भारत मानवता का एक सजग प्रहरी है। श्रीमन्, मुझ को प्रसन्नता है कि पूजनीय श्रीमती इन्दिरा गांधी के नेतृत्व वाली सरकार सदैव ही रंग-भेद का विरोध करती आई है। मुझे पूर्ण विश्वास है कि भविष्य में भी इस नीति का अनुसरण करती रहेगी। इस नीति का संबंध हमारे आदर्शों के साथ में है, हमारे मूल्यों के साथ में है इस लिए इस नीति में कभी कोई परिवर्तन नहीं हो सकता है।

श्रीमन्, मैं अपने विद्वान एवं सुयोग्य विदेश मंत्री जी को तथा उनके मंत्रालय को भी इस बात के लिए बधाई देना चाहता हूँ कि रंग-भेद के संबंध में जो हमारी नीति है उस के अनुसार विश्व समुदाय में सफलतापूर्वक कार्य कर रहे हैं। मेरा विश्वास है कि इस नीति का समर्थन करते हुए, उन के प्रयास से, हमारे मित्र देशों की संख्या बढ़ेगी और जो हमारे मित्र देश हैं उन के साथ हमारे जो संबंध हैं वे अधिक प्रगाढ़ होंगे और अधिक मधुर होंगे।

श्रीमन्, रंग-भेद मानवता के प्रति एक अत्यंत गंभीर अपराध है। मानव-मानव के बीच यह रंग-भेद करने वाले को कठोर से कठोर दण्ड दिया जाना चाहिए; साथ ही जो भी अंतर्राष्ट्रीय शक्तियाँ हैं, जो भी देश हैं, जो भी सरकारें हैं, जो रंग-भेद में विश्वास करती हों, हमें अपनी संस्कृति के अनुरूप उन का हृदय-परिवर्तन करने के लिए सदैव कार्य करते रहना चाहिए।

श्रीमन्, मैं सदन के सम्मानित सदस्यों से अनुरोध करूँगा कि इस विवाद-रहित तथा महान् विधेयक को स्वीकार करके विश्व के समक्ष भारत का गौरव बढ़ाने में अपना योगदान प्रदान करेंगे। श्रीमन्, अंत में मैं सम्मानित सदन का अधिक समय नष्ट न करके सुमित्रावर्धन पंत की दो पंक्तियाँ पढ़ कर अपनी बात को समाप्त करूँगा। उन्होंने एक स्थान पर कहा है:-

“सुंदर हैं बिहंग सुमन सुन्दर

मानव ! तुम सबसे सुंदरतम।”

और दूसरे स्थान में कहा है कि:-

“क्या कमी है तुम्हें त्रिभुवन में

यदि बने रह सको तुम मानव ?”

तो मैं आशा करता हूँ कि भारत की यह जो महान् संस्कृति है, जिस के प्राण के रूप में यह विधेयक यहां प्रस्तुत किया

है, उस को यहां सर्वसम्मति से स्वीकार करना चाहिए जिस से हम भारत की इस महान् संस्कृति को विश्व समुदाय के समक्ष ऊँचा करेंगे, जिस से कि भारत जो सदैव ही जगत का गुरु रहा है, उसे जगत का गुरु रहने का सम्मान प्राप्त रह सके।

इन्हीं शब्दों के साथ मैं इस विधेयक का हृदय से समर्थन करता हूँ।

DR. (SHRIMATI) SATHIAVANI MUTHU (Tamil Nadu): Mr. Deputy Chairman, Sir, I rise to support this Bill namely, the Anti-Apartheid (United Nations Convention) Bill, because, our country has acceded to this convention.

As per article 2 of the Schedule, the term 'the crime of apartheid' shall include similar policies and practices of racial discrimination and segregation as practised in Southern Africa and establishing and maintaining domination by one race over another race. Systematically oppressing them and exploitation of labour and forced labour also come under the term 'crime of apartheid'. As per article 3, individual members of organisations and institutions are also punishable for any 'crime of apartheid, committed by them. Conspiracy and other acts are also punishable. I am pointing out all these facts to emphasise that apartheid in any form or nature is cruel and, hence, these persons who are guilty of this 'crime of apartheid' should be punished severely.

[The Vice-Chairman (Shri Bishambhar Nath Pande) in the chair.]

The punishment for the 'crime of apartheid' is death or imprisonment for life or imprisonment for a term which may extend to ten years and also fine as per paragraph three, in page number of two of the Bill. Sir, I welcome and support all the stringent measures that are mentioned in the Bill. But this Bill is, in a

[Dr. (Shrimati) Sathiavam Muthu]

way, a ratification of the Convention of the United Nations General Assembly. Though the resolution was adopted on 30-11-73, we take it up only today after a spell of eight years. Yet the Bill, I regret to point out, does not reflect the true^e spirit of the international Convention. I request the Government to modify the Bill so as to reflect the true picture of the Convention. The laws enacted now and then alone are not sufficient to bring the necessary social reforms needed. The authorities implementing them should also be sincere. Our behaviour should be courteous and exemplary. We know that some students or tourists from these Black countries faced unnecessary and unwarranted harassment even on the New Year Day last year in our capital and the accused were set free for want of evidence.

I would like to point out that there are no clear provisions in this Bill regarding punishment. Para 3 on page 2 does not define the fine. I think the fine should be not less than Rs. 10,000 and upto the maximum amount of Rs. 20,000. Similarly lines 5 to 13 under para 4 need further modification. All of us know that ignorance of law is not an excuse and no person could claim any exemption for breach of law due ignorance. Hence no question in regard to the offence committed unknowingly arises, particularly when he indulges in inhuman acts.

When para 5 of this Bill has delegated full power to the Central Government, lines 15 to 13 under para 4 become absolutely unnecessary. The officer concerned may prosecute a person only when he is himself convinced of the fact. I hope, Sir, the Minister will drop these lines altogether or modify these in such a way so that no person who encourages or cooperates in the commission of the crime of apartheid can put the blame on lack of evidence.

Sir, it is not irrelevant to compare the status of the Scheduled Castes to

that of the South African suffering under apartheid. It is not my intention to hurt the feelings of any person in any place if I say that there is at least the difference in colour and physical features among the blacks and whites. But what difference can we find in India among communities which are based on so many castes and practising untouchability for the last so many centuries? Can any one point out the difference in colour and physical features in between the Harijans and other caste Hindus? Yet there is segregation, discrimination, domination by the caste Hindus over the scheduled Cables and Scheduled Tribes. They are oppressed by the caste Hindus.

There is an exploitation of labour and forced labour in India in spite of the Central law. The Scheduled Castes still are bonded labourers. There are organisations who fight against reservations. There are atrocities and murders and arsons going on every day. Twenty-four Harijans were murdered in Deoli. What steps do we take except shedding crocodile tears? Should we not amend the laws to give death sentence or imprisonment for life to the culprits. The Scheduled Castes are like orphans. Their problems have not yet knocked the doors of the United Nations General Assembly. They are called Harijans—i.e. children of God. Yet God himself did not care for them.

We are ratifying this Convention today on the occasion of the 25th death anniversary of Dr. Ambedkar. Let us pay our tribute and remember his statements given a number of times. Dr. Ambedkar remarked once on this Harijan problem during the freedom struggle—I quote:

"How can we ask the Britishers to wash their blood-stained hands before we wash ours?"

So I request this Government to come forward to bring necessary legislation for making untouchability a

crime punishable with life imprisonment and fine of Rs. 10,000 to Rs. 20,000.

I support this Bill once again on my own behalf and on behalf of my party—AIADMK.

SHRI RAJENDRA SINGH ISHWAR SINGH (Madhya Pradesh): Mr. Vice-Chairman, Sir, apartheid is a relic of the last century, < i> the days when the white man considered himself as a demigod and all coloured people were created to serve him. This irrational and immoral butte of self-deception of the Whites was pricked fifty years ago but, unfortunately, there are still places where reason and justice do not avail and one of such places is South Africa. It is necessary that this crime of apartheid must be eradicated.

In our country we have taken stern measures to eradicate untouchability. We cannot, therefore, permit on our soil anything which is even remotely connected with apartheid. No argument need be canvassed to support the Bill.

The South African Whites are Christians and Christ said that the entire human race are children of the same Father, God. Why then such untold injustice and torture and pain have been inflicted on account of the difference of colour and race cannot be understood.

It is obvious that apartheid is evolved on account of fear of economic and political insecurity. We are in front line with the civilised nations in enacting this Bill. However, I would invite the hon. Minister's attention to what I consider will provide some loophole in clause 4 of the Bill.

Clause 4 of the Bill which is the clause denoting offences and the punishment for them reads like this: —

"Where an offence under this Act has been committed by a company or an organisation or an institution,

every person who, at the time the offence was committed, was in charge of, and was responsible to, the company organisation or Institution, as the case may be, for the conduct of its business or affairs shall be deemed "—I am underlining *deemed*—"to be guilty of the offence and shall be liable to be proceeded against and punished accordingly."

Sir by a deeming expression we create a legal fiction and the legal fiction in the region of crime comes like this that whereas ordinarily for punishment under the criminal law it is necessary to establish that an offender has not merely committed a criminal act—what they call, *Actus Reus*—but this act has been committed with the necessary guilty intention, *Mens Rea*. The two things must coexist: there must be the guilty mind accompanied by the guilty act. And then we say a crime has been committed. By the fiction of deemed here, it is assumed that the person who has committed the act infringing the clauses of this Bill has both these elements present in him. Now, keeping this in mind, we come to the next clause, the proviso:—

"Provided that nothing contained in this section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence."

Sir, I submit with great respect that once we deem a man to be guilty, then to allow him to escape on account of this clause "the offence was committed without his knowledge" would be producing a contradiction in our intentions in the Bill. Therefore, I suggest that the proviso should run like this: —

"Provided that nothing contained in this section shall render any such person liable to punishment

[Shri Rajendra Singh Ishwar Singh]

provided in this Act if he proves that he exercised all due diligence to prevent the commission of such offence."

That should, in any respectful submission, be an ample safeguard to the person who is being prosecuted if some action or some act has been done and it has been done in spite of his taking the best effort to see that in his company or in his institution such an act which makes an offence has not been performed. If we retain this clause "the offence was committed without his knowledge", then we will be giving him a very large scope to get out; there will be a big loophole and, maybe, this may not make a very correct sense with the deeming clause which I have pointed out in clause 4. The hon. Member who spoke immediately before me made a mention of the point of punishment and said that in clause 3 the quantum of fine has not been prescribed. I think, Sir, it has been deliberately left undefined because in this case the fine can be to any extent and that would depend on the seriousness of the crime and also the paying capacity of the institution or the company which is found guilty. Once we prescribe the fine, as was suggested, Rs. 5,000 or Rs. 10,000, we will limit the discretion and I would rather wish that the clause stayed as it is at the moment.

I support the Bill.

THE VICE-CHAIRMAN (SHRI BISHAMBHAR* NATH PANDE): Shri M. Kalyanasundaram—Not there. Shri V. Gopalsamy—Not there. Prof. Sourendra Bhattacharjee.

PROF. SOURENDRA BHATTACHARJEE (West Bengal): Mr. Vice-Chairman, Sir, needless to say, like others, I also support the Bill, the underlying object of the Bill. At the very beginning, I have one question to put to the External Affairs Minister who is piloting the Bill. In spite of

our total commitment against *apartheid*, a long record of our fight, spearheaded by Mahatma Gandhi, against *apartheid* which started in South Africa, why has there been this delay in our ratification through legislation of the International Convention? So far as I remember, the External Affairs Minister, in his introductory speech, referred to 1977 as the year—perhaps the month of September—when this International Convention on *Apartheid* was signed together with others by India also. Why has the legislation come so late, after a lapse of three years? In spite of the legal points which have been raised, I am quite aware that this law is in the main important for its moral effect; unlike other municipal laws, its applicability would be very much limited, limited to the soil of our own country. Perhaps the scope of such offences would be very much limited. So I am interested that, while adopting this Bill and enacting it into law, the position of India, the moral position, should be very clear. In this connection, certain misgivings are there in my mind. I am not mentioning our social practices, customs which have been much criticised and which sometimes have been compared to *apartheid*, the untouchability in our country and things like that, the evils from which we are not yet free. But something more tangible more glaring which has been held against this or that Government in our country is that while claiming ourselves to be the most consistent exponents against *apartheid* a position has arisen, whether by acts of omission or commission, in which we are lending indirect support to the South African Government. We know that the economic sanction against the South African Government has been torpedoed by the major Western Powers who refuse to comply with it and utilise it to buttress South Africa's economy and defence. In our country also, for the last few years, a controversy has gone over the way we disposed of old Centurian tanks or parts of them. Accusations have been traded. But one fact came out of it in clear terms, that

the company which produced these diverted them to South Africa who 4 P.M.

utilised them for defence

purposes That is something which cuts at the very root of our claim of moral superiority in this regard, and to the world it will come as a contradictory nature of our protestations if not our hypocrisy. Our hands should be very much clean, very much free in this regard. The Centurian episode has cast a slur on that. At least there is a question mark. We must be very careful that such things do not happen so far as India is concerned.

Another current issue has also created some misgivings. Currently India is engaged in a test series with the M.C.C. team the England team. A controversy did arise over the participation of certain players because of their sports contact with South Africa. I had occasion to write to the Prime Minister before a decision in this respect was announced. I am opposed to allowing a team including such players. My contention is not that that point was not taken into account or anything of the sort. The Prime Minister, of late, has been my experience, does not in time even to acknowledge letters from the Members of Parliament. So that is beside the point. The fact remains that the controversial point which did arise in this connection was not clarified when the clearance was given to the M.C.C. team. Only a cryptic line came that one of the players involved, Geoffrey Boycott, also made a statement condemning apartheid on one occasion or the other. But the issue was whether these players had any sporting contact with South Africa itself. It was there beyond doubt. Later on it came up that it was the performance of the individual players did not matter but that it was the performance of the team as a whole that mattered. I am not trying to make an issue out of it at the moment when the sport is on, when the series is going on. But I am pointing it out only because of the fact that the issues involved in

the controversy were not clarified, and the impression that we did get was that the Prime Minister somehow was persuaded to clear this visit of the M.C.C. team and that the main issue was not properly tackled. Such issues cast a shadow on our otherwise a very straightforward record of fight against apartheid. We should take care of this aspect; that such doubts do not cast shadow on it.

I again extend my wholehearted support to the Bill itself.

श्री बी० सत्यनारायण रेड्डी (आंध्र प्रदेश) : उपसभाध्यक्ष महोदय, मैं इस रंग-भेद विरोधी विधेयक का समर्थन करता हूँ। क्योंकि रंग-भेद खुद मानवता के विरुद्ध है। सारा समाज, सारे मानव, सारे इंसान एक ही हैं। दुनिया के किसी हिस्से में कोई रहे, किसी रंग का हो, काला हो, गोरा हो, सभी इंसान हैं, उनमें भेद नहीं होना चाहिये। रंग के कारण, मत के कारण, मजहब के कारण, कास्ट के कारण कोई भेद नहीं होना चाहिये। ऐसा बिल यू०एन०ओ० ने तो कई साल पहले ही पास कर दिया था लेकिन हमारे यहां इस सदन में बहुत देर से आया। खर आ गया इस लिये इसका स्वागत है। मगर सवाल यह है कि इसको अमल में किस तरीके से लाया जाय। यह बहुत ही अहम सवाल है। दुनिया के बहुत से देशों ने इसकी ताईद की है। भारत भी इसकी ताईद में है। आप जानते हैं कि दुनिया में बहुत सै मुल्क एक के बाद एक इसकी ताईद में आये हैं। लेकिन सवाल यह है कि इस पर अमल किस तरह से किया जाय और कितने मुल्कों ने इस पर अमल किया है? दुनिया के कितने देश ऐसे हैं जिन्होंने सही माइनों में दिल से इस पर अमल किया है? हमारे इल्म में यह बात भी आई है कि कई देश ऐसे भी हैं जिन्होंने इस प्रस्ताव का यू०एन०ओ० में समर्थन किया है, लेकिन अभी भी वे साथ अफ्रीका के साथ सम्बन्ध रखे हुए हैं। उन्होंने इस

[श्री बी० सत्यनारायण रेड्डी]

बिल को पास किया है, लेकिन इसके बावजूद भी उन्होंने साउथ अफ्रीका के साथ सम्बन्ध बनाये रखे हैं। यह बात भी अखबारों में आई है कि भारत के भी इन्डायरेक्टली कुछ तिजारत के मामलों में साउथ अफ्रीका के साथ सम्बन्ध हैं। एक मँगजीन में यह बात आई है कि कुछ प्रेसियस स्टोनज और रफ डायमण्ड्स साउथ अफ्रीका से किसी कम्पनी के जरिए भारत में पालिस करने के लिये लाये जाते हैं और उसके बाद यहाँ से दूसरे देशों को एक्सपोर्ट किये जाते हैं। इसलिये मैं माननीय मंत्री महोदय से यह जानना चाहता हूँ कि वे यह बतायें कि क्या यह बात इस बिल के खिलाफ नहीं जाती है? अगर ऐसा है तो फिर इस बिल के पास करने का कोई मतलब नहीं होता है। कुछ ऐसे देश भी हैं जैसे अमेरिका और चीन और कुछ छोटे और बड़े देश, जिनका तिजारत के मामलों में साउथ अफ्रीका के साथ सम्बन्ध है। इन देशों ने यू० एन० ओ० में इस प्रस्ताव को पास किया है। मैं जानना चाहता हूँ कि भारत इस बारे में क्या कार्यवाही करने जा रहा है? अगर हम एक तरफ तो साउथ अफ्रीका के साथ सम्बन्ध रखें और दूसरी तरफ इस बिल को पास करें तो यह बात इस बिल की भावनाओं के खिलाफ जाती है। मैं मंत्री महोदय से यह जानना चाहता हूँ कि इस बिल के पास करने के बाद आप इस पर अमल करने के लिये क्या ठोस कदम उठा रहे हैं, यह साफ-साफ बताया जाय।

दूसरी बात इस बिल के क्लॉज 3 के बारे में मैं यह कहना चाहता हूँ कि इसमें जो यह कहा गया है कि—

“Every person to whom international criminal responsibility applies under article III of the said Convention as set out in the Sche-

dule shall be punished with death or imprisonment for life....”

यह जो पनिशमेंट विद डेथ है, इसके बारे में मुखतलिफ राय है। कई देशों में डेथ पेनेलिटी नहीं है और कुछ मुल्कों में है। हिन्दुस्तान में भी इस बारे में मुखतलिफ राय है। कई लोगों ने और कई आर्गना-जेशनस ने, इस पर चर्चा की है और यह कहा है कि इस मौत की सजा के कानून को बदला जाना चाहिए और मौत की सजा के बजाय सिर्फ लाइफ इम्प्रीजनमेंट ही होना चाहिए। डेथ पेनेलिटी नहीं होनी चाहिये। इंटरनेशनल एमनेस्टी भी डेथ पेनेलिटी के खिलाफ है। हिन्दुस्तान में भी इस बारे में चर्चा हो रही है। ऐसी सुरत में मैं समझता हूँ कि इस डेथ पेनेलिटी को इस रूप में पास करना उचित नहीं। ऐसा करना इस वक्त ठीक नहीं होगा। इसलिये मैं समझता हूँ कि इस धारा 3 में “पनिशमेंट आफ डेथ” शब्दों को बदल दिया जाय और इसके बदले में यहाँ पर लाइफ इम्प्रीजनमेंट और फाइन करके इसको ज्यादा से ज्यादा सख्ती से अमल में लाना चाहिए। क्लॉज 6 के बारे में मुझे यह कहना है कि जो उसमें यह लिखा है कि :

“No person shall be arrested or prosecuted in respect of any offence under section 3 except with the previous sanction of the Central Government.”

ये जो शब्द कि सट्रल गवर्नमेंट की सेंक्शन के बगैर कोई प्रोसीक्यूशन नहीं होगा में इसको कोई भी गवर्नमेंट आज कांग्रेस (आई) की गवर्नमेंट है, कल कोई दूसरी गवर्नमेंट आये कोई भी गवर्नमेंट हो वह अपने मकसद के लिये इसका इस्तेमाल कर सकती है। ये जो ‘previous sanction of the Central Government,’ शब्द हैं इसके बजाय जूडिशियल अथॉरिटी के

संक्रमण, या इस सदा और उत सदा, या ना
पार्लियामेंट की सेशन की बात उसमें हो
तो ज्यादा ठीक होगा। य मेरे दो सुझाव
हैं आशा है मंत्री जो इस पर ध्यान देंगे।
(समय की घंटी)

दूसरी चीज जैसा कि भट्टाचार्य जी
ने भी इस बारे में कहा है और वह यह
है कमिशन ने करीब - करीब 150
खिलाड़ियों को बुक लिस्ट किया है।
जिन लोगों ने साउथ अफ्रीका के खेलों
में हिस्सा लिया था उनमें से दो प्लेयर्स
को भारत सरकार ने हिन्दुस्तान में खेलने
की इजाजत दी है। ये जो दो प्लेयर्स हैं
इनके नाम हैं वास्काट और पार्कर कुक,
इनको यहाँ खेलने की इजाजत दी है।
तो क्या दूसरे सुभालिक जिन्होंने इस
इजाजत के खिलाफ डिसेंट दिया है, जैसा
कि नाईजीरिया और दूसरे अफ्रीकी देश हैं
जिन्होंने इसके खिलाफ अपना विरोध
प्रकट किया है तो मैं जानना चाहता हूँ
कि क्या उन्होंने यह विरोध लिखित रूप
में दिया है? और ऐसे देश जो साउथ
अफ्रीका में रंगभेद की नीति के खिलाफ
हैं और जो इससे न राज हैं क्या उन्होंने
इस बारे में कोई विरोध प्रकट किया है?
क्या इससे हमारी नीतियों को ठेस नहीं
पहुँचेगी यह मंत्री महोदय बतायें।

मंत्री महोदय से फिर एक बार
जानना चाहूँगा कि यह विधेयक पास होने
पर इसको किस ढंग से अमल में लाएंगे।
साउथ अफ्रीका जो एक छोटा-सा देश है
रंगभेद की पालिसी को चला रहा है,
तो मैं जानना चाहता हूँ कि क्या दुनिया
के तमाम मुल्क अपनी पालिसी में, अपने
इरादे में फँस रहे हैं? क्या वे
उस मुल्क को मानवता के रास्ते में लाने
में कामयाबी हासिल नहीं कर सकेंगे?
इसका क्या कारण है इसके बारे में मंत्री
महोदय का क्या कहना है मैं इतना कहकर

समाप्त करता हूँ और इस विधेयक का
समर्थन करता हूँ। धन्यवाद।

SHRI S. SANTOSH MITRA (West Bengal);
Mr. Vice-Chairman, though late I consider the
Bill is a welcome measure. Apartheid is a
serious crime. This policy is pursued in a
legalised form only in South Africa, which is a
racist regime. It is abetted by the imperialist
powers with a view to exploit people in the
interest of the white minority class. This sort of
discrimination and torture is also exist-ting in
other parts of the world, though not in so crude
a ^{form} as is in South Africa. Such sort of
exploita- tion exists in ou, own country in the
name of religion and caste, though it is not
followed in a legalised form. The Government
is aware of it and is taking measures to
eradicate this evi^ which is a feudal relic.
Black Africans and Indians are denied political
rights. They have no fundamental right either.
They have no right to form association or right
to protest against this tyranny. They are treated
as slaves of the medieval age and they are
compelled to sell their labour in cheaper
markets. One cannot even go to the Docto,
without the permission of the Magistrate. And,
Sir, even to go to the church, permission is
necessary. Even the parents, both husband and
wife cannot attend the meetings at the schools
at the time of the parents' meetings. Only one
of them is allowed to go to such meetings.
Such conditions are exist ing there which are
very barbaric. Everybody knows that the
regime could not have existed even for a single
day without the military, economic and
commercial aid from th* Western powers,
particularly the USA.

Another thing to be noted is -that the South
Africans are not only practising this
apartheid in the soil of South Africa, but th_e
South African Government has also attacked
Angola and has set up military bases inside
Angola where a number of villages have been
destroyed, a number of people have been
killed and where

[Shri Santosh Mitra]

a number of brutal tortures have been inflicted upon the people by the South African army. One unfortunate thing is that though we are passing such a Bill and all of us are condemning such sort of racial discrimination, we also find that some goods from our country find their way into the South African markets. Our country does not sell goods directly to South Africa. But goods are sold from India and they make their appearance in the South African market and, in this connection, I would like to mention the Centurion tanks. They were sold to some parties, but they have found their way into South Africa. In this regard, Sir the Government of India should be more vigilant to see who the users of these goods are and who are the people who purchase these goods from India and sell them to the South Africans. The Government should be very vigilant and find out who the traders are who are buying goods with a view to sending them to the South African markets and this thing should be stopped and strict vigilance is to be maintained.

Another unfortunate affair is the inclusion of the two cricket players in the present England cricket team which is now playing in our country. They have spent many years as players and have been coaching cricket in South Africa. About their cricket talents I have got nothing to say. But we should have taken strong measures. They have only made a statement and on the basis of that we have allowed them here. But I think that everyone knows that when the football team or the Rugby team of South African Government. But here, thousands and thousands of the New Zealanders protested against them and they raised their voice of protest against the *apartheid* policy of the South African Government. But here, Sir, unfortunately, we have allowed these players to play cricket and they are now playing in India.

In conclusion I would like to say that the Government, now that we

are passing this Bill—and I am sure the Bill will be passed unanimously—should take more effective measures, both at the national and the international levels, to protest against the preparation of *apartheid*. Another submission of mine is that just by passing this Bill, if we sit quietly, it will not do and it will not check this crime of *apartheid* and, therefore, the Indian Government should take the initiative in mobilising the public opinion, the international public opinion against this barbaric regime. Help against this barbaric policy, which alone will help in curbing such a thing in this century which has been going on unabated. Thank you, Sir.

THE VICE-CHAIRMAN (SHRI BISHAMBHAR NATH PANDE): The list of speakers is now exhausted. Now I would request the Minister to reply.

THE MINISTER OF EXTERNAL AFFAIRS (SHRI P. V. NARASIMHA RAO): Mr. Vice-Chairman, Sir, eleven hon. Members have participated in this debate and I am grateful to them for the strong support that they have given to the Bill and also for certain suggestions which they have been good enough to offer.

Sir, by way of reply, I have not much to say, except to clarify a few points that have been raised.

It has been said that quite a few other countries must have accepted the Convention and one Member asked me how many such countries have passed similar legislation. Sir, I tried to check on this and I find that the position is as follows.

It is not really necessary that every country should pass a corresponding legislation, in order to make this Convention the law of the land. This would depend on the Constitution of that country. In India, it so happens that, according to our Constitution, an International convention *ipso facto* does not become law by the mere fact of our accepting it. We accept it in the first instance and then we have to

pass a corresponding legislation here by Parliament and only then can that Convention be given legal effect here. In countries where the same position obtains, legislation becomes necessary. But in other countries, where this may not be the case, where by an Executive action, for instance, it could become law and there would be no need for any further legislation being passed by the Legislature of that country. A hon. Member Mr. Govinda Reddy pointed out, about seventy countries have already accepted the Convention. The exact number of countries where legislation has been passed is not readily available, but I presume that out of the countries who accepted the convention there may be very few who may still have to pass legislation, where legislation is necessary. Most of them have been in the process of passing the legislation where it is necessary, and where it is not necessary they must have already made it the law of the land and any whatever constitutional measures that is prevalent in those countries.

Sir, the question of delay was raised. I have explained in the other House, and I would like to repeat it here, that there has not been any inordinate delay in bringing this legislation. Sir, I would give a chronological account in regard to this Convention. The Convention is dated 1973, but it came into force in 1976. In 1977, India accepted the Convention. Within one year of that, in 1978, legislation was introduced. But since it was not possible to get this legislation passed by our Parliament, since the Lok Sabha was dissolved meanwhile, the legislative procedure had to be repeated in 1980. Immediately after the elections, the new Government came in and the Bill was again introduced. It happened that for three or four sessions continuously, in spite of our efforts, it was not possible to accord this Bill in the legislative business, and that is why it has been pending. I am glad that it has been possible to find some time for this Bill now and that is

how it is before the Houses. So, there is really no intentional or inordinate delay in bringing this legislation and I would like the hon. Members to appreciate this.

Another question was asked as to whether I visualise that, in the not too distant future, by building public opinion, it would be possible to abolish *apartheid*. Sir, I am no astrologer but I can say that the impact of international opinion has been considerable, and if we take the position as it is today and compare it with the position, say 10 or 15 years ago, the difference is very clear. It is just not possible for some countries to resist the pressure of international public opinion for too long now. I am quite sure that whether it is on Namibia, where Resolution 435 is being reiterated year after year, or whether it is on the question of *apartheid* where against the international community has expressed itself in the most emphatic terms time and again, this is bound to have its effect. And I am absolutely certain in my own mind that although I cannot say that there could be a deadline, we could draw a deadline, I am quite sure that this is going to happen and the abolition of *apartheid* is only a question of time.

Another point which was raised pertains to the Clause which by notification enables the Government of India to amend the Schedule. Sir, technically, the Schedule is a part of the Act itself and, therefore, the point is well taken that when you amend the Schedule, you are amending the legislation, and how could you give power to Government to do this? Now, Sir, technically I have nothing to say and it is a correct position. But the fact is that in this particular case, in the first place the word "may" has been used. When there is an amendment to the convention, the Government of India is not bound merely by the fact of that amendment and to automatically bring that amendment here. Government of India will certainly apply its mind whether a particular amendment which has

[Shri P. V. Narasimha Rao]

been adopted to the convention in this connection needs to be adopted here correspondingly or not. That is one. Number two, although the Government of India is empowered to bring an amendment in this Act, that amendment is not really being done behind the back of Parliament. It could be before Parliament; it is laid before Parliament; it becomes the property of Parliament, and the Parliament will be in a position to debate it, to take it up for consideration. And¹ if there is any alteration which is suggested by Parliament, nobody prevents Parliament from doing so. While I technically agree that his power has been taken by the Government, has been given to the Government according to this law, I don't think it is such an excessive piece of delegation to the Government as to become objectionable.

Sir, the main point which has been emphasised and which needs to be emphasised is that this Bill concerns race discrimination, racial discrimination and not discrimination on any other ground. It is true that not only in India but in many other countries, there is discrimination of various kinds. It is perhaps a failing of human nature that this is happening. We in this Bill are concerned with one kind of discrimination and that is racial, on the ground of colour. So, Sir, I would not....

SHRI GHANSHYAMBHAI OZA
(Gujarat): What is the definition of 'race'?
Have we to go by the dictionary meaning?

SHRI P. V. NARASIMHA RAO: So far as apartheid is concerned so far as South Africa is concerned, we take one as the white race, the other as coloured races' and this is how the dichotomy obtains there.

SHRI GHANSHYAMBHAI OZA: That is not the dictionary meaning.

SHRI P. V. NARASIMHA RAO: I am not going by the dictionary meaning. I am going by the meaning that

everyone has come to understand. This is the kind of discrimination which is the subject matter of this Bill. I am not, therefore, commenting on the other kinds of discrimination which admittedly exist in this country as well as other countries. We have to do our best. And not only that. This discrimination is sanctified by law. The difference between the discrimination in this country and the discrimination which is the subject-matter of this Bill is that, under this Bill, we are dealing with a subject which is entirely different in its legal implications in the sense that in South Africa apartheid is the law. In other countries other kinds of discrimination is not the law; it is the violation of the law. It is exactly the opposite situation that obtains and, therefore, it is better that we do not confuse the two. We should keep them apart and deal with them effectively as we ought to.

Sir, another point which has been raised is in regard to fine not having been specified. This was answered by another Member and I would not like to repeat it. The quantum of fine is something which is best left to the Court which is trying the offence and, therefore, there is nothing unusual. This is the standard practice in all legislation here. Therefore, I would not like to say anything more on that.

There is one other question which has been raised—again, a legal question—in relation to clause 4. The objection seems to be that where the question of a company or an organisation or an institution having committed or not committed the offence is under consideration, then every person, who, at the time the offence was committed, was in charge of and was responsible to the company, organisation or institution, as the case may be, for the conduct of its business or affairs shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Now, this has been approved by the hon. Member but what he says is that this has been sought to be neutralised or diluted by the proviso that one of the extenuating

circumstances is the lack of knowledge on the part of that person. Now, Sir, I would like to submit that lack of knowledge on the part of a person is generally a very good defence. If something is done without the person knowing it, whether he knew or not is a question of "act" that has to be established, but if it is established that he did not know what was being done by that institution operating in the name of that institution, then how can we really hold him responsible? This is a very serious matter and I do not think that we can also presume knowledge on his part. We presume something already. But if he proves that he did not have the knowledge of it, I do not think it will be open for any Court to say that the presumption of knowledge also is to be final. That is not correct. Besides, that he exercised all due diligence to prevent the commission of such offence is another extenuating circumstance. These two circumstances will have to be provided for and the benefit of these two extenuating circumstances needs to be given according to the general principles of criminal justice. So, there is nothing extraordinary about it and that is how these two provisions find a place in clause 4.

SHRI GHANSHYAM YAMBHAI OZA: *ir-*
Do not tread on delicate grounds.

SHRI P. V. RASIMHA RAO: I am not treading on delicate grounds. There can be a distinction drawn between deeming and presuming. I am only saying that without a person's knowledge, and in spite of that person having exercised all diligence to prevent the offence; now these two grounds are not insubstantial grounds. These two are substantial grounds. These two are good grounds for giving the benefit of exoneration from the charge under this section. Mr. Satyanarayan Buddy raised the question of death penalty. Now, death penalty happens to be in force in this country at the moment and, therefore, the intention of the Parliament, as has been reflected in the Bill, is to give maximum punishment that is

possible under the present law; therefore this should not be linked up with whether death penalty in general should remain or (should be abolished). That is a very wide question. Whatever happens, whatever decisions are taken on that, will be taken at the proper time. So far as this Bill is concerned, it proposes to award the highest punishment that is in force in the country today.

Some comments have been made in regard to relations with South Africa. I would not go into many details. Relations with South Africa have not been severed by all countries; some countries have done so as we have, but not all countries. That is why, the question is still hanging fire and that is why the international community is not quite able to deal with this question effectively; that is also why provisions in regard to applying sanctions against South Africa have not been acted upon. Therefore, there is something incomplete in this; I agree. But international public opinion has to be built up on the same lines and as I said when it is built up to the effectiveness which is needed, it will be possible to change the policies of South Africa by applying these sanctions. It is true that these sanctions are not being applied and we have to go on making our efforts relentlessly in order to see that these sanctions are also applied against South Africa.

Another point which has been raised is in regard to authority given to Central Government or such officer or authority as may be authorised. This seems to have been objected to by some hon. Members. I would like to submit that this is a very special kind of legislation in which it is not just criminal liability, but international criminal liability which is being attached. So, we cannot take it lightly and there is nothing wrong in the Central Government being given the authority in order to permit prosecution under the provisions of this Act;

[Shri P. V. Narasimha Rao.]

I do not think there is anything improper in that.

In regard to the M.C.C. team etc, I am sure that the Education Ministry will be able to come up with the answers needed. I do not propose to go into that; I generally know the position but it would be wrong for me to make a statement which legitimately falls under the purview of another Ministry. I am sure that clarifications would be forthcoming wherever needed.

These are some comments which I wanted to submit to the House in regard to the point, raised and I would commend the Bill for the acceptance of the House.

THE VICE-CHAIRMAN (SHRI BISHAMBAR NATH PANDE): The question is:

"That the Bill to give effect to the International Convention on the Suppression and Punishment of the Crime of Apartheid, as passed by the Lok Sabha, be taken into consideration."

The motion was adopted.

THE VICE-CHAIRMAN (SHRI BISHAMBHAR NATH PANDE): We shall now take up clause-by-clause consideration of the Bill.

clauses 2 to 7 and the *Schedule were added to the Bill.*

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

SHRI P. V. NARASIMHA RAO: Sir, I beg to move:

"That the Bill be passed."

The question was put and the motion was adopted.

INDIAN IRON AND STEEL COMPANY (ACQUISITION OF SHARES) AMENDMENT BILL, 1981

THE MINISTER OF COMMERCE AND STEEL AND MINES (SHRI PRANAB KUMAR MUKHERJEE): Sir, I beg to move:

"That the Bill further to amend the Indian Iron and Steel Company (Acquisition of Shares) Act, 1976, be taken into consideration."

Hon. Members are aware that the management of the Indian Iron and Steel Company Limited was taken over by the Government of India in public interest with effect from the 14th July, 1972, initially for a period of two years, to ensure the proper management of the company and with a view to arresting the precipitous fall in its production due to ineffective and unresponsive management at the top. This period was further extended by three years with effect from 14th July, 1974.

During the period of take-over, a number of steps were taken to improve the performance of the company but when a stage was reached when substantial financial assistance from Government became necessary for sustained operations, it was decided to acquire the shares of the company held by parties other than the State Governments and public sector institutions. This was achieved under the Indian Iron and Steel Company (Acquisition of Shares) Act, 1976.

Subsequently, the remaining shares of IISCO held by public financial institutions nationalised insurance companies, and State Governments were also purchased and transferred to the Steel Authority of India Limited (SAIL), with effect from 30th March 1979.

Section 7(1) of the Act provides that every shareholder having a claim in relation to any share acquired under the Act shall prefer such claim before the Commissioner of Payments on or before the 30th November, 1977. It further enables the Commissioner of Payments, if he is