

DR. B. GOPALA REDDI: Hon. Members can make a requisition for these documents and they might be made available to hon. Members. This is a matter for the Secretariat. As far as the discussion also is concerned, it is for the Chairman to fix any date convenient to the House.

MR. CHAIRMAN: As soon as the copies are ready, they will be distributed. As for a discussion, you may give notice of a Motion and we will consider it then.

SHRI J. S. BISHT (Uttar Pradesh): May I just put one question? How is it that all these decisions of the Government leaked out to the press and were published some days ago?

DR. B. GOPALA REDDI: That is a matter which has to be investigated. It is a separate matter. The Home Ministry may throw some light on the matter.

MR. CHAIRMAN: "The Home Ministry can throw some light on it"? They seem to be in the dark about this matter.

THE ARMS BILL, 1959—continued

SHRI J. S. BISHT (Uttar Pradesh): Mr. Chairman, I was commenting the other day on this Arms Bill. The hon. Member from Madhya Pradesh, Shri Ram Sahai, made a point which I think is quite reasonable. He suggested that the licensing clerks of the District Magistrate's office make a lot of money by taking bribe and delaying the issue of licences. There is some substance in what he has said and I suggest to the hon. Minister that under the rule-making powers he should delegate the authority of issuing licences to different categories of officers. For example, the power to grant a licence for a muzzle-loading gun and for an ordinary breech-loading shot gun should be exercised by the sub-divisional magistrate within his sub-division. I think that a sub-

divisional magistrate, in consultation with his tehsildar and the local police, should be quite competent to dispose of this minor matter.

With regard to issuing licences for rifles, I think the District Collector or District Magistrate should be the authority for issuing this licence. With regard to issuing licence for revolvers and pistols, the Commissioner of a division should be the proper person who should be authorised to issue licences for them. I may inform the hon. Minister that in Uttar Pradesh, even today the issuing of a licence for a revolver is entrusted to the Commissioner of the division. I believe that in most of the States of India there are Commissioners of divisions and they can discharge this duty, except in Madras where they have no Commissioners. But that function can be discharged there by the members of the Board of Revenue. If the work is distributed in this manner, then there will be no concentration of authority with regard to this specific matter in the hands of the District Collector or really so to say in the hands of his licensing clerk. And that will greatly minimise the temptation to take bribe.

Secondly, there is the question of renewals. Now, a licence will be granted for a period of three years. I suggest that these three years should be calendar years and that the sub-divisional magistrates or the District Magistrates should on their tours renew the licences then and there. I believe that if the application is made on the stamps, they can pass an order on the stamp and endorse the licence and hand it over to the licensee then and there. That will remove another grievance of the people, because when they leave the licence with the licensing clerk, it takes months to get back a licence.

There was, Sir, another point raised by an hon. Member from West Bengal, Shri Khan, which, I think, is also reasonable. He said that the hon. Minister has claimed that the

new Arms Bill is a very liberal measure, and he said that there should be some proof of that. And for that, he has asked that at least the Members of Parliament and the Members of the Legislatures and so on and so forth should be ordinarily granted these licences without much difficulty from the proper licensing authority. I feel that is a right point. The hon. Minister has got that power under clause 41 of this Bill to exempt certain persons or class of persons from the operation of certain provisions of this Act.

The main purpose of the Bill is to see that a person requires a licence and that he has good reason for obtaining the same, and secondly that he is not unfit to acquire a licence. I believe that there should be some rough and ready method to lay down that there are certain categories of people who are fit to bear arms and who ordinarily should be granted licences without further enquiries and I suggest that all Members of Parliament and of Legislatures and Chairmen of local authorities, gazetted officers and officers of the same rank in the commercial establishment, etc. should be granted licences by the appropriate licensing authority without further trouble or without further enquiry.

It does not seem proper that Members of Parliament should dance attendance on the licensing clerk of the magistrate if they wish to possess a licence. In fact, I may say that even in the British days under the old Indian Arms Act of 1878, Members of the Central Legislature were exempt from having licences for the possession of arms. Therefore, it is nothing new that would be done if the Government exercised its powers under clause 41 of the present Arms Bill. Sir, these are the main points.

Lastly, I wish to draw the attention of the hon. Minister to a point which I mentioned when the Bill was referred to the Select Committee, namely, that there are certain areas where

certain arms, not firearms but ordinary arms like *kukris* and swords, are kept by the generality of the people without any licence. And I mentioned that the whole region of Kumaon Division of Uttar Pradesh was an area where people have been keeping these *kukris*—Gurkha *kukris* as they are called—and swords without any arms licence up to date. That is the position. Therefore, I think Government would be well-advised to extend that benefit under the new Arms Bill which is certainly a more liberal measure than the old Arms Act and I think that such a privilege is extended to certain other communities on religious grounds, like the Sikhs who are allowed to keep a *Kirpan* wherever they may be. So, I think that is not a new privilege that is being asked for and it will be creating unnecessary trouble if you ask every person to ask for a licence for an ordinary *kukri* or for an ordinary sword, because then you will be asking nearly half a million households to ask for a licence and to go to the District Collector's Court or to some such court in order to obtain such a licence.

With these remarks, Sir, I certainly support the Bill which I quite agree is a liberal measure and I repeat what I said the other day that it is an act of faith now to grant a licence in such a liberal measure in times when discipline is not very good and the crime wave seems to be rising in practically every sphere of life.

Dr. R. P. DUBE (Madhya Pradesh): Sir, I had no intention of talking on this Bill at all but I want to stress two points which I discussed with the Minister and to which I did not get a very favourable answer. Therefore, I am now speaking with a certain amount of disappointment and surprise. I earnestly request the Home Minister, the hon. Minister who is piloting the Bill, to accede to my request, which has been voiced not by me alone but from many quarters, by many Members who spoke previously in this House and also by many

[Dr. R. P. Dube.]

Members who have appended dissenting notes to the Joint Select Committee's Report on this Bill. I hope he will not turn it down because the Bill has been approved and passed by the Lok Sabha and therefore, why should he make any alterations on the suggestion of the Rajya Sabha which is only an endorsing body and which is supposed only to endorse, and thus waste the time of the Government. I say all this because on previous occasions very good, sound and reasonable suggestions of this House had been turned down for want of time. Now it is only the beginning of the session and after the Bill has been amended by this House, it can go back to the Lok Sabha because I am certain that the Lok Sabha is sitting till the 22nd of December and there is ample time for this Bill to be passed by that House. This House is supposed to be the House of Elders and they are supposed to offer criticism. The opinion of this House should also be taken into consideration. This is my request.

I now mention the cause of my disappointment. In the Statement of Objects and Reasons of this Bill, when this Bill was introduced, it was clearly mentioned that this amending Bill had been brought forward to liberalise the policy of administration of the Indian Arms Act, which was enacted eighty years ago. At that time, the ruling Government, after the War of Independence of 1857—which they called Revolution of 1857—wanted to disarm everybody in India and so they brought in this Bill. But even they did not include in firearms, air guns and air pistols which were thought harmless. But since the achievement of independence and when we have started liberalising the amending Bill, we have now included these things in firearms. Is this what you call a liberal policy? I cannot understand how the Select Committee and the hon. Minister in their wisdom thought so, more so now when you want everybody to be prepared

to defend the country. These harmless things at least could have been allowed to teach the young boys and girls target practice and if air guns are to be included in firearms, why not catapult and golails which also project pellets much bigger in size than air guns and air pistols project?

I would, therefore, request the hon. Minister to kindly accept Shri Amolakh Chand's amendment and add "except air gun, air pistol or the like" after the word "energy" in line 26 at page 2, or make some rules by which the exemption can be granted to air pistols and air guns. The thing that surprises me is the fact which is mentioned in page 3, line 30, that everybody who has completed 16 years of age can possess firearms. How could the Joint Committee which agreed to include air guns in firearms—how could it allow young boys who may have just joined the college to possess firearms, knowing full well what is going on in India, knowing how the college boys get excited for little or nothing and start throwing stones, brickbats, bottles, etc. etc., and attack and raid places? Until now they were only throwing brickbats, stones and bottles. Now they will start firing at people because they will be in licensed possession of arms.

[MR. DEPUTY CHAIRMAN in the Chair]

Boys who have completed sixteen years of age are not given driving licences. They are not majors till they are twentyone. But I cannot understand how they can legally be allowed to possess firearms.

I would again request the hon. Minister to look into these things. Air guns, etc., can be exempted by rules, but if this age limit is passed, it cannot be changed unless the law is amended. I would therefore request him that it is very necessary in these days, when so much indiscipline, rowdism and violence is going on amongst the college and school students, that they should not be

allowed to possess firearms and licences at the completion of age sixteen only.

Thank you very much, Sir.

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI B. N. DATAR): Mr. Deputy Chairman, I am grateful to a number of hon. Members who agreed that the present Bill was a great improvement on the earlier Acts of 1860 and 1878 during the British regime. You will find, Sir, that a number of objections were taken by certain hon. Members to the effect that the Bill was not far-reaching enough. It was contended that it was restrictive and hence frustrating. I am afraid all these objections can be very easily met if we find that in the various provisions of this Bill it has been made very clear that ordinary citizens will be entitled to get licences under proper circumstances as described in the Bill. Secondly, Sir, as I pointed out in my opening speech, Government had to consider the question from two points of view, namely, the right of a citizen to have a licence for firearms on the one hand, and on the other the right of the society to have protection against such anti-social elements. That is the reason why this particular Bill had to be balanced between two considerations, and I am happy to find that a number of hon. Members have appreciated the position the Government have taken in this respect.

It was also contended as an argument that there had been a great increase in crimes. So far as this question is concerned, Sir, may I point out that there is not such an increase in crimes? On the other hand, if the world statistics are taken into account, we shall find that there is a considerable decrease or decline so far as India is concerned, while in other cases the increase has been very appreciable. Secondly, there are certain forces that have been let loose after the Second World War, and therefore we have to contend with new difficulties also. As some of the

hon. Members have pointed out, there have been a number of anti-social elements. There have been cases of indiscipline amongst students, youthful and exuberant, getting the wrong way. All these matters have to be fully taken into account, and unless in proper circumstances some restraints are placed on the granting of licences, conditions might go still worse. That was the principal reason why we had to introduce certain restrictions of a salutary character. Beyond that we have not gone at all, and therefore I would submit to the consideration of this House that the present Bill is a great improvement and will make the arms law as progressive and as less restrictive as possible.

Now, Sir, may I also point out that some hon. Members made a reference to certain points and raised certain objections which have been answered very effectively by a number of hon. Members on this side? Dr. Kunzru in particular, I am very happy to find, found that the Bill was an improvement on the old law, and secondly he decried any attempt on the part of the present popular Government to place needless or vexatious restraints on the right of the people to hold arms. I need not go into the question as to whether the holding of arms is a fundamental right. This question was considered, as you are aware, Mr. Deputy Chairman, when the Constituent Assembly was drafting the Constitution of India. The question was placed before it as to whether in the Fundamental Rights the right to hold arms should also be included. After a full discussion it was considered that such a right should not be included in the Fundamental Rights. All the same we are aware, Sir, that whenever there is a genuine desire on the part of the peace-loving citizens of India, they must have the right to hold arms, and the method by which they should get licences should be as simple as possible. I would also agree with what the hon. Members have stated, namely, that much depends upon the manner in which the provisions of this Act will be implemented

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by the licensing authorities. We are anxious that no unnecessary impediments should be placed in the way of those who seek a licence for themselves for their protection or for the protection of their crops, etc. That is the reason why I promise that the interpretation of this Act will be as liberal as possible and not necessarily restrictive as has been made out by some hon. Members. That itself is a fairly good advance, and I am confident that the hon. Members would agree that the conditions will change after the present law and the rules to be made thereunder come into operation.

Then, Sir, I would pass very briefly to certain provision of the Bill to which reference was made by certain hon. Members. A number of them made comments against the manner in which the word 'arms' has been defined in clause 2 of the Bill. May I point out here that the word 'arms' has been defined in such a way as to point out the particular intention or the design of the maker thereof or the the user thereof as either a domestic instrument, as an agricultural instrument, or as an instrument of offence or defence. That is the reason why in sub-clause (c) we have used the expression "designed or adopted". An ordinary knife can be presumed to be designed for ordinary domestic purposes. There can be no dispute about it. But if something more is done to a knife by way of making it usable for offence or defence against one's enemies, then naturally it would create complications. That is the reason why these expressions have been used. Arms mean articles of any description designed or adapted as weapons for offence or defence. "Designed" means what the design of the man in making or manufacturing or using it is. Secondly, even an ordinary domestic instrument can be so adjusted or adapted as to make it an instrument of offence or defence. Therefore, one has to be very careful and this expression has been repeated, where we give a definition about those

used for domestic or agricultural purposes. Therefore, Sir, it is the ordinary design that has to be taken into account. If according to the ordinary design it is meant for domestic or agricultural purposes, then it ought to stop there, even though unfortunately what are ordinary instruments for domestic or agricultural purposes are misused, and as an hon. Member rightly pointed out, even the ordinary knives are often used instruments in committing murders. But that does not mean that a stick or a knife or say a sickle used by an agriculturist is designed for the purpose of using it as an instrument of offence or defence. Therefore, the design has to be taken into consideration and not the actual use made by the person concerned and after taking into account this design, it can be easily inferred from the circumstances of the case how that instrument has been brought into being and it is easy to make a distinction between an instrument for domestic or agricultural uses and that for use as a weapon for offence or defence. Therefore, the word 'arms' has been properly defined, and as I have pointed out, we had to define the word 'arms' because under exceptional circumstances, it might be necessary to regulate the use of ordinary arms. Dr. Kunzru rightly pointed out that there might be cases when it would be absolutely essential in a particular locality to control the use of such arms as daggers, etc. because they are likely to be in more places than one and they are likely to be easily available for committing acts of disturbance. That is the reason why, as Dr. Kunzru pointed out, in exceptional circumstances, there ought to be rules which should enable the Government to take action in a particular locality against the use of specified instruments. That has been made clear, and therefore, I presume that the present definition is a perfectly proper one.

Then an hon. Member contended that in clause 3 we have stated that a firearm or any other weapon under licence can be carried by a servant in

his presence or under his written authority. This point was not properly noticed by my hon. friend, Dr. Kunzru. He wanted to know why it had been put in this way. It is because, otherwise, it will be a matter of great difficulty if a servant can carry arms or ammunitions without any licence. We have here done away with the need for a servant to take out a licence, and that is the reason why this provision has been made. He can carry any firearms in his presence without any licence to himself or if it has to be carried on in his absence, it can be done under his written authority, because sometimes it might be necessary to do so when a shooting party is going into the forest and these arms will have to be sent ahead with the servants or the retinue. Under these circumstances, all that the servant has to do is to take the written authority, and if his right to hold a particular firearm without a licence is challenged, he can show the written authority only and that would be entirely sufficient, and that is the reason why the proviso to clause 3 has been specifically used.

Considerable objection was raised on the ground of lowering the age from 18 to 16 in clause 9. So far as this is concerned, we made this concession on the ground that it was felt by a number of witnesses who appeared before the Joint Select Committee that sixteen would be the proper age. In England also for the possession of such arms, sixteen is the proper age and not eighteen or the age of majority. Ordinarily, you will find that sixteen is a fairly advanced age, though not actually the age of majority. But why sixteen years? It may be presumed that the particular young man might hold it properly. Secondly, you will also note that even apart from this, it will be the duty, it will be the obligation, of the licensing authority to see whether this boy of sixteen can use it properly. All that is stated is that a young man of sixteen will be eligible, but if at all there are any

circumstances that would show that he may not use it properly—as for example, the exhibition of some impetuous traits in this case—then these circumstances will surely be taken into consideration by the licensing authority. A number of hon. Members suggested that the year ought to be eighteen as in the original. But after considering all the cases, after taking into account the experience of the rifle associations whose representatives appeared before the Joint Select Committee and after considering the general consensus of opinion amongst the members of the Joint Select Committee, it was decided that it ought to be at the age of sixteen. All that has been done is that from sixteen years onwards, a young man would be eligible; but it does not mean that every such man of sixteen will be entitled, as a matter of right or solely on that ground, to get a licence. The licensing authority has full powers to consider all the circumstances, and therefore there are special provisions in this Bill by which it would be within the discretion of the licensing authority to consider whether, besides being eligible, he would also be fit for making proper use of all such fire arms.

SHRI H. P. SAKSENA (Uttar Pradesh): Is the age of sixteen the age of attaining discretion?

SHRI B. N. DATAR: That is what I have pointed out in the other House also, where a similar question was raised—whether sixteen was the proper age for this. As I have said, in the United Kingdom we have got this very age. According to our original laws, sixteen years was considered as an age when one attains discretion, and according to the original laws, it was considered even as majority. Then the British legislations were considered, and we have maintained that eighteen would be the proper age, and in some cases, eighteen will have to be extended to twentyone. That is true, but even now in a number of matters, it is not

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exactly eighteen years, but even below eighteen, like sixteen which we have taken into account. Therefore, after considering all the points of view, the Joint Select Committee came to the conclusion that it would be better to follow the English model.

DR. H. N. KUNZRU (Uttar Pradesh): What do Government mean by 'the original law'?

SHRI B. N. DATAR: 'Original law' means the law before the majority Act, according to the original Hindu Law. I may quote or my hon. friend . . .

DR. H. N. KUNZRU: No, no, I know the Hindu Law, but are you observing the Hindu Law today?

SHRI B. N. DATAR: I just pointed out that it would be the age when one would attain understanding powers, when one would attain the power of discretion. This Sanskrit expression has been used in Yagyavalkya Smriti—

बाल आर्षंऽश्वर्षति

And a number of doctrines in the Yagyavalkya Smriti are being followed even now. Therefore, I made a reference . . .

DR. H. N. KUNZRU: You can quote authority even for the marriage of girls before they are twelve under the Hindu Law, but you do not follow the law.

SHRI B. N. DATAR: Sir, I was quoting that, and I was incidentally mentioning the original law. We have here certain views expressed. Take, for example, the view of the rifle associations and their experience in this matter and they say that if we put the age at sixteen, there would be unnecessary risk in every case. I have already explained the position that what has been done by this particular rule is only to make a boy of sixteen eligible; it does not mean that in every case he

will be entitled as of right to get a licence. That is the point which I have already made clear. Therefore, I would submit that what has been done by the Joint Select Committee is of a fairly satisfactory character.

RAJKUMARI AMRIT KAUR (Punjab): May I ask him a question? How can he say that a young lad of sixteen is eligible to receive arms, but may not receive them? Will there be a committee to see whether he is eligible? What guarantee is there that he is eligible? I mean, who is to judge that he is eligible? In my opinion, in the present state of discipline in the student world and even the school world, the Government has to think very carefully as to whether they are justified in giving arms to boys of sixteen years.

SHRI B. N. DATAR: May I point out that the District Magistrate who is generally the licensing authority will consider the antecedents of the person as to whether he would be fit for using such firearms? So after a full enquiry the District Magistrate will give him a licence, if he finds that he will make proper use of it. That is number one. I do sympathise with what the hon. lady Member has stated, that there is a lot of indiscipline in the country; it is highly unfortunate that there is a lot of indiscipline among the student community, and therefore full care and precaution will be taken in seeing to it that these licences are not issued to a boy of sixteen as a matter of course.

SHRI H. P. SAKSENA: May I seek your permission to make a personal explanation? So far as the discussions in the Joint Select Committee of which I was a Member are being repeatedly referred to, on this age of sixteen I want to make my personal position quite clear. There, perhaps surreptitiously, this was introduced in the discussions of the Joint Select Committee when I had been out for a few minutes. I attended all and each one of the meetings and yet

this thing that has happened in the discussions of the Joint Select Committee is not one of my consent and of my approval.

MR. DEPUTY CHAIRMAN: You are making a very serious allegation.

SHRI B. N. DATAR: The hon. Member should have protested; I am not sure whether he has protested.

SHRI H. P. SAKSENA: I am not one of those . . .

MR. DEPUTY CHAIRMAN: At the same time you are making a very serious allegation against the Select Committee that they have surreptitiously introduced it; it is not proper.

SHRI B. N. DATAR: My hon. friend, if I mistake not, agreed. He did raise the question but ultimately the argument that was raised in favour of sixteen must have weighted with him. That is the reason why I would take him to have agreed. It is perfectly open to him to say that sixteen may not be proper. Under the circumstances, Sir, I would like to proceed further. In the United Kingdom the age limits are seventeen for purchasing or acquiring and fourteen for borrowing or receiving as gift. For possession, there is no limit in respect of smooth bore guns and air guns. Therefore, Sir, this was considered as proper after taking into account all these matters.

Then, Sir, an objection was raised regarding clause 13. I have answered points regarding all these clauses and I would only submit here by pointing out that the proviso in sub-clause (3) (a) (i) was put in only at the instance of some hon. Members in this House as also before the Joint Select Committee, who had stated that a muzzle-loading gun would not be effective for proper crop protection. That is the reason why, to meet that particular point, we have stated that it would be open to the licensing authority to consider the case made out before him by an applicant for

licence that a muzzle-loading gun may not be sufficient for his purpose. In such a case the licensing authority can grant a licence in respect of any other smooth bore gun as aforesaid for such protection. And so far as the question of target practice or training is concerned, a specific provision has been made in this respect.

Then, Sir, I would pass on further to clause 14 where Dr. Kunzru referred to sub-clause 14(1)(b)(ii), "where the licensing authority deems it necessary for the security of the public peace or for public safety to refuse to grant such licence". His contention was that this would be covered by the sub-clause earlier, "to be for any reason unfit for a licence". But, Sir, it was considered proper to specifically mention the purposes for which the licence should not be granted. That is the reason why it has been so specifically mentioned; it has been made more clear.

Then, Sir, I would pass further on. With regard to appeals the hon. Mr. Sapru made an enquiry as to whether the appellate authority will be in a position to know why the licence had not been granted and what were the reasons for which the grounds mentioned in the rejection order were not supplied to the applicant. Now I would point out here, Sir, that my hon. friend is under a misapprehension. The appellate authority is the higher authority and is the higher authority so far as the District Magistrate is concerned, so far as that licensing authority is concerned, and the appellate authority will have full papers to go into before he can decide whether the licence was properly granted or rejected and if rejected whether the grounds were supplied to the applicant, and if not supplied, why they were not supplied to the applicant. The appellate authority will have a full opportunity of going into the whole file and considering as to whether the licensing authority had exercised his discretion properly or improperly. So on that ground, Sir, no difficulty would arise at all.

SHRI B. D. KHOBARAGADE (Bombay): The difficulty will be this. How can an applicant prefer an appeal until and unless he knows what are the grounds on which his application has been rejected?

SHRI B. N. DATAR: Now so far as that is concerned, Sir, I have pointed out that ordinarily the grounds of refusal would be supplied to him. In exceptional cases, in the public interest, they will not be supplied to him. In that case the appellate authority will be in a position to know whether this ground, namely the public interest, was properly exercised by the licensing authority. It is for the appellate authority to know all these things and there would be no difficulty at all though it is true, Sir, that in the public interest the applicant whose application had been refused may not be knowing the particular grounds. That is true, but in the higher interests that has to be maintained.

SHRI B. D. KHOBARAGADE: And the applicant will be in the dark.

SHRI B. N. DATAR: Then, Sir, I need not go into the question of the offences and the penalties. The whole thing has been very carefully considered and the various punishments that have been mentioned here are graded ones depending upon the enormity or otherwise of the crime committed.

Then I have already explained clause 35 and I have pointed out how the officer who wants to take action in respect of something found in any premises under the joint control of several persons must have some reason to believe that one or the other was aware of the existence of the arms or ammunition and thereafter. Sir, in the trial before a magistrate the accused will have also an opportunity to disprove the presumption raised in this case against him.

I need not go into all other points, Sir. My hon. friends have mentioned

certain points and I might mention here that they will all be considered so far as the making of rules is concerned. My friend, Dr. Dube, was very sad that in respect of air rifles, etc. we did not make a general exemption. But, Sir, there are air rifles or air guns of different types. Some are perfectly harmless, and so far as the harmless ones are concerned, they would surely be covered by the rules which will grant exemptions. But there are others which are of a fairly serious character, which in some cases are even of a dangerous character. It is only in case of such air rifles or air guns that licences would be required. All these would be made clear so far as making of the rules is concerned.

Then mostly, Sir, it was contended by a number of hon. Members that the Members of Parliament or Legislatures should be entitled as a matter of rule to the licences under the Arms Act. Now it was true that during the British administration they had made such a proposal, and after the attainment of independence it was considered and extensions had been granted by rules, but it was considered by the present Government when it took over that such a discrimination based on membership of a Legislature might not look proper, because it might lead to a feeling of discrimination. That was the reason why it was not specifically mentioned. All the same, Sir, whenever any Member of Parliament or a Member of a Legislature makes an application for a licence, their cases would surely be considered, Sir, with the fullest sympathy that their applications deserve. But it would not be proper to make a statutory rule that a Member of Parliament or a Member of a Legislature will be, as a matter of right, entitled to a licence. That will smack of discrimination.

SHRI J. S. BISHT: They will not be the only persons. We have suggested that chairmen of local authorities and all gazetted officers should be included.

SHRI B. N. DATAR: That precedes on discrimination in a broad way. I would assure the hon. Member . . .

SHRI J. S. BISHT: There is no discrimination in the sense that they are fit to bear arms. People have elected them and their character is above board.

SHRI B. N. DATAR: I hope the hon. Member will be satisfied with my assurance that the applications from the Members of Parliament or Legislatures will be considered with the fullest sympathy by the licensing authority. Sir, it would not be proper to make a statutory rule or to put such an exemption in the rules themselves. That would not look proper. Perhaps a complaint would be made against all of us that we got this discriminatory rule made.

SHRI B. D. KHOBARAGADE: May I know, Sir, what happened to the complaint made by an hon. friend that one Member of Parliament was refused the grant of licence?

SHRI B. N. DATAR: I believe some Members of Parliament have got licences. Dr. Kunzru said that he got one.

SHRI B. D. KHOBARAGADE: It is not a question of some of us getting it. What about every Member of Parliament?

SHRI B. N. DATAR: Each case will be considered on merit with full sympathy.

SHRI B. D. KHOBARAGADE: It would mean that even a Member of Parliament would be refused to own or possess an arm.

SHRI B. N. DATAR: Does the hon. Member want a further answer from me? If, for example, there are certain circumstances, they will also be considered by the licensing authority. That is the reason why I gave an assurance, a general assurance, that the cases of Members of Parliament and of Legislatures will be considered on merit with full sympathy. That

ought to be satisfactory to all hon. Members.

Sir, I again thank hon. Members who refuted the arguments raised by other hon. Members. In particular I am happy that Dr. Kunzru gave full and general support to the provisions of this Bill though he wanted some changes to be made.

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill to consolidate and amend the law relating to arms and ammunition, as passed by the Lok Sabha, be taken into consideration."

The motion was adopted.

MR. DEPUTY CHAIRMAN: We shall now take up the clause by clause consideration of the Bill.

Clause 2.—Definitions and interpretation

SHRI B. D. KHOBARAGADE: Sir, I move:

1. "That at page 2, line 17, after the words 'such as a' the word 'knife' be inserted."

SHRI AMOLAKH CHAND (Uttar Pradesh): Sir, I move:

10. "That at page 2, line 26, after the word 'energy' the words 'except air gun, air pistol or the like' be inserted."

The questions were proposed.

SHRI B. D. KHOBARAGADE: Sir, my amendment seeks to insert the word 'knife' after the words "such as a" at page 2, line 17. I will explain the purport of my amendment. I have already mentioned in my speech some time before why by the inclusion of the words "such as a lathi or an ordinary walking stick" the clause has been made a bit complicated and confused. The whole object of this clause is to define arms of different

[Shri B. D. Khobaragade.] descriptions. The word "arms" has been mentioned to include:

"... articles of any description designed or adapted as weapons for offence or defence, and includes firearms, sharp edged and other deadly weapons, and parts of, and machinery for manufacturing, arms, but does not include articles designed solely for domestic or agricultural uses. . ."

So, if we take into consideration the whole clause, it will be seen that particular types of arms have been mentioned. The words, "such as a lathi or an ordinary walking stick and weapons incapable" are of a qualifying nature. Therefore, while interpreting the clause, there will be difficulty. It will be felt that only lathis and walking sticks are to be exempted, they being considered solely meant for domestic or agricultural purposes. Therefore, as there is a mention of sharp edged weapons in this clause there should be some word to qualify the words "sharp edged and other deadly weapons". As we have included the words "such as a lathi or an ordinary walking stick and weapons. . . ." to qualify the whole domestic and agricultural implements similarly one word "knife" should be incorporated so as to qualify the words "sharp edged and other deadly weapons". In absence of this qualifying word there will be some sort of confusion. While interpreting the clause, the licensing authority might consider that by including these words "such as a lathi or an ordinary walking stick", Parliament did not want to make an exception of sharp edged weapons which are used as domestic weapons.

MR. DEPUTY CHAIRMAN: You want knife to be excluded?

SHRI B. D. KHOBARAGADE: There should be no qualification of any sort. If the idea of the hon. Minister is to have some sort of qualification, the word "knife" should be inserted

so as to qualify the words "sharp edged and other deadly weapons".

SHRI AMOLAKH CHAND: Mr. Deputy Chairman, Sir, my amendment is a very simple and innocuous amendment which says that in the definition of 'firearms' such things as they have mentioned such as:

"a lathi or an ordinary walking stick and weapons incapable of being used otherwise than as toys or of being converted into serviceable weapons"

have been included in the definition of 'firearms'. I have asked for the inclusion of the words "except air gun, air pistol or the like" after line 26 on page 2 of the Bill. I have heard the hon. Minister with some care. I feel that he would be able to exempt air gun and air pistols under the rule-making powers in the Act.

MR. DEPUTY CHAIRMAN: Is air gun a firearm?

SHRI AMOLAKH CHAND: No. "... except air gun or pistols or the like." Now, Sir, the hon. Minister in reply said that he was prepared to exempt air gun and air pistol.

MR. DEPUTY CHAIRMAN: But, is it necessary at all? An air gun is not considered as a firearm.

SHRI MULKA GOVINDA REDDY (Mysore): That is what he wants.

SHRI AMOLAKH CHAND: The question is under which definition this air gun or air pistol comes.

MR. DEPUTY CHAIRMAN: That is what I am saying. It does not come in the definition of firearm. I think I am correct. Firearms means:

"arms of any description designed or adapted to discharge a projectile or projectiles of any kind by the action of any explosive or other forms of energy."

There is no explosive used in the manufacture of air gun or air pistol.

SHRI AMOLAKH CHAND: The point is that firearm means any arm which fires.

MR. DEPUTY CHAIRMAN: It is not anything that fires. There must be some ignition there.

SHRI AMOLAKH CHAND: Further, you find:

"... to discharge a projectile or projectiles of any kind by the action of any explosive or other forms of energy . . ."

that is, by air pressure. That also comes within this definition:

"by the action of any explosive or other forms of energy, except air gun, air pistol or the like."

It should read like this.

MR. DEPUTY CHAIRMAN: But the Minister just now said that he was going to exempt that under the rules.

SHRI AMOLAKH CHAND: Under which definition of the word "arms" can he do that?

MR. DEPUTY CHAIRMAN: Under the rules.

SHRI AMOLAKH CHAND: If he is prepared to do that. . .

MR. DEPUTY CHAIRMAN: He gave you that assurance just now.

SHRI AMOLAKH CHAND: He is qualifying it. What he said was:

"There are different types of air guns and air pistols."

As far as air rifle is concerned, I do not want it. I want to know positively whether he is willing to exempt it under the rule-making power. Why should it not be included under the statute so that there may not be confusion or doubt in anybody's mind.

MR. DEPUTY CHAIRMAN: Mr. Datar, you can reply after lunch.

The House stands adjourned till 2-30 P.M.

The House then adjourned for lunch at one of the clock.

The House reassembled after lunch at half past two of the clock, MR. DEPUTY CHAIRMAN in the Chair.

SHRI B. N. DATAR: Sir, my hon. friends have raised two points. One is that after the word 'lathi', the word 'knife' should also be inserted. It would not be proper to use the expression 'knife' because it lends itself to adaptations in a number of ways so as to make it very dangerous. Now, the word 'walking stick' was used in the other House because it was considered that some words should be used by way of illustration. It is not an exhaustive word 'such as a lathi or an ordinary walking stick'. For the purpose of making a distinction between what is domestic instrument and others it was given. It does not mean that a knife cannot be used. Ordinarily a knife is a knife which is used for domestic purposes but it can be so adapted as to make it a dangerous weapon. That is the reason why it is not necessary to use it.

Then so far as air guns are concerned, I pointed out the position. You wanted to know whether they were merely arms or firearms. They are firearms because they emit certain energy. We have used the word 'energy' in one of these definitions. That is the reason why they are firearms and they are subject to control. Ordinarily whenever they are not of a serious type, they would be exempted; even under the rules now in force, they have been exempted and Government would try to examine as many types as are possible but as I pointed out, there are certain air guns and air pistols which are of a more dangerous type and it is necessary that they should be

[Shri B. N. Datar:]
treated as firearms and a licence
obtained.

DR. R. P. DUBE: What about
catapult?

SHRI AKBAR ALI KHAN (Andhra
Pradesh): There are air guns which
are used by children below 8 years.

SHRI B. N. DATAR: So far as they
are concerned, they have already
been excluded. May I invite the hon.
Member's attention to the definition
of arms? We have stated:

"... weapons incapable of being
used otherwise than as toys..."

So whenever they are pure toys, they
do not come under the provisions of
the Act at all and I have pointed out
that certain exemptions would be
granted in respect of air guns.

SHRI AMOLAKH CHAND: Are
there different types of air guns and
air pistols? It is only in the case of
air rifles that the Minister can say that
they are dangerous and so we would
like that there should be a licence to
possess them. There I have no dis-
pute with him but as far as air guns
and air pistols are concerned, they are
only coming within the mischief of
the definition of firearms and they are
exempted even up to to-day. What is
the intention of not including it here?

SHRI B. N. DATAR: I am prepared
to give this assurance that we shall
continue exemptions in respect of all
others except those which are of a
dangerous type.

MR. DEPUTY CHAIRMAN: The
question is:

1. "That at page 2, line 17, after
the words 'such as' the word
'knife' be inserted."

The motion was negatived.

SHRI AMOLAKH CHAND: Sir, I beg
leave to withdraw my amendment.

*Amendment No. 10 was, by leave,
withdrawn.

MR. DEPUTY CHAIRMAN: The
question is:

"That clause 2 stand part of the
Bill."

The motion was adopted.

Clause 2 was added to the Bill.

*Clause 3.—Licence for acquisition and
possession of firearms and ammuni-
tion*

SHRI AMOLAKH CHAND. Sir, I
move:

11. "That at page 4, line 2, the
words 'or for use by such holder' be
deleted."

The question was proposed.

SHRI AMOLAKH CHAND: Sir, I
tried to explain in my preliminary
remarks why the words which were
used for a particular purpose, that is,
"for holding sport guns" should remain
here. If you read the proviso, it
says:

"Provided that a person may,
without himself holding a licence,
carry any firearm or ammunition in
the presence, or under the written
authority, of the holder of the lic-
ence for repair or for renewal of the
licence..."

Now the words thereafter 'or for use
by such holder' are not clear to me
because the Minister, in his reply, said
that supposing a person who is hold-
ing is going on the road and there is
his servant who is carrying the arms.
then he should not come within the
mischief of this clause. Now when
the words here are 'provided that
such a person may without himself
holding a licence carry firearm or in
the presence or under the written
authority of the holder', what this
contemplates is that if the holder of
the licence, in his presence, gives his
arms to a person and if he is carrying

*For text of amendment, see col.
792 supra.

it in his presence, then he does not come within the mischief of this clause. I do not understand why the words 'or for use by such holder' are there. If you keep those words, then he is entitled to carry it even in the absence of the holder of the licence which I think is not proper. So I submit that the Minister would be well-advised to delete these words "for use by such holder." Otherwise the case will be like this, that I hold a licence and anybody can carry it. In my presence anybody can carry along with me. That is covered by the clause.

MR. DEPUTY CHAIRMAN: For your use.

SHRI AMOLAKH CHAND: For my use in my presence but now it would be for my use even in my absence. That is a very dangerous thing. So these words should be deleted. That is not in any law at the moment because at present there are retainers who are mentioned in the licence as persons who can carry it for the holder. Now this creates a third category. The first is that I hold a licence and I carry my arms. The second is, if I am accompanied by a person and in my presence along with me, he can carry under my authority, but now a third provision would be allowed—I am in the city of Delhi and somebody is holding my firearm in the city of Madras. That would be absurd.

SHRI B. N. DATAR: May I point out in this respect that my hon. friend has not understood the change that has been made. In the original Bill, as it was introduced in the Lok Sabha, the words were these:

"Provided that a person may, without himself holding a licence, carry any firearm or ammunition in the presence, or under the written authority, of the holder of the licence for the repair or renewal of the licence or for use by such holder for purposes of sport."

Now it was considered by the Joint Select Committee that the expression

'for the purposes of sport' might be of a restrictive nature and so they were to be removed. That was why 'for use by such a holder' was kept and 'for purposes of sport' was removed. Oftentimes it happens that weapons or arms have to be sent ahead of a party in advance. Under the circumstances there is a particular restriction that has been laid down. Either the man who is carrying the weapons is behind him and is in the presence of the holder of the licence or in his absence, under his written authority. So the difficulty that the Member has felt has been met by the expressions 'under the written authority'. Now a licence holder will not give his written authority without considering whether the person who is taking away the arms and ammunition is a responsible person, is a dependable person or not. That is the reason why the Joint Select Committee considered that 'for use by such holder' should be of a general nature and not restricted only for purposes of sport.

SHRI AMOLAKH CHAND: I am not satisfied with the explanation which the hon. Minister has given. What I want to know is . . .

MR. DEPUTY CHAIRMAN: You cannot make another speech.

SHRI AMOLAKH CHAND: Then I do not press and I beg leave to withdraw my amendment.

**Amendment No. 11 was, by leave, withdrawn.*

MR. DEPUTY CHAIRMAN: The question is:

"That clause 3 stand part of the Bill".

The motion was adopted.

Clause 3 was added to the Bill.

MR. DEPUTY CHAIRMAN: The amendment proposed by Shri

**For text of amendment, see col. 798 supra.*

[Mr. Deputy Chairman.]

Khobaragade to clause 4 is a negative one and so it is out of order. So, there are no amendments to clauses 4 to 8.

SHRI B. D. KHOBARAGADE: But I want it to be deleted.

MR. DEPUTY CHAIRMAN: Yes, deletion means that it is a negative amendment. If you want, you may vote against it. I shall put clause 4 separately so that you may vote against it. Shall I?

SHRI B. D. KHOBARAGADE: Not necessary.

Clauses 4 to 8 were added to the Bill.

Clause 9.—Prohibition or acquisition of possession by, or of sale or transfer to, young persons and certain other persons of firearms, etc.

SHRI B. D. KHOBARAGADE: Sir, I move:

3. "That at page 6, line 13, for the words 'attained the prescribed age-limit' the words 'completed the age of twelve years' be substituted."

4. "That at page 6, lines 16 and 17 be deleted."

SHRI AMOLAKH CHAND: Sir, I move:

12. "That at page 5, line 30, for the word 'sixteen' the word 'eighteen' be substituted.

13. "That at page 5, at the end of line 39, after the word 'bond' the words 'and three years thereafter' be inserted."

The questions were proposed.

SHRI B. D. KHOBARAGADE: In this connection, I only want to urge that young persons, young boys, should get proper facilities for training and that is why I have sought to insert the provision that if a boy who has attained the age of twelve years, he should be allowed to practise and he should be allowed to possess such arms or rifles and .22 bore

air-guns. There is no harm in his being allowed to possess such arms, because it is very essential that our boys should get this training at an early age. This is not an easy job. Marksmanship is a difficult art and it takes a good deal of practice to attain it. Therefore, it is very essential that boys should get training in this respect at an early age. That is why I want the hon. Minister to make provision in the Bill itself by which all boys who attain the age of twelve years will get all the necessary facilities so far as target practice is concerned. Of course, there is provision in the Bill to the effect that necessary arrangements will be made in the rules prescribing different age-limits in relation to different types of firearms. But in my opinion, this is not sufficient to make provisions for this in the rules and I feel that there is no harm, especially since the principle has been accepted by the hon. Minister, that young boys should be allowed to possess arms for the purpose of practice, to include that provision in the Bill itself, instead of in the rules.

Therefore, I would urge on the hon. Minister to reconsider the question and see that this particular provision is incorporated in the Bill itself. Thank you.

SHRI AMOLAKH CHAND: Mr. Deputy Chairman. I have given notice of two amendments to clause 9. By my first amendment I seek to substitute the word "eighteen" for the word "sixteen" occurring in part (i) of sub-clause (1)(a). The hon. Minister, while replying to the debate on the consideration of the Bill said that he was led by the U.K. Act where young boys of sixteen are permitted to hold licences. During the debate, Rajkumari Amrit Kaur also pointed out that the age of sixteen was not a proper age. I also find that one of the Members of the Select Committee said that he was rather not in favour of the age of sixteen, but when he found that the whole Committee had passed it, he took it

that something right had been done. The question before the House is whether sixteen is the proper age for this purpose, whether that is the proper age, in the present conditions that we find in India, when we should issue arms to such young persons. The law of majority I would not allude to now, except to say that in that law the age of majority is only eighteen years. Under the Indian Penal Code also, if a person below the age of majority commits an offence, the law of probation etc. etc. all come to the rescue of the boy. We know that we do not want to deal with a young delinquent, of the age of sixteen, in the same way in which we deal with a criminal. Therefore, is it desirable that we should give such young persons arms freely? I am using the word "freely" with particular reference to the speech made by the hon. Minister during which he said that we are providing in the Bill for an age of sixteen, but the licensing authority will not issue licences to these persons until and unless he is satisfied about the antecedents, etc. of the boy who is sixteen years old. I would very respectfully submit that it is a negative provision to which he refers. Having by statute authorised that a boy of sixteen could go and ask for a licence, why say that if a person of sixteen years comes before the licensing authority, he or the executive will look into the antecedents of the persons and so on? Instead of all this, why not put in the age of eighteen in place of sixteen, since eighteen is the age of majority. Now, firearms are not like air-pistols or air-guns or anything of that sort. A boy of sixteen who has no mature judgment and who cannot understand how to use his discretion, may on a flimsy ground use his firearm and deprive someone of his life. I think this is a rather dangerous thing and when I considered the atmosphere in the House when this age of sixteen was being considered, I was practically convinced that the hon. Minister piloting this Bill would agree to an amendment to raise the age to eigh-

teen and it was with that view that I brought forward this amendment. I have no particular prejudice or anything of that sort regarding our young people. But we the elders in Parliament should consider the actual facts and we should not be led away into saying, "All right, let these young boys be also given firearms now." If he says that licence for arms may be given to boys of sixteen, I would not object to it very much. But as regards firearms, guns, revolvers, pistols and the like, I feel that we should use our discretion and persuade the hon. Minister to agree to this amendment.

As regards the other amendment of mine, as I pointed out earlier also, in part (ii) under clause 9(1)(a), they want that there should be a rest of five years before anybody who had come out of jail after a term of six months' imprisonment. But under part (iii) it seems that any person who has been bound under section 107 of the Criminal Procedure Code or section 109 of that Code as being a person dangerous to society or likely to cause breach of the peace, he could immediately after the termination of that bond be eligible to get a licence. This appears to me to be rather strange. Therefore, I would suggest that in the case of a person who has been convicted of violence or of moral turpitude, you may have a delay of five years. But those who have been bound but have been allowed to remain in society and not sent to jail, they should wait for three years after the term of the bond. That is why I have suggested the addition of the words "and three years thereafter" after the word "bond". If you say that the principle in part (i) and that in part (iii) are different, then that is altogether a different matter. But if the principle is the same and if a person who has been in jail has to wait for five years, and the person who has been allowed to remain in society but has been bound down, should be eligible to get a licence as soon as the bond is over, that I do not think is proper and I

[Shri Amolakh Chand.]

hope the hon. Minister will accept these two amendments.

SHRI H. P. SAKSENA: I give my wholehearted support to the amendment moved by my hon. friend, Shri Amolakh Chand, so far as the question of the age-limit is concerned, and I repeat what I said earlier that if the Joint Committee had given any support to this limit to be fixed at 16, then it was not done in my presence. Perhaps I had left the meeting for a few minutes. I am prepared to say that perhaps it was surreptitiously brought in.

SHRI B. N. DATAR: I object to this, Sir.

MR. DEPUTY CHAIRMAN: It is highly improper that the hon. Member, having been a Member of the Select Committee, should say that the Select Committee introduced this age surreptitiously. It is highly improper. The hon. Member should have protested in the Committee itself. He has also not given any minute of dissent.

SHRI H. P. SAKSENA: I did not impute any motive . . .

MR. DEPUTY CHAIRMAN: I want the hon. Member to withdraw that word.

SHRI H. P. SAKSENA: . . . to the Committee but I simply stated the fact that perhaps it was done in my absence and, therefore, I do not approve of it.

MR. DEPUTY CHAIRMAN: The hon. Member cannot make any reference to the proceedings of the Select Committee and make such aspersions which are extremely bad.

DR. R. P. DUBE: Sir, I have already spoken about this question in my speech at the first reading stage. I still think that a boy aged 16 is quite immature and looking to the present-day conditions, I do not think you should have this low age-limit at all. Boys aged sixteen should not be allowed the use of firearms. Those

people are not allowed the use of air-guns and such other arms but now you are allowing them the privilege of the use of firearms. I do not understand how these two things can be reconciled. In one place you do not want even air guns to be used without a licence whereas in another place, you allow a boy of sixteen to use firearms. I personally think that the hon. Minister should reconsider this question. This sort of thing cannot be provided for in the rules and it will mean your having to bring in an amendment of the statute. Now that we are considering the Bill here, why not make the age eighteen? You know what the present-day conditions are. You find boys plundering, using firearms, etc.

SHRI AMOLAKH CHAND: That is the effect of cinema.

DR. R. P. DUBE: Whatever it is—you may even call them delinquents—the problem is there and I would beg of the hon. Minister to reconsider this question. Let him not think that if he accepts an amendment here, he will have to go back to the other House. Such considerations should not weigh with him in accepting an amendment of this character.

SHRI B. N. DATAR: May I point out to my hon. friend that it was not proper on his part to have suggested that this House is only an endorsing House? That is far from the truth. Whenever there are important suggestions made in the House, we always consider such points and I myself have accepted amendments here in this House on many previous occasions and have gone back to the other House. We always profit by the wisdom and the very salutary advice given in this House. I would, therefore, submit that there should be no such idea in the minds of hon. Members here. I am anxious to carry this House to the fullest extent possible.

Coming to the amendments, Sir, I fully appreciate the force and the

propriety of the arguments advanced by my hon. friend, Shri Amolakh Chand. So far as the question of the age-limit is concerned, this point was raised in the debate before the reference to the Joint Select Committee. The Joint Committee also considered the whole matter and then came to the conclusion that the age ought to be lowered to sixteen from eighteen. Here I would like to give full details about the practice in the U.K. There are similar practices prevalent here in our country. The sons of salute-rulers are exempt when they come to the age of sixteen years. In the U.K. the age differs under the various Children's Acts. The age-limit for loans is sixteen, seventeen is for purchasing or hiring of firearms and fourteen for borrowing, receiving as gift or possession. There is no age limit in respect of smooth bore guns. This is the position in the United Kingdom but we are not going to the fullest extent. It was very strongly pointed out that we should put in the limit of sixteen years. We had also the evidence tendered by the Rifle Associations which stated that it would not be a risk to bring down the age limit to sixteen. That is why, after full consideration, the Joint Committee accepted this amendment and changed the age from eighteen to sixteen. All the same, Sir, what my hon. friend, Shri Amolakh Chand, has pointed out has to be fully considered and I might give an assurance that we shall find out how this works, whether there are really any abuses, and then after the necessary experience has been gained, we shall bring up the age to eighteen, if the experiment does not prove useful as we expect it to. I hope, Sir, this assurance of mine will be of such a nature that the hon. Members will accept it. Let us try this experiment for some years. If it is found that this has led to abuses, then the Central Government will come before this House and the other House for making the necessary changes in the enactment. This is so far as amendment number twelve of Shri Amolakh Chand is concerned.

There is considerable misapprehension in regard to amendment number thirteen. There is some change in the position so far as the conviction and the binding over of a man for good behaviour are concerned. You are aware, Sir, that under the preventive sections of the Criminal Procedure Code, if a man's conduct is found out to be of not the proper type or when he acts against public peace, then he is to be bound over. When a magistrate fixes the period of the bond, he takes into account the full antecedents of the man and fixes the period for which the man concerned should be bound over. If a period of one year, or two years or three years, has been fixed, then in the judicial opinion of the magistrate himself, this period is quite sufficient. When a man passes that period, then naturally he should be treated to have purged himself of the bad conduct for which he was called upon to execute a bond. No further stigma should attach to the person concerned, especially after the period of the bond has been gone through. Take the case of a conviction. In the case of a conviction, the question of such a character comes only indirectly. We have made it clear that if the conviction is of a technical character, then naturally it need not bring in any further disability at all. My hon. friend, Shri Sapru, suggested the other day that this was an additional punishment. It is not an additional punishment at all. We have left out of account those convictions which are on grounds other than violence or moral turpitude. When a man has been convicted of violence, then his actions will have to be watched for some time after his release. Similar is the case in regard to offences involving moral turpitude. These two expressions are common enough in legal parlance. It is clear from this that only in cases of offences of a heinous nature has this further disability to be experienced.

3 P.M.

In such cases, what happens is, he incurs a sentence but in the case of

[Shri B. N. Datar.]

a licence some further consideration has to be given to his conduct and for that a further period has purposefully been put in and his conduct will be watched . . .

SHRI P. N. SAPRU (Uttar Pradesh): May I ask a question? If a man is convicted of an offence of enticing away a married woman, would that be covered by the expression 'moral turpitude' and is that an offence which would disqualify him from carrying arms and asking for a licence for five years?

SHRI B. N. DATAR: My hon. friend has long judicial experience and he can answer these questions himself instead of putting them to me. All the same, enticing away a married woman is certainly a serious offence involving moral turpitude and there is no doubt about it. That is the reason why the question of his fitness for arms arises only incidentally. After his conviction, his conduct will have to be watched and there are two reasons for this additional period here. One is that the offence involves violence or moral turpitude and his conduct has to be watched with a view to seeing whether he again drifts into criminal conduct or whether he himself improves and for that purpose in the case of a conviction a certain supervening period has to be added. In the case of a bond the period of the bond is purposely looked into and the man will have to be under the force of this bond for such period that his conduct will have been completely improved. Therefore, there is some distinction between the two and for that reason we have made it clear that after the period is over and when the man is free, no further disability should be attached to him.

MR. DEPUTY CHAIRMAN: What about Mr. Khobaragade's amendments?

SHRI B. N. DATAR: I am not accepting them, Sir.

SHRI AMOLAKH CHAND: Mr. Deputy Chairman, Sir, I would like to put one question which I did not do, because I thought the hon. Minister knows the position of the law. Now, if a person is bound under section 110 for good behaviour for three years and he does not furnish the bond, he has to go to jail. Is it the idea of the hon. Minister that as soon as he comes out of the jail after undergoing imprisonment for three years for not furnishing a bond, he will immediately get a licence? I thought he knew the provisions of the law.

SHRI B. N. DATAR: I know the provision of the law quite clearly. So far as this is concerned, I have mentioned that during the period of the bond either he is out subject to the security offered by some other person on his behalf about his good behaviour—that means he lives out a normal peaceful life, a life of good behaviour during that period—or if he is kept behind the bars, then also he serves out that period for the purpose of purging himself of the ignominy attached to it. Therefore, it is not proper to go on adding a further period.

SHRI B. D. KHOBARAGADE: May I know . . .

SHRI B. N. DATAR: Yes; so far as my hon. friend's contention is concerned, I have already answered. Sixteen years is a period about which there is a lot of controversy.

SHRI B. D. KHOBARAGADE: I was referring to target practice.

SHRI B. N. DATAR: So far as target practice is concerned, my hon. friend was objecting to the proviso. Now, we have made it clear that different age limits may be prescribed in relation to different types of firearms. This was the point made by the Rifle Association also and they said that in some cases for certain training even boys from 16 onwards

should be allowed to have training. That is what we have allowed. This is a matter of detail; we accept the principle that different ages may be prescribed in relation to different types of firearms. Government will consider all these circumstances and will prescribe different age limits for different weapons according as the weapons are of an ordinary type or are of a more dangerous type. And these will be mentioned in the rules and the rules will be placed here for general approval.

SHRI B. D. KHOBARAGADE: What will be the minimum age? If he can give an assurance.

MR. DEPUTY CHAIRMAN: They will prescribe it in the rules. Do you want to press the amendments?

SHRI B. D. KHOBARAGADE: If he could now mention what the age will be, I would not like to press the amendments. He might be having some idea of the minimum age.

MR. DEPUTY CHAIRMAN: He cannot answer it now.

SHRI B. D. KHOBARAGADE: Sir, I beg leave to withdraw my amendments.

**Amendment Nos. 3 and 4 were by leave, withdrawn.*

SHRI AMOLAKH CHAND: Sir, I beg leave to withdraw my amendments.

**Amendment Nos. 12 and 13 were, by leave, withdrawn.*

MR. DEPUTY CHAIRMAN: The question is:

"That clause 9 stand part of the Bill."

The motion was adopted.

Clause 9 was added to the Bill.

**For texts of amendments, see col 801 supra.*

Clauses 10 to 12 were added to the Bill.

Clause 13—Grant of licences

SHRI B. D. KHOBARAGADE: Sir, I move:

5. "That at page 8, lines 9-10, the words 'in respect of a muzzle loading gun to be used for' be deleted."

6. "That at page 8,—

(i) at the end of line 10, after the word 'protection' the word 'or' be inserted; and

(ii) lines 11 to 15 be deleted."

The question were proposed.

SHRI B. D. KHOBARAGADE: As explained by the hon. Minister, it is clear that if there are sufficient reasons that a muzzle-loading gun is not sufficient for the protection of crops, then the agriculturists will be allowed to get licences to possess other firearms. There are a number of cases in which the agriculturists are not able to protect their crops by the use of muzzle-loading guns, and if we are making the measure more liberal, if we are giving licences to all individuals, then in my opinion there should not be any restriction imposed on the agriculturists to obtain licences for other firearms and they should not be restricted to use only muzzle-loading guns. Our whole object is that all individuals and citizens should get licences. So far as questions of public security, public peace, law and order, etc. are concerned, we can understand that we should impose some restrictions on anti-social elements and others so that they do not freely get the licences. But if the agriculturists cannot protect their crops with muzzle-loading guns, then they should be able to get licences for other type of firearms and there should be no restriction of whatsoever kind. Therefore there is no necessity for making this provision that where the licensing authority is satisfied that a muzzle-

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loading gun will not be sufficient for crop protection, then only he should grant a licence for other type of firearms. This restriction should be removed. If the agriculturists are not creating any trouble or nuisance or disorder, if they are not indulging in unlawful activities, and if they want firearms for *bona fide* purposes of protecting their crops, they should be granted licences and it should not be left to the discretion of the licensing authority.

SHRI B. N. DATAR: Sir, I may point out that this special provision has been made for the sake of crop protection. If, for example, an agriculturist or a cultivator requires any other arms for other purposes, that is entirely a different matter. All that has been done in clause 13 is to facilitate a procedure which is very simple and in respect of which we have given special directions that ordinarily licences should be given. Now, in the original Bill as it was presented to Parliament, this proviso was not there. Secondly, hon. Members will also admit that it is the general view that so far as crop protection is concerned, ordinarily a muzzle-loading gun is quite sufficient but it was urged very strongly before the Joint Select Committee that there might be certain areas subjected to certain pests where an ordinary muzzle-loading gun may not be sufficient at all. In respect of those areas, this particular proviso has been added. We have accepted that proviso and therein we have made it very clear that, having regard to all the circumstances of any particular case, if the licensing authority is satisfied that a muzzle-loading gun will not be sufficient, then he will be granted a licence in respect of any other smooth bore gun as aforesaid. Therefore, what my hon. friend has suggested is beside the point, so far as the question of crop protection is concerned. I would again repeat that if an agriculturist or cultivator requires arms for other purposes than

crop protection, it will come under the normal provision and then it will be considered for what it is worth.

SHRI B. D. KHOBARAGADE: Do you also give licences for other weapons, to agriculturist if he asks?

SHRI B. N. DATAR: That is a different matter, not for crop protection.

SHRI B. D. KHOBARAGADE: In view of the explanation given by the hon. Minister, I beg leave to withdraw my amendments.

**Amendment Nos. 5 and 6 were, by leave, withdrawn.*

MR. DEPUTY CHAIRMAN: The question is:

"That clause 13 stand part of the Bill."

The motion was adopted.

Clause 13 was added to the Bill.

Clause 14—Refusal of licences

SHRI E. D. KHOBARAGADE: Sir, I move:

7. "That at page 9, line 6, the word 'sufficient' be deleted."

8. "That at page 9, lines 10-11, the words 'unless in any case the licensing authority is of the opinion that it will not be in the public interest to furnish such statement' be deleted."

The questions were proposed.

SHRI B. D. KHOBARAGADE: Mr. Deputy Chairman, this is rather a very important amendment. The other day also a number of speakers voiced their feelings that there should not be any restriction imposed based on possession of property. It is not only persons who own some property, movable or immovable, who need protection. In these days when there is rowdism and hooliganism rampant everywhere, peaceful citi-

**For texts of amendments, see col. 812 supra.*

zens, law-abiding citizens, need protection. They may not possess movable property. They may not possess immovable property. But in the case of these good-natured and peace-loving citizens, if their life is in danger, in peril, then it is our duty to see that those people get licences to possess arms to protect their life and honour. The other day I mentioned one case from U.P., where a member of the Uttar Pradesh Congress Committee was brutally assaulted. He suffered injuries. So, during these days it will be seen that the life of the workers, the leaders who are working in political parties, trade union movements, is sometimes in peril. There might be some sort of political rivalry and, therefore, if there is rivalry between two persons, two groups, then it is quite possible that the life of one individual is in peril. Therefore, even though he does not own or possess any property, such individuals should get licence. They should not be debarred from getting any licence just because he does not own or possess any property. Moreover, the whole purpose of the Bill is that if there are any restrictions to be imposed, they should be only in the interests of public peace, law and order and public safety. So, I do not understand in what way public peace or public safety will be in peril if the law-abiding citizens, who satisfy all the qualifications under this Bill but who fail to satisfy only one condition, i.e., do not possess any property, get licence to possess arms. If they satisfy all the conditions under this Bill, why should the people be debarred from getting any licence, from possessing fire-arms and ammunition. It amounts to discrimination, discrimination based on property, and it is not proper. Therefore, in view of the circumstances mentioned by me this word "sufficient" should be deleted and all those people who require arms for *bona fide* purposes should get licence, irrespective of the fact whether they possess any property or not.

So far as my second amendment is concerned, it refers to appeals. You

have made a provision in this Bill that any aggrieved party can prefer an appeal against the order of the licensing authority. You have given him that right. But how can an aggrieved applicant prefer an appeal unless and until he knows on what grounds the application has been rejected? It is not possible to prefer an appeal. It is very essential that he should know the reason why his application has been rejected. Then only he can make out a case to be argued before the appellate authority. In the absence of any such certified copy of the order, or any copy of the order, it is not possible for the applicant or the aggrieved party to prefer an appeal. At least, if it is not possible to give a copy of the order, he should be informed about the grounds on which his application has been rejected so that he can prefer an appeal and make out a case before the appellate authority against the grounds and the reasons on which the application has been rejected by the licensing authority.

SHRI B. N. DATAR: Sir, so far as the first point made out by the hon. Member is concerned, may I invite the attention of the House to two points? One is that Dr. Kunzru, when he spoke, was anxious that this particular clause should be deleted altogether, because he expressed himself very clearly and he wanted the clause to be deleted for an opposite reason, namely, he thought that the issue of fire-arms to people who occupy a very humble station in life would not be justified as they would not be able to ensure their safety. That was the ground which he had taken. The Government considered the whole question and they themselves stated that want of sufficient property should not be a ground for rejection. So far as this particular "sufficient property" is concerned, or this clause is concerned, there is a lot of misapprehension about its exact meaning. But I may point out that you yourself, in the course of the discussion at the consideration stage, put it very correctly. You stated that under the present circumstances, if a man does not pos-

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sess sufficient property, the word "sufficient" is to be interpreted by the licensing authority in his discretion. You stated that want of sufficient property was a ground for rejecting an application for a licence. Now, all that we have done is that we have stated that this ground should not be taken. On this ground there should be no rejection at all. Therefore, I would submit that these words that have been put in have been misunderstood, but it is a great step that we have taken in meeting the desire of people to have arms without passing the test of what is known as holding sufficient property. As at present the criterion is there. That criterion we have purposely removed. Therefore, I hope that the House will appreciate it and the words "sufficient property" are a perfectly legal expression. It has been used in a number of things and the very object, as you rightly stated, was to remove this particular disqualification or disability or the practice that is being followed. If that is done, the difficulty would not arise.

Then, so far as the second amendment of my hon. friend is concerned, here also may I make the whole position clear? When an application is filled before the licensing authority, either it is accepted or it is rejected. Now, in both the cases it may be open to the magistrate to give the reasons. When an application is rejected, then the order of rejection or a certified copy of the order of rejection will in all cases be given to the man. Let there be no doubt at all. I would make it clear that the order containing the expression that the application has been rejected will always be furnished to the unsuccessful applicant and that itself will be the basis on which an appeal can be filed. Now, the next question that arises is that ordinarily the grounds on which the application is refused will be given.

There will be no difficulty in ordinary cases but there are certain circumstances which are of an over-

riding character and there are circumstances where in the interests of the society and in public interests the reason should not be disclosed. Sometimes a premature disclosure or a disclosure which is indiscreet is likely to be harmful to the society itself and that is the reason why it is considered necessary that the ground should not be communicated to the unsuccessful applicant—and such cases may not be very many. In such cases, even on the basis of an order, he can file an appeal to the appellate authority and the appellate authority, as I pointed out this morning, will go into the whole question, will go into the question not only of the rejection of the application but also of the reasons for this rejection, and after going into all these circumstances, the appellate authority will pass a proper order. Therefore, Sir, the fear that my hon. friend has in view has been met and to the extent that it could not be met, public security is our only justification.

SHRI B. D. KHOBARAGADE: I would like to know from the hon. Minister. . .

MR. DEPUTY CHAIRMAN: No more speech. It has been explained and re-explained many times.

SHRI B. D. KHOBARAGADE: I am not making a speech. I would like to know if any peace-loving citizen, who has no property or who does not possess any property, would be able to get a licence. I would like to know this because my feeling is that absence of sufficient property should not be made a ground for rejection of an application. Therefore, I have got some misapprehension about this clause. I would like to know in what way this clause is to be interpreted.

SHRI B. N. DATAR: Anyway, so far as this point is concerned, I would like to go by your interpretation, Sir. That is a perfectly good interpretation. It puts it in a forcible manner and it says "absence of

sufficient property shall be no ground for rejecting”.

MR. DEPUTY CHAIRMAN: There must be some other reasons to reject. Mere absence of property will not be a ground.

SHRI B. D. KHOBARAGADE: Absence of “sufficient property”. It means that an applicant must possess some property. If he does not possess . . .

MR. DEPUTY CHAIRMAN: I do not think there is any man who has no property. You want me to put it to vote?

SHRI B. D. KHOBARAGADE: If that is the contention of the hon. Minister, then, I suppose, he will not get a licence.

MR. DEPUTY CHAIRMAN: The question is:

7. “That at page 9, line 6, the word ‘sufficien’ be deleted.”

The motion was negatived.

SHRI B. D. KHOBARAGADE: I beg leave to withdraw my amendment.

*Amendment No. 8 was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

“That clause 14 stand part of the Bill.”

The motion was adopted.

Clause 14 was added to the Bill.

Clauses 15 to 19 were added to the Bill.

Clause 20.—Arrest of persons conveying arms etc., under suspicious circumstances

SHRI B. D. KHOBARAGADE: I move:

9. “That at page 12, lines 32—34, for the words ‘any police officer or

*For text of amendment, see col. 814 *supra*.

any other public servant or any person employed or working upon a railway, aircraft, vessel, vehicle or any other means of conveyance’ the words ‘or any police officer’ be substituted.”

The question was proposed.

SHRI B. D. KHOBARAGADE: I am making this amendment for one particular reason and that is that a citizen should not be harassed. If we go through the provision of this clause, it will be noticed that wide powers have been given to all government servants to arrest—not only to arrest but arrest without warrant—and seize arms and ammunition. These wide powers had been given to all government servants. These government servants had been enumerated in this clause: “any magistrate, any police officer or any other public servant or any person employed or working upon a railway, aircraft, vessel, vehicle or any other means of conveyance”. So, it will be seen that in a railway, an ordinary coolie, who has been employed in the railway, if he thinks that the arms and ammunition are to be used for unlawful purposes, he can arrest the person without a warrant. Nowadays the buses and the road transports have been nationalised. There, even an ordinary conductor, because he is a government servant, can arrest a person if he thinks that the person possessing arms and ammunition is likely to use them for unlawful purposes. Even an ordinary peon of an officer can arrest a person and that too without a warrant. That is the provision. When an ordinary coolie, when an ordinary government employee can arrest a person without a warrant, I have got apprehension in my mind that these powers which we are giving to the government employees will be misused and, therefore, Sir, I would like to suggest that these powers should be given only to the police officers and that is the purport of my amendment. These powers of arrest and seizure of arms and ammunition should only be given to any magistrate or any police officer and not to all government employees because,

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in that case, these powers will be misused and it will amount to harassment of peace-loving citizens.

SHRI B. N. DATAR: Sir, may I point out that there are similar provisions in the Criminal Procedure Code also that whenever an offence is being committed, then it is the duty of all other persons present—persons other than even the police officers—if in their presence certain offences are committed, to bring it to the notice of the proper authorities? It becomes a statutory duty of those persons to bring it to the attention of the proper authorities. Similarly, in this case, a provision has been made because of the preamble which the hon. Member has not read to the House. I would read it. It says:

“Where any person is found carrying or conveying any arms or ammunition whether covered by a licence or not, in such manner or under such circumstances as to afford just grounds of suspicion that the same are or is being carried by him with intent to use them, or that the same may be used, for any unlawful purpose”.

Therefore, Sir, it will kindly be noted that whenever they are being carried under such circumstances, then it would not be proper to take a risk at all. Whether such places are railway, aircraft, vessel, vehicle or any other means of conveyance, if in these places they are not immediately seized or the man arrested, then a very great danger is likely to ensue. It is for such purposes that a certain class of persons who are directly and vitally connected with these vessels, etc., had been enjoined to carry on this as a duty, not as a matter of right but for the purpose of avoiding danger to a particular vessel, etc. and also to see that the alleged unlawful purpose that the man has in view in carrying them in the vessel or the railway is frustrated. These are the two objects, and such cases arise only when attempts are made in a stealthy manner, in a surreptitious manner, to carry these

weapons. Therefore, Sir, this section can be utilised only when there are suspicious circumstances, and naturally the persons who have been mentioned are either police officers or public servants or persons employed or working upon a railway, etc. In midstream, for example, there is a vessel, and a man has carried surreptitiously a certain weapon and is suspected of making a wrong use of it. That wrong use might destroy the vessel itself. So in the interests of safety, in the interests of avoiding a greater danger, this power has been extended only to persons who are bound to work in a responsible capacity. If a public servant, for example, is there, naturally he is subject to the rules of the Government, and he can be immediately proceeded against if he does not do it. Similar is the case with any person employed or working upon a railway. I think it is the duty of such persons to be responsible in the sense that while carrying on their duty, they have to ensure the safety of the vessel or the railway, etc. It is only under these circumstances that these powers have been given so as to prevent a possible danger.

SHRI B. D. KHOBARAGADE: What guarantee is there that the powers will not be misused? I want to ask...

MR. DEPUTY CHAIRMAN: Order, order. I will now put the amendment to vote.

The question is:

9. “That at page 12, line 32-34, for the words ‘any police officer or any other public servant or any person employed or working upon a railway, aircraft, vessel, vehicle or any other means of conveyance’ the words ‘or any police officer’ be substituted.”

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

“That clause 20, stand part of the Bill”.

The motion was adopted.

Clause 20 was added to the Bill.

Clauses 21 to 38 were added to the Bill.

MR. DEPUTY CHAIRMAN: There is an amendment to clause 39, but it is a negative amendment. I will put all the remaining clauses.

Clauses 39 to 46 were added to the Bill.

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

SHRI B. N. DATAR: Sir, I move:

"That the Bill be passed."

The question was proposed.

SHRI J. S. BISHT: Sir, I request the hon. Minister that Members of Legislatures in India should not be put to the trouble of asking for licences from District Magistrates. The hon. Minister said that Government did not want to discriminate in favour of Members of Legislatures. I do not know where the question of discrimination comes. I am not asking that they be exempted from taking out any licence. They will take out licences. What I am asking is that when they make an application, that should be enough, and the District Magistrate should automatically issue the licence to them. That is a very simple thing. The whole procedure means that you want verification of the status and the character of the man. When a man is elected to a legislative body or, say, to the chairmanship of a local authority or is a gazetted officer, what more enquiry do you want to be made about him? Is it conceivable that in England a Member of Parliament or in America a Member of the Congress should go before a local district magistrate and dance attendance on him for just a petty licence? You are bringing the prestige of Parliament into contempt in that way. Parliament does not consist of pillars and posts. It consists of men. You are forcing these men to go before the small officers in the district just for the sake of a licence. When a man applies for a licence and is denied it, he takes it as an offence to his izzat, to his prestige, to his status.

No Member of the Legislature should be put in that position. I again submit that in making these rules, you should make it compulsory on the licensing authority to issue a licence to every Member of a Legislature as soon as he puts in an application without any further enquiry. With regard to the question whether anyone will commit any offence, well, you have had in Kerala a whole Government ..

DR. W. S. BARLINGAY (Bombay): What is the practice in the United Kingdom and other places?

SHRI J. S. BISHT: Do you think that anybody there would dare oppose a licence to a Member of Parliament or in America to a Member of the Congress? It is unthinkable. It is because you have here raised the status of the bureaucrats as against the Members of Parliament—that is the great tragedy to which I take strong objection. This is a hang-over of the British days when a district officer was the lord of the district. You are still hanging on to the same thing. If a man is elected to a legislative body, whether it is a State Legislature or Parliament, that should automatically entitle him to get this petty little privilege of a licence for firearms. I hope this question will be seriously considered. No question of any false sense of discrimination should arise in this matter.

SHRI B. N. DATAR: Sir, may I point out with all deference to my hon. friend that we had the rules during the British administration under which the Members of Legislatures were given licences as a matter of course? The question was examined after the achievement of independence, and at that time it was considered that there ought not to be any such exemption and, as I stated, it was considered that it might smack of discrimination. That was the reason why about 1949 the rule was abrogated after the achievement of independence, and during the last ten years there is no such general exemption. That fact also should be taken into

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account, and till now no complaints have been received by us or by the State Governments that this has worked in a way adverse to the hon. Members concerned.

May I also add for the information of my hon. friend that when a person is a Member of Parliament or of a Legislature, this fact will surely be taken into account by the licensing authority? Normally they would not refuse to give licences to such people except when there are overriding circumstances. Normally they will be entitled, they will be given . . .

SHRI J. S. BISHT: Can the District Magistrate refuse a licence to the hon. Minister?

SHRI B. N. DATAR: I do not know whether a Minister has asked for it. I have never taken out a licence.

SHRI J. S. BISHT: As a matter of law, can he refuse it?

SHRI B. N. DATAR: What I was pointing out was . . .

SHRI AMOLAKH CHAND: As far I know, the Ministers are exempt from licence, but I may be wrong.

SHRI B. N. DATAR: He has to ask for it like ordinary people. He has also to ask for it. I have never asked for it, much less taken out any licence. May I point out that this is the policy that we have been following since 1949, during the last ten years, and therefore it is a question whether we should introduce any such exemption in the rules that are under consideration. Government will make rules and what the hon. Member has stated will also be taken into account, but I would not like to make any commitment. I only pointed out the difficulties in our way. All the same, I would again repeat what I have stated that the licensing authorities would with other circumstances consider this question of membership in a Legislature with such respect and with such sympathy as it deserves.

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill be passed."

The motion was adopted.

THE MARRIED WOMEN'S PROPERTY (EXTENSION) BILL, 1959

THE DEPUTY MINISTER OF LAW (SHRI R. M. HAJARNAVIS): Sir, I beg to move:

"That the Bill to provide for the extension of the Married Women's Property Act, 1874, to parts of India in which it is not now in force, be taken into consideration."

The House is aware that the Married Women's Property Act, 1874, applies to the whole of India except the Part B States, and it was not extended to the Part B States, as I explained in an earlier discussion, because at that time we wanted to ascertain what exactly the position was in those States with regard to personal laws. Now we have undertaken the task of introducing a uniform law all over India and this, if I might say so, is a step in that direction. I might again remind the House that article 44 of the Constitution enjoins upon us to bring into operation a uniform civil code in the whole of India.

Now, the main purpose of the Married Women's Property Act was to separate the legal personality of the husband from that of wife. The doctrine of common law was that both wife and husband formed one person and that the wife should not, unless she joined with the husband, exercise certain rights.

DR. W. S. BARLINGAY (Bombay): Is that so now?

SHRI R. M. HAJARNAVIS: But the Married Women's Property Act in England changed that concept of Common Law and said that where a married woman possessed separate property, she could sue and be sued. A reflection of that law may be found