Education Minister in the first week of October and submitted a memorial in protest against the Education Bill of the Kerala Government. The memorial is under consideration of Government.]

PAPERS LAID ON THE TABLE

STATEMENTS SHOWING ACTION TAKEN BY THE GOVERNMENT ON VARIOUS ASSURANCES, PROMISES AND UNDERTAKINGS

THE DEPUTY MINISTER OF HOME AFFAIRS (SHRIMATI VIOLET ALVA): Sir, on behalf of Mi-. A. K. Sen, I beg to lay on the Table the following statements showing the action taken by the Government on the various assurances, promises and undertakings given during the sessions shown against each: —

(i) Statement No. II—Eighteenth Session, 1937.

(ii) Statement No. IV—Seventeenth Session, 1957.

(iii) Statement No. XIV—Thirteenth Session, 1956.

[See Appendix XIX, Annexure Nos. 33 to 35 for (i) to (iii).]

REPORT OF THE REHABILITATION FIWAMCE ADMINISTRATION

THE DEPUTY MINISTER OF FINANCE (SHRI B. R. BHAGAT) : Sir, I beg to lay on the Table, under subsection (2) of section 18 of the Rehabilitation Finance Administration Act, 1948, a copy of the Report of the Rehabilitation Finance Administration for the half year ended the 30th June, 1957. [Placed in Library. See No. LT-404/57.]

NOTIFICATION PUBLISHING AMENDMENTS IN THE ALL INDIA SERVICES (PROVIDENT FUND) RULES, 1955

THE MINISTER 3F STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI B. N. DATAR) : Sir, I beg to lay on the Table, under sub-section (2) cf section 3 of the All India Services Act, 1951, a copy of the Ministry of Home Affairs Notification S.R.O. No. 3701, dated the 14th November, 1957, publishing certain amendments in the All India Services (Provident Fund) Rules, 1955. [Placed in Library. *See* No. LT-399/57.]

THE NAVY BILL, 1957—*continued.*

SHRI MAHABIR PRASAD (Uttar Pradesh): Mr. Chairman, yesterday I was referring to the 'petty officers'. It has been suggested in one of the amendments that the words, 'petty officer', and the *Chief petty officer', be substituted by the words, 'junior officer' and Chief junior officer'. In the Navy, acting sub-lieutenants, sublieutenants and lieutenants are regarded as junior officers, and if the suggested change is accepted, it will create confusion, and therefore, I would request the House to keep thesa words as they are.

Now, Sir, in one of the speeches objection has been taken about the purchase of the aircraft carrier. Well, if not for offence, for defence all kinds of weapons are necessary, and aircraft carrier is one of the necessary things. Besides the aircraft carrier our Navy is short of so many modern equipments. For example, our coast is 4,000 miles long but we have very few survey ships, and one survey ship takes about a year to survey 20 to 25 miles of the coastline. Now, with the present number of survey ships it will take a long time to survey the entire coast and it is very necessary to have these surveys periodically to know about the conditions of the coast. Therefore, more survey ships are also necessary for the Navy. Similarly we do not have modern destroyers. Those are also a necessity, but that is the subject-matter of a different debate.

Now it has been pleaded that the ratio of promotion from ratings to officers be fixed at 33 1/3 per cent. The basic education of the ratings is

[Shri Mahabir Prasad.] quite limited, and it will be difficult to, accept the ratio suggested. As at present, 12^ per cent of the ratings are promoted out of the new recruits lo the officers' ranks, and after all it is Government's discretion to promote as many people as may be possible from the subordinate ranks, and fixing any ratio will not be very desirable.

Then, much has been said about the exclusion of women from the naval service. Now, if we read the clause I do not think that women have been excluded from all services. The clause as it stands reads, 'No woman shall be eligible for appointment or enrolment in the Indian Navy or the Indian Naval Reserve Forces except in such department, branch or any other body forming part thereof or attached thereto and subject to such conditions as the Central Government may, by notification in the Official Gazette, specify in this behalf." As will be seen, the discretion is with the Government and they can allow as many departments to be opened for women as they like. Everybody knows that the conditions of living and work in the Navy are very hazardous. People have to work from 16 to 18 hours a day. The accommodation position is still more serious. People have to sleep on the decks for days together. There is very limited space for the ratings. They have to use double-tier sleeping beds, and all that. Under all those conditions I doubt if many women will come forward to join the Navy. If they do, there are certain departments which are already open, and as conditions permit, more departments can be made open to them.

During my visit to Bombay I had the occasion to visit the naval hospital, and I was very much satisfied tc find that a feeling of brotherhood prevailed, and once any patient is admitted to the hospital, there is no discrimination whether he is the highest officer or the small rating as far as the treatment is concerned.

Next, Sir, a lot has been said about J he naval detention courts. During the debates in the Joint Committee it was made out as if the conditions in the naval detention courts are something horrible and about which lot of reforms are necessary. From what I saw at Bombay of the naval detention court I would say that the court is more of a reformatory school where the people are reformed rather than it being a detention court with the idea of giving punishment. The experience is that the number of people in the detention courts is very very small. Even at present, when I was there, there were only six people and I was given the opportunity to talk to all of them. Four of them were because they did not come back to the naval headquarters or to their place of work after expiry of their leave without sending any intimation for extension of leave or any other sort of information. Discipline in the Navy has to be maintained and it is necessary for that purpose that those people who could not explain their abstention should be treatec under the Naval Act.

One of them was there because he had stolen some money. Even on the civil side, for stealing there is a punishment and I do not see whether there is anything to be desired in the Naval Detention Code.

In the Navy Bill, a provision has been made for the resignation of seamen. It was not there before and it could have been a hardship. But with that provision made, another of the hardships has gone.

Then, there was no specific provision in the Bill if any superior officer illtreated his subordinates. Clause 46 has been added specifically for that purpose and that removes another *ot* the wanted needs.

A lot has been said in the other House as well as in the Joint Select Committee about the procedure of appeal in the Navy. If we give **the** right of appeal to any other court outside the Navy, it will undermine discipline. People, in the Navy will

begin to look forward to other sour ces rather than their own. If we go through the clauses of the Bill, we will find that very high qualifications have been laid down for the Judge Advocate General, trial judges and others. In fact, the Judge Advocate General comes almost near the High Court Judge. The procedure which is followed in the court-martial is that some officers sit in the court-martial along with the trial judge. The trial judge is one of the judge advocates of the office of the Judge Advocate General. No doubt, he is a member of the staff of the Judge Advocate General, but he is very much different from the Judge Advocate General himself. Now, a procedure of review of the court-martial decisions has been provided in the Bill. All the decisions of the court-martial have to be reviewed by the Judge Advocate General. That means, a sort of appeal has been provided in the Bill itself against the decision of the court-martial. Moreover, we find that the accused is free to represent his case through a lawyer if it is so necessary. Therefore, there is a provision in the Bill for appeal and to say that no appeal is provided is not correct. Further, in the case of death sentence, the sentence has to be confirmed by the Central Government and it cannot be executed unless it is confirmed by them. That means that there is a third safeguard. First, there is the court-martial; then the Judge Advocate General reviews the case and thirdly, the Central Government has the power to review it in the case of death sentence.

I was going through the amendments and I found that there was an amendment to lines 21 and 22 on page 3, where the definition of 'enemy' has been provided. The definition of 'enemy' is the same in the Army Act, the Air Force Act and the Navy Act and if the words sought to be deleted are omitted, that will lead to serious things. Therefore, I think it is not desirable to touch the definition of 'enemy' as given in thi> Bill.

SHRI V. PRASAD RAO " (Andhra Pradesh): It has not got defined at all.

SHRI MAHABIR PRASAD: Through another amendment, it is desired that an option be given to such persons as are recruited before 15 that when they become 18, they will have the option to get out. When the recruits are taken at the age of 15, Government spends money oyer their training for three years rand then,, at the age of 18, if this option is given to them, all the money spent for their training during these, years will go waste. Moreover, as may be seen, nobody can be repi uited to the Navy without the cqpgent of his parents or guardians. • So, it is not that people are recruited without their knowledge and therefore, such a provision will not- be very much desirable. ,. ..

Through amendment No. 14, it is desired that the--word 'two' should be substituted by the word 'five' where 'mutiny' rs defined. Even in the Indian Penal- Code, 'mutiny' means 'two or more-.-'- ' So, I do not see any reason why 'five' should be added here instead of *'iw-o.'*

We are very much impressed by the fact that a spirit of equality and brotherhood pervades the entire naval service, uniting all its strength from the ratings up to the officers in ties of ..close relationship, so that .they are all living together as members of a happy family. Discipline is the keyword of this unique achievement and we should not do anything to undermine that discipline.

SHRI H. N. KUNZRU (Uttar Pradesh): Mr. Chairman, ,the Bill before us is in many respects an improvement on the existing Navy Act. But there are certain points arising **out** of the Bill that require consideration. Perhaps, those points were raised even by the existing law. But they have not received adequate attention yet. The first point that T should like to refer to. relates to the maintenance

[Shri H. N. Kunzru.] of the wife and children of an officer in accordance with the decree of a court. Clause 31 of the Bill says that "a person who is subject to naval law shall be liable for the maintenance of his wife and his legitimate or illegitimate children to the Mine extent as if he were not so subject; but the execution or enforcement of any decree or order for maintenance passed or made against such person shall not be directed against his person, pay, arms, ammunition, equipments, instruments or clothing."

Another part, Sir, of this clause says that, where any decree or order of the kind already referred to is made against a person in the Navy—I mean a person subject to naval law—and if such order is made and a copy of the decree or order is sent to the Central Government or the Chief of the Naval Staff or the pre scribed authority, the Central Gov ernment, or the Chief of the Naval Staff or the prescribed authority may direct a portion of the pay of the person so subject to Naval law to be deducted from such pay, etc. The ordinary courts are competent to make orders in connection with cases of all persons. It may be 12 NooBneeessary because of duties that Naval officers may be called upon to perform in an emergency or otherwise that he should be protected in some respects, because the interests of defence must be held to be higher than those of any other spheres of our life. But I cannot understand why in times of peace, tae Central Government or the Chief of the Naval Staff or any other authority should have the right to say, when a court has passed judgment or made an order, that it should not be carried out. It is, Sir, extra-ordinary, strange, that in a case like this, in a case where an officer fails to maintain his wife and children, whether legitimate or illegitimate, any other authority should come in between him and the court. It is reasonable to say that only a certain proportion of the pay of an officer or any other person, subject to naval law, shall be deducted for the maintenance of his wife and children. But I cannot understand why any authority, why even the Central Government itself, should have the power to say that the judgment of the court, or the order of the court, may not be carried out.

SHRI J. S. BISHT (Uttar Pradesh): Probably it was a case of an *ex parte* decree while the officer was at sea.

SHRI H. N. KUNZRU: This is provided for in the proviso. This is proviso to sub-clause (b) to paragraph 31(2) and it reads as follows:

"Provided that in the case of a decree or order for maintenance referred to in clause (b) nc deduction from pay shall be directed unless the Central Government, or the Chief of the Navai Staff or the prescribed authority is satisfied that the person against whom such decree or order has been passed or made, has had a reasonable opportunity of appearing, or has actually appeared either in person or through a duly appointed legal practitioner, to defend the case before the court by which the decree or order was passed or made."

This is governed by the proviso; the decree or the order of the court being an *ex parte* affair is dealt with by the proviso. But I cannot understand why in any other case the Central Government or the Chief of the Naval Staff or any prescribed authority should have the power to direct that the judgment Or order of the court may not be complied with.

Sir, then the next section to which I should like to draw the attention of the House, the next clause, is clause 33. I have already said that if an officer is made to act in accordance with the judgment or order of the court, it means that the Central Government or the naval authorities

are satisfied that the obligation imposed on him by the decision of the court is fair and that it should be carried out. Nevertheless, clause 33 states that any deduction to be made from the pay and allowances of persons subject to naval law may be remitted by the Chief of the Naval Staff in his discretion. It further says: "such deduction may also be remitted in such manner and to such extent and by such other authority as may be prescribed".

This Bill has been criticised on various grounds but I do not find that any one has referred to this feature of the Bill which seems to me to call for an explanation. So, the next point to which I want to refer to is clause 160. The clause 160 says that all proceedings—it virtually means that all decisions—of trials by court-martial or by disciplinary courts, shall be reviewed by the Judge Advocate-General of the Navy either on his own motion or on application made to him within the prescribed time by any person aggrieved and the Judge Advocate-General must report the result of such review to the Chief of the Naval Staff and the review shall be accompanied by such a recommendation as may appear to him to be just and proper. This is already a part of the Army Act—I mean such a provision forms part already of the Army Act and the Air Forces Act. It does not at the present time form part of the Navy Act. It is good that a provision like this has been introduced in the new Bill and that the Navy will be placed—our subject of naval law will be placed—on the same footing as those subjects which form part of the Army Act or the Air Forces Act, but no appeal is allowed in any case. I know that this matter has already been discussed in another place. But I think it is so important that it requires further consideration. The papers that have been supplied to the Members of Parliament show that appeals from the judgments of couvts-m'artial are allowed in England, in Australia, and in Canada. I do not know whether they are allowed in other parts of the Commonwealth or not but it is enough for my purpose that these appeals are allowed in these three countries. The English law—I mean both the English law and the Australian law—lays down that there shall be a special court to review the decisions of the court-martial. I am not using the word 'review'. Sir, in a legal sense but in the ordinary popular sense. The English law further lays down that there shall be an appeal to this court, that is, to the appeal court, with the permission of the court only. There is thus a safeguard that no person can hold up the execution of a sentence indefinitely just by appealing to the court that I have referred to above. His case will be heard in appeal only if the appeal court feels that it raises such questions as require to be reconsidered. Again, Six, the British law lays down—and I think also the Canadian law—that there may be a further appeal, *i.e.,* an appeal from the judgment of the appeal court in certain cases. In England an appeal will be allowed to the House of Lords if the appeal court certifies that important questions of law are involved. In Canada on the other hand, an appeal is allowed to the Supreme Court when the judgment of the appeal court is not unanimous. Now, why is it that with these examples before them, the Indian authorities have come to the conclusion that the present state of things should continue? We are all in our own way conservative, and I have no doubt that the Government has its own share of conservatism that prevents us all from going forward even when it is desirable in our own interest or in the public interest to do so. But in view of the cautious nature of the British and the Australian law, I do not understand why the Indian authorities have fought shy even of introducing a provision on the lines of the provisions contained in the British and Australian laws. If such a change was too big for them, they *i* could have allowed an appeal at least

[Shri H. N. Kunzru.] in those cases where a capital sentence was inflicted, or they could have with propriety, allowed an appeal even in cases where a person is sentenced to imprisonment for more than, say, five years. If the discipline of the Army or the Navy or the Air Force in England has not been loosened by the provisions that I have akeady referred to, I do not see why any fear that any provision made for an appeal will adversely affect the discipline in our defence forces should be entertained.

Lastly, Sir, I should like to refer to the position of the trial judge advocate in connection with court-martial. I refer, Sir, to clauses 113 and 114. Clause 113 says that it will be the duty of the trial judge advocate to sum up in open court the evidence for the prosecution and the defence and lay down the law by which the court is to be guided. Now this, to an ordinary man, seems to be a strange provision But I suppose, the justification for it in the case of courts-martial is that the law requires that a majority of the officers must be persons belonging to the executive branch of the Navy. Now, if these persons are unacquainted with law, there must be some person to fill up the gap. They will judge on the basis of facts, I suppose, and the judge advocate is to sav what the law is to be.

Now, the next clause, i.e.. clause 114. says:

> "At all trials by court-martial it is the duty of the trial judge advocate to decide all questions of law arising in the course of the trial . . ."

And I ask the House to note these words:

> " .....and specially all questions as to the relevancy of facts which it is proposed to prove and the admissibility of evidence or the propriety of the questions asked by or on behalf of the parties; etc ?tc".

This seems to be a *stranger* provision. When the trial judge advocate has explained the law, I should think that his duty was finished. But that he should decide whether a question is relevant—relevancy of facts and admissibility of evidence—I think the provision goes too far.

SHRI J. S. BISHT: Bin who will decide it?

SHRI H. N. KUNZRU: After all, Sir, these officers have commonsen?e.

SHRI J. S. BISHT: What about the admissibility of evidence?

SHRI H. N. KUNZRU: Sir, I shall deal with that point in a minute or two. If this procedure is followed, the department or the judge advocate general can always affect the **courst** of a trial by his own decision regarding the admissibility of evidence or the relevance of facts. Nov, whe ther this has become necessary or not owing to the ignorance of law on the part of the officers, I canno'. say, but it is obvious that such a procedure is highly defectiv.., and that if it were resorted to in any other branch of our life, it would give rise to serious dissatisfaction. The dissatisfaction would be so serious that the Government would be compelled to change the law. Now, Sir, sub-clause (21 of clause 114 says:

> "Whenever in the course of a trial it appears desirable to the tria> judge advocate that arguments and evidence as to the admissibility of evidence or arguments in support of an application for separate Mais or on any other points of law should not be heard in the presence of the court, he may advise the president of the court accordingly and the president shall thereupon make an order for the court to retire or direct the trial judge advocate tc hear the argument in some other convenient place."

This, Sir. is contrary to ail the ordinary notions of the position of a

court, of the relations between an advocate and a judge. Here, a irial judge advocate could virtually say to the court-martial, "You shall noi. be present when such and such poin< -: are heard". I do not know, Sir, what the justification for this law is I should like to know whether thi;-particular provision which I suppose i exists in the law relating to the Army J and the Air Force also, has been used in the past and, if so, on what kind of cases.

Now, Sir, clause 115 says that il is the duty of the court to decide which view of the fact is true and then arrive at the finding which, under such view, ought to be arrived at. The arguments are heari not by them but by the trial judge advocate and the trial judge advocate then, I suppose, reports the proceedings i,o the court which then decides which view of the facts is true. Everything here seems to be topsyturvy and I should like the hon. Minister lr charge of the Bill to explain to us fully why provisions of such extraordinary nature are necessary in this Bill. Sir, it is difficult to find a parallel for the relations between the trial judge advocate and the court-martial but, if I may hazard a brief summing up of the position, it seems to be that the trial judge advocate supplies the law and the court-martial is in the position of a jurv which decides whether an accused is guilty or not. Now, Sir, it can be argued, what can be done if the members of a court-martial are not mer. weli-versed in the law? I think, Sir, it will be much better to have a certain number of well-trained judges, people who are graduates in law and who have been given a good deal of training. Such people, after receiving that training, should be treated as judges and be members of the court--nartial Such a procedure is much better than allowing a number of judge advocate to lay down the law to the court. The judges who ought to roe well-trained and well-conversant with the law that fhey will be called upon to administer, should form part of the court and they can then advise their colleagues on legal matters without the slightest impropriety. They will not have the slightest interest in the case for the prosecution; they win not be supposed to have anv bias against the accused and their impartiality will not be open to question in any way. I should therefore like, though not without some hesitation, to place that suggestion before Government. I think, Sir, in view of the changes of great magnitude that have taken place in this country during the last ten years, the tremendous change that has come over public opinion, the different way in which relations between different persons are viewed at at the prestnt time, it is desirable that Government should shed some of their cherished notions and bring the military law into accord with the facts of our present day life.

DR. P. V. KANE (Nominated): Mr. Chairman, I shall go into the details of the Bill a little later on but I must say, Sir, that on reading the whole Bill, it looks to me like a Draconian code. I do not know what the object is. You want more and mere people of the right calibre, right education and right spirit of patriotism to come to our Armed Forces, including the Navy. If any man reads this Bill and then comes, 1 shall certainly advise him not to send his son to the Navy at all. I do not want to enter into very great details now but I shall show how. The first point, is, the court is a court of officers only There is one trial judge advocate but he too is appointed by the Government. All Advocate-General, Government, Advocates, trial judges, etc., are appointed by the Government under article 168. Naturally, when a man is accused, he fears that those who are Government officers are not ih the same position as the High Court Judges or the Supreme C ravt Judges and that they will be afraid to go against the prevailing trend. Before I proceed further, I should like to point out to you—and many of you might remember that also—the well-

[Dr. P. V. Kane.] known case, the Dreyfus case in France. This Dreyfus was an eminent officer but somehow or other, he was accused of dealing with the enemies, | being a traitor and so on. A court-martial was appointed and he was relieved of his duties and disgraced, i He had to run 3way and practically for fifteen years that son of thing went on. The Servicemen are there. Probably a particular officer may be i the highest type of officer; still, he is a Serviceman and there is some dignity of the Service to be protected and the poor fellow may be made a vicitim. Suppose, a private, a small man or a petty officer, as he is called, or a junior officer is charged with something. A court-martial is appointed in respect of disrespect or annoying some superior officer.

Naturally there will be a tendency to hold up the supposed dignity of the superior officer. In Dreyfus's case, he . got an eminent literary man like Zola to espouse his cause and then the whole tiling was reversed after fifteen years when he had suffered. Then the Commander-in-Chief had to come and reinstate him and all that happened.

[THE VICE-CHAIRMAN (SHRIMATI SAVITRY DEVI NIGAM in the Chair.]

With that case in mind, I cannot accept the broad principles of this measure and I give this warning here. It seems as if it were a court which is packed. That is what will appear to the man who is guilty or is supposed to be guilty. Therefore, we must take, at least in the latter half of the twentieth century, more care and not allow such things to happen. This is the genera] remark I wanted to make.

I shall now come to some of the tendencies apparent in the Bill by going over in a quick way some of the clauses. Now, look at clause 19. Here, a person subject to naval law has been debarred, without the express sanction of the Central Government— you omit fa) and look at (b)—from being a member or be associated in any way with, etc. These are very strong words. I do not understand what is meant by "associated in any way with". It might be that a friend of his might be in the labour union and so forth. It says further, "....be associated in any way with, any other society, institution, association or organisation that is not recognised as part of the Armed Forces of the Union or is not of a purely social, recreational or religious nature". Suppose it is a cultural association. He will not be allowed to join that because a cultural association will not come under social association; it wil] not be recreational nor will it be religious. I have mentioned only one example. This is one thing which will not be covered by these three or four things. That is one thing I found. You may prevent him from being a member of a Labour Union of the Armed Forces. That T can understand but, under (b), you must omit these v.ords, "or be associated in any way with". The earlier one, "be a member of", I can understand.

Then I come to clause 37. There are many clauses waich are bad enough but I point out those that are, in my opinion, the worst. Clause 37 says:

> "Every person subject to naval law who disobeys, ... with death."

I agree that a traitor deserves no mercy. Let us look at the second part:

> "if he has acted from cowardice,, be punished with death."

Cowardice may take hold of the greatest of warriors sometimes. Even Arjuna was afraid. The great warrior who defeated everybody became afraid and was unwilling to fight and he had to be goaded by long sermons by Lord Krishna. I think cowardice to be punished with death is rather too much and then who is to decide whether one is a coward? Some other officer sitting will say that he is a coward.

SHRI SONUSING DHANSING PATIL (Bombay): In the case of Arjuna, it was a question of embarrassment not of cowardice.

DR. P. V. KANE: No. Arjuna says:

"वेपथुश्च शरीरे मे रोमहर्षश्च जायते ।
गाण्डीवं स्रंसते हस्तात् ।।"

He was trembling, his hair stood on end and his bow fell from his hand, He was afraid, not merely embarrassed. Then Lord Krishna also says:

"कुतस्त्वा कश्मलमिदं विषमे समुपस्थितम् ।
अनार्यजुष्टमस्वर्ग्यमकीर्तिकरमर्जुन ।
क्लैब्यं मा स्म गमः पार्थ"

He does not say embarrassed. He is afraid of fighting his own uncle and grandfather. So the same punishment of death to be given for a traitor and for a coward is not correct. He may temporarily be a coward but he may not be a physical coward. Who is to decide? It will be the Members of the Forces because on facts they are the masters. Suppose they come to the conclusion that he is a coward, that is an end of his life simply by one act of cowardice.

Another thing is that the decision is to be by majority. If there is a provision that if there is unanimous decision, then it is something. But the provision is, if it is a court-martial of five people, only four need agree, not all. So I submit that this cowardice should not be so punishable at a 1.

SHW H. N. KUNZRU: What is to happen if a man runs away from the battlefield?

DR. P. V. KANE: He should be imprisoned and put away. That is there.

DIWAN CHAMAN LALL (Punjab): That is there—death penalty.

DR. P. V. KANE: Supposing on the opposite side there is his father coming—sometimes it has happened that father is in one camp and the son in another camp . . .

DR. RADHA KUMUD MOOKERJI (Nominated): In election.

DR. P. V. KANE: A coward may say 'I cannot fire at my father' . . .

SHRI H. N. KUNZRU: He must.

DR. P. V. KANE: In England it arose when there was war between Cromwell and Charles. . . .

DR. RADHA KUMUD MOOKERJI: That is an electoral fight.

DR. P. V. KANE: I don't like this provision that a man, simply because he is a coward should have death sentence. Of course it is for Government to consider.

I shall come to clause 39 (d) which says:

> "Every person subject to naval law, who—(d) having been made a prisoner of war, voluntarily serves with or aids the enemy;"

A man is a prisoner in the hand's of Hitler. They can treat him with any kind of cruelty and suppose he aids in some way, is that punishable? That is the point. He is a prisoner in the enemy's camp. How can this court come and say that he voluntarily serves? This is also too much. It must be changed into something better. He may be compelled or else he may be shot then and there and he may be sent to a room where gas is used to kill him.

SHRI LAVJT LAKHAMSHI (Bombay): Who can prove that is voluntarily serving?

DR. P. V. KANE: Actively' or some such word should be used— not merely 'voluntarily'. My point is this clause 39(d) should be changed.

Then we come to clause 43 (a) and (e). (a) says:

> "Every person subject to naval law, who—

[Dr. P. V. Kane.]

(a) joins in a mutiny";

Then (e) says:

"(e) does not use his utmost exertions to suppress a mutiny;"

These are all put in line. They look like what a poet says about Panini:

"विचारवान् पाणिनिरेकसूत्रे श्वानं युवानं मघवानमाह ।"

All put in one.

Supposing he resorts to mutiny, he forfeits ail sympathy of the nation but .simply if he does not use his utmost to suppress mutiny etc.—they are put together—you say that he shal) be punished with death. Death is there. This is a question of fact—utmost exertion. What is utmost exertion? In one it may be utmost and in an-other it may not be. Some men are differently constituted in mind and body. One man may be guilty of using and another may not. This is too much and this should be brought out not under clause 43 where there is death sentence but should be in another place. You may say that if a man fails to use utmost exertion, a court-martial may sentence him to some imprisonment etc. I don't say that no punishment should be given but that it should be equated with acts that deserve death sentence is too much.

I will come to clause 82(2) which I call more or less a Draconian Code. It says:

"Except in the case of mutiny in time of war or on active service, the punishment of death shall not be inflicted on any offender until the sentence has been confirmed by the Central Government."

It will be noticed that all that is required is that the Central Government should confirm it. The Central Government is not a judicial body but it has been given this final right which the High Courts and the Supreme Court have, namely, if the sentence of death is confirmed, it will be carried out at once without any reference to any of the ordinary tribunals. That is too much, I think. You may say after it is confirmed by the Supreme Court or High Court etc. It is not enough that you must do justice but it-must be felt by all that justice is being done. Naturally many of the public might feel that it is a hole and corner affair of Government officers condemning a fellow officer or low grade officer and the Government confirm : it. They may say "Why not the Government itself deal with it?" So, at least some independent body should have power of confirmation or whatever you may call it, whether High Court or Supreme Court but this is not sufficient. Every sentence of death must be subject to some confirmation particularly where the law is to be interpreted by a single sultan— that Judge Advocate who lays down the law. I don't want to repeat what Shri Kunzru just now said that those decisions seem to be, if anything, at least not agreeing with the juridical principles. Suppose there is a death sentence propounded by a majority of the judge, constituting the Bench or court-martial, then the only remedy-left is to appeal to the Judge-Advocate General. That is again a Government Officer. If he does not do anything, then you go to the Central Government. If the Central Government says that he must die for any of the things mentioned, he may be liable to be sentenced to death. Therefore, there must be a better provision than clause 82(2).

Then we come to those three provision? read by Shri Kunzru—-clauses 113. 114, and 115. I don't want to repeat what he said but I entirely agree with him, if I may respectfully say so, that the clauses require a better draftsmanship than has been presented here. I am only making a suggestion. The wording is like this:

"... .the trial judge advocate shall proceed to sum up in open court the evidence for the prosecution and

the defence and lay down the law by which the court is to be guided."

That may also be to some extent allowed. Then comes clause 114, which is the most important clause in this court-martial trial:

"It is the duty of the trial judge advocate to decide all questions of law arising in the course of the trial, and specially all questions as to 'he relevancy of facts which it is proposed to prove and the admissibility of evidence or the propriety of the questions etc."

Three or four things are put in here and the Judge Advocate is to hive, al'hough the court may have ive people, the final voice as regards the three questions, namely, questions of law, questions as to relevancy of facts. Thirdly, he has to decide whether certain evidence is admissible or not. as different from relevancy of admission of documents.

DiWAN CHAMAN LALL: And propriety is also there.

DR. P. V. KANE: Yes, tha another. I am obliged to my i *m* I hare. He has to decide about thy propriety of a question asked. Suppose the advocate for accused asks a question. The judge advocate has to decide the propriety of that question. There is nothing here to say that he is bound to take down the question and answer, to be placed before the Judge Advocate General. I don't know. All these things are entirely now in one person's hands, namely the decision on the question of law, relevancy of fact.;, propriety of questions and the admissibility of evidence, documentary or oral. This is too much. And the judge advocate is to be appointed by the Government. That is another thing. He is appointed by the Government. He is net an independent officer having judicial functions, riot a person who has not to look *to* the "Government for his promotion and so' on, rot like a High Court Judge or a judge of the Supreme Court, who have nothing to do with the Government. What I submit is that clause 114 is rather too much. And then, supposing this judge advocate says certain evidence is not admissible, what happens? Every man is liabte '.o commit mistakes. Suppose he commits a mistake, there is no remedy. The only remedy is to go to the Judge Advocate General and say that this decision about relevancy of fact was not correct. But he may say, "Never mind some facts were not allowed to come in. But there were other facts on which you have been properly convicted." That may be said. So my point is this. I shall advise everybody not to go to the naval service, if he takes my advice. What is it? You are bound hand and foot. Ordinarily you will find every man has certain rights. Our constitution provides him with so many-rights. He does not cease to be a private man simply because he has bargained away these and gone into the difficult naval service. Our Constitution gives him so many fundamental rights. If you look at the fundamental rights in the Constitution, you will find that he can move the High Court or the Supreme Court. The power to issue writs *mandamus, certiorari,* all these things are there. But all of them are barred now. There is a provision in the Constitution itself, but that is more guarded than this clause. Article 227 of the Constitution says.

"Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction."

Then it goes on further and says it has certain powers to

"call for returns from such courts,

(b) make and issue general rules and prescribe forms".

And in sub-section (4) it says:

"Nothing in this article shall be deemed to confer on a High Court powcr~ of superintendence over any

[Dr. P. V. Kane.]

court or tribunal constituted by or under any law relating to the Armed Forces."

So the High Court has no power, nor the Supreme Court. So this man is bound hand ana foot, as I said. He is like a slave practically. He is a slave to the service. Therefore, something must be done to preserve either the power of the High Court or the Supreme Court in every case in which there is a death sentence or a substantial sentence of imprisonment for 3 or 5 or more years. That must be done. Otherwise no educated man will come to your service, if he takes legal advice.

SHRI J. S. BISHT: Now, are they coming or not?

DR. P. V. KANE: They will come if you give them proper opportunities and if in the service the conditions are not very detrimental to their interests. But the point is this. Now, that you are revising your code, you should look ahead some ten or twenty years. You should look not only to your discipline but you should look to the question whether people will come in who will be the best possible material available. That is the prime consideration now. Discipline comes next. First of all, good people have to come and then comes discipline. You are cutting at the very root of enlisting proper persons to the Navy. Navy life by itself is hard. Life in the Army or even in the Air Force is not so hard. Here, supposing the Navy goes out on a cruise, the man is away for months. He is cut off from his family. That is not the case with the Army or even with the Air Force. The man comes every day. He is posted to some place, unless of course there is a war or some such thing. So my point is this. I am only emphasising that naval service is more difficult in a way than the other services. There may be greater danger in the air service. If there is an accident, then people die, but in other ways the man has a better life. What I am saying is that already there is a provision under which superintendence has been taken away from the High Court and the Supreme Court. Therefore, there must be some provision somewhere so that in certain cases at least, of the highest and greatest difficulty or hardness, there may be some redress through an impartial tribunal, a tribunal which at least the people regard as impartial. It is the people who must be satisfied that justice is being done. So what I am saying is, with article 227(4) and with the composition of the court as it is and the powers given to the judge advocate about disallowing questions of evidence, law and all sorts of things, the trial is a mockery, practically. In some cases at least, it will be a mockery, like the Dreyfus case. Therefore, I am opposed to many of these provisions.

Now, one or two matters remain. You will find that in article 21. the Constitution provides that no person shall be deprived of his life or personal liberty "exctpt according to procedure established by law." These very wide words are there. But still I do not think they contemplated the present Navy Bill. Here is a procedure prescribed, no doubt, as to how the case should be conducted.

AN HON. MEMBER: Article 33 also is there.

DR. P. V. KANE: Yes, article 33 is also there and that article says:

"Parliament may by law determine to what extent any of the rights conferred by this Part shall be restricted."

That is what I am arguing. These rights are given. Do not make them jo narrow. I understand Parliament has got the right of life and dealth: but what are they going to do? "Parliament may by law determire to what extent any of the rights conferred by this Part shall, in their application to the members of the Armed Forces or the Forces charged with the maintenance of public order, be restricted or abrogated so ais to

ensure the proper discharge of their duties and the maintenance of discipline among thorn." I do not say, "Don't have courts-martial." I do not say that. You may have them. But why should Ihey be on a special footing? Their decision must be subject to some superintendence by the High Courts or the Supreme Court and the latter should find that a person was really guilty. That is how at least other people must feel. So that does not help anybcdy, namely, "Parliament may by law determine" etc. etc., and it should rot determine it in this way.

I think, when the clause by clause consideration stage comes I may speak more, but at present I should not waste the time of the House.

DIWAN CHAM AN LALL: Madam, I am grateful to you for giving me this opportunity to say a word or *two* after the very learned speech that my friend behind me has made. He has directed the attention of the hon. Minister to a very serious matter indeed. I do not know and my learned friend may be able to enlighten us as to what procedure was followed in framing the statutes under this Bill, who were the draftsmen, what committee sat in order to discuss this matter, what legal opinion was taken and at what stage, and whether, if there was a committee, it wss a departmental one, and whether this measure was carefully examined by my learned friend or his Ministry. I do not know. I suspect that all the precautions that should have been taken in regard to this measure have not been taken, that all the drafting expertise that could have been brought into action in reference to this measure has not been utilised and that due caution and care have not been brought to bear upon the provisions of this measure as it should have been done. Why it has not been done passes my understanding, passes all understanding.

Now, my learned friend who spoke Just now suggested that there are certain provisions which make a mockery of justice. Well, I would not like to go as far as that. I do not know if my hon. friend who is piloting this measure in this House is a lawyer.

SHRI H. N. KUNZRU: Yes, yes, he is.

DIWAN CHAM AN LALL: And I do not know if be has done court-martial cases in his life. But some of us who have for the last many years been dealing with court-martial cases are aghast at some i.f the provisions and delighted with some others, aghast at certain provisions *m* this measure.

Now, let me take one or two. The usual proceduie in court-martial cases is that when an offence is brought to light, there is what is known as a court of enquiry. It is followed later on, if there is substance in the court of enquiry proceedings, by what is known as a summary of evidence. The summary of evidence forms the basis of the prosecution case. The witnesses are marshalled, their evidence is taken. Thereupon if an offence has been disclosed, a court-martial is ordered, and the- court-martial is not the court-mirtial as designed in these provisions of tni* B'll. But the court-martial may be or.c of three different kinds, an ordinary court-martial, a summary court-martial or a general court-martial. Now, that is a well known procedure in regard to this particular matter.

In regard to IJie procedure of the court itself, ordinarily the Indian Evidence Act applies, as my learned friend has put down in this particular measure, but having put that particular thing down he has given extra-ordinary powers to the judge advocate who sits there to advise on points of law, to order the admissibility or otherwise of certain evidence, the admissibility or otherwise of a certain document, even the propriety, as my learned friend has said, even the propriety of a question put on behalf of the accused or on behalf of the prosecution. Never in the history of courts-martials in India has such a

[Diwan Chaman Lall.] power been vested in the hands of an officer of the executive authority and we must remember that the judge advocate sits there in this capacity as ordered by the military authorities in order to lay down the law for people who are supposed to be laymen, namely, the officers who try the case. Now, when the judge advocate says that such and such a question, which the defence counsel may consider to be vital in the interests of the case, does not come within the purview of the expression "propriety", you are thereby interfering with the course of justice. You are not doing the right thing by the accused. You are taking away a right which to-day is within the power of the defence counsel to see that justice is not denied. Now, for what reason did my hon. friend bring this particular aspect of the law into being in this measure? What made him do it? I suspect that someone not very familiar with the processes of the law in the courts-martial has inserted this particular provision, and I want my hon. friend, when he realises the importance of it, to concede the point and withdraw this particular provision because, let me say quite frankly, Madam, let me say quite frankly now that in my experience of the law ranging over a large number of years, I did not find in any court a greater sense of justice than the sense of justice that prevailed in courts-martial. Therefore, if we are going to tamper with that, something that is unique in the history of India, something that is unique from the judicial point of view, if we are going to tamper with that, let us tamper with it with our eyes open. Let us tamper with it in order to increase the confidence that people repose in courts-martial, and not to destroy that confidence that people have reposed in courts-martial, and the object of this particular provision, I regret to say, will be none other than miscarriage of justice in almost every case, depending upon IJie prejudices of the judge advocate.

DR. RADHA KUMUD MOOKERJI: Why are you so tender towards rebels?

DIWAN CHAMAN LALL: Is my hon. friend calling my friend, the Minister who is piloting this measure, a rebel? I do not know. I am not being tender towards him.

THE DEPUTY MINISTER OF DEFENCE (SHRI K RAGHURAMAIAH) : I am reserving all my comments to the time when I reply.

DIWAN CHAMAN LALL: The hon. Minister says he is reserving his comments. But I was interrupted by my very wise and learned friend in regard to a remark that he made, which I did not follow. What I am trying to say is this, that I wish my learned friend had said certain things about this measure originally in reference to the criticism that is being raised, and the criticism, I want my learned friend to realize is not made in any carping spirit. It is in reference to something which is very very vital indeed. Just as I said that the ordinary civilian feels that the highest tribunal can create no better confidence in justice than the courts-martial can, realising that particular aspect of it, it is very necessary that these forces, whether they are naval, military or air, should also continue to have that same confidence in these courts which are going to deal with their destinies.

Now having said this I would like to know, for instance, from my learned friend why it is that he has done another thing. He has said . . .

SHRI H. N. KUNZRU: At this stage may I request Diwan Chaman Lall to continue his speech after the lunch adjournment?

DIWAN CHAMAN LALL: I shall do so.

THE VICE-CHAIRMAN (SHRIMATI SAVITRY DEVI NIGAM) : 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, THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA) in the Chair.

DIWAN CHAMAN LALL: Sir, before we adjourned for lunch, I was referring to the question of the necessity of a careful draft being prepared of such legislation. I know that my learned friend will say to me when he gets up to reply that this particular measure went before a Joint Select Committee. It did indeed go before a Joint Select Committee and I understand that the proceedings of a Joint Select Committee are confidential and no reference, therefore, can be made to what happened or what did not happen in the Joint Select Committee. But I do not consider that due regard has been paid by the administration in regard to the provisions of this measure, much of it having been decided by the administration against whose verdict in such matters it is very difficult for any ordinary committee to go. And I submit, Sir, that when we regard this measure f;om this particular point of view, it will be obvious that old and antiquated laws have been foisted upon this country in the year of grace 1957. The old phraseology, the old ideals, the old methods and the old procedure remain.

Perhaps, you are not aware, Sir, that the original law that was passed, as far as we are concerned, was in 1934. It made applicable to India and the Indian Navy the law that was applicable to Great Britain, i.e., the Naval Discipline Act. Now, the naval discipline is an extraordinary hing and it was, I believe, first brought into law in the eleventh year of George IV, again in the first year of William IV, again in the twentieth, twenty-seventh and twenty-ninth year of Q'ueen Victoria. In fact, the provision as it stood in 1934 referred to the Act of 1864 in the blessed reign of Queen Victoria. Now, are we going to take it that the world has stood still in regard to this matter or that nothing has happened to make us even change the phraseology that we copied from that particular legislation? We copy the bad things sometimes and we do not copy the good things. Take the death penalty, in the definition of 'mutiny' in the provisions relating to 'mutiny' under the 1934 Act, which is read with the British Act. Under section *10* of that particular Act, showing cowardice in the face of mutiny is not punishable with death. But, here, we go a step further. We punish cowardice with death. May I draw my learned friend's attention to section 10 of the Old Act? This is what it says:—

> "If he has acted from cowardice, shall suffer penal servitude or such other punishment as is hereinafter mentioned."

And what happens as far as we are concerned? If we look at clauses 42 and 43, page 19 of the book that has been given to us, we will find "shall be punished with death or such other punishment as is hereinafter mentioned". The same sort of language has been used except that "penal servitude for life" is substituted by a sentence of death. It is my personal view that death penalty ought to be abolished. But even taking the view of my learned friend who wants the death penalty in such cases, I quite , well believe that there are cases in which they would be very chary in suggesting any lower punishment than the highest. Even taking it at that, why should we go a step beyond the framers of the particular legislation two hundred years ago, who gave life sentence, servitude for life, as the penalty in a particular matter for which my learned friend today, two hundred years later, comes and says, "No, the penalty is to be death". Has not anything happened during this period to change the opinions of reasonable men in regard to such matters? My complaint is this that, although reasonable men did sit on the Joint Select Committee to consider all these matters, perhaps, it escaped their notice; but it should not have escaped the notice of the administration. They should not take advantage of the lack of interest in a

[Diwan Chaman Lall.J matter of this nature by others. They should come forward themselves with legislation which is modern and not antiquated as the legislation that is before us.

Now, I speak subject, of course, to certain exceptions. I shall come to those exceptions presently. The point I was drawing attention to is this—if we are going to make laws, let us make laws which are modern in this modern world. Let us not blindly copy the phraseology of the legislation merely because it comes down to us having been sanctified by the flat of the rulers who were ruling this country. What may have been good for them, obviously, necessarily, need not be good for us and what phraseology they used is not necessarily the phraseology that we are bound to employ in coming before this House and presenting a legislation of this nature. Word for word you go through this legislation, you will find it word for word, phrase for phrase. We go back to two hundred years. Why is it that this lassitude has fallen upon the framers of this legislation? Have we no good drafters alive for drafting this? Drafting is a noble art, it is a very important art. There are very important people in the country who are still available, who have studied this art with care and with a great deal of pain. They are available. Why not make use of the services of these drafters? Why should there be such a phraesology as is employed here where the authority is given to a judge advocate to turn down a question? May be, it may be a question of life and death put by the counsel. I presume, ordinarily, defence counsels are able counsels. Prosecuting counsels are able counsels. The question is put with due cane and regard, in the interests of the accused, with due care and regard to the liberty—maybe, the life—of the accused and it is turned down. This authority is given to the Judge Advocate General. On what grounds? Not the ground of relevance. If the law permits you, turn down on the ground of propriety. My learned friend will forgive me—what is propriety? Where have you defined 'propriety'? Who is going to judge whether all the conditions of propriety have been fulfilled or not? Who is going to decide this? The judge advocate. There is no appeal. You cannot go to any higher court ordinarily. But, I submit—my reading may be wrong—there is so much of this sort of thing in this particular measure that I think a loophole will be given to a large amount of litigation that may possibly arise in regard to the validity of the expressions used, to the meaning and the significance of the expressions used. Quite possible that a man who is accused and whose questions have been disallowed on the ground of propriety may take the matter to a superior civil court, the High Court or it may even be the Supreme Court. It may be that the avenue will be opened up for litigation which is most undesirable in the case of court-martial.

Therefore, I submit that in spite of the fact that the Joint Select Committee has reported, the suggestion obviously is to let anybody off. I admire the courage of my hon. friends who have tabled a very large number of amendments. I admire their courage. They are wasting their breath unfortunately. Not that they are wrong. In many cases they are right. But the time is passed now for any such step to be taken. All that we can do is to draw my learned friend's attention to these matters and ask him when he has time from his multafarious activities in the administration of this vast department, to appoint some sort of a departmental committee of experts, who know the job, who are fully aware and conversant with the workings of court-martials, with the working of this particular type of legislation during the last hundred odd years, who are familiar with the precedents, who are familiar with the procedure, who are familiar with the things pertaining and relevant to this particular type of legislation. Let them sit down and consider what changes and what modernisation is necessary for this

particular measure, because, Sir, you must remember that it is not only the Navy that is affected. Surely my learned friend will probably come before us soon, I hope, with an amending measure relating to the Air Force and the Army. For instance, in this particular measure, one of the good steps that my learned friend has taken is the step which ceases all proceedings in a reference of an accused person before a court-martial when the verdict of the court-martial is acquittal. When an acquittal has been the verdict of the court-martial, under the present law as far as the Army Act is concerned, for confirmation the proceedings have got to go to some higher authority. First of all, all the proceedings have got to go to the Judge Advocate-General and then probably the Military authorities have got to deal with this matter. Therefore, although the accused may have been acquitted by a court-martial set up to try him and found absolutely innocent, not guilty, nevertheless his fate is kept hanging, as far as the Army Act is concerned, for a number of weeks, may be for a number of months, until the verdict is rung out of the Judge Advocate-General or the Military authorities concerned. I congratulate my honourable friend in taking a bold step and putting an end completely to any further proceedings where the verdict is not guilty. This is a matter on which I should congratulate him. I would beg of him to *come* before the House with a similar measure also in the matter of the Air Force and the Army. The Army Act is also an antiquated act. It needs modernisation. It needs bringing up into the atmosphere of the modern world and I do hope that he will take the necessary steps to do so presently.

Now, Sir, the second point that I would like to congratulate my friend on is the bold manner in which he has decided a matter of law which has been worrying the judiciary as well as the administration for a long time in stating that every officer holds his office at the pleasure of the President. I am very glad that he has done that categorically and there is no doubt now in regard to this matter. It was necessary that this should not be a matter between the litigant on the one side and the court on the other, and I think it must be put at rest once for all.

Again, the third thing on which 1 should like to congratulate my hon. friend is the procedure that he has brought in for expediting of cases of officers or personnel on leave, a directive given to the civil court in this matter to finish their proceedings within the period of the leave. It is a very good move indeed in regard to a civil case. In regard to criminal cases, a suggestion has been thrown out that the same procedure may ba followed there.

Now, Sir, I am unable to understand, however, why we have not gone and defined certain things which are mentioned in this particular measure. One of the things is a circumstantial letter. What is a circumstantial letter? Where is it to be found" You know, Sir, that when a case starts before a court-martial, according to the procedure laid down here, the prosecutor has to open his case with a circunv stantial letter. What is this circumstantial letter? There is no reference to this circumstantial letter in any of the definitions that had been given. It is mentioned that the prosecutor shall open the case with a circumstantial letter. What is it? We are completely in the dark. Some reference has been made to boards of enquiry? What are the boards of enquiry? We are again completely in the dark. Another reference has been made to various other things but it shows that somebody has slipped up. If you are going to lay down a particular procedure and you mention a technical expression it is up to you to define that technical expression. If you do not define where we are going to look for this? Is this or is this not a comprehensive measure? Discipline, punishments, everything relating to the disciplinary action to be taken against Naval personnel is to be found here. The procedure is also *to* be found here. Then why are we

[Diwan Chaman. Lall.] silent about such things? Is there a court of enquiry contemplated under this measure? Is a summary of evidence contemplated under this measure? I would like to know and I am quite sure those who are interested in the procedural side of justice being done to the naval personnel would also like to know, whether there is going to be a court of enquiry in such cases, whether that court of enquiry is to be followed by a summary of evidence and if a summary of evidence is to be taken, what are the circumstances under which it would be taken.

Now, Sir, in this very connection my learned friend has said that as far as the judicial proceedings are concerned this expression 'judicial proceedings' applied to courts-martial and disciplinary court.

SHRI K. RAGHURAMAIAH: I said that the review proceedings are made applicable not only to proceedings of court-martial but also to disciplinary proceedings.

DIWAN CHAMAN LALL: He is quite right when he says that he was referring to the review proceedings but I am referring to something else,

The expression 'judicial proceedings' is a technical expression. What is a technical expression, my learned friend knows and many other able lawyer members in this House know. My learned friend has made it applicable to the proceedings of court-martial and to the proceedings of disciplinary courts. Now if there is a summary of evidence, if there is a court of enquiry, why should not this particular expression be made equally applicable to the court of enquiry proceedings as well as the proceedings of the summary evidence. I fail to understand why it should not be so. This matter has arisen time and again where, for instance, in a court-martial case, a particular witness has said something, and in a court of enquiry he has said something else. That particular reference, it has been held by certain court-martials, cannot be utilised because under the Indian EvMence Act it is not to be considered as a judicial proceedings and when it is not considered as a judicial proceedings, reference cannot be made to it in the evidence given by the accused nerson when he gets to the witness box. I submit these are matters of a technical character. The House may not be interested in these matters, but these are matters of great interest in judging whether a measure provides adequate justice or not to the accused persons in these cases. I am very anxious as most of us are, and I am sure my learned friend himself is, that the fullest kind of confidence should be created not only in the minds of the public, but equally in the mind of every person engaged in this naval profession, engaged as a valuable person serving his country in the Indian Navy. We are proud of our Indian navy. We had a great Navy in the past, and I have not the slightest doubt that we shall be building, as time goes on, a very great Navy of our own. It is necessary, therefore, that confidence should be created, and in these circumstances I would ask my learned friend to bring in at the earliest possible moment a more comprehensive measure; more suited to modern times and more just in its implications to the naval personnel that is to be dealt with under the provisions of this Bill.

Now, Sir, I would suggest that there is one other matter that my learned friend should very carefully look into. If today a particular office" or a rating in the naval forces of India is tried by court-martial, he is tried for that particular offence that is charg»d against him. He cannot be tried for any other offence, a-nd if he is acquitted of that particular offence, then he cannot be on hir trial for something else that may have come up in the course of the proceedings. But my learned friend has gdne beyond tne D»sition which prevails today, and what he has done is this. If a parti-

cular accused is charged with a particular offence, and in the course of the evidence it comes out that he is possibly not guilty of that offence but guilty of a lesser offence of some other kind then he can be charged with that lesser offence of some other kind and sentenced. All the safeguards of the evidence having been taken before; a c«urt of enquiry or a summary of evidence, they are all thrown to the winds. All that safeguard is destroyed completely and a new type of offe: ice is created by the provision in this Bill. If you look at clause 126 read uith clause 91, you will realise, Sir, what I am really driving at. Now, clause 126 states as follows/

> "If the accused is charged with one offence and it appears in evidence that he committed a different offence for which he might have been charged under section 91, he may be convicted of the offence which he is shown to have committed although he was not charged with it."

Now, what sort of justice is that, I would like to know. Now let us look at clause 91 first before we go on with this particular argument. Clause 91 reads as follows:

> "If a single act or series of acts is or such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at one trial; or he may be charged in the alternative with having committed some one of the said offences."

Now these are alternative charges . . .

SHRI SONUSING DFANSING PATIL: Is it the normal procedure, under the Criminal Procedure Code?

DIWAN CHAM AN LALL: Yes, this is the normal procedure under the Criminal Procedure Code where the High Court has also got the right to alter a narticular charge and sentence an ordinary person on that altered charge. But such a thing does not exist in the courts-martial procedure. This procedure does not exist. Therefore why is it being imported now?

SHRI SANTOSH KUMAR BASU (West Bengal): To modernise the'law.

DIWAN CHAMAN LALL: My learned friend wants to modernise the law. Well, there are ways and ways of modernising the law, but certainly not going to barbarous times and then call it modernising the law. I have got reminiscence of a case that my revered father was trying before the Maharaja of Kashmir. He took with him a wrong book. Instead of taking the Criminal Procedure Code he took Austin's Jurisprudence. He suddenly discovered on the page that he opened that "All sovereignty proceeds from the King", .and he read that out to the seventy-year old Maharaja of Kashmir, and the Maharaja of Kashmir was so delighted with the fact that he was absolutely sovereign, the sovereign head of all justice, that the accused *was* acquitted. Now, if you want that type of justice yes. But that type of thing does not exist today. What is your justification for importing intc this legislation something which is new? Now, I can tell you the reason why it does not exist today.

My learned friend talked about modernisation. What is modern about the court-martial procedure is this that you first of all have a court of enquiry. If the court of enquiry says there is nothing, then ordinarily the case drops. Then again there is some old barbarism still persisting in that procedure. The Area Commander or the Head of the Forces may suddenly decide that in spite of the court of enquiry verdict, the case must proceed When the case proceeds, the summary of evidence is taken. Now, the summary of evidence ties down the prosecution to the actual charge and the evidence in respect of that charge cannot get out of it. That is the reason why the procedure now being imnorted is not to be found in the

[Diwan Chaman Lali.] court-martial proceeding, and to bring it now would mean that the summary of evidence procedure will be destroyed completely, and whether a summary of evidence on that new charge is taken or not, the man can be sentenced. Now, I suggest that this is not modern and this is not something that should exist. *(Interruption.)* My learned friend there was probably busy with his papers. I said that in the Criminal Procedure Code there is no such thing as the summary of evidence. There is no such thing as the court of enquiry in the Criminal Procedure Code. This was a different type of procedure in courts-martial, and being a different type of procedure it was organised for the purpose of ensuring the fullest amount of justice to military personnel, naval personnel and air force personnel. They have to be treated differently. They are men who are risking their lives for your safety so that you may sleep and look at your papers comfortably on the floor of this House, so that you may be protected. This safeguard was imported into this law so that no hasty judgment could adversely affect the liberty and the life of soldiers, sailors and airmen engaged in defending your country. That was the reason. Therefore, Sir, I very humbly submit that in spite of the fact that my learned friend has done some modernising in certain respects, he will take my hint and try at the earliest possible moment to set up an expert committee to go into these matters and come to this House again when he has considered these matters in a most careful manner from the point of view of modern conditions and from the point of view of ensuring fullest justice to the Armed Forces of this country.

3 P.M.

KAZI KARIMUDDIN (Bombay): Mr. Vice-Chairman, after the illuminating speech of Diwan Chaman Lall, it is not necessary for me to make a very long speech on the amendments that I have given notice of. There is not the least doubt that this is one of the most important Bills that is being considered by the Parliament. I agree with most of the principles underlying this Bill but the drafting of this Bill and the procedure laid down for trials is highly defective and I am going to make some constructive proposals. The Bill is so important that we should not be in a hurry to pass it but we should apply our mind to see whether the procedure that is to be adopted for trials is the proper one and whetner it would appear that justice will ka done.

Clause 9 lays down that no woman shall be eligible to enter the Navy except in specified posts to be notified by the Central Government. Apart from what restrictions should be placed and on whom, apart from the fact whether women should or should not be allowed to be recruited in this service, the draft of clause 9 is highly defective. Article 15 of the Constitution lays down that no citizen shall, on grounds only of race, caste, sex, place of birth or any of them be subject to any disability whereas clause 9 places an absolute disability. Clause 9 says:

> "No woman shall be eligible for appointment or enrolment to the Indian Navy . . .

Now, if a reference is made to the Supreme Court, I am sure that this would be held to be ultra *vires* of the Constitution. Article 15 of the Constitution is an enabling provision. It does not disqualify a woman but the proviso is that restrictions can be placed by any State. In this case, there is no question of restriction; they have been disabled from entering the service excepting in some departments to be specified by the Central Government. Therefore I am going to move that amendment of mine saying that no woman is ineli-
I gible except when she is married or except in departments to be specified
I by the Central Government.

SHRI SHEEL BHADRIJAYEE (Bihar): This is also against the Con-
i stitution.

KAZI KARIMUDDIN: It is not because the proviso to article 15 says that restrictions can be made by the State. Therefore, the enabling power cannot be granted to the Central Government. The enabling power of recruitment of women is already given to the State by the Constitution but restrictions can be placed by the State. Therefore, the draft of clause 9 is highly defective. Another thing which I want to submit, Sir, is this.

SHRI K. RAGHURAMAIAH: I do not want to interrupt but would the hon. Member kindly read article 33 and say whether that has any bearing?

KAZI KARIMUDDIN: I have very j carefully read article 15 of the Constitution. Now, this article 15 lays down that they are eligible whereas clause 9 says that they are not eligible. That cannot be the legal drafting of clause 9 of this Bill.

SHRI K. RAGHURAMAIAH: I said, article 33.

KAZI KARIMUDDIN: Now. Sir, another thing that I want to raise in this connection is this.

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA) : May I draw attention to article 33 of the Constitution to which the hon. Minister also pointed out? It is very clear.

KAZI KARIMUDDIN: Sir, article 33 says:

> "Parliament may by law determine to what extent any of the rights conferred by this Part shall, in their application to the members of the Armed Forces or the Forces charged with the maintenance of public order, be restricted or abrogated . . ."

It is only the restriction that can be placed by the State. You cannot lay down a law by which you say that no woman is eligible. You can say, "No woman is ineligible except . . .". Their rights can be abrogated or restricted. That is my argument and that is entirely in keeping with article 33 and article 15. Therefore, this clause 9 is ultra *vires* of the Constitution. It should be worded the other way about. Women should be made eligible but restrictions should be placed on them. That can be done by the State. Therefore, my submission, Sir, is that even the provisions of article 33 are not inconsistent with the arguments that I have advanced.

This Bill is more or less a copy of the British Naval Act. My submission is, that when the British Naval Law or the Canadian Navy Law or the Australian Law lays it down that an appeal can be preferred against a capital sentence, how is it that in this Bill this right has not been provided for? It would be said that it can be reviewed, but the law of review is very clear. If we look into the law of review, we find that cases can only be reviewed when fresh material is brought to the notice of the court or on the face of it, there is any error of law. In these proceedings, unless any error of law is shown or any fresh material is brought on record, it cannot be reviewed. In a matter of this great importance, when there is a provision for a capital sentence, why should there not be a provision for appeals? There should be an appeal to a judicial committee consisting of members who are of the stature of judges. Why is it that the Government does not want to have a provision regarding appeals? What is the danger? If there is a right of appeal, if the judgment is wrong, then it is bound to be set aside but, if the judgment is right, nothing else happens. Where is the danger? What would the judges at this stage do? Therefore, in a case where there is a question of life and death, my submission is that a right of appeal should have been provided in the Bill.

Now, Sir, another thing that I want to bring to your notice is the provisions of clause 114. One point which has not been touched by the previous

[Kazi Karimuddin.] speakers is this. If there are points regarding the place of trial or separate trials or about any evidence, then the members of the court-martial would retire and have consultations with the trial judge advocate. Now, my submission is that there is no provision that along with the members of the court-martial and the trial judge advocate, the accused also would be allowed to go. Any consultation in a court of law, in the absence of the accused, and decisions arrived at in the absence of that accused, in my opinion, will be a great monstrosity on law. They retire, they consult together and then take a decision when the accused is not present and has not the right to object. Why should they retire at all? It is only a matter regarding the trials, it is only a matter regarding the law points and is not of a confidential nature at all. Had it been of a confidential nature, it could have been said that since the place where the trial is held is a public place, consultations should not be held in open court. You will see, Sir, clause 114(2) lays down:

> "Whenever in the course of a trial it appears desirable to the trial judge advocate that arguments and evidence as to the admissibility of evidence or arguments in support of an application for separate trials or on any other points of law should not be heard in the presence of the court, he may advise the president of the court accordingly and the president shall thereupon make an order for the court to retire or direct the trial judge advocate to hear the arguments in some other convenient place."

There is no provision here that the accused would be present at that time. If arguments are advanced in the absence of the accused, will it be said that this is a just procedure when the accused is absent, when arguments are being advanced and decisions are being taken? Therefore, my submission, Sir, is that sub-clause (2) of clause 114 should be deleted.

Next, I would like to invite the attention of the Defence Minister to •lause 46 which says:

> "Every person subject to naval law who is guilty of ill-treating any other person subject to such law, being his subordinate in rank or position, shall be punished with imprisonment for a term which may extend to seven years or such other punishment as is hereinafter mentioned."

Sir, I am open to correction, but nowhere has ill-treatment been defined. Even if it be an ordinary ill-treatment by a superior officer of his subordinate, it may make him liable to prosecution and the punishment prescribed is as much as seven years. Therefore, unless you define ill-treatment, it is very difficult now to convict a man on a vague allegation of ill-treatment, and the sentence prescribed may be 7 years or such other punishment as is mentioned. Therefore, my submission is that unless these acts are defined, —ill-treatment is too vague a term— such prosecution in a court of law will not be justifiable.

Then I come to clause 107. In that clause it is said that if the prosecutor wants to adduce fresh or additional evidence, then the prosecutor will apply and a copy of the summary of his evidence will be given to the trial judge advocate and to the accused. But it is not stated whether the court would be asked or as a matter of right the prosecutor will examine that witness. It is stated that a copy of the summary of the evidence will be given and the prosecutor will name the witness. But what is the use of this provision unless it is stated that the witness will be examined on permission by the court? The result will be that the prosecutor will be entitled to adduce evidence at any time and have additional evidence at any time. That will be a very great injustice. Probably this matter has been neglected or overlooked. It ought to be mentioned that with the permission of the court additional

evidence will be taken. This ha? not been mentioned here.

In clause 109 it has been laid down that evidence of witnesses will be recorded by a shorthand-writer. But there is no mention whether it will be recorded in full or in shorthand. And there is no provision that that depo sition will be signed and verified by the judge. It is said that the short hand-writer will read out the deposi tion. But where is the guarantee that that deposition is signed and remains the same, that there will be no interpolations. The shorthand-writer will read it. But the deposition recorded should be as it is clone in a criminal court or in a civil court and there should be certification by the judge that it is interpreted and admitted as correct. But in clause 109 there is no 'such mention.

Next, coming to clause 112, Sir, you will find that the members of the court-martial are entitled to view the place where the offence is committed. I do not understand that mere viewing a place has any significance, unless it is an inspection, unless an inspection note is made and it is kept on record. But there is absolutely nothing of that kind in clause 112. Therefore, my submission is that mere viewing the spot means nothing, unless it is to be inspected. The inspection note has to be made and kep; on record. Probably this phraseology has been copied from some other Act, without realising that unless there is inspection and an inspection note kept on record, the accused cannot use it.

Sir, I have already mentioned something about clause 114. Then I would like to refer to a patent defect in this Bill and that is in clause 117. This clause says:

> "When the court has considered the finding, the court shall be reassembled and the president shall inform the trial judge advocate in open court what is the finding of the court as ascertained in accordance with section 124."

Sir, there is a wrong use of the word "consider" in this clause. Judges retire and they reassemble after coming to a finding. The words to be used should have been—"When the court has arrived at a finding", and then the court shall reassemble and the president shall inform the trial judge advocate in open court what is the finding of the court. The word "finding" has been used towards the end, but in the beginning it has been stated—"When the court has considered the finding". It is not a consideration but the arriving at a finding. This is a patent defect. Maybe it is verbal, but I think this should be corrected. Otherwise this will be open to great misinterpretations when an occasion comes. A judge comes to a finding. That means he arrives at a finding. Therefore, my submission is that this patent defect in law should be corrected.

Next I come to clause 121 where the word "majority" is used. But the majority is not simple majority, but as laid down in clause 124. But there is no reference to clause 124 in clause 121 without which it will be meaningless.

My next submission relates to clause 143 where it is stated that when the court finds that the accused is insane, then the trial will be adjourned or a finding will be given that he had committed the act under insanity. My submission is that in the rules to be framed, the Department or the Ministry of Defence should make provision for obtaining medical opinion regarding the insanity of the accused.

Lastly I would submit that I have made some constructive suggestions particularly regarding clause 117. I submit that simply because this Bill has come from the Lok Sabha, these amendments should not be deferred. I hope the Defence Minister will be pleased to reconsider the entire matter in view of th$_e$ discussions which we have had here.

Thank you.

SHRI J. S. BISHT: Mr. Vice-Chairman, I have no hesitation in welcoming this Bill. It is a great improvement on the previous law that was in force before this Bill was brought before Parliament. There have been some basic misapprehensions with regard to the intent and purpose of this Bill and that is mainly responsible for the criticisms that have been levelled by most of my lawyer friends against certain provisions of this Bill. It must be realised that our Constitution itself has conceded that the fundamental rights cannot be left intact for those who enter the service of the Defence Forces. That is why it has been laid down that when they enter the Defence Services they will, owing to the requirements of the defence of the country and the security of the State abrogate those rights which ordinarily belong to every citizen of the republic of India. This omission on the part of my learned friends has landed them in all sorts of troubles, and if all the provisions that they have recommended are to be adopted, I do not understand what is the necessity for an Indian Army Act or an Indian Navy Act or an Indian Air Force Act. Then all the offences, as soon as they are detected, can be handed over to the criminal courts of the land to be dealt with under the ordinary Criminal Procedure. The very fact that that procedure is not suitable for the Defence Forces, either of this country or of any civilised country that I know of in the world, is proof positive that these forces require some special law and are to be governed by some special procedures in order to secure discipline in the armed forces. My hon. friends also forget that, in an army of, say, half a million people there may be hardly 15,000 officers. Well, these half a million people have been trained at very considerable expense and are in actual possession of all the deadly arms and ammunitions and lethal weapons, They have not said anything as to how these officers should handle the men in case of any trouble **from them, in case *ot*** infiltration **from** any opposition, how they **are** to maintain discipline in the midst of these people, more so in a branch of the force which is like the Navy. Nobody has shown that. The Navy has battle cruisers, destroyers or corvettes. They may be out in the sea hundreds of miles away, far away from the land, where no reinforcements are possible, and a few troublesome people may take it into their head to revolt, to put the officers to death, being in possession of the long range guns to threaten the cities. You will remember, Sir, that round about 1945 or 1946 there was some sort of a revolt in the Indian Navy and actually the officers were caught hold of and the guns were actually threatening Bombay city and it was threatened that Bombay will be bombarded if certain terms were not accepted. *(Interruption.)* It may be that later on better counsels prevailed but we should see what to do if the worst does happen, what would be the fate not only of the officers there but even of these big cities there if some disaffected people in some ship, they being armed with very deadly weapons, take it into their head to revolt against either the lawful authority of their officers or the lawful authority of the State, maybe under any pretext whatsoever. It is for these considerations of discipline, of safety of the Defence Services and the security of the State that special laws have to be enacted and are enacted, even in harsher terms in the totalitarian States, in all the civilised States that I know of, and regular courts-martial are held. In fact, sometimes when there is a grave emergency they hold what is called drum-head court-martial in which summary judgment is given within a matter of a few minutes because the safety of the force itself requires that such dangerous elements should be liquidated forthwith. In those dangerous conditions it is not for my lawyer friends to just go about these legalistic arguments as if we are dealing with a civilian criminal, a solitary figure who may be out there to murder somebody or **to** commit arson

or to commit a petty theft for his own benefit and the whole might of the State is against him. That is not so here. Here we are dealing with a group of people well trained and well armed, who may take it into their head sometimes to defy the lawful authority. It is to meet such extreme elements that such laws are made.

Now, Sir, I come to certain provisions about which grave objection has been taken. My hon. friend, Kazi Karimuddin, took an objection. I may also here refer to certain proceedings of the Joint Select Committee because they are herein printed and published and have been given to the Members of Parliament. My hon. friend, Kazi Karimuddin, for instance, took objection to certain provisions of clause 46. He referred to the portion, "Every person subject to naval law who is guilty of ill-treating any other person" and said that "ill-treatment" was not defined. If he were so very careful as to go into these little details he might have as well gone through clauses 53 and 54 wherein many other words like this occur, which have not been defined. For example, in clause 53 occurs the word, 'uncleanness' which is not defined, and again the words, 'any indecent act' which has not been defined. Then in clause 54 it appears, "Every officer subject to naval law who is guilty of cruelty" etc. Again it is not defined whether it is physical cruelty or mental cruelty or spiritual cruelty or what sort of crime is it that may amount to this cruelty occurring here. Again, in the same clause in sub-clause (2) it appears: "Every person subject to naval law who is guilty of any scandalous or fraudulent conduct or of any conduct unbecoming the character of an officer" etc. Now this applies to an officer, the unbecoming character of an officer.

Now, these are things that we cannot *go* into because, for instance, if you look at page 95 of this Select Committee Report, Sir, you will see that in para. 6 they say that clauses 46 **and** 47 were adopted without any amendment. It is quite evident that these things must have been gone through in very great detail by all the Members of the Joint Select Committee and they were satisfied that there was nothing to report about them. Again, with regard to clauses 51 to 54—I say I was also referring to clauses 53 and 54—again they say that these clauses were adopted without any amendment. So, it is quite evident that no grave objection was taken to them and it was because they were satisfied for reasons that must have been explained to them by the Government or their spokesmen at the time and in confidence that these were necessary and that they need not go into them. Now, Sir, they come mostly to one particular provision to which attention was invited by the hon. Dr. Kunzru and then by my learned friend, Diwan Chaman Lall, and that was with regard to clause 114. I was again looking to the proceedings of the Select Committee, and again at page 104 of their Report I find that clauses 101 to 123 were adopted without any amendment. So, what am I to say with regard to the Members of the Select Committee who allowed these provisions to be adopted without any particular objection or any Note of Dissent on this particular point, so far as I can remember? What I find my hon. friends have missed \s at page 40, which is a very wholesome provision here in clause 102, a thing which is not happening even in the ordinary criminal court. It is here. If you will look to clause 102 you will find that "The following provisions shall apply to the disposal of objections raised by the prosecutor as well as the accused", namely, that before a court-martial begins to function it is the privilege both of the prosecution and also of the accused to raise an objection with regard to the impartiality of any member of the court-martial, and this thing does not ordinarily happen in an ordinary criminal court. Before a magistrate they don't say: I question the impartiality of this magistrate or of this Sessions Judge or of this Bench of the

[Shri J. S. Bisht.] High Court. But here very great care has been taken at the very source, when the court-martial is constituted. It is this that any member may be objected to on the ground that something affects his competency to act as an impartial judge. Any accused person, if he has got any debt with, regard to the competency or as to the impartiality of any judge, he may raise an objection. And th$_e$ provision goes on to say that "objections to members shall be decided separately, those to the officer lowest in rank being taken first: provided that if the objection is to the president, such objection shall be decided first and all the other members whether objected to or not shall vote as to the disposal of the objection". Then says sub-clause (c) of the same clause: "on an objection being allowed by one-half or more of the officers entitled to decide the objection, the member objected to shall at once retire and his place shall be filled up before an objection against another member is taken up." Then comes sub-clause (d) "should the president be objected to and the objection be allowed, the court shall adjourn until a new president has been appointed by the convening authority or by the officer empowered in this behalf by the convening authority;" and again sub-clause (e): "should a member be objected to on the ground of being summoned as a witness, and should it be found that the objection has been made in good faith and that the officer is to give evidence as to facts and not merely as to character, the objection shall be allowed." You will thus see that very great care has been taken to see that the officers who constitute the court-martial are people who are acceptable both to the prosecution and to the accused and that there is no manner of doubt in the mind either of the prosecutor or of the accused as to the impartiality of the officers. Once you have accepted that point then these little objections that are now being raised pale into insignificance. When we accept you as the judge, we accept your bona *fides,* we accept you as an impartial person who will arbitrate equitably and with a good conscience. What remains thereafter? All these petty, little objections can be raised only when there is some doubt as to the *bona fides* of the judges or the magistrates or the court that is constituted or when we know that a small point may be twisted against us. We have got no such objection or doubt in our mind when we fully accept the bona *fides* of that man as we do in the case of a court of arbitration. You will remember, Sir, that under the ordinary civil law, in regard to a matter—of whatever complexity it may be, however contentious it may be and whatever its value may be—once we refer a matter to arbitration, we say that we shall abide by its verdict whatever it may be and even the ordinary law of evidence does not apply. The court may accept even an irrelevant evidence. In this case, there is a trial judge advocate who will at least rule out all those cases that are all irrelevant. Therefore, even in the ordinary civil court, when we accept a person as a man on whom we have full confidence, about whose bo?ia fides we have no doubt, then all these small objections and legalities are of no significance at all. In view of these facts, I submit that the objections that are being raised with regard to clause 114 are not of much value. I understand that this matter has been specially enquired into by the Defence Department. Probably, it has been the subject of a certain enquiry by some special committee appointed for the purpose. The Deputy Defence Minister will clarify that point iater on, that it was not with a light heart that the Ministry adopted this particular clause and that it was after great care and caution and after having examined all these points that this matter was adopted.

Now, there is another point to which much objection has been taken and it is this, that no appeal has been provided here and that we must allow some sort of appeal to a Supreme Court judge. I feel very much against introducing such a provision in tnis

Bill, because once you allow an appeal to the Supreme Court, you know the delay thai it takes; there is litigation and delay and nothing is so harmful for the maintenance of discipline in the Armed Forces than this habit of litigation, especially when you give them an idea that there is some authority outside the Officer cadre or the Armed Forces' top-ranking authority itself to which they would like to look forward for getting away from the punishment which they may be deserving for acts which they should not have committed. And I think, that is highly undesirable. The highest authority is the Chief of the Naval Staff. In fact, the Government has taken very great care in case of death penalty and they have laid down that the matter shall go to the Central Government for confirmation. No death sentence will be executed unless it is confirmed by the Central Government itself and that is encugh. So far as this provision is concerned, I think the Armed Forces of all ranks, whether they are private soldiers or seamen or airmen or they are officers of the ranks of General or Lieutenant-General, should know that the highest authority that can exercise these powers is the machinery within the Armed Forces itself and that there should be no opening for intrigues or for grievance or for going about from place to place to civil authorities, for raising questions in Parliament or any other authorities so that they may get away from their offences.

Another point that has been raised is about the appointment of the Judge-Advocate General and of the trial judge advocate and that all the powers vest in the Government. That is true that the power vests in the Government. But I do not know in whom else it should vest. Clause 168 says:

> "(1) There shall be appointed by the Central Government a Judge-Advocate General of the Navy and as many judge advocates in the department of the Judge-Advccate General of the Navy as the Central Government may deem necessary.
>
> (2) Out of the judge advocates so appointed, the Central Government may designate any one to be the Deputy Judge-Advocate General of the Navy."

Well, to that, all I can submit is that the power must, of course, vest in the Central Government. The Supreme Court judge is appointed by the Central Government. Even the High Court judge is appointed by the Central Government. You cannot get away from the Central Government. But that does not in any way diminish the independence of the Judge-Advocate General. Merely because he is appointed by the Central Government, it does not mean that he will be partial to the authorities in the Navy or the Army or the Air Force, as the case may be. The Central Government is interested in having justice done to the soldiers, or seamen or airmen. But, I would certainly recommend to the Deputy Minister of Defence an act which can be done by mere executive action without affecting the law in any manner. You are now appointing the judges. Instead of the appointing authority being the Ministry of Defence, let it be some other Ministry—the Ministry of Home Affairs or the Ministry of Law—the Ministry which is responsible for the Judicial Department. I do not know who appoints the High Court judges, whether it is the Ministry of Law or the Ministry of Home Affairs, or it is both the Ministries together. Whatever it may be, at any rate, let it not be the Ministry of Defence, so that even that little doubt need not be there and it should be announced after this Act comes into force that appointments are being made on the recommendations of such and such Ministry and not the Ministry of Defence. Therefore, what little suspicion there is with regard to the fact that the trial judge advocate will be a sort of partial man will go.

There has been some confusion also with regard to the words 'judge advocate', 'trial judge advocate' and 'Judge-Advocate General' and all that sort of things. Unfortunately, in these Acts, whether it is the Army Act or

[Shri J. S. Bisht]

the Air Force Act or the Navy Act, this particular nomenclature has been retained and this is mainly respon sible for creating this confusion, because an advocate is an advocate and a judge is a judge ordinarily in the civil and criminal courts of the land. The words 'judge advocate' and 'trial judge advocate' have created this sort of confusion. Some hon. Members think that the trial judge advocate is a sort of prosecutor. Actually, he is not a prosecutor. The prosecutor is a different person. He is debarred from sitting in the court-martial at all. The judge advocate is a separate person; he is a separate entity altogether. The trial judge advocate is more or less like the sessions judge, in a trial by jury. It is more or less analogous; it is like a criminal case in which the sessions judge is the final authority with regard to points of law and the jury is the Anal authority with regard to points of fact. The officers there are more or less like a jury which gives its verdict on points of fact, whereas the trial judge advocate is like a sessions judge who gives his verdict on a question of law. After all, these officers are not lawyers, they do not know law and courts-martial are constituted throughout the land with all sorts of officers—junior officers, medium-grade officers and senior officers, according to the type of the work that may be involved. This trial judge advocate, therefore, has nothing to do with the prosecution; he is not in any way bound by the prosecution and is not interested in the prosecution at all. What he is interested in is to see that justice is done both for the State—for the department of the Navy or the Army or the Air Force, as the case may be —and for the accused. The Judge Advocate General is a person who is analogous to a High Court and that is why every case comes in review to him and it is on his advice that the Government acts.

Then, Sir, there have been certain points raised with regard to questions on clause 9, with regard to appointment. I am sorry to say that a sort of legalistic argument has been brought into it. We must look to the practical side of the life. Life in the Navy is very hard life and the Navy, or a ship in the Navy, may be out in the sea for months together. Anyone who has seen a ship must know that the accommodation is very tight there, even for a man. Now, to ask that young men and young women should be there together for months together, out in the sea, that is not a very practical approach to a practical problem. That is not desirable. We do not want scandals to happen. We do not want undesirable things to happen. We do not want indiscipline in the naval forces and it is not desirable that such things should be allowed there from a purely practical point of view. Apart from it, any such branches of the Navy as can take women, they will be allowed to take women because the provision is clear there. For instance, a ship which is purely Red Cross for taking wounded people, where there are a lot of doctors and nurses, all that sort of thing, probably women would be taken there. There are shore establishments where also it is quite possible to keep them quite safely and they would certainly be taken in. There is no bar about that. But to ask to take them in fighting ships, is not a desirable thing from any point of view and I think, the Constitution gives ample power to Parliament to make restrictions on any of these points. I, therefore, submit that there is not much in what has been said, in the objections that have been raised here. The law as codified now is a very great improvement on the antiquated law that used to govern so far and if future experience, experience in any future war, shows that some desirable change is necessary, that would be introduced later on because we should not lightly from a purely academic point of view make changes in laws that affect, as I said before, the security of the State, or discipline of the Armed Forces, It is only a war, an actual war and things that happen

in a war, that can suggest any changes in the law. Laws are not to be changed lightly unless circumstances tell that this is necessary. With these words I support the Bill.

SHRI B. M. GUPTE (Mysore): Sir, it is a matter of gratification that the Bill has been vastly improved in the Select Committee but its progress stopped there and it is rather a curious phenomenon that no amendment, not even the slightest change of a co?ma, was accomplished in the course of the debate in the Lok Sabha.

This is a Bill consisting of about 200 clauses, many of them very controversial and when even the slightest amendment is not accepted, it becomes rather a curious and surprising phenomenon. Perhaps, it might be due to the very excellent work of the Joint Select Committee or perhaps it might be due to the non-responsive attitude of the Government. I do not wish to go into the matter and in defence of Government I might admit that the Government did their best in meeting the viewpoints of the opposition in the Select Committee and therefore, they said thus far and no further and, therefore, they made no concession in the Lok Sabha. But anyhow the result is that many improvements which ought to have been made, which I hold are very important, have remained to be done and if it is possible at this stage, I would earnestly request the Minister to look into the matter. I know it is a very late stage and generally the Government is not inclined to accept any amendment in the Rajya Sabha unless the Bill is introduced in the Rajya Sabha but even though it is very late, if the Minister takes into consideration some of the points which had been urjied in the Lok Sabha and al'o very strongly urged here, if he will reconsider the matter, if not immediately at least after some time, as suggested by Diwan Chaman Lall he may think of bringing in a more comprehensive and more liberal Bill.

The attitude of the Government was criticised and in some respects I do hold that it was rightly criticised that the approach of the Government was contradictory and unsound. In some matters they copied verbatim the provisions of the United Kingdom Naval Act but in some important matters like the case of appeals, they refused to accept the modern improvements made in all these democratic countries like the United Kingdom, Australia, Canada and the United States. Certainly they have all provided for appeals by special legislation. They have wider experience than we have of naval affairs and I think it would have been better if we had given better consideration to these provisions made by these countries. Then on other points also the opposition has criticised and many other members also have criticised the severity of the sentences for naval offences. No doubt they are very severe. At least to those of us who are accustomed to the standard of the Indian Penal Code, these punishments are very severe, but in the interest of discipline that might be necessary. I do not wish to quarrel with them at this stage but even if they are severe, their severity might have been reduced if the appeal has been allowed. Personally, I am not in favour of creating special appellate courts. I personally think that the Constitution has created one integrated judicial structure from top to bottom. In the interests of fostering unity of the country they devised one integrated judiciary and the key-stone of the judicial structure is the Supreme Court. So, we should not have special tribunal for special subjects or special sections of people, and, therefore, there should be an appeal i not only to a specially created appellate tribunal but to the High Court or to the Supreme Court. Because of a large number of cases being delayed in the ordinary courts at the lower level, special appellate courts might be provided for but ultimately we should not disturb the position the Supreme Court has got in the Constitution and the position the Supreme Court is having in the minds and ; hearts of the people. The Supreme

[Shri B. M. Gupte.] Court has come to occupy a very important place in the hearts and minds of the ordinary citizens. The ordinary citizen is looking to it as the final dispenser of justice, as the final protector of our life and liberty. I do suppose that that kind of sentiment must be fostered and must ba encouraged. It is no use anyway divesting the jurisdiction of the Supreme Court merely for the sake of prompt disposal and therefore, I submit, that if the Minister is not able to accpt all sorts oi appeals at all stages, at least I would make one recommendation and very strongly urge him to accept that in the case of death penalty. I do not see why a person should be penalised simply because he entered the Navy and he should be deprived of the protection which the Supreme Court gives to all other citizens. Therefore, even when the extreme penalty of death is imposed upon them, I do not see why they should be deprived of that protection and, therefore, I would submit, Sir, that at least in the case of death penalty, the final appeal even after the confirmation by the Central Government, should lie to the Supreme Court. This is one humble suggestion which - I would urge upon the Minister with all the earnestness at my command so that at least some of the defects of the Bill might be remedied.

Then, Sir, with regard to civil offences, I am not for administrative courts. As I said, just now, for the purpose of fostering unity of the country we have devised an integrated sy.-tem of judiciary, common citizenship etc. So I am not for administrative courts, separate courts for navy, separate courts for army, separate courts for certain officials. I am not in favour of them at all. There should be one system. One integrated system must be maintained. And, therefore, I do not see why the civil offences should not be tried by ordinary courts. These courts-martial and discipline courts may try tha naval offences. But there is no reason why they should try ordinary civil offences. Therefore, Sir, my second suggestion is that this jurisdiction of the ordinary courts should be restored. With regard to grave offences like murder and rape it is provided that they shall be tried by ordinary courts only if they are committed against non-naval personnel. They should be left to the charge of the ordinary courts even if they are committed against naval personnel. They are civil offences and very grave offences, and the jurisdiction of the ordinary courts should not be ousted at all. So that is my second submission.

Then, Sir, I do not want to go Into other details. But after this I shall point out certain provisions which I think are not properly drafted or properly framed. I am, of course, speaking subject to correction. But in my opinion they do not reflect what is meant by Government or what is meant by the framers of this Bill. I refer to clause 78. As far as I can judge, I think the compulsory jurisdiction of the naval courts is there with regard to naval offences, and with regard to civil offences it is only optional. But as far as the wording goes, the word "may" has been used with regard to both. All the naval offences and civil offences may be tried by the naval courts. That means even with regard to naval offences the jurisdiction is optional. Of course, I am speaking subject to correction. But I do not think that that is intended. What is intended is that the naval offence* come under the compulsory jurisdiction of the naval courts while the civil offences come under their optional jurisdiction. And this optional jurisdiction is going to cause confusion and cause conflict. "Well, I do not see necessary provisions made here. If it is going to be an optional jurisdiction, who is going to decide that those offences shall be tried by the naval courts or by the •adinary courts? I do not see any nrorisinn to that effect. Suppose a man is arrested for a civil offence by the police, and if the court-martial

thinks that the matter ought to come to it, are the police going to surrender the accused? There is no provision for calling upon the police to surrender such an accused, nor is any provision laid down as to who is to decide . . .

SHRI K. RAGHURAMAIAH: I would refer him to section 549 of the Criminal Procedure Code.

SHRI B. M. GUPTE: Anyway, Sir, it is going to cause confusion and conflict. I therefore submit that this optional jurisdiction should be clone •away with and the jurisdiction of the ordinary criminal courts should be restored and the compulsory jurisdiction of the naval courts might be confined only to the naval offences.

Ti?n, Sir, there is another point of dcubt. I refer to clause 160. There it is said that the Judge Advocate General shall review all the proceedings unless in the prescribed period an application for review is made by the aggrieved person. If every proceeding is to be reviewed by him, I do not see why this provision about making an application is laid down at all. Irrespective of the fact whether a petition is received or not, if the Judge Advocate General has to review the case, then there is no point at all in providing for a petition. Personally, I think, that is not meant. What is really meant is this that the Judge Advocate General shall have the right to review, if he so chooses •on his initiative or on the motion of the person aggrieved. But wha~ is ordinarily a right in other provisions of this nature has been converted into a duty that he shall review every proceeding, whether it is small or great. If that is the case, Sir, I do not see at all why that provision is made that the aggrieved party should make a petition in the prescribed period. I, therefore, think that the wording is somewhat faulty. It •ought to have been like this that he shall have the right to review the proceeding on his own initiative or he shall review it when an aggrieved person makes a petition to that effect. Anyhow, Sir, it is a misnomer to call the Judge Advocate General's review as a judicial review. It is not a judicial review at all. It cannot be a judicial review. The Judge Advocate General is part and parcel of the administration of the Navy and he is in daily contact with the officers. According to the provisions of clauses 160 and 161 he is not bound to give a personal hearing to the accused, and therefore, it cannot be said that his review is a judicial review. It is a review no doubt, but I do not attach much importance to it, and I am not prepared to call it a judicial review. Anyhow, whether it is a judicial review -or an administrative review, I do not think it is proper to provide that each and every petty case shall be reviewed by him. And perhaps that is not intended also. But if that is the intention, then I have no objection. But otherwise the wording should be changed. Therefore, Sir, I would request the hon. Minister to look into the matter.

Finally, Sir, I would make an appeal before I conclude to all those who will concern with this measure and whose duty it will be to administer this enactment, to all the officers of the Navy, the Chief of the Staff and even the Central Government and the Defence Minister. No doubt, very severe punishments have been laid down in the interest of discipline, but administration must rely less and less upon the severity of the sentence. They must creat conditions which foster a sense of duty, a spirit of co-operation. They must administer the Act not in a spirit of iron rule, but in a spirit of sympathy, understanding and comradeship so that our naval personnel will do their duty as a patriotic act and with enthusiasm and not with the fear of punishment. I submit, Sir, that if that is done, I am quite sure the future of our Navy is going to be very bright. With these few words, Sir, I support the Bill.

श्री शीलभद्र याजी : माननीय वाइस चेयरमैन महोदय, बहुत आश्चय की बात है कि जो हमारी महिलाएं हैं, जिनकी तादाद हिन्दुस्तान में, मैं समझता हूं कि हमारी तादाद के बराबर है और जो लगभग १८ करोड़ हैं, उनको भारतीय संविधान के रहते हुये इस नेवी बिल मे नेवी में भर्ती होने से वंचित किया जा रहा है । अभी हमारे पूर्व वक्ता श्री काज़ी करीमुद्दीन ने कहा कि यदि सुप्रीम कोर्ट में यह केस जायेगा तो यह जो नेवी बिल है वह अल्ट्रा वायरीस हो जायेगा, इसमें कोई सन्देह तथा आश्चर्य की बात नहीं है। इसलिए जो हम पार्लियामेंट के मेम्बर हैं उनको बहुत सोच समझकर इस बिल को पास करना चाहिये । यदि इस तरह को बात नहीं होती है तो सारे हिन्दुस्तान में जो हमारी बहनें हैं उनके बीच में एक विक्षोभ होगा । जैसा कि आपने देखा कि तुलसीदास जी ने रामायण में एक स्थान में यह लिख दिया था कि :

ढोल, गंवार, शूद्र, पशु नारी,
ये सब ताड़न के अधिकारी ।

लेकिन उसका नतीजा क्या हुआ ? उस रामायण की कापियां जल रही हैं । हमारे कालेज की जो लड़कियां हैं उन्होंने कई जगह रामायण की अर्थी बनाकर उसको जलाया । नर्वदा के किनारे जबलपुर में और कई जगह मैंने देखा कि उसकी अर्थी बन रही है और उसको जलाया जा रहा है । क्या आप चाहते हैं कि जो आपका नेवी ऐक्ट पास हो उसकी भी कापियां इसी प्रकार जलें । डिप्टी डिफेंस मिनिस्टर साहब चले गये हैं । उन्हें मेरी बातें सुनने में कड़वी मालूम पड़ रही हैं । हमारे बिष्ट जी ने कहा कि यदि औरतों को नेवी में लिया जाता है तो कोई अप्रिय तथा अवांछनीय घटना हो सकती है ।

जब एक मर्द शादी के बाद सर्विस में जा सकता है तो क्या औरतें शादी के बाद सर्विस में नहीं घुस सकती हैं ? यह बात मेरी समझ में नहीं आ रही है । काजी करीमुद्दीन साहब जो यह कहते हैं कि शादी होने के बाद औरतों को नेवी में नहीं लेना चाहिये तो मैं यह नहीं समझता कि शादी होने के बाद सेक्स बंद हो जाता है । इस प्रसंग में वे कांस्टिट्यूशन के सेक्स का हवाला देते हुए कहते हैं कि यह बात आगे चल कर नल एंड वौइड हो जायेगी क्योंकि यह कांस्टिट्यूशन के खिलाफ है । तो क्या शादीशुदा मर्द ही नेवी में जा सकता है, औरतें नहीं जा सकती हैं ? चाहे शादीशुदा हो, चाहे शादीशुदा नहीं हो, सभी औरतों को नेवी में जाने का मौका देना चाहिये । अभी हमारे कुछ मित्रों ने ऐसा भी कहा कि ऐसा कहीं किसी देश में नहीं होता है । मैं जानता हूं कि रशिया में है, जापान में है और करीब करीब सब देशों में है कि नेवी में लड़कियां जाती हैं और बहुत अच्छी तरह से काम करती हैं । मैं यह समझता हूं कि इस सम्बन्ध में जो मेरा ज्ञान है, वह गलत नहीं है । कुछ लोग विहेव कर रहे हैं, मालूम पड़ता है यह बात गलत है, लेकिन मैं जानता हूं यह बात सही है । इसलिए हमें अपनी बहिनों को नेवी में जाने की पूरी सुविधा देनी चाहिये, नहीं तो यह बात संविधान के खिलाफ पड़ेगी । हो सकता है कि इसके लिये हमें जौइंट सेशन करना पड़े, इसमें दिक्कत हो सकती है । लेकिन यदि हमारे पार्लियामेंट के मेम्बर अनजाने कुछ ऐसा कानून बनाते हैं जो संविधान के खिलाफ पड़ता है तो मैं समझता हूं कि हम लोगों को अभी खूब सोच समझ कर इसको बनाना चाहिये ।

दूसरी बात इसमें अपील के बारे में है । मैं समझता हूं, जैसा कि मेरे एक पूर्व वक्ता ने बताया, कि और मामलों में तो नहीं लेकिन यदि कुछ दूसरे अपराधों पर मृत्यु-दंड दिया जाये तो सुप्रीम कोर्ट में अपील करने का अधिकार होना चाहिये और यदि ऐसा नहीं होता तो मैं समझता हूं कि दंडित व्यक्तियों के साथ भी अन्याय होता है ।

इसके साथ हमारे एक पूर्व वक्ता ने बताया कि १९४६ में बम्बई में हमारे इंडियन नेवी में एक महान् विप्लव हुआ, उसी तरह से आर्मी के अन्दर क्रान्ति हुई और यदि यह न हुआ होता और यदि आजाद हिन्द फौज नहीं बनती तो आज आजादी नहीं होती, अंगरेज यहां से नहीं जाते । लेकिन आजादी के बाद जब हमारी सरकार ने समाजवादी व्यवस्था की घोषणा की है, तो अब नेवी में या एयर फोर्स में या आर्म्ड फोर्सेज में रिवोल्यूशन या क्रांति की जरूरत नहीं है । हां, जब कोई राष्ट्र गुलाम होता है तब उसका धर्म हो जाता है, उसका फर्ज हो जाता है कि वह अपनी स्वाधीनता के लिए विप्लव करे । यदि अंगरेजों के वक्त हमारे सैनिकों ने, आजाद हिन्द फौज के ५०,००० लोगों ने, रिवोल्यूशन किया, नेवी में किया या एयर फोर्स में किया तो वह उनका धर्म था । लेकिन जिस चीज का माननीय मित्र ने हवाला दिया है वह बेमौके की शहनाई है, उनको आज की स्थिति से उसकी तुलना नहीं करनी चाहिये थी ।

इस समय हमारे डिफेन्स मिनिस्टर महोदय यहां नहीं हैं, वे कहीं चले गये हैं । मैं उनसे यह चाहूंगा कि यदि इन संशोधनों के लिये जौइंट सेशन की भी नौबत आये तो उसे करना चाहिये । मैं समझता हूं कि यह जो संविधान के खिलाफ काम हो रहा है उसके लिए हमारे आनरेबुल मेम्बर देखें कि वह काम संविधान के मुताबिक हो ।

इन शब्दों के साथ मैं उम्मीद करता हूं कि यह जो संविधान के खिलाफ काम हो रहा है कि हमारी बहिनों को नेवी में जाने से वंचित किया जा रहा है, तो उससे संबंधित धारा में अवश्य तरमीम होनी चाहिये, और जिनको मृत्यु-दंड मिलता है उनको सुप्रीम कोर्ट में अपील के लिये जाने की इजाजत मिलनी चाहिये, इस बात का उनको अधिकार देना चाहिये । इन शब्दों के साथ मैं इस बिल का समर्थन करता हूं

SHRI SANTOSH KUMAR BASU: Mr. Vice-Chairman, I have been listening to this debate with considerable interest, particularly in view of the fact that the hon. Members of this House have gone very deeply into this matter clause by clause and have pointed out several items in this Bill which, according to them, deserve amendment or alteration. In the other place, Sir, I do not know if the Bill has passed through scrutiny of such an intensive character. Senior Members of this House have castigated different provisions of the Bill and have come to the conclusion that this Bill requires thorough overhauling in many respects. Unfortunately, I cannot go so far with them. It will not do for us to judge this Bill by an application of standards which are justifiable in civil life to the extremely special conditions prevailing in the Navy. Most of the criticisms which have been advanced have proceeded, in my submission, from that angle of vision.

Now, taking the provision, one after the other as far as possible, which have come in for considerable criticism at the hands of the hon. Members, I find, Sir, that the criticism of the provision imposing a sort of ban upon the admission of women into the naval services has over-looked a very important aspect. I find on a reference to clause 9 that it provides that no person who is not a citizen of India shall be eligible for appointment or enrolment in the Indian Navy or the Indian Naval Reserve Forces except with the consent of the Central Government. There is then the proviso and there is the sub-clause (2) which says that no woman shall be eligible for appointment or enrolment in the Indian Navy or the Indian Naval Reserve Forces except in such department, branch or other body forrrt-ing part thereof or attached thereto ! and subject to such conditions as the Central Government may by notification in the official gazette specify in this behalf. I invite your particular ' attention, Sir, to the nature of the

[Shri Santosh Kumar Basu.J ban which has been imposed. No woman shall be eligible for appointment or enrolment in the Indian Navy or the Indian Naval Reserve Forces. Now, that does not exhaust the entire naval cadre because, when we turn to clause 5, we find that the Central Government may raise and maintain a regular naval force and also reserve and auxiliary naval forces.

[MR. DEPUTY CHAIRMAN in the Chair]

I do not know, Sir, whether I am correct in my interpretation of clause 5 when I say that the Central Government may raise three kinds of naval forces, a regular naval force, a reserve naval force and an auxiliary naval force. So far as the ban under clause 9 is concerned, it is confined only to two kinds of naval forces, the naval force and the naval reserve force. It does not put any ban upon women being recruited to the auxiliary naval force. That being the position, I would submit, Sir, that the Constitution and its relevant provisions will not in any way stand against the provision made in subclause (2) of clause 9 because the auxiliary naval force can still have, within its ambit, women who are citizens of India. If that interpretation holds good—and I submit, on a plain reading of these two clauses, there is nothing against this interpretation—then the so called ban which is supposed to be of an absolute character does not really appear to have been imposed by the provisions of clause 9. I take it, Sir, that the Government will agree to this interpretation that there can be an auxiliary naval force consisting of women who are citizens of India and taking my stand upon that interpretation, I would most strongly urge the Government to set up immediately with the passing of this Bill, an auxiliary naval force for women of this country. I can understand, Sir, the hesitation on the part of the Government to recruit women in the ordinary naval forces straightway. It might require some development of our Navy which is yet in its teens before we can agree to recruit women to the naval cadre in the fullest sense of the term. But so far as the auxiliary naval forces are concerned, I think the Government should take into their serious consideration this matter and they should take immediate steps to organise such an auxiliary force. We have got a coastline extending over more than 3,500 miles. We do not know what the future has in store for us so far as our defences are concerned. We do not know that in the distant future it will not be necessary for us to set up a close and earnest vigil all along our coastline. God forbid that such circumstances should ever come, but under such circumstances, it may be necessary for us to fall back upon the resources to be built by the womanhood cf India for the purpose of effecting and maintaining the closest vigil upon our coastlines. From that point of view, I would most earnestly ask the Ministry and the Government to constitute and set up immediately an auxiliary naval force, because the provisions in this Bill will not stand in their way.

Next, I come to clause 31 about which my esteemed and hon. friend Dr. Kunzru has so much to say, and on that I have got a few comments to offer. Dr. Kunzru was extremely annoyed at the provision in the Bill which provides that the Government should come between the court and the decree holder and refuse to implement the provisions or the directions in the decree or order so far as the liability of the seaman for maintenance of his wife and children is concerned. I submit that if we scrutinise the provisions of this Bill, they do not do anything of that kind. So far as sub-clause (1) of clause 31 is concerned, it provides for an absolute ban against the execution and enforcement of any decree or order against person, pay, arms, ammunition, equipments, instruments or clothing, of a person subject to the naval law. After laying down that genera[1] provision in sub-clause (1)

there is a *non obstante* provision in sub-clause (2) which makes an exception and says:

> "Notwithstanding anything contained in sub-section (1),—
>
> '(a) where it appears to the satisfaction of the Central Government or the Chief of the Naval Staff or the prescribed authority that a person subject to naval law has without reasonable cause deserted or left in destitute circumstances his wife or any legitimate child'
>
> '(b) where any decree or order is passed under any law against a person who is, or subsequently becomes, subject to naval law for the maintenanee of his wife or his legitimate or illegitimate children' ".

and so on,

> "the Central Government or the Chief of the Naval Staff or the prescribed authority may direct a portion of the pay of the person so subject to naval law to be deducted from such pay and appropriated in the prescribed manner."

Therefore, the absolute ban against the execution against the pay of an officer or a seaman, which was laid down in sub-clause (1) is departed from and practically given the go by in sub-section (2), and provided that the amount is to be determined by the naval authorities. It is laid down:

> "the amount deducted shall not exceed the amount fixed by the decree or order (if any) and shall not be at a higher rate than the rate fixed by regulations made under this Act in this behalf."

Therefore, these other considerations which are to be taken into account under the regulations also have to be considered in fixing the amount to be deducted. To that extent there is deviation from the absolute ban contained in sub-section (1). Therefore, I would submit that these other considerations which are to be applied in the case of a seaman necessarily arise because of the special nature of his appointment. The court may impose any amount as the dues of the decree holder, but it is only reasonable and proper that the naval authorities should take into consideration according to the regulations made by them in the Act as to what should be the amount in a particular case.

Then again, you will find it mentioned in the proviso that unless the naval personnel has had a reasonable opportunity of appearing or has actually appeared either in person or through a duly appointed legal practitioner to defend the case, no such order shall be made by the naval authority. Why? It is for this reason that such considerations will have to be taken into account by the naval authorities. There may be decrees or orders obtained in a civil court behind the back of the naval personnel, when he is away and is abroad. They should not be countenanced by the naval authority. It is from this point of view that special consideration arises in the case of a naval personnel.

Next, I come to clause 106 to which attention has been drawn by my hon. friend Diwan Chaman Lall in a very eloquent speech, in which he dealt with the procedure which has been laid down for proceedings in court-martial. My hon. friend Diwan Chaman Lall said that these provisions have been very loosely worded and a considerable portion of his speech was directed against the competency and capacity of the draftsmen concerned. There were other speakers also who talked in that strain. Well, I have not made such a close study of the provisions in this Bill as has apparently been made by my hon. friend Diwan Chaman Lall who on his own statement has got much experience of these cases before courts-martial. But the item that he has selected does not, in my submission, support the strong

LShri Santosh Kumar Basu.] language that he has used. He has referred to clause 106, sub-clause (2) which lays down this:

> "The prosecute- shall open his case by readi/~T che circumstantial letter prepared in accordance with the regulations made under this Act,"

Diwan Chaman Lall has commented with great vigour and asked, what is a circumstantial letter? It is not denned in the Act. Nobody knows the nature of it. It has apparently no dictionary meaning to guide the court-martial. But I may point out that the words "circumstantial letter" are immediately followed by the words "prepared in accordance with the regulation made under this Act." Apparently the regulations will make ample provisions as to the nature and content of the circumstantial letter. Therefore, Sir, taking this "circumstantial letter" out of that context would not, in my submission, justify the scathing criticism which has been advanced against the draftsmen responsible for this Bill.

Then again, Sir, coming to the provisions in clause 114, which has been criticised by some of my hon. friends, notably by my esteemed and honourable friend Dr. Kunzru, whose weight of authority in this House is acknowledged by everyone, particularly his experience and knowledge of matters relating to the armed forces, and to whose comments and criticisms it is my privilege to listen to with the utmost respect, well, he has drawn attention to the provisions of this clause and has criticised those provisions because, according to him, they have put everything topsy-turvy, to use his own words. In clause 114, sub-clause (1) this provision has been made, "At all trials by courts-martial it is the duty of the trial judge advocate to decide all questions of law arising in the course of the trial, and specially all questions as to the relevancy of facts which it is proposed to prove and the admissibility of evidence or the propriety of the questions asked by or on behalf of the parties; and in his discretion to prevent the production of inadmissible evidence whether it is or is not objected to by the parties."

Now, Sir, generalh speaking, this is exactly what i. /udge in a civil court is expected to do and is required to do with reference to the jury, civil court in the sense that it is a non-military and non-naval court but which is really a criminal court under our Criminal Procedure Code, and these are exactly the duties of the jury which are defined in the relevant section of the Criminal Procedure Code.

SHRI K. RAGHURAMAIAH: Section 297.

SHRI SANTOSH KUMAR BASU: Section 297. Now, Sir, let us not forget that although the appellation "court" is applied to these military officers and their president, they are in effect a jury and nothing more than that, and tate judge advocate, although he is called a judge and an advocate, he is nothing really but a judge. That exactly conforms to the pattern set under the Criminal Procedure Code and under the criminal law all over the civilised world where a particular type of jurisprudence prevails. It is the duty of the judge advocate. In spite of the special appellation he gets under the naval law, he really performs the functions of a judge *vis-avis* the court which is really a body of jurors. Now, this sub-clause 114(1) provides that all questions of law, all questions of relevancy of evidence and its admissibility will be decided by the judge advocate, and it is because he performs the functions of a judge and it is his legitimate jurisdiction to guide these lay military officers, lay not in military affairs and in military rules, but lay, I may say, in the matter of legality of evidence and such other matters—we have already provided in this Bill that the provisions of the Indian Evidence Act will apply—and naturally they are not

expected to study the intricacies of] the Indian law of evidence. It is for that reason that they have got to be guided and they have got to obey the directions on law given by the judge advocate, who performs the functions pure and simple of a judge in a criminal court.

Great objection has been taken by my honourable and esteemed friend, Diwan Chaman Lall, to the expression "propriety of the questions". My hon. friend says in effect: "Who is he, this judge advocate, to lay down his ipse *dixit* with regard to the propriety of the questions? We can concede so **far** that he can decide about their relevancy or admissibility but certainly not about their propriety."

Well, therein comes the special character of this law because, after all, a que^t on muy be highly improper from the point of view of the nacy or of the army. Also in the criminal courts under the civil law there is the question of propriety, for instance, questions which are of a scandalous nature, questions which •ought not to be allowed even though they are strictly within the limits of law. Well, these are questions of propriety and even the judge in a criminal court under the civil law has got to decide upon the propriety of questions in those matters. Therefore nothing peculiar turns upon these words, "propriety of the questions" to which such a tremendous objection has been put forward by my esteemed and hon. friend, Diwan Chaman Lall.

Then my hon. friend, Kazi Karim-uddin, who has made such a close study of the provisions of this Bill, has objected to a provision in sub-clause <2), "Whenever in the course of a trial it appears desirable to the trial judge advocate that arguments and evidence as to the admissibility of evidence or arguments in support of an application for separate trials or on any other points of law should not be heard in the presence of the court, he may advise the president of the court accordingly and the president shall thereupon make an order for the court to retire or direct the trial judge advocate to hear the arguments in some other convenient place."

That also exactly conforms to the pattern of things that take place in an ordinary criminal court. Whenever there is a question of law or a mixed question of law and facts discussed and argued by the members of the bar before the court, the jurors are asked to retire. Invariably whenever a question of law is mixed up so intimately with questions of fact that matters outside the evidence which has already been given before the jurors may have to be brought to the notice of the judge for the purpose of deciding on questions of relevancy, the jurors cannot be asked to be influenced by such discussions with regard to matters which have not been strictly proved according to the law of evidence, and therefore they are asked to retire.

KAZI KARIMUDDIN: There is no question of evidence in sub-clause (2). It is only regarding separate trials and only on points of law.

SHRI SANTOSH KUMAR BASU: It is "arguments and evidence as to the admissibility of evidence." My learned friend has omitted to see it, if 1 may say so with great respect.

KAZI KARIMUDDIN: "In support of an application for separate trials."

SHRI SANTOSH KUMAR BASU: Quite so, because that requires discussion of evidence, evidence which may not have yet been given. That is plain and simple. That is the reason why the jurors are asked to retire. That is the reason why this court, which is nothing but a sort of jury, has got to be retired, and there is nothing strange, nothing peculiar, nothing out of the ordinary so far as this provision is concerned.

Now, my esteemed friend, Kazi Karimuddin, says: Why should they be asked to retire to "some other convenient place." It is for the sim-

[Shri Santosh Kumar Basu.] pie reason that in these naval establishment or aboard a ship there may not be sufficient room where this discussion might take place and the court might be asked to retire. The better course probably would be to retire the counsel, the accused and the judge advocate to some other place—either remove the jurors to some other place or, if that is not possible, well, retire the judge advocate and the members of the bar and the accused to some other place. That is necessary having regard to the special conditions regarding space and accommodation in naval establishments where these trials by the courts-martial may possibly take place. It is to make provision for all manner and all kinds of contingencies that such a provision had to be made. In an ordinary court of law probably it is not necessary for the judge to go away elsewhere with the prosecutor, the accused and the counsel. It may be that the juroi are asked to retire to their retiring room, but it may not be possible in some naval establishments in the place where the court-martial is being held. There is nothing very serious about it. There is nothing in this provision to show j that the accused will not go to the I other place. Nothing. There was no j justification for any such thing at all, because it has already been made clear. According to sub-clause (1) of clause 112, the accused may be present where a case is reviewed by the judge advocate and the court. The presence of the accused has been ensured at every stage and at every place. There is nothing to apprehend so far as the provision of this subclause is concerned that the accused will be left behind and that others will go away including the prosecutor.

My esteemed friend, Kazi Karim-uddin, has again referred to subclause (1) of clause 117 and he objects to the language of this sub-clause, so far as the word 'considered' appearing in the first line is concerned, "When the court has 'considered' the finding, the court shall be reassembled and the president shall inform the trial judge advocate in open court what is the finding of the court as ascertained in accordance with section 124." My learned friend's objection is that the word 'considered' is out of place. After the consideration, there has to be the finding and they come back to deliver their finding. Therefore, according to my friend, they should have arrived at their finding and not merely considered it. Now, this finding is nothing but the verdict of a jury and the usual formula used on such occasions is—"Mr. Foreman, have you consider your verdict?" That is the time-honoured expression which is used at least in the Calcutta High Court sessions which have the hoariest of tradition as a court of sessions in this great country. Therefore, Sir, I do not think that there is any lacuna or any misapplication of a word so far as draftsmanship is concerned.

I come then to the general objection that it is repugnant to all accepted notions of civilized jurisprudence that the judge advocate, who forms part of the prosecution itself in so far as he is a part of the organisation or set-up which is to advise the authorities about the justification of the prosecution, should be entrusted with the work of a judge in such cases in the courts-martial. Sir, it has been said by some of my esteemed friends that he is a part of the administration and that he cannot be entrusted with the work of judging as the judge advocate. Now, from that point of view, a sessions judge is a part of the administration. There are different departments no doubt, but he is also a part of the administration in that higher sense. Now, having regard to the peculiar set up in naval law with regard to courts-martial, well, he is a part of the administration no doubt. But from that broader and bigger point of view, a judge also is a part of the administration. The High Court judge is also a part of the administration; they are different organs of the same administration. Yet, when

a judge comes under an oath to decide a case or to give his opinion with regard to matters of law, he is inspired by a higher ideal and a higher sense of duty than the pettiness which sometimes pervades the atmosphere of a mere prosecution. A mere prosecutor seeks anyhow to secure a conviction. A judge advocate when he comes to the field under an oath, is inspired by a different type of idealism. I would submit that it has been held in many cases that, when a judge comes to decide a case, he comes with a nobler ideal, with a fresher outlook, apart and something different from the outlook which ordinarily inspires a prosecutor. My esteemed friend, Dr. Sapru, was more insistent that it is repugnant to all provisions of jurisprudence that a judge and a prosecutor should be rolled into one. Well, I am always anxious to listen to these legal arguments from my friend, Dr. Sapru, who has been referred to in more than half a dozen places by Justice Douglas of the Supreme Court of America in his Tagore Law Lectures which were recently delivered at the Calcutta University. I fine, it has been said in these lectures that a judge administering justice under an oath is a different individual than when he does not sit upon the Bench. That ought to apply also to a judge advocate who is functioning under an oath. Therefore, I would submit from that point of view, that the criticism that has been offered on that score would not be quite justified.

At the same time, I am completely at one with all those who have urged that a provision for appeal to the Supreme Court against capital sentence should have been provided in this Bill. Sir, when speaking on an earlier occasion on this subject on the floor of this House, that was the enly point which I urged with all the earnestness that 1 could command. And today also I would echo the sentiment as strongly as ever that a provision should have been made in this Bill for an appeal to the Supreme Court at least in capital sentence cases. The Supreme Court has built up a reputation as the palladium of justice and has carved out a niche in our hearts as the ultimate resort for all seekers for justice. Now, to take away that appeal or rather not to give that right under the Statute which had been refused under the Constitution, I do not think it will be in accord with the pattern of the judicial system that we are out to set up in this country, and I would earnestly appeal to my hon. friend, the Minister in charge of this Bill, that even if it be not possible in this Bill, it should be followed as early as possible by a supplementary Bill providing, amongst others, for an appeal to the Supreme Court in capital sentence cases.

Now, Sir, there is only one point more that I wish to raise before I resume my seat. It is with regard to the question of the oath. I find that there was considerable discussion before the Joint Select Committee as regards the form of the oath. It is provided in this Bill that naval personnel should take an oath of allegiance to the Constitution of India, but I find that one of the members of the Joint Select Committee, Shri Manabendra Shah of Tehri Garhwal, has recorded a very well-reasoned, well thought out note, pleading that the oath of allegiance should not only be to the Constitution of India but also to the people of India as a whole. Now, Sir, it may be said that the allegiance to the Constitution of India is the usual form of oath prevalent in the Army and Air Force and therefore no departure should be made so far as the Navy is concerned. I am not at one with that view. After all, the Constitution may change. Again quoting from Dr. P. N. Sapru from this book 'We the Judges" by Justice Douglas of the American Supreme Court,—Justice P. N. Sapru said in his Agra University Lectures in 1953. "We ought to approach the Constitution not as a law of Medes and Persians which cannot be changed but as something which it is in our power to bend for worthy objectives".. That philosophy is reflected in what Thomas.

[Shri Santosh Kumar Basu.]

Jefferson wrote about the American Constitution. After all, the Constitution is a law although it is the fundamental law. A law is changeable but the allegiance of the personnel of the Navy and the Army is unalterable, unchangeable and it should be fixed for ever and that allegiance should be to his country and also to its Constitution. I would therefore, in all earnestness plead that the form of the Oath should be changed. May I recall in this connection an episode to which I was myself a witness? You know that after the partition of Bengal, two High Courts were set up in West Bengal and East Bengal. The old High Court continued in Calcutta and there was .a new High Court set up in East Bengal. Among the European I.C.S. Judges, some opted for the Calcutta High Court and some for the Dacca High Court., When I was in Dacca, one of those British Judges twitted •me by saying that a European I.C.S, Judge was continuing to serve in the •Calcutta High Court after swearing a new Oath of allegiance. He was *aghast* at the idea of a Britisher swearing a new Oath of allegiance. When I came back to Calcutta I happened to meet this Judge, who was the target of this criticism and he said to me: "I owe allegiance only to the Constitution". His idea was that he did not owe allegiance to the President of the Republic of India or to the country i ;but to the Constitution and as such as 1

a Britisher, he had not done anything wrong. Therefore, if that idea is applied to the Oath thpt is provided for our Naval personnel they might easily turn round one day and say that they would hold allegiance to the Constitution and not to the country. I am not anticipating any such trouble, any such difficulty, but let us not provide in this Bill anything that might possibly give rise to any such interpretation. Constitution is one thing, country is another thing .and the State is another thing.

Therfore, Sir, I would submit, and most respectfully submit that this provision ought to have been changed. So far as judges are concerned, other officers are concerned, or members of the legislatures are concerned, they might owe allegiance to the Constitution only but as regards the Armed Forces, they should go to the extreme length of their allegiance to the country, their loyalty to India, which is above all constitution, above all law, India that is great, ancient and eternal.

In conclusion, Sir, let us not by our words or actions create the impression that this Bill is going to set up a naval regime which would make it more unattractive to our people. Some members have gone to the length of saying that 'let us not set up a system of discipline in the Navy which will act like a bugbear to new recruits and will keep away people of India from joining the Navy'. I submit if this is the impression which is going to be created, then we are going to do a positive disservice to the people of India and to the Navy. I am sure, this Bill has not made any such provision which should keep away people from recruitment to the Navy. It has got very wholesome provisions for safeguarding the interests of the Naval personnel, which will secure for them sympathy, courtesy and above all justice. It is from that point of view that we should proceed to look upon this Bill and I hope, Sir, that it would be passed into law.

श्रीमती सावित्री निगम (उत्तर प्रदेश) : उपसभापति महोदय, मैं इस विधेयक का स्वागत करने के लिए उपस्थित हुई हूं । ब्रिटिश पीरियड के बने हुए कानूनों को जिनके पीछे दासता और क्रूरता की कड़ियां बंधी हुई हैं, बदलना आवश्यक ही है । यह एक बड़ा कम्प्रीहैंसिव बिल है, इसलिए मैं इसका स्वागत करती हूं ।

श्रीमन्, देश की सुरक्षा के लिए हमें त्याग करना ही पड़ेगा । इसके लिए सुरक्षा के साधनों को नियंत्रित करना और उन्हें हर

तरह से डिसिप्लिन्ड बनाना भी आवश्यक है। अनेक सदस्यों ने इस विषय में बहुत कुछ कहा कि हमारे नेवल आफिसरों और रैटिंग्स को यूनीयन बनाने की सुविधा क्यों नहीं दी गई ? उन लोगों ने यह भी एक दलील पेश की कि उनको अपनी कलचरल और सोशल एक्टिविटीज़ बढ़ाने के लिए यूनीयन का आश्रय लेना पड़ सकता है। लेकिन में उन लोगों से विनम्रता पूर्वक कहूंगी कि वे स्वयं जायं और देखें कि किस तरह से उनके देश के नेवल आफिसर और किस तरह से उनके रैटिंग्स अपना जीवन बिताते हैं। जब वे स्वयं जाकर इन चीज़ों को देखेंगे तब उन्हें पता चलेगा कि नेवल आफिसरों के हर जगह सुन्दर क्लब होते हैं, जहां पर वे अपने कलचरल और सोशल एक्टिविटीज में आसानी के साथ हिस्सा लेते हैं। यही नहीं अन्य सुविधाएं जो भी आवश्यक होती हैं उन को मिली हुई हैं। उनका जीवन अत्यन्त आनन्दमय और संतोषजनक है। इसलिए ऐसी कोई चिंता की बात नहीं है कि यदि उन्हें यूनीयन बनाने की सुविधा न दी जाय तो वे अपनी कलचरल और सोशल एक्टिविटीज में हिस्सा नहीं ले सकेंगे। इसके साथ ही साथ उन लोगो के लिए मैसिंग की भी व्यवस्था की गई है। जिन सदस्यों ने सचमुच जाकर इन लोगो की मैसिंग और खाने की व्यवस्था देखी है, में जानती हूं उन्हें उससे पूरा संतोष होगा। उन लोगों की अपनी एडवाइजरी कमेटी और मैसिंग कमेटी होती है, जहां पर वे अपनी सुविधाओं के बारे में विचार करते हैं। सचमुच देश की सुरक्षा करने वालों का जिस तरह से कदर और खयाल होना चाहिये उस तरह से उनका इस समय हो रहा है और उनमें आत्म-संतोष और प्रसन्नता दिखाई देती है। उनसे मिलने और बातचीत करने से पता चलता है कि उनका जीवन संतोषपूर्ण और सुखी है।

श्रीमान, कई सदस्यों ने रैटिंग्स में अप-राईजिंग की जो बात कही वह गलत है और सर्वथा अनुचित है। उस समय जो अप-राईजिंग हुई वह एक बहाना था। उसका कारण यह नहीं था कि उनको भोजन खराब मिलता था या कोई ऐसी असंतोषपूर्ण बात थी जिसके कारण उनमें अपराईजिंग हुई। बल्कि उसका सबसे बड़ा कारण राष्ट्रपिता की पुकार थी जिससे सब के हृदय में आजाद बनने की नई आग भड़क उठी। इसलिए उन्होंने एक बहाना ढूंढा और वे आज़ादी की जंग में कूद पड़े। उसमें खाने की असुविधा की कोई घटना नहीं थी। उस बात को अब कोट करना उचित नहीं है। आज़ादी मिलने के इतने दिन बाद, और जब हर एक नेवल आफिसर यह जानता है कि यह देश उसका है, उसको अपनी जान पर भी खेल कर इस देश की रक्षा करनी है और वह सचमुच इस देश पर बलिदान होने के लिए अवसर देखता रहता है, उसके विषय में यह कहना कि यदि उसको अच्छा खाना न मिला, यदि उसको अपील करने को सुविधा न मिली तो मुमकिन है कि वह रिबेलियन कर दे, यह बिलकुल अनुचित है।

श्रीमन्, कोर्ट मार्शल की तारीफ़ में हमारे संसद् सदस्यों ने बहुत कुछ कहाकि पहले बहुत सुन्दर व्यवस्था थी और उसमें किसी को एतराज़ नहीं होना चाहिये। संभव है कि लीगल सर्किल में ऐसी भावना हो, लेकिन जहां तक आम जनता का प्रश्न है, कोर्ट मार्शल के सम्बन्ध में बहुत सी किवदंतियां प्रचलित हैं और लोग कोर्ट मार्शल की चर्चा करते हुये थर्राते हैं। सन् १८५७ के स्वतंत्रता आंदोलन के साथ कोर्ट मार्शल की ऐसी क्रूर कहानियां कही और सुनी जाती हैं कि साधारण जनता कोर्ट मार्शल का अर्थ यह समझती है कि किसी आदमी को गोली से शूट कर देना या बिना किसी सुनवाई के सख्त से सख्त सज़ा दे देना। इसलिए में समझती हूं कि यह बड़ा ही अच्छा हुआ कि एक कांप्रिहेंसिव विधेयक लाया गया और एक प्रकार से उन सब पुरानी बातों को और उस पुराने चैप्टर को समाप्त कर दिया गया।

श्री प्रकाश नारायण सप्रू (उत्तर प्रदेश) स्त्रियों के लिये भी कुछ रिजर्वेशन होना चाहिये ।

श्रीमती सावित्री निगम : श्रीमन्, मुझे यह अत्यंत खेद के साथ कहना पड़ता है कि इस विधेयक में क्लाज ६ का जो सब क्लाज २ है उसका मैं विरोध करती हूं और उन सदस्यों के स्वर में मैं अपना पूरा स्वर मिलाना चाहती हूं जिन्होंने इसका विरोध किया है । मुझे पता नहीं चलता कि इसका क्या कारण है कि हमारे इतने प्रोग्रेसिव डिफेंस मिनिस्टर की निगाह में इतना अनप्रोग्रेसिव क्लाज क्यों नहीं खटका । मुझे इस बात पर आश्चर्य हो रहा है । इस क्लाज को जितनी बार मैं पढ़ती हूं उतना ही मुझे ऐसा प्रतीत होता है कि इस क्लाज के द्वारा स्त्रियों को बड़ा ही हीन और दुर्बल समझा गया है और ऐसा समझा गया है कि वे बड़ी कमजोर होती हैं, निकम्मी होती हैं, कुछ कर नहीं सकती हैं । मैं चाहती हूं कि अब भी देर नहीं हुई है, हमारे जो डिप्टी डिफेंस मिनिस्टर महोदय हैं वे इस पर गौर करें और संसद् के अधिकांश सदस्यों को जो मत है उसके अनुसार अपने निश्चय को दोहरायें । मैं एक बार फिर इसे पढ़ना चाहती हूं :

> "No woman shall be eligible for appointment or enrolment in the Indian Navy or the Indian Naval Reserve Forces except in such department, branch or other body forming part thereof or attached thereto and subject to such conditions as the Central Government may, by notification in the Official Gazette, specify in this behalf."

श्रीमन्, क्या कहूं, कुछ पता नहीं कि वे कैसे भूल गये कि जिन स्त्रियों को हमेशा से, परम्परा से शक्ति माना गया है उन्हें कैसे उन्होंने इतना कमजोर माना । रानी लक्ष्मी, दुर्गा, चांद बीबी, पद्मिनी और जीनत बेगम जैसी स्त्रियां जिस देश में पैदा हुई हों, उस देश के रहने वाले भी यदि स्त्रियों को दुर्बल कहें तो इससे बड़ा और आश्चर्य क्या हो सकता है । मैं यह कहना चाहती हूं कि उस समय जब स्त्रियां पर्दे में किसी कोने की बंदिनी रहा करती थीं, जब उनको ऐसा अवसर नहीं मिलता था कि वे बाहर समाज में अच्छी तरह विचरण कर सकें, तब भी देश में ऐसी बहुत सी रत्न स्त्रियां उत्पन्न हुई । आज जब आजादी मिले हुये दस वर्ष हो गये हैं, स्त्रियों को पढ़ने लिखने की सारी सुविधायें हैं, स्त्रियों को सम्पत्ति में भी अधिकार मिल गया है और स्त्रियों ने आजादी की लड़ाई में यह दिखा दिया है कि अवसर पड़ने पर वे पुरुषों से कंधा से कंधा मिला कर देश की सुरक्षा पर अपनी जान तक न्योछावर कर सकती हैं, तब भी ऐसा कानून पास करना इस देश के लिये लज्जाजनक है ।

श्री प्रकाश नारायण सप्रू : यह अनकांस्टिट्यूशनल है ।

श्रीमती सावित्री निगम : श्रीमन्, अभी जब मैं इस पर अपने विचार प्रगट कर रही हूं, तो इस सदन में जो एक कानूनी एक्सपर्ट हैं वे यह भी बता रहे हैं कि यह अनकांस्टिट्यूशनल है । यदि यह विधेयक कोई स्त्री अदालत में ले जाये तो यह हो सकता है कि यह विधेयक अल्ट्रावायरस करार दे दिया जाये, गैर कानूनी करार दे दिया जाये और उस समय देश की प्रेस्टिज की, और पार्लियामेंट की प्रेस्टिज को कितना धक्का लगेगा यह सोचने की बात है । यदि आज कानून का निर्माण करने वाले ऐसा कानून बना देते हैं कि स्त्रियां युद्ध में भाग लेने से डिबार कर दी जायें, तो मैं पूछना चाहती हूं कि अगर पहले भी ऐसा ही कानून होता तो देश की रक्षा कैसे होती, कैसे रानी लक्ष्मी बाई लड़ी होती और कैसे उन्होंने इतने दिनों तक झांसी को बचाया होता ।

श्रीमन्, यह भी कुछ संसद सदस्यों ने कहा कि हम ब्रिटिश कंवेंशन को मानते हैं

और उसी के आधार पर इस विधेयक का निर्माण हुआ है। मैं उनसे कहना चाहती हूं कि जहां तक ब्रिटिश कंवेंशन का प्रश्न है, एक सब से बड़ी बात यह है कि जब हमारा देश आजाद हो चुका है और हमारे देश की परम्पराएं, यहां का कल्चर, यहां के ट्रेडीशंस और यहां का जो पुराना इतिहास है वह बिलकुल भिन्न तरीके का है, तो इसकी कोई आवश्यकता नहीं है कि हम ब्रिटिश कंवेंशन से इतना प्रेम करें और उसके पीछे हम अपनी परम्पराओं को, अपने ट्रेडीशंस को बिलकुल कुचल दें। वैसे मुझे ब्रिटिश कंवेंशन से कोई दुश्मनी नहीं है और जो ब्रिटिश कंवेंशन में ऐसी बातें हैं जो हमारे ट्रेडीशंस के अनुरूप हैं उनको लेने में मुझे कोई एतराज नहीं है और मैं उनका समर्थन करूंगी, लेकिन मैं ऐसी चीजों को लेने के लिये तैयार नहीं जिनमें हमारा देश कहीं आगे है। हमारे देश में बहुत से ऐसे मामले हैं जिन के बारे में मैं दावे के साथ कह सकती हूं कि हमारा देश तमाम दुनिया के देशों से कहीं अधिक प्रोग्रेसिव है। आप इस पार्लियामेंट में स्त्री सदस्यों की संख्या को ही ले लीजिये। मैं कहती हूं कि हमारे देश में स्त्रियों को जिस अनुपात में संसद सदस्य बनने का सौभाग्य मिला है वैसा शायद ही किसी देश में मिला हो। ऐसी अनेक बातें हैं जिनमें हमारे ट्रेडीशंस, हमारे कंवेंशंस कहीं अधिक प्रोग्रेसिव हैं। लेकिन ऐसी बातों में भी हम अपने देश को पीछे ढकेलने के लिये ब्रिटिश कंवेंशन के ऐसा पीछे पड़ जायें कि हम अपना विवेक ही खो दें, यह उचित नहीं है। हमें चाहिये कि कोई काम करते समय हम अपने विवेक और बुद्धि को सदा जाग्रत रखें। इस लिये मैं कहूंगी कि इस मामले में हम ब्रिटिश कंवेंशन का बिलकुल ही अनुकरण न करें।

इस सम्बन्ध में मैं एक बात और कहना चाहती हूं। कुछ संसद सदस्यों ने यह कहा कि स्त्रियों को और पुरुषों को उनकी प्रकृति ने ही विभिन्न क्षेत्र दिये हैं क्योंकि उनमें विभिन्न प्रकार की शक्तियां और गुण पाये जाते हैं। मुझे इसको स्वीकार करने में कोई एतराज नहीं है और मैं यह मानती हूं कि उन दोनों के कार्यक्षेत्र भी संभवतः अलग हों, लेकिन कानून के द्वारा स्त्रियों को हमेशा के लिये किसी क्षेत्र से वर्जित कर देना या नेवी से हमेशा के लिये वर्जित कर देना कहां का न्याय है? चाहे कितनी ही बातें एक दूसरे के विपरीत क्यों न कही जायें, लेकिन यह हो सकता है कि कुछ ऐसे पुरुष हों जिनमें वह साहस न हो, वह शौर्य न हो, वह पुरुषार्थ न हो, जब कि कुछ ऐसी भी स्त्रियां हों जिनमें अधिक साहस हो, अधिक शौर्य हो और अधिक शक्ति हो और वे अधिक योग्यता से देश की सेवा कर सकें। इस लिये किसी भी सेक्स विशेष के लिये ऐसा नियम बना देना सर्वथा अनुचित और अन्याय-पूर्ण है। जैसा कि कुछ सदस्यों ने कहा, संभव, है कि डिप्टी डिफेंस मिनिस्टर महोदय भी यह कहें कि बड़ी मेहरबानी की भावना से या आदर करने के कारण ऐसा किया गया है कि स्त्रियों को कष्ट न मिले, इस लिये उनको नेवी में न रखा जाये क्योंकि वहां बड़ा कष्ट का जीवन होता है और बड़ी कठिनाइयां होती हैं। लेकिन मैं विनम्रतापूर्वक उनसे पूछना चाहती हूं कि जो नेवल आफिसर्स को कष्ट होते हैं, क्या उससे कहीं अधिक घोर कष्ट में यहां इस देश में लाखों और करोड़ों स्त्रियां नहीं हैं? इस तरह ये सारी दलीलें बिलकुल थोथी प्रतीत होती हैं। अगर मान लिया जाय कि ऐसा हो है तो उनको चाहिये था कि बजाय इसके कि वे एक ऐसा क्लाज लाते जिससे स्त्रियों को हमेशा के लिये वर्जित कर दिया जाता, वे इस क्लाज को बिलकुल रखते ही नहीं। इस लिये मैं उनसे प्रार्थना करना चाहती हूं कि अब भी कुछ देर नहीं हुई है। इस सम्बन्ध में मैं यह भी कहना चाहती हूं कि किसी को चाहे बड़ी से बड़ी सुविधाएं क्यों न दी जायें, लेकिन जब उनको हम निषेधात्मक बना देते हैं, वर्जित बना देते हैं, तो वे सुविधाएं बेड़ियां बन जाती

[श्रीमती सावित्री निगम]

हैं, रोड़े बन जाती हैं। इसी प्रकार यह क्लाज चाहे कितनी अच्छी नीयत से लाया गया हो, लेकिन यह स्त्री समाज के सामने एक रोड़ के समान है, एक अपमानजनक क्लाज के समान है। इस लिये मैं विनम्रतापूर्वक प्रार्थना करना चाहती हूं कि वे इस क्लाज पर पुनः विचार करें। पता नहीं आगे चल कर देश की सुरक्षा के लिये कैसा समय आये। ईश्वर न करे पर ऐसा समय आ सकता है। आज आकाश में जैसे रंग बदलते हुये बादल मंडला रहे हैं उनसे ऐसा प्रतीत होता है कि भविष्य बिलकुल अनिश्चित है। ऐसी स्थिति में स्त्रियों को सदा के लिये वर्जित कर देना और उनमें दुर्बलता की भावना पैदा कर देना कहां तक उचित है? ईश्वर न करे कि कभी भी ऐसा अवसर आ जाये कि देश के सारे पुरुष देश की रक्षा करने में लग जायें और फिर स्त्रियों की सेवा की आवश्यकता हो। यदि ऐसा हो जाये तो उस समय यह करना होगा कि पहले जल्दी से पार्लियामेंट का सेशन बुलाया जाय ताकि यह क्लाज डिलीट हो। यह बिलकुल असम्भव सी बात प्रतीत होती है। जो भी सुनेगा वह कहेगा यह क्या है? कोई कानून हम कोई दस दिन के लिये या दस साल के लिये नहीं बनाते। आज हम पीढ़ियों के लिये, सदियों तक के लिये नये कानून और नयी परम्परायें निर्मित करने जा रहे हैं। आज जो कानून बनते हैं वे आगे आने वाली पीढ़ियों के लिये गाईडिंग फैक्टर होते हैं। जिस तरह से आज हम ब्रिटिश कंवेंशन के पीछे हाथ धो कर पड़ गये हैं उसी तरह से हमारी आगे आने वाली पीढ़ियां हमारे इन विधेयकों को गाईडिंग फैक्टर मानेंगी और इनके आधार पर नये विधेयकों का निर्माण करेंगी। इसलिये इस विधेयक में इस प्रकार का क्लाज रखना देश के साथ ही नहीं बल्कि समाज के साथ भी एक बड़ा भारी अन्याय होगा। यह एक भूल है, ऐसी मेरी भावना है।

मैं समझती हूं, सदन के तीन चौथाई सदस्यों ने इस क्लाज के विरोध में बहुत कुछ कहा है और यह सलाह दी है कि इस क्लाज को बिलकुल डिलीट कर दिया जाये। मैं डिफेंस मिनिस्टर महोदय से प्रार्थना करूंगी कि वे अब भी इस क्लाज को डिलीट कर दें और जो एक भूल हो गई है उसको जबर्दस्ती रहने देने की बजाय उसमें सुधार कर लें और इस प्रकार यह दिखा दें कि हम लोग हर समय छोटी छोटी भूलों को दूर कर अपने को करेक्ट करने के लिये तैयार रहते हैं। धन्यवाद।

MESSAGE FROM THE LOK SABHA

CANTONMENT (EXTENSION OF RENT CONTROL LAWS) BILL, 1957

SECRETARY: Sir, I have to report to the House the following Message received from the Lok Sabha, signed by the Secretary of the Lok Sabha: —

"In accordance with the provisions of Rule 120 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to inform you that Lok Sabha, at its sitting held on the 2nd December, 1957, agreed "without any amendment to the Cantonment (Extension of Rent Control Laws) Bill, 1957 which was passed by Rajya Sabha at its sitting held on the 19th November, 1957 "

MR DEPUTY CHAIRMAN: The HOUSP stands adjourned till 11 A.M. tomorrow.

The House then adjourned at two minutes past five of the clock till eleven of the clock on Wednesday, the 4th December, 1957.