PAPERS LAID ON THE TABLE

ANNUAL REPORT OF THE STATE TRADING CORPORATION

THE MINISTER OF COMMERCE (SHRI N. KANUNGO): Sir, I beg to lay on the Table, under sub-section (1) of section 639 of the Companies Act, 1956, a copy of the First Annual Report of the State Trading Corporation of India (Private) Limited for the year ending the 30th June 1957, together with a copy of the Auditors' Report and the comments of the Comptroller and Auditor-General of India thereon. [Placed in Library. *See* No. LT-378/57.]

NOTIFICATION UNDER KHADI AND VILLAGE INDUSTRIES COMMISSION ACT, 1956

SHRI N. KANUNGO: I beg to lay on the Table, under sub-section (2) of section 3 of the Khadi and Village Industries Commission Act, 1956, a copy of the Ministry of Commerce and Industry Notification S. R. O. No. 3629, dated the 8th November, 1957, publishing an amendment in the Government Notification S.R.O. No. 1310 dated ment Notification S.R.O. No. 1310, dated the 23rd April, 1957. [Placed in Library. *See* No. LT-413/57.]

NOTIFICATION PUBLISHING AN AMENDMENT IN THE TEA RULES, 1954

SHRI N. KANUNGO: I beg to lay on the Table, under sub-section (3) of section 49 of the Tea Act, 1953, a copy of the Ministry of Commerce and Industry Notification S.R.O. No. 3630 [8(10) Plant (A)/57], dated the 8th November, 1957, publishing an amendment in the Tea Rules, 1954. [Placed in Library. *See* No. LT-395/57]

ORDER UNDER THE ESSENTIAL COMMODITIES ACT, 1955.

THE MINISTER OF INDUSTRY (SHRI MANUBHAI SHAH): Sir, I beg to lay on the Table, under sub-section (6) of section 3 of the Essential Commodities Act, 1955, a copy of the Ministry of Commerce and Industry Order No. P&D-19(1)/56, dated the 26th November, 1957. [Placed in Library. *See* No. LT-419/57]

TARIFF COMMISSION'S REPORT ON THE CONTINUANCE OF PROTECTION TO NON-FERROUS METALS AND BARE COPPER CONDUCTORS INDUSTRIES WITH CONNECTED GOVERNMENT RESOLUTIONS AND NOTIFICATIONS.

SHRI MANUBHAI SHAH: I beg to lay on the Table, under sub-section (2) of section 16 of the Tariff Commission Act, 1951, a copy each of the following papers:—

(1) (i) Report (1957) of the Tariff Commission on the continuance of protection to the Non-Ferrous Metals Industry.

(ii) Government Resolution No. 22 (4)-T.R./57, dated the 2nd December, 1957.

(iii) Government Notification No. 22(4)-T.R./57, dated the 2nd December, 1957.

[Placed in Library. *See* No. LT-408/57 for (i), (ii) and (iii).]

(2) (i) Report (1957) of the Tariff Commission on the continuance of protection to the Bare Copper Conductors and A.C.S.R. (Aluminium Conductor Steel Reinforced) Industry.

(ii) Government Resolution No. 3(5)-T.R./57, dated the 2nd December, 1957.

(iii) Government Notification No. 3 (5)-T.R./57, dated the 2nd December, 1957.

[Placed in Library. *See* No. LT-409/57 for (i), (ii) and (iii).]

THE NAVY BILL, 1957—*continued*

SHRI SONUSING DHANSING PATIL (Bombay): Mr. Chairman, I rise to support the various provisions of the Navy Bill and in doing so, I would try to analyse some of the observations made by the several hon. Members on the various drawbacks which they have been pleased to find out. Sir, the Bill was subject to the collective wisdom of the Joint Select Committee which had as many as 13 sittings and it was considered clause by clause. Several amendments were brought forward which were considered on merits and the Bill, as it

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emerged out of the Joint Select Committee, was almost unanimously accepted by the Lok Sabha. It is a very happy feature that the Lok Sabha did attach much importance to the Bill as it emerged out of the Joint Select Committee and I have my thanks for that but when the Bill is being considered in this august House, there are several criticisms varying between very constructive criticisms to carping criticisms. Some criticisms are no doubt illuminating; they are constructive in their approach and they are very useful also but the other criticisms which assume the form of a sort of trenchant criticism are based on misunderstanding and confusion. I do not claim very expert knowledge of the Navy Bill or the Naval Law but, as a Member of the Joint Select Committee, I had the opportunity to study the Bill and the various provisions that exist in the several countries as regards the naval forces. The fundamental object of this Bill is to amend and consolidate the various laws that are prevalent. As far as this particular Bill is concerned, it will now repeal The Indian Navy (Discipline) Act, 1934, the Indian Naval Reserve Forces (Discipline) Act, 1939 and the Naval Forces (Miscellaneous Provisions) Act, 1950. This Bill is designed almost closely on the pattern of the U.K. system excepting certain adaptations.

Sir, there is one criticism from a responsible jurist that the Joint Select Committee meekly submitted to the departmental—I do not say departmental pressure but—approach and that they could not as a matter of fact independently think about the various provisions which are intended or which are suggested in this august House. Sir, this criticism is centred mainly on two points. As far as the broad features of the criticisms are concerned, I will first try to deal with the right of appeal which is so very hotly contested and the eminent jurists, eminent social workers and a number of leading lawyers in this august House have espoused the cause of the right of appeal to the naval forces. Apparently it appears that the right of appeal is very sound, and any departure from it is something against the fundamental rights of the person. Many Articles are quoted in support of this, that the chapter that deals with the fundamental rights is restricted in several respects. One of the major rights under that is the right to defend and to get justice from the Supreme Court of the land. There are two points involved in an appeal and it is common knowledge that the appeal is on the point of fact as well as on the point of law. As far as the point of fact is concerned, it involves several considerations which are in the nature of evidence and if a particular important or material evidence is not gone into and if the issues are not properly framed, then the appellate court sends the case back for retrial which means again a fresh trial on the issues suggested by the appellate court or the material which is not given before the first court and which was very important for deciding the issues before it.

Looking at the peculiar position of the Navy, Mr. Chairman, it is but fit that the Navy is, for a considerable part, on the sea and afloat. The officers are not available for the purpose of appeal, and so it involves a lot of delay and time. It involves a long absence of the responsible officers who have to work in the Navy. This naturally takes away the stiffness of the character of the punishment which is so necessary for the efficient maintenance of the Navy. After all, what is the idea of justice in the Armed Forces? That is a sort of rough and ready justice based on judicial principles and judicial approach. It is not that because the rough and ready justice is necessitated in the Armed Forces or the Naval Forces that the very crucial or fundamental provisions of jurisprudence are given up. No, that is not the case. But certain provisions are expedited to get speedy

justice, and that is what is sought to be done as far as the fundamental provisions of appeal in this regard are concerned.

There is another point involved After all, when an appeal is on a point of law, that purpose is very well served by the broad-based provisions made as far as the judicial or semi-judicial review is concerned Nowhere in the Armed Forces Act or other Acts up to this time has there been such a salutary provision of judicial or statutory review and its scope is so wide that the person aggrieved by application or the Judge Advocate General on his own motion can go into the fact whether it is a question of law or fact It has not been circumscribed by clause 160 and the following ones So, the provision as far as the judicial review is concerned serves the purpose which is, as a matter of fact served by the appellate provision except for the sentiment that there is no appeal provided There is no point involved in it It does not take us long away from the very fundamental approach as far as the justice or dispensation of justice in the Navy is concerned

Sir again, the jurisdiction of the Supreme Court or the High Court is invoked in the name of fundamental rights But the framers of the Constitution in their wisdom thought it fit and made certain provisions in Articles 133, 136(2) and 227, circumscribing the limits of fundamental rights and of the appellate provisions as far as the specially constituted tribunals for Armed Forces under special Acts are concerned

An argument is advanced that at the time when the Constitution was on the anvil in the year 1949, the provisions as regards the appellate tribunal as it existed in the United Kingdom, Canada, Australia and the United States of America were not available Had those provisions been available, perhaps, the framers of the Constitution would have changed their mind and made certain provisions But it is too much to anticipate this. Even in the advanced countries, they have made a provision for all the Armed Forces, the Army, the Navy and the Air Force, for a Joint Board of Appeal and if it is thought that the purpose that is going to be achieved by the judicial review is not achieved to that degree or to that proportion, then it will be a fit case for reconsideration by the Government If the purpose of the review is frustrated or nullified, the Government can come out just to keep up the uniformity or co-ordination between all the Armed Forces, by a separate legislation, providing for a Joint Appellate Tribunal. As far as the present provision is concerned, I think it is full of constitutional safeguards and one cannot run it down merely because there is no provision for appeal to the High Court or the Supreme Court

One of the jurists, Shri Sapru, has also referred to a point under Article 226 and said that, though Article 227 read with Article 136(2) may bar such a thing, Article 226 still gives the remedy under the Constitution But, according to my humble suggestion, his reading of that Article is not proper and the High Court or the Supreme Court has no independent authority to go into the question unless and until it comes in a regular manner If the provision for appeal is to be provided in the Navy Bill then several sections of punishments or orders will have to be made appealable, that will again involve a lot of complications and delay So far as speedy justice is concerned in the Navy, it is but in the fitness of things that the present provision is adequate enough to safeguard the interests of the person concerned

So far as the procedure of court martial is concerned, many objections have been taken and the serious one among them is Diwan Chaman Lall's He was very 'vociferous' in his criticism if I may use that word He is a brilliant Barrister He has taken certain exceptions as far as the extraordinary powers that have been given

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to the Judge Advocate are concerned. Sir, the institution of Judge Advocate is not new to this Navy Bill It has been pursued throughout the Armed Forces Act wherever it exists, and it is a very salutary provision to protect the rights of the accused as far as the legal provisions are concerned He is placed just in the position of a supervisor or superintendent, by his attendance at the court martial, of the various legal procedures before the court martial and he is to advise them on the legal points The objection taken is that he is a person who belongs to the department of the Judge Advocate General and in a way, he is a detriment to the interests of the accused He acts under the orders and command of the Naval officers That approach does not qualify him even though he is a legally qualified person

A fear is expressed that there might be an unintentional misdirection on a point of law or error of judgment which he might commit and thereby prejudice the cause of the accused, but it is unfounded

Sir, the various capital punishments that are prescribed in the several clauses are those which are to be granted on the merits of each case and according to the severity of the offence involved And even in the civil law, we see that capital punishments are not removed from the Statute Book And so long as that is not done, it is all the more proper and fit in the Navy Bill even though capital punishments are provided and prescribed, they are not necessarily granted and there are very few cases, as we were informed in the Joint Select Committee, of capital punishments in the Navy So that fear should not unnecessarily lead us to the consideration that because the Judge Advocate is likely to commit errors, he should not therefore have the powers as to the propriety of questions, as to the relevancy of evidence and as to the admissibility of documents These are very ordinary matters which are provided by the Criminal Procedure Code Here, Sir, the position of the court is just like that of the jury And even though the majority of the officers belong to the executive branch, still they are not persons who are prejudiced and they are not persons who are the prosecutors or the investigators They are independent persons belonging to the Navy, and that should not disqualify them from sitting and taking decisions on the crimes that are committed or the regulations that are violated So, Sir, the position of a Judge Advocate need not be so much attacked, because the man who is judicially competent disallows a particular question on a point of law or the admissibility of evidence or the propriety of questions That has been provided in the Indian Evidence Act And even section 298 of the Criminal Procedure Code states the wide powers that the Judge sitting with the jury exercises on all these points, and if I may say so, the Bill combines all the good features of the Criminal Procedure Code along with the character of the naval crimes, and that is a golden means which is adopted by the framers of the Bill and which has also been accepted by the Joint Select Committee It does not, that way, take away the bright feature of the position of a Judge Advocate who merely because he happens to be from the Judge Advocate General's department should be disqualified I, therefore, emphatically support that provision, because that has been handed down to us from several Acts obtaining in other countries, and the Navy law is more or less based on several customs and conventions as well as on several procedures that have already been laid down Sir, one good feature of this Bill is that the procedure of the court martial is not left to the sweet will of the Department by framing regulations, and which can then exercise powers under a delegated legislation, but it has now been made part

and parcel of the law It is a statutory provision just like the Civil Procedure Code or the Criminal Procedure Code, and when there are provisions laid down by law, any violation of the provisions is going to involve a question of law In that way the court martial procedure is made more firm, more definite and more positive, and the position of the Judge Advocate is all the more helpful than a hindrance So, the criticism levelled against the Judge Advocate that he is an extraordinary man with unique powers is not warranted and is not based on a real concept of the court martial

Then, Sir, there is one particular feature of the Navy as far as women are concerned Ardent champions of the women's cause say that their sex is discriminated against, and several other hon Members also support this view But, Sir, we cannot ignore the practical side of the Navy where sea life is involved The practical conditions of the members of opposite sexes living together on the ship away from their homes for several months, their age and the peculiar atmosphere that exists there cannot be ignored, and in India we have not yet arrived at the stage where our women folk can very well wield lethal weapons and go out in a military parade That time is still awaited Of course, it may look very sound and very progressive in our utterances to give equal status to women as far as the armed forces are concerned but the time is not yet ripe, and I am not one of those who belong to that category of orthodox sections to deprive them of that right But the instances that are quoted of the great Rani Laxmibai of Jhansi and others are not instances in point They are instances of an exceptional character They are not instances of a regular enrolment in the Navy or in the Armed Forces Here the question is not that there is an overall ban on their entry in the Navy It is only those particular departments of the Navy where active service is required that they are not allowed to go on the grounds of expediency, practicability and several other factors As far as the other departments are concerned, for example, the nursing department, the clerical department, the issue department and several other departments, women are not barred It is only in certain cases of active service in the regular forces that they are barred, and that is only just and proper So, any ardent advocacy on that point is an advocacy of the cause which is not suited to the temper of our nation

Sir, reference has been made to the fundamental rights under the Constitution The framers of the Constitution had in their wisdom thought fit to restrict and abrogate these rights under article 33, and if they are restricted in clause 4 of this Bill, it is a welcome feature After all we have to look to the practical side of the question also And if we are going to advocate the cause of women in this matter, I think it would not be fair, nor practicable Shri Sapru has said that we may not put it in the Statute Book or in this Bill, but we may provide for it by administrative method that whenever they are presented to the Selection Board, they may be rejected on the ground of incapacity or on the ground of physical unfitness But I am afraid that you cannot reject each and every woman on the ground of physical unfitness or incapacity It will be too much to assume that every woman is unfit for that job Therefore, it is better to restrict it by a positive provision in the Bill itself Then, Sir I may also submit that the interpretation that is put by my learned friend, Kazi Karimuddin, that it is a breach of fundamental rights is not I think, in order because this is only a reasonable restriction put on the right of a woman to be enrolled in the Navy or in the regular forces

Then, Sir, as far as the other points are concerned, the peculiarity of the Navy Bill or the naval forces consists of three things There is a preponderance of summary cases that are

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tried. Secondly, there is a high degree of discipline that is required in the Navy as compared to other Armed Forces; and thirdly, a peculiar position has been assigned to women, which I have already discussed. Now, Sir, as far as the first two parts are concerned, the Bill makes adequate provision to try offences, which are of a trivial nature, summarily, and also offences which are of a serious nature by a regular court martial trial.

Sir, as far as the question of Judge Advocate General is concerned, he is also a person who is attacked. He is not taken to be worthy of that consideration which is expected of a high dignitary like the High Court Judge or any other independent judicial person. Sir, my own submis-

12 NOON sion is that the position of a Judge Advocate General is no less than a High Court Judge and even though he may be appointed by the department, that does not take away his degree of independence or his judicial approach to the problem, because he is legally competent. In this connection Dr. Kunzru has suggested a *via media* that, as far as possible, while sitting on the court martial, the officers should be persons who are legally trained and they should be competent lawyers and if that provision is made then it will be in keeping with the modern notions of our law of dispensation of justice. That is a suggestion for action and if in future we can provide for that, it is welcome and as far as the present personnel is concerned, they are trained commissioned officers in the Navy and they are experienced and so they have got a lot of knowledge as far as Navy practices, customs and laws are concerned. In fact, I have no curriculum about their training but I can venture to say that since they are competent to sit on the court martial, it goes without saying that they are persons with wide experience and they have got sound grounding, though not that expert grounding of law, and they are well versed with the several legal practices that are obtaining in the Navy. So, that way whatever decision they take as a court, with the help of the Judge Advocate, when it comes to the Judge Advocate General for review, he exercises the necessary legal acumen on it and there the accused is also given the help of a pleader and he can represent the matter fairly and squarely.

KAZI KARIMUDDIN (Bombay): There is no provision for a counsel.

SHRI SONUSING DHANSING PATIL: There is a provision for a counsel and if my learned friend carefully reads it, he will find it and I can point out to him that he will find it in clause 160, para. (2) which says:

> "Where any person aggrieved has made an application under sub-section (1), the Judge Advocate General of the Navy may, if the circumstances of the case so require, give him an opportunity of being heard either in person or through a legal practitioner or an officer of the Indian Navy."

KAZI KARIMUDDIN: That person means defendant.

SHRI SONUSING DHANSING PATIL: That is the point in short. That is self-explicit and I need not labour on that.

Well, Sir, one point was made in the Minutes of Dissent about the Oath to the Constitution as well as the Oath to the country and I was surprised that there were eloquent arguments advanced as far as the Oath to the Country is concerned. One of the arguments is that the country remains steady and is unchangeable and that the Constitution is changeable. As far as India is concerned, it is a Democratic Republic and the Constitution is given by the people. It is adopted and given by the people. So, when we have got a Sovereign Republic by the people and of the people and for the people, we cannot, that way, say

that our Constitution is not firm and is always changeable. It is based on fundamental rights, justice, equality, liberty and fraternity and these are given in the Preamble There are four broad principles on which our Constitution is based, and these principles are always there, static. They are not always subject to change and whatever minor changes are to be made, they would be in other respects But as far as our country is concerned, even articles 1, 2, 3 give ample power under which new territories can be added on to it. So, the country is subject to change but not the Constitution The Constitution means and includes the country and I hope that is followed by everybody. So, I think, there is no necessity of having a separate Oath to the Country I do not think that the concept of the country as we have got is similar to that in certain countries like Russia and others where the country is put above everything So we need not unnecessarily create that sense when we have got certain fundamental basis of the Constitution and the Oath of allegiance to the Constitution means that Oath is also with reference to the law in the country which cannot be read in isolation. So, that point need not detain us.

As far as minor points are concerned, I need not take the valuable time of this hon House but I can only say that the Joint Select Committee tried to exercise its collective wisdom to its utmost and it took decision by a majority as is the practice under the rule provided. Several amendments were already brought and they were discussed As far as the question of evidence is concerned, since the Navy cosists of only the officers and the ratings, there are no experts available on this point and that need not deter us from considering this Bill. After all, evidence had to be considered by the Joint Select Committee from whatever material was supplied to it. The material was quite adequate and I extend my thanks to the various officers and the draftsman who attended the meeting.

SHRI V. PRASAD RAO (Andhra Pradesh): On a point of order, I think it should not be relevant to mention here what transpired in the Joint Select Committee.

SHRI SONUSING DHANSING PATIL Mr. Chairman, I would not have referred to this point unless there was an attack on it, which reflected on the wisdom of the Joint Select Committee that it adopted very loose phraseology in the draft that was presented to them. If one cares to go through the various sittings of the Joint Select Committee, one would find that the drafts were resubmitted when they were not agreed to and the draftsman was asked to redraft them in a proper manner That shows that the Joint Select Committee did not merely rely on the draft that was presented to it but it was modified and it was put for the confirmation of the Joint Select Committee. So whatever be the grounds of attack on the point of bad draftsmanship etc, I have failed to appreciate the point that is made that the Joint Select Committee did not suggest a better draft. I think nobody was prevented in this House to adopt a draft if it was really acceptable and was really suggested in a concrete form but the hon Member Shri Diwan Chaman Lall merely generalised it that it suffers from bad draftsmanship, it suffers from loose phraseology. These are all attacks which are not based on reality. I humbly submit that whatever draftsman was available, was of the best type and the draft was not a sort of imposition on us but it was accepted after due deliberation and great consideration.

Sir, in conclusion I will only urge that there should be wide welcome to this Bill. It is a very important Bill which would go far towards the proper and efficient maintenance of the Naval forces. Whatever provisions are made for the maintenance of the wife and children, one point which slightly escaped my notice was the provision of sending money for the defendant's journey to and from the

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court. Sir, this is necessitated because the Bill, as it is drafted, contemplates two procedures. If a wife or children, are deserted or are neglected and if a person who is aggrieved makes a complaint to the Naval Officer, then that complaint is attended to and he gets a sort of remedy or a redress from the Naval Officer, but if a person feels that the redress as given by the Naval officer is not adequate enough, if that person chooses to go to a court of law and incurs a liability or responsibility, in making defendant one of the persons belonging to the Naval forces; and if he is dragged to the court, the duty is enjoined upon him that he should not cause inconvenience to, or interfere with, that person in the regular course of his duty. If this is accepted, then he is under a compulsion to pay his expenses. Suppose a claim is preferred, even if his claim is bogus or unfounded, then that man is dragged on to the court unnecessarily. It is but natural; it is a sort of punishment to a destitute or deserted wife or to a deserted child, who deliberately takes recourse to proceedings in a court, not following the decision given by the Naval officer. So, that is an alternative. That is a sort of responsibility passed on to him because of certain procedures.

With all these comments, I commend, and very wholeheartedly support the several provisions of the Bill. And I also support the various suggestions made in the Joint Select Committee and the conclusions that the Joint Select Committee has arrived at. Whatever criticisms were levelled, they were more directed, as I said earlier, to the question of appeal and courts martial. But as I understand the whole procedure, it is not a departure from the regular practice. As regards the appeal provisions in other countries, we cannot take the Navy alone, as far as appeal provisions are concerned, because it involves a change in the provisions of article 136 of the Constitution, as that article lays it down that as far as the Armed Forces are concerned, no appeal lies from the decisions of any court or tribunal constituted by or under any law relating to the Armed Forces, to any higher court. Then again . . .

MR. CHAIRMAN: Mr. Patil, you have been repeating a good deal. You said you were commending the Bill and supporting the Bill, and then you say there is another point which you would like to deal with.

SHRI SONUSING DHANSING PATIL: I plead guilty to that charge. In my enthusiasm, this is but natural and repetition is inescapable. I only want to make this point that there should be co-ordination and uniformity in the Armed Forces as far as appeal provisions are concerned and if any difficulty is experienced, it is always open to this august House to remove it. As far as the other points are concerned, I think that all objections have been met with. With these remarks, I support the Bill.

THE DEPUTY MINISTER OF DEFENCE (SHRI K. RAGHURAMAIAH): Mr. Chairman, at the outset, I would like to thank the Members who have taken such deep interest in the provisions of this Bill and who had useful and very enlightening criticisms to make. Sir, I am sorry, however, that some of the most bitter critics are not present here. I would have very much liked it because, maybe, in the course of my speech this morning they might be able to correct me here and there in the statements that I may have to make. Normally at this stage it is not, I presume, necessary to go back to the background history of a Bill like this, because it has been done very ably, as I said in my opening speech, by the Defence Minister when he moved the Motion for reference to Select Committee. But certain statements made by my learned friend, Diwan Chaman Lall, in his great

speech, full of rhetoric and scintillating sentences make me do so. He made the very damaging statement, if I may use that expression, Mr. Chairman, that he was amazed that a Bill like this could have been produced by the administration, and he alleged that it looked as if the administration had taken advantage of the lack of interest in this. It, therefore, becomes necessary for me to refer to the immediate background. As the House knows, the revised Army and Air Force Acts came into force after being passed by this Parliament in 1950. Normally speaking, this Bill also should have been placed before Parliament then, but it was felt by reason of the fact, that the existing Act was based on the British Act and in the U.K. they had appointed a Committee to go into the whole naval structure, it would be prudent to await the results of the recommendations of that Committee. That is the reason why this Bill was postponed and was not taken up at the time of the presentation of the Army and Air Force Acts before Parliament. Since then, the Pilcher Committee has made its report and in the U.K. they had enacted fresh legislation on the subject, so that the people who drafted the Bill had the advantage of not only our existing Act, not only our experience within the last so many years but also the experience of the U.K. as reported upon by the Pilcher Committee and embodied in their enactment and also various other enactments of the U.S.A., Canada, Australia and so on. All these things were taken into account, and furthermore, it was considered very carefully—naturally so—by the Cabinet and further as the House knows, it has been considered also with very great care and attention by the Select Committee and, has been passed, without any amendment by the Lok Sabha. At this stage, to say that we have foisted something, knowing there is lack of interest, to say the least, it takes my breath away. This is not even a compliment to the hon. Member who said it, because at least he ought to know that, when we come up with a Bill here in the Rajya Sabha, whatever else may escape, we cannot forget the fact that such keen students of Naval affairs as Diwan Chaman Lall are here. Therefore, Sir, I am compelled to make these remarks, because, when I was listening to his speech it appeared to me as though he was describing a small loaf of bread made with deleterious substances, pressed in great haste, baked in secrecy and foisted on an innocent child. Nothing of that kind. Very great attention has been given to it and as I shall show presently, there *is nothing abnormal about this Bill.* There is nothing out of the way. All the fundamentals of jurisprudence have been taken care of and embodied in this Bill. In fact, I venture to say that if there is something in this Bill which is not in the old Bill, it is this: We have taken into account our experiences, the report of the Pilcher Committee,—the expert Committee appointed in the U.K., and we have also taken into account the latest legislation which this Parliament in its wisdom has enacted—I am referring to the amendments to the Criminal Procedure Code. I would like my hon. friend to point out at least during the clause by clause consideration of this Bill any particular instance where there is travesty of justice or any novelty or any experimentation with the fundamental canons of jurisprudence. Diwan Chaman Lall is a great lawyer and he wanted to know whether I am a lawyer and quite rightly, it is usual for eminent lawyers to question whether a small lawyer is really a lawyer. Like all eminent lawyers probably also he had no time to go through some of these clauses very carefully. He has drawn particular attention to clauses 113 and 114 of the present Bill. These relate to the procedure followed by courts martial. Clause 113 provides:

> "When the case for the defence and the prosecutor's reply, if any, are concluded, the trial judge advocate shall proceed to sum up in

[Shri K. Raghuramaiah.]

open court the evidence for the prosecution and the defence and lay down the law by which the court is to be guided."

Sir, this represents not only existing practice but takes into account section 297 of the Criminal Procedure Code. The only innovation, if it can be called innovation, is the insertion of the words 'in open court'. I would like to know whether it offends the fundamental canons of jurisprudence? I wish my hon. friend were here to elucidate upon this and enlighten us.

Clause 114(1) refers to the duty of the Judge Advocate to decide all questions of law arising in the course of the trial, specially all questions as to the relevancy of facts and also admissibility of evidence. The picture he has painted here of the Court martial proceedings as adumbrated in this paragraph was so shocking that hon. Members who heard him must have wondered whether there is really anything abnormal in it because he was pointing out that for the first time we were destroying the confidence which people have got secured in Courts martial. Sir, these are however very ordinary matters of procedure as pointed out by my friend, Mr. Patil, and also yesterday by Mr. Basu. These are ordinary matters of day to day procedure governed by section 297 of the Criminal Procedure Code. Also, Sir, these are matters in regard to which great attention has been paid all these years in the day-to-day administration of the Courts martial; nothing novel about it, nothing strange about it, nothing to invoke all that terrific onslaught which my hon. friend has bestowed on this.

Similarly, Sir, clause 114(2) refers to the Judge Advocate advising the president of the court and the president thereupon making an order for the court to retire and directing the Judge Advocate to hear the arguments at some other convenient place. This, Sir, is based on the very wise recommendations of the Pilcher Committee and on a recommendation also made in one of its great judgments by the Calcutta High Court. Therefore, Sir, whether we look at clause 113 or clause 114 or any of the other clauses I beg to submit that there has been no departure from the well-known canons of jurisprudence.

SHRI H. N. KUNZRU (Uttar Pradesh): What does the Calcutta High Court say in one of its great judgements?

SHRI K. RAGHURAMAIAH: I have not got the actual judgment, but I shall give a reference to it—AIR 1933, Calcutta 335—wherein the hon. Judges observe that it is always desirable that the jury should be asked to retire from the court when the question as to admissibility of a particular piece of evidence is being discussed. Yesterday it was contended that it was anomalous, that it was most ununderstandable why when this particular question is being discussed the court should be cleared. The reason, Sir, is that the court here functions as a jury and it is not desirable that they should be there, and it is likely that they may be prejudiced by virtue of what they hear. Takes, for instance, a confessional statement, Sir. It may be that when we are considering the admissibility of a confessional statement we have to read out the statement.

SHRI H. N. KUNZRU: My hon. friend should realise that that position is not stated in that way here. Well, we shall make that point clear later on when the amendments are moved.

SHRI K. RAGHURAMAIAH: Sir, I have got very great respect for Pandit Kunzru. I have worked with him in great many places. I do not question his wide experience or his great knowledge. But may I submit, Sir, with all humility that all these things are not provided in an Act. You have to work out, and in the process of working out so many practices grow. If

you begin to have every possible contingency covered in a Bill I do not know, Sir, whether it would be possible for Parliament, within the limited time at its disposal to take up these things. That is why we have got the other salutary provision here. Many of these things are to be regulated. Provision is made for regulations to be framed and those regulations will be placed before Parliament so that even in regard to very minor matters of procedure, if the House feels that certain point is left out or certain other provision must be made, it is open to the House to do it at that stage.

Now, Sir, to come back to my learned friend, Diwan Chaman Lall he also referred to clauses 126 and 127. Clause 126 relates to alternative findings and authorises the court, where it appears in evidence that he committed a different offence for which he might have been charged under section 91, to convict him of the offence which he is shown to have committed although he was not charged with it. Then, Sir, clause 127, sub-clause (1) reads: "When a person is charged with an offence consisting of several particulars a combination of some only of which constitutes a complete minor offence and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence although he was not charged with it."

He painted, Sir, yesterday as if this is a ghastly piece. It is nothing of the kind. I am sure, an eminent lawyer as he is, in view of what he said about his long experience with law, he should have come across at least incidentally sections 237 and 238 of the Criminal Procedure Code dealing with almost identical matters. Sir, talking of definitions, talking of vagueness of the Bill, of bad draftsmanship, of it being a hazy piece of legislation and so on, he hit upon a particular word 'circumstantial letter' referred to in sub-clause 106(2) and said that he could not know what it meant, that nobody could know what it meant and that it was obligatory to have said what was exactly meant by 'circumstantial letter'. If my friend, as so ably pointed out by Mr. Basu yesterday, had only cared to look at sub-clause 106(2) wherein it says: "The prosecutor shall open his case by reading the circumstantial letter prepared in accordance with the regulations", he would not have made such a statement.

He referred also to courts of enquiry. I would have very much loved to tell him—he does not seem to be here—that there is nothing like a court of enquiry before a naval court martial. First of all it is called a board of enquiry. And I would also love to tell him, if he is here, that a board of enquiry is not always obligatory in a court martial. What happens is: When an offence is committed, the Commanding Officer either details some officer to investigate, or if there is grave loss and so on involved, he would request the convening authority to appoint a board of enquiry. In any case the summary of evidence is there, and the summary of evidence is made available to the accused for the purpose of contradiction and so on as in the case of a trial in a regular criminal court and in accordance almost with the provisions of section 207A of the Code of Criminal Procedure. Now that is one of the amendments which the Parliament in its wisdom made to the Criminal Procedure Code, and we are only following that. In fact I am glad to say, I am proud to say that the naval courts martial have been following this all these years. So there is nothing exceptional or extraordinary in that procedure. It is meant for the benefit of the accused for whom all of us are so solicitous to ensure proper administration of justice.

Some hon. Members have felt and they have also expressed it that the punishments are very severe. May I say that these punishments have not been incorporated here in a fit of vindictive fancy? Many of them have

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been taken from previous enactments and a few years ago at the instance of the Prime Minister, Sir Trevor Harris, ex-Chief Justice of the Calcutta High Court, went into this matter with regard not only to the Navy Discipline Act, but also with regard to the Army Act and also the Air Force Act, and having seen these disparities, he advised that there must be a uniform scale of punishments Consequent on that, the three Chiefs met and decided that the anomalies in the Acts should go It is possible, Sir, that later on we will have to bring the Army and the Air Force Acts also into line with these provisions When on this question of punishment the hon Member Diwan Chaman Lall referred to 'cowardice' and said that before this there was no punishment of death for 'cowardice', it was only imprisonment for life He asked, "Why on earth, have you gone back in this to barbarous times and imposed this punishment of death?" Here again, with all his erudition, I would have asked him if he were here, whether he cared to go through the old Act, the new Act and all the relevant matters? If I may point out, clauses 34, 35 and 37 of the present Bill which refer to 'cowardice' are exactly identical with the reference to 'cowardice' in section 2, section 3, section 5 and section 10 of the Indian Navy (Discipline) Act The only thing we have done is to make the alteration with regard to 'cowardice' in relation to mutiny There under section 10 of the existing Act it is only penal servitude or less But in the Army Act even now, in similar circumstances, the maximum penalty is death We have brought the Navy Act on a par with the Army Act in accordance with the decision of the Service Chiefs following the recommendation of Sir Trevor Harris When one hon Member pointed out to my learned friend Diwan Chaman Lall with reference to some of the other provisions, that they were already there in the Criminal Procedure Code, he said something like this, "I know But why are you going back to barbarous times?" I do not know whether the Criminal Procedure Code which represents the wisdom and experience of this country, let alone that of the United Kingdom and others, can be so categorised If we are guilty of any such charge, I would plead guilty and still try to follow the provisions of the Criminal Procedure Code as closely as circumstances warrant and the situation requires

My hon friend Mr Sapru was surprised about the constitution, about the appointment and about the way in which the Judge Advocates would function He cited a case which had come to his knowledge while he was in the United Nations He said that when he mentioned about a provision which enabled leave of appeal to be given by the court which convicted or imposed the sentence, the French delegates were shocked and they asked, "How could a court which itself imposed the punishment or gave the finding ever be trusted to give leave to appeal?" But we know that this is done every day in almost all the High Courts in this country and we do not mistrust our judges May I say Sir, that when the Judge Advocate functions he functions in the same spirit of detached justice? It is not as if he is an executive limb sitting there and trying to whip up everyone That is not done in the atmosphere in which the court martial functions The Government appoints him But the moment he takes his place as Judge Advocate, he has this sense of detachment I am sure those who are familiar with the procedure in courts martial will agree that he does it with a supreme sense of detachment, his only anxiety being to ensure that justice is done

Pandit Kunzru and many other hon Members of this House have rightly referred to the absence of appeal provisions in this Bill Government, Sir, is not unaware of the importance of this issue They have given their most anxious consideration to this, not only the Government, but if I may

say so, the Joint Select Committee also. This certainly is an important matter. But while on the one hand when we follow certain practices of the United Kingdom we are charged with copying, in this particular case when we have taken our own conditions, our own circumstances into account and formulated a certain procedure on some other lines, then we are charged with not having followed the British pattern. The British, if I may say so, have not incorporated the appeal provision earlier. They did it in 1950. They did it after a great deal of experience, it is true, but experience of their own affairs, their own circumstances. May I mention that in our case also we have to take into account not only the number of cases, not only the manner in which justice has been administered in these cases during the last so many years, but also the inconvenience and the difficulties that are necessarily pertinent to any provision for appeal. Have we not heard in this country time and again, that there is enormous delay in the disposal of cases, that justice is denied by delay? There have been, Sir, only 31 cases of naval court martial ever since 1954 and I would request any hon. Member to show whether in any one of those 31 cases there has been a case like the Dreyfuss case which an hon. Member referred to yesterday? I have stated again and again with some little knowledge of those matters that there has been no case of grave injustice ever since trials by courts martial started in this country. Should we ignore that? Should we ignore the fact that there has been no case of sentence of death since at least 1954? It is not as if every day we impose a death sentence. And the confirmation by the Central Government is there. Earlier, prior to that there is the review by the Judge Advocate General and the Judge Advocate General is one who has qualifications comparable to that of a High Court Judge. The Judge Advocate General has nothing whatever to do with the trial. He comes into the picture only after the trial is over, and all the evidence and other records are before him.

[MR. DEPUTY CHAIRMAN in the Chair.]

Is a man who has qualifications comparable, as I said, to that of a High Court Judge, to be mistrusted? Then, Sir whom are we going to trust? All the same, Sir, I might repeat what I said earlier, that Government has not a closed mind on this. It certainly is a thing to be watched, and if and when we feel, if and when Government feels, that there is no proper security for the administration of justice, that will be the time for us to make some provision on the lines of the United Kingdom Act, or that of any of the Commonwealth countries. Also, as my hon. friend Mr. Patil rightly pointed out, this is a matter which has to be considered not only in relation to the Navy, but also in relation to the Army and the Air Force, and legislation if ever it comes, must necessarily be comprehensive enough to cover all the three wings of our defence services. My hon. friend Shri Amolakh Chand said that the President is the Supreme Commander and therefore the reviewing authority should vest in the President. May I point out to my hon. friend that his argument has been anticipated by the framers of the Constitution and it has been so provided in article 72 of the Constitution?

At this stage, perhaps I should deal with the clause relating to women. It is not anybody's intention, to throw any aspersion on our mothers and sisters. Their capacities are obvious and if this clause is inserted, let me say it quite frankly, it is not done with any sense of discrimination. You should remember the conditions of service in the Navy. I wish the hon. Member Shrimati Savitry Devi Nigam could see conditions on board a warship. I could arrange a visit for her on some special occasion, for normally it is not allowed. I wish she would go on board a warship and see what is the kind of work that is

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required, what is the kind of life high is there, day in and day out, in high seas, in different climates and in tortuos weathers, manning heavy guns and so on. It is not a very pleasant thing, Madam. Apart from that, there is perhaps the other subject which I should not touch but one which is so gently touched by my hon. friend, Mr. Patil. There are certain situations where perhaps it is not quite desirable that there should be this kind of . . .

SHRI J. S. BISHT (Uttar Pradesh): Co-existence.

SHRI K. RAGHURAMAIAH: I would not say that. We have to take different circumstances into account. Undivided and undiluted concentration of work if ever it is necessary, nowhere else is it more necessary than in this sphere. Some hon. Members asked me about the position obtaining in the U.S.S.R. I said I would find out. I have since found it out and I can say with some authority that nowhere else, either in the U.S.S.R., U.S.A., U.K. or anywhere in the Commonwealth or in any country of which I am aware of, is there any unrestricted employment of women in all the naval services and, more particularly, I can say that on board a warship they are not allowed. Maybe they are employed in shore establishments. That is a different matter altogether. I can say we have them in our country also doing admirable work in the medical department. They are doing excellent work there and it may be that in course of time, when circumstances changes . . .

SHRI V. PRASAD RAO: They are not statutorily banned.

SHRI K. RAGHURAMAIAH: I am glad, Sir, that my hon. friend is not now denying the fact that they are banned in actual practice. I have not got this particular enactment of those countries with me to quote chapter and verse but the fact remains that they are not allowed on board any warship. Even here, Sir, it is not as if there is a complete ban. As some of the hon. Members pointed out it only gives the Central Government power to decide from time to time what the department and so on should be in which they can be employed. Whatever else may be said of this, it is not *ultra vires* of the Constitution as some hon. Members have said. Apart from those provisions in the Constitution which enable us to restrict those fundamental rights, this can also be completely justified under article 33 which enables the abrogation of fundamental rights, restriction of fundamental rights and we have taken power in clause 4 of this Bill to validate the restrictions or abrogations in that respect.

Pandit Kunzru raised some points regarding maintenance. He has enquired and quite rightly, as to why, under clause 31, there is first of all, a bar regarding the execution of enforcement of a decree for maintenance being executed and, secondly, why we have gone a step further and provided that even in the cases where those decrees are taken into account and deduction is to be made, a discretion is given to the Chief of the Naval Staff and others to decide the quantum of the amount. May I point out, Sir, that the deductions contemplated in the Bill are numerous? Clause 28 gives a list of them and I would only draw attention to one particular thing, clause 28(4), "any sum required to make good the pay and allowances of any person subject to naval law which he has unlawfully retained or refused to pay;". Supposing we say that whatever decree is passed by a court, a decree for maintenance, subject to the ceiling prescribed, should be recoverable from the pay, is it not possible to think that a man will connive with his wife and obtain a decree? Is it then suggested that every month, month after month, to the full extent of the maximum permissible deduction, deductions should be made for the satisfaction of the decree and that nothing should be left for instance, even to make good the pay and

allowances of the other officer or person whose money the person concerned has either misappropriated or denied or done something else with? There are so many deductions to be made here in the interest of discipline, in the interests of the service generally and so on. There must be room enough for adjustments and power should rest with the Chief of the Naval Staff. That I would submit, Sir, is one of the reasons why it was thought necessary to give this discretion to the Chief of the Naval Staff, to decide how much of it should go towards the satisfaction of the decree. One of the hon. Members has pointed out that when a suit for maintenance is filed, the plaintiff is obliged to pay all the charges that are necessary, he has to deposit in the court all the charges that are necessary, to bring the defendant to the court. It is true and it has been done deliberately. As hon. Members will see when they read clause 31, there are two specific remedies made available in the case of maintenance. One is a very cheap remedy, a very efficacious remedy, a very comfortable remedy, if I may say so. The aggrieved wife or the child can go to the Chief of the Naval Staff or the other authority shown in the clause and then state the case. If the Chief of the Naval Staff is satisfied that it is a just case, it is a genuine case and that maintenance should be given, the matter ends there. The deduction is made on the basis of an order and without spending pie the deserted wife or the child gets the maintenance. Supposing a person does not take advantage of that provision but insists on going to a court of law, would it not affect the organisation the particular atmosphere in which the Army or the Navy functions, to insist that in every such case, the defendant wherever he may be, however far he may be stationed on the high seas, should be immediately brought down to the court? Some safeguards, therefore, have been felt necessary to be provided for ensuring that the Army or the Navy or the Air Force functions as a unit without this kind of disturbance of personnel. That is why, Sir, a more expeditous, a more cheaper remedy of a representation to the Chief of the Naval Staff has been provided in this case. Pandit Kunzru asked yesterday as to why this is necessary in times of peace assuming that in times of emergency, of course, you cannot disturb the army personnel or the naval personnel. But, Sir, the line of distinction between war and peace, as Panditji knows, is very thin indeed and an Army or a Navy must always be ready to function at all times. Therefore, and I am sure he will agree that this is necessary not only in times of emergency but also in times of peace.

Coming to certain expressions, I think it was Mr. Prasad Rao, who first raised the point about the petty officer. He said that this is a very petty, very discrediting, very contemptuous term. I do not know where he got all this from because, apart from the fact that this is a term of endearment in the naval services, I also had a glance at not the fifteenth century dictionary but a twentieth century dictionary which perhaps would satisfy Members, and the meaning of petty officer, it gives is "a naval officer with rank corresponding to the non-commissioned officer in the Army". There is nothing contemptuous in it. What my friend has done is to split up the word petty officer, into petty and officer. He has then looked up the dictionary meaning of this term 'petty' —one of the meanings—and found it to be contemptuous and then has tried to import it here. Now, I am not a great authority on the English language but, with my humble knowledge of it, may I say that it is a very dangerous thing to do and I am sure, my hon. friend, Mr. Prasad Rao of all people, will appreciate this. He comes from the same area where I come from and there we call what are called the peanuts as monkey nuts. Shall we separate the term into monkey and nuts and then say that only

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monkeys eat it and not men? Take again a word like 'Vice Admiral.' It is a very honoured term. Shall we dissect it as 'Vice' and 'Admiral' and try to impart the wicked meaning of vice into the 'Admiral'? Would it be fair? One of the big officers the other day was telling me that his wife always—I suppose, everybody's wife does it—writes against the column 'profession' 'Housewife.' Shall we dissect that word and say 'house' and 'wife'? and argue that that means only wife for the house and not for the outside. Again, take the word 'headmistress.' Shall we take the 'head' from the 'mistress' and consider the connotation of 'mistress'. I do not want to go into all that, but I would request him to read back and consider his own speech and say whether I should follow the same logic there or not. He referred to civil offence. Is there any civility about an offence? I know that there are some people in this country who think that even murder is very polite. But, I am sure, the hon. Members do not think so and yet, Sir, we have considered it proper to refer to certain offences as civil offences.

Lastly, Sir, before I leave this subject, may I say that, with all his grand references to fine discipline that is shown by the Armed Forces, he exhorted them as "our officers and boys". I am sure, Sir, the word 'boys' he used in an endearing sense. But, it is in another sense, a boy in a hotel. The British used to call the servers as 'boys'. I am sure he never meant it that way. May I beg of him and beg of the hon. Members here who have taken note of the words 'petty officer' not to dissect a compounded word and try to impart into one part of it a meaning which may be found in a dictionary, but which in the context is nowhere within the knowledge of the people who use it? I am told, Sir, that, if there is one thing that will distress the members of the Naval Service, it is the removal of this word which has come with a great tradition behind it. It is known all over the world. It is part of the Indian Navy; it is part of the United Kingdom Navy; it is part of the United States of America Navy. It has been there for ages and the proudest moment, I am told, of a rating's life is the day when he becomes a petty officer.

Sir, one of the hon. Members said that he wished that no hurdles were placed in the matter of promotion. Quite right. There is no such hurdle in the Naval Service. The House will be glad to know that, although the training is different, although the educational qualification is different, there is a provision for, first of all, promoting a rating as a Petty Officer and then as the Chief Petty Officer and then, provided all other conditions are satisfactory, for taking him into the commissioned ranks and it won't be beyond human imagination to look forward to the day when a rating would become the Chief of the Naval Staff. Nothing is impossible. So, it is not as though there is any rigid caste system or compartmental system in the Naval service.

Some hon. Members have suggested, in regard to oath, the incorporation of the words referring to the loyalty to the country. May I point out to them, Sir, that we have tried to follow the pattern of the Third Schedule to the Constitution? The Third Schedule lays down specific forms of oath applicable to the Judges of the High Court, the Ministers, and the Members of Parliament. If we have erred, Sir, we have erred in the path of the fathers of the Constitution. We have followed it very loyally and I submit, Sir, that that oath is quite solemn and quite sufficient for the object which we all have in mind.

Regarding clause 19(1), some of the hon. Members have read it as though a person belonging to the Armed Forces cannot, in the first place, become a member of any association other than a social, recreational or a

religious one. May I point out that it is not so? The only thing is, in the case of an association of a purely social, recreational or religious nature, nobody's permission is necessary. But permission is necessary in every other case, so that, if it is a purely cultural organisation, nothing prevents a person who wants to join it, to come to the authority mentioned in this clause and to prove that it is a purely cultural organisation and there is no bar in the clause to prevent a person joining it, if the Central Government are satisfied.

One of the hon. Members asked: "What is an association? Can a man be a friend of a member of an association?" I do not think, Sir, that it needs much of an argument on my side to show that membership of an association is quite, quite different from being a friend of a member of an association.

I believe, Sir, I have covered most of the points that have been raised on the floor of this House. If I have left any, I shall be most happy to clarify them. But I would like to add before I close on this occasion, that it is most unfortunate that my friend, Diwan Chaman Lall I am glad he is here now should have made those remarks about drafting. I am not as great an expert at drafting as the eminent Diwan Chaman Lall is, nor have I such an erudition of court martial procedure. But I would submit, Sir, that his remarks are most uncharitable. Drafting was one of the points on which the greatest attention was bestowed by the Joint Select Committee. With my humble knowledge of drafting, I would pay a compliment to the draftsmen. It is not a joke to draft. It is not such an easy thing as to sit back and then pen down something. But, Sir, I am prepared to admit that the level and standard of Diwan Chaman Lallji's drafting may be higher. I would have loved to see a specimen of it in the shape of an amendment and I am sure had he done so it would have been irresistable.

I do not think, Sir, there is any further point which I am called upon to clarify. As I said, in the course of the clause-by-clause consideration stage, I shall add whatever remarks I have to.

Thank you, Sir.

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill to consolidate and amend the law relating to the government of the Indian Navy, as passed by the Lok Sabha, be taken into consideration."

The motion was adopted.

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

Clause 2 was added to the Bill

Clause 3—*Definitions*

SHRI V. PRASAD RAO: Sir, I move:

1 "That at page 3, lines 21-22, the words 'and any person in arms against whom it is the duty of any person subject to naval law to act' be deleted."

3. "That at page 4,—

(i) in line 10, for the words 'petty officer' the words 'junior officer' be substituted; and

(ii) in line 11, for the words 'chief petty officer' the words 'chief junior officer' be substituted."

4. "That at page 4, lines 23-24 for the words 'liable to be arrested and tried under this Act for any offence' the words 'subject to the provisions of this Act' be substituted."

(These amendments stood in the names of Dr. R. B. Gour and Shri V. K. Dhage also.)

MR. DEPUTY CHAIRMAN: The clause and amendments are open for discussion.

SHRI V. PRASAD RAO: As for the first amendment, Sir, here the term 'enemy' is not properly defined at all. It also includes such and such things—'enemy' includes all armed rebels, armed mutineers, armed rioters and pirates "and any person in arms against whom it is the duty of any person subject to naval law to act." The second thing is that it is redundant because we have not given any comprehensive definition, but have only included certain categories of people in this term. I think the definition of the term 'enemy' will be more cohesive instead of putting redundant things.

The third thing is about the words 'Petty Officer'. In spite of all the eloquence from the Deputy Minister —he has also a bit of flair for histrionics—I could not understand it, because the very premise on which it is assumed is not correct. 'Petty Officer' is not a compound word just like 'Vice Marshal' or 'Vice Admiral' or some such thing. So, in spite of the very long peroration and the eloquence that is displayed by our Deputy Minister, the 'petty officer' did remain petty, I think so I am not at all convinced by all the arguments that he advanced or by the knowledge of English displayed by him. I am no *pundit* of English, but as I stated, that did not convince me about the correctness of the word 'petty'. I want to say one fact. There is a question of endearment among the Navy people. I also had a little to do with the Navy people. He said that this 'petty' thing is very very dear to him and that it should remain as a 'petty officer.' On the other hand, there are very many people who said—"Could not this term 'petty officer' be changed to some other term, to some other pretty term?" Carried away by his eloquence perhaps, he said that, because of endearment among the Navy people, they want this term. There is no doubt about that. They want it; they want to be promoted to the higher ranks. That does not mean that he should take this very term 'petty officer' as a great thing. The term 'junior officer' should be substituted for 'petty officer'. Why have we taken all the British traditions as they are? We are enacting this law and we have changed certain terminology in the Army also. I want to know exactly what comes in the way, if some people very strongly object to it, in changing this terminology? Why should we cling to that particular terminology? This raised so much of a hubbub in the other House, in this House and also in the Joint Select Committee. I do not think we should accept it, unless we ourselves got endeared to that term 'petty.' There is nothing very strong that we should cling to this word.

Thank you, Sir. Though I think the Minister will not accept this, I do press this amendment.

MR. DEPUTY CHAIRMAN: (*To Shri K. Raghuramaiah*) Any reply?

1 P.M.

SHRI K. RAGHURAMAIAH: Sir, most of these points have already been replied to. As regards the point raised by my friend about enemies, as he knows, there are enemies and enemies, and we want a definition to cover every enemy. Therefore, Sir, I object to the amendments.

MR. DEPUTY CHAIRMAN: The question is:

1. "That at page 3, lines 21-22, the words 'and any person in arms against whom it is the duty of any person subject to naval law to act' be deleted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

3. "That at page 4,—

(i) in line 10, for the words 'petty officer' the words 'junior officer' be substituted; and

(ii) in line 11, *for* the words 'chief petty officer' the words 'chief junior officer' be substituted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

4. "That at page 4, lines 23-24, for the words 'liable to be arrested and tried under this Act for any offence' the words 'subject to the provisions of this Act' be substituted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 3 stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill

MR. DEPUTY CHAIRMAN: The House now stands adjourned till 2-30 P.M.

The House then adjourned for lunch at two minutes past 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.

Clause 4 was added to the Bill.

Clauses 5 to 8 were added to the Bill

Clause 9—Eligibility for appointment or enrolment

SHRI V. PRASAD RAO: Sir, I move:

6. "That at page 6, lines 26 to 30 be deleted."

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): The clause and the amendment are before the House.

SHRI V. PRASAD RAO: I think the clause open to discussion is the one about which many friends both on this side of the House and that side of the House have spoken and without exception, of course, all the lady members supported this, that there be no such clause like this. I think the pilot of the Bill has faced a very rough sailing as far as this clause is concerned from the other side also.

After hearing the arguments of our hon. Deputy Minister of Defence on this clause, I am not convinced why this becomes necessary at all . He said that there was no such things, as a point of fact, that in any Navy women are taken into the active service into the sea. I am afraid, his information is not correct. He also specifically stated that even in the USSR, in no warship, women are allowed. I am myself not so well posted about information in the warship, but I know that some of the sailing vessels, where the conditions of service is no better than in a warship, they do not only admit women into them but some of them keep reservation for women, and the condition of sailing is no less difficult than fighting in a war. It is, in fact, more difficult than fighting in a Naval vessel.

As far as the statutory provision is concerned, there is no definite bar. In China they do not bar women into any department. I never said that it actually prevents women from coming into the Navy but I think it is against the spirit of the Constitution, that is what I pointed out. I do not say categorically that this clause is *ultra vires* of the Constitution as such. What I said is that though it is in conformity with the letter of the Constitution, it is against the spirit of the Constitution, that is what I have said. After having said all these things I think there is no necessity for this specific provision. Actually if we do not want women in any particular department, that can be made out by a regulation, So, even if this statutory bar is not there, women are not

[Shri V. Prasad Rao.]

going to come *en masse* to join the Navy. That apprehension, I think, is not correct. I do not think they are going to join *en masse* and it is going to lead to any litigation if this sub-clause is not there. So, I have suggested that sub-clause (2) of clause 9 be deleted.

SHRI K. RAGHURAMAIAH: I am glad that my learned friend indicated that my reference earlier was to warships. Of course he also made a similar statement about U.S.S.R. Navy and China. But I do know that there are some countries where rules of recruitment vary very greatly from their enactments. But we need not go into that. The fact remains, and he has not contradicted it, that in warships women are not, as a rule allowed and I stick to it. This has been argued at length and I have always explained that there is no complete bar here. What we have done here is to empower government from time to time to examine the conditions of the service the circumstances of the case and the capacity available and to make adjustments suitable to occasion. I would, therefore, Sir, oppose this amendment.

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): The question is:

6. "That at page 6, lines 26 to 30 be deleted."

The motion was negatived.

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): The question is:

"That Clause 9 stand part of the Bill".

The motion was adopted.

Clause 9 was added to the Bill.

Clause 10—Commissions and appointments

SHRI V. PRASAD RAO: Sir, I beg to move:

7. "That at page 6, after line 32, following proviso be inserted namely:—

'Provided that one-third of the total appointment of officers shall be made by grant of commissions to persons who are enrolled in the Indian Navy.'"

Sir, I also beg to move:

8. "That at page 6, after line 37, the following proviso be inserted, namely:—

'Provided that half of such appointments shall be made by promotions.'"

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): The clause and the amendments are before the House.

SHRI V. PRASAD RAO: I shall only say a few words on these amendments. It is about statutorily fixing the quantum of officers to be recruited from the lower ranks. This, as pointed out earlier, is to give confidence and to boast the morale of the ratings, making it specific, that a larger quota of officers are going to be recruited from them. Sir, as at present, I think it is governed by regulations and 12½ per cent. of the promotions are made from the lower ranks. Now, most of the ratings, and some of the officers also, feel that this quota should be much higher. Since the percentage of education, as far as Navy is concerned, among the ratings is very much higher than that of the Army, and there is a lot of potential officers cadets there among the ratings, I feel that if this percentage is increased to one-third, not only sufficient number of officers cadets would be found from the ratings but it would help a great deal to boast the morale of the lower rank also because it assures them that one third of them (Officers) will be recruited from them. Another thing. We are now recruiting officers at a very young age and the youth must be blended also

with experience. So, by promoting from the lower ranks, we shall be taking experienced people who, when blended with youth, will become an ideal officer cadet. I think the Defence Ministry will give at least this consideration even at this late stage. If they fight shy to accept the amendment now, they may make such a provision by regulation and it will be very helpful for better administration of our Navy.

SHRI K. RAGHURAMAIAH: In the first place from the picture, which the hon. Member has painted, it looks as though there is now no opening either for the ratings or for the officer cadets.

SHRI V. PRASAD RAO: I said 12½ per cent. quota is there.

SHRI K. RAGHURAMAIAH: When I was listening to him, I thought he was referring to some labour organisation where anybody could be a Secretary or a President or anybody else. He must have also some idea of Navy. The Navy is quite a different thing and the officers there require not only education, ability but also a very special training and special ability. The type of training that is given to a person who will be taken into the commissioned rank or into the position of command is quite different. All the same, we have provision now in rule of practice or regulation by reason of which Government have thrown open 12½ per cent. of the annual intake to be filled up from among the ratings. Ratings can become petty officers, chief petty officers, and as I was mentioning this morning, they can even be promoted straightway to a commissioned rank. My friend's quarrel is about the 12½ per cent. I do not know on what statistical data or logistics that he pronounces that it should be one third. I do not know, but one can be as arbitrary as the other. Twelve and a half per cent. has been fixed in this case, considering the capacity available, the high requirements of the commissioned ranks, the conditions of training, etc. All these factors are borne in mind and I would submit that nothing prevents the Government tomorrow from increasing this, if conditions requiring a change exist. I would therefore submit that this is a matter which should be left to the discretion of the Naval Administration and of the Government. It is not a matter to be specifically, inexorably and unalterably fixed in the Navy Bill.

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): The question is:

> 7. "That at page 6, after line 32, the following proviso be inserted, namely:—
>
> 'Provided that one-third of the total appointment of officers shall be made by grant of commissions to persons who are enrolled in the Indian Navy.'"

The motion was negatived.

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): The question is:

> 8. "That at page 6, after line 37, the following proviso be inserted, namely:—
>
> 'Provided that half of such appointments shall be made by promotions.'"

The motion was negatived.

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): The question is:

> "That Clause 10 stand part of the Bill."

The motion was adopted.

Clause 10 was added to the Bill.

Clause 11—Enrolment.

SHRI V. PRASAD RAO: Sir, I move:

9. "That at page 7, after line 18, the following proviso be inserted, namely:—

'Provided that any person enrolled during his minority shall have the option to get himself discharged within three months of his attaining majority.'"

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): The clause and the amendment are now open for discussion.

SHRI V. PRASAD RAO: This is a simple amendment. It says:

"Provided that any person enrolled during his minority shall have the option to get himself discharged within three months of his attaining majority."

We are providing in this Bill for minors also to be enrolled in the Navy, of course, with the consent of their guardians. At the time they attain majority, some sort of mechanism should be there for him to resign, if he feels himself unable to serve in the Navy, or if he has joined in a huff. This proviso will enable such a youth or adolescent who had joined in a hurry or a huff or on account of a quarrel with his parents to get his discharge. Or the parents themselves may have found him to be unsuitable. When he attains majority, there must be some provision for him to get himself discharged from the Navy. I think this proviso must be there.

SHRI K. RAGHURAMAIAH: I oppose the amendment for the simple reason that, as my hon. friend also must be aware, because he was a member of the Select Committee where this matter was considered. Whatever substance may have existed before amendment of clause 14, it has now vanished. Now under the clause as amended, a seaman also may resign so that, if a person during his minority enters the Navy and at any time he feels the conditions are unacceptable to him, nothing prevents him from resigning, of course subject in all cases to its acceptance by the Government or prescribed authority. That specific right has been given under clause 14. Now, there is no room for any doubt on this and there is no need for this amendment.

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): The question is:

9. "That at page 7, after line 18, the following proviso be inserted, namely:—

'Provided that any person enrolled during his minority shall have the option to get himself discharged within three months of his attaining majority.'"

The motion was negatived.

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): The question is:

"Clause 11 stand part of the Bill."

The motion was adopted.

Clause 11 was added to the Bill.

Clauses 12 to 18 were added to the Bill.

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

SHRI V. PRASAD RAO: Sir, I move:

11. "That at page 9, after line 38, the following proviso be inserted, namely:—

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

12. "That at page 10, lines 7-8, the words 'or for such other purposes as may be specified in this behalf by the Central Government' be deleted."

13. "That at page 10, after line 15, the following proviso be inserted, namely:—

'Provided that nothing in this sub-section shall bar any person subject to naval law to communicate with any member of Parliament on other than military matters.'"

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): The clause and the amendments are now open for discussion.

SHRI V. PRASAD RAO: I want to say only a few words. Amendment 11 says:

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

The purpose of my amendment is not to bring in politics into the Navy but only to widen the horizon of our Naval people. In the Select Committee also, they had refused to include cultural associations under the purview of this Bill. We feel that no sort of embargo should be put as far as the cultural activities of our Armed Forces are concerned. As I said earlier, it is only by encouraging such things that we can make our Naval people better soldiers, better fighters, in defence of our Country. Only Purely religious, recreational or social organisations one can join without the permission or consent of the Government of India. Even if he wants to join a professional or academic association like the Institute of Engineers or some other society for educational purposes, he has to seek the permission of the Central Government which, I think, is very difficult to obtain, because no such statistics have been provided to us as to how many people had applied for permission and how many have actually been permitted. At least, it will be a cumbersome process and I do not understand why entering an educational association should be statutorily banned here. It is not with the purpose of bringing in politics into the Navy that I move this amendment, but to increase the cultural life of our people in the Navy and so that undue restrictions might not be put on them, I feel, that this proviso should be there.

SHRI K. RAGHURAMAIAH: In the course of his remarks so often the hon. Member used to ask the question as to why the Government should fight shy of this and shy of that. May I return the compliment for once and ask why he fights so shy of approaching the Government to prove before them in all innocence that an association is really cultural or scientific and not something else. Government can see if this is really so or it is something else under the guise of a cultural or scientific association. There is no prohibition at all here. All that the clause requires is that, if it is a purely recreational or social or religious association, then no permission is necessary. Automatically, a person can become a member. But if it is anything else one has to prove the *bona fides* of the association. I submit, Sir, considering the difficulties of the armed forces, it is most essential that Government should have this very healthy power. I oppose the amendments.

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): Are you pressing your amendments?

SHRI V. PRASAD RAO: I shall move amendment No. 13 also.

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): All the amendments were moved.

SHRI V. PRASAD RAO: I should like to say only a few words about my amendment No. 13.

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): You have already spoken and the Minister has replied.

SHRI V. PRASAD RAO: Then all right, Sir.

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): Now I put the amendments one by one.

The question is:

11. "That at page 9, after line 38, the following proviso be inserted, namely:—

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

The motion was negatived.

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): The question is:

12. "That page 10, lines 7-8, the words 'or for such other purposes as may be specified in this behalf by the Central Government' be deleted."

The motion was negatived.

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): The question is:

13. "That at page 10, after line 15, the following proviso be inserted, namely:—

'Provided that nothing in this sub-section shall bar any person subject to naval law to communicate with any member of Parliament on other than military matters.'"

The motion was negatived.

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): The question is:

"That Clause 19 stand part of the Bill."

The motion was adopted.

Clause 19 was added to the Bill.

Clauses 20 to 30 were added to the Bill.

Clause 31.—*Liability for maintenance of wife and children*

SHRI V. PRASAD RAO: I move:

29. "That at page 15, lines 27 to 30 be deleted."

(The amendment also stood in the name of Shri Abdur Rezzak Khan)

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): The amendment and the clause are open for discussion.

SHRI V. PRASAD RAO: The proviso in sub-clause 31(4) reads:

"Provided that such service shall not be valid unless there is sent along with the process such sum of money as may be prescribed to enable that person to attend the hearing of the proceeding and to return to his ship or quarters after such attendance."

This has been described by the Deputy Minister as one of the very salient provisions for not embroiling these navy people in unnecessary litigation. But has he ever thought of those unfortunate women about whom proper care is not taken by those people who are serving in the navy? Should we not also provide to see that not only that navy men are kept in proper condition so that they can serve the Nation better, but also to see that their families are well provided for? Sir, one argument may be raised that it is very cheap and efficacious to appeal to the Chief of the Naval Staff to get some remedy, but after that has failed, if one has to go to court, the poor woman, who

is only seeking to get a maintenance allowance, has to pay an enormous amount in order to proceed with her case in court. I think it is very very unjustifiable. We don't expect the wife of a navy man, who is seeking to get her maintenance allowance to deposit a sum to the tune of nearly Rs. 400 to Rs. 500 to enable her husband who may be serving, say, in Kashmir or in some part of the mid-seas to come to some court somewhere in Dhanushkodi or somewhere in Madurai, deposit a sum of Rs. 400 to Rs. 500 to get a maintenance allowance of only Rs. 20 to Rs. 25. I think this proviso is preposterous. I perfectly agree that naval people should not be disturbed. At the same time it is our duty to see that the families of naval people also are not unnecessarily harassed. We should not put them to hard difficulty. We must understand that it is only a poor woman who will take recourse to court. Only after the procedure of appealing to the Chief of the Naval Staff has borne no fruit they resort to this thing and for that if such a premium is put, if such a difficulty is put, it will be well nigh impossible for that woman to go to court and she will be compelled to keep quiet and suffer rather than go to court to get her legitimate grievance redressed.

SHRI K. RAGHURAMAIAH: The hon. Member has rightly asked whether Government have thought also of the distress of those woman. Well, Sir, our minds are not functioning in a single track way only. We have thought of it and the result of our thought is embodied in sub-clause 31(2), which provides a cheap and efficacious remedy. Well, Sir, it is open for any woman or child deserted or left in destitute circumstances or difficult conditions to go to the authorities and state the case. It does not cost anything, just a petition. And, Sir, why should we mistrust our Government or those high officers? Why should we distrust them? We assume and I am sure—my assumption is borne out by the vast experience of these years—that they do render justice. When such a quick remedy is provided, what is the object in going to court? I do not say there are no occasions. Of course there are and the law will take its course. But we have to take certain precautions, that the men are not dragged from remote places at great cost and at great inconvenience. In this view of the matter, Sir, this amendment, I submit, is not necessary.

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): The question is:

29. "That at page 15, lines 27 to 30 be deleted."

The motion was negatived.

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): The question is:

"That Clause 31 stand part of the Bill."

The motion was adopted.

Clause 31 was added to the Bill.

Clauses 32 to 41 were also added to the Bill.

Clause 42—Mutiny defined

SHRI V. PRASAD RAO: I move:

14. "That at page 19, line 1, for the word 'two' the word 'five' be substituted."

15. "That at page 19, line 4, the words 'contempt for or' be deleted."

16. "That at page 19, lines 4-5, the words 'or embarrassing' be deleted."

[These amendments also stood in the names of Dr. R. B. Gour and Shri V. K. Dhage.]

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): The amendments and the clause are open for discussion. Mr. Prasad Rao.

SHRI V. PRASAD RAO: No speech is necessary, Sir.

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): So I put the amendments to vote.

The question is:

14. "That at page 19, line 1, for the word 'two' the word 'five' be substituted."

The motion was negatived.

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): The question is:

15. "That at page 19, line 4, the words 'contempt for or' be deleted."

The motion was negatived.

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): The question is:

16. "That at page 19, lines 4-5, the words 'or embarrassing' be deleted."

The motion was negatived.

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): The question is:

"That clause 42 stand part of the Bill".

The motion was adopted.

Clause 42 was added to the Bill.

Clause 43—*Mutiny punishable with death*

SHRI V. PRASAD RAO: I move:

17. "That at page 19, line 33 be deleted."

[The amendment also stood in the names of Dr. R. B. Gour and Shri V. K. Dhage.]

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): The amendment and the clause are open for discussion.

SHRI V. PRASAD RAO: Sub-clause (h) says, "utters words of sedition or mutiny"; Here we are providing for death penalty. So we must be careful about the language. Anything may be construed as a word of sedition. So when we are providing for death penalty for this we must be careful to define these things. I think for sedition, of course, we have to provide for a penalty but not for a penalty of death. In these circumstances I think "sedition" should be removed and only "mutiny" should be there.

SHRI K. RAGHURAMAIAH: Sir, sedition is bad enough at any time but I should say, Sir, it is most dangerous in the armed forces. The clause may remain as it is. I oppose the amendment.

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): The question is:

17. "That page 19, line 33 be deleted."

The motion was negatived.

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): The question is:

"That clause 43 stand part of the Bill."

The motion was adopted.

Clause 43 was added to the Bill.

Clause 44 was also added to the Bill.

3 P.M.

Clause 45—Striking superior officer

SHRI V. PRASAD RAO: Sir, I move:

18. "That at page 20, line 5, for the words 'his superior officer' the words 'any officer or seaman' be substituted."

19. "That at page 20,—

(i) line 6, for the words 'such officer' the words 'any officer or seaman' be substituted; and

(ii) in lines 7-8, for the words 'such officer' the words 'any officer or seaman' be substituted."

[Amendment Nos. 18 and 19 also stood in the names of Dr. R. B. Gour and Shri V. K. Dhage.]

SHRI V. PRASAD RAO: May I move my amendment No. 20 which is consequential?

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): No, that amendment is a negative one and so it cannot be moved. The clause and amendments are before the House.

SHRI V. PRASAD RAO: Sir, instead of providing in two clauses two sets of punishments for the same offence, as is done here, I think it will be better for any seaman also to be included along with an officer, in clause 45. There is no necessity for any such separate clause as clause 46. I do not understand why two categories of punishments should be provided for the same offence, one for the officer and another for the ordinary rating. I think it has been accepted by the Joint Select Committee that for the same offence the same sort of punishment should be meted out, irrespective of the fact that one is an officer and the other is a rating. If anything, the greater punishment should be provided for in the case of the officer since he is more responsible. But here in this clause, the officer is awarded less punishment than the ordinary rating. I think it would be perfectly justifiable and in the spirit of the changes that were made by the Joint Select Committee if here we provided the same punishment for both the officer and the rating. But in the case of the rating you say—"with imprisonment for a term which may extend to ten years". But in the case of the officer guilty of ill-treating any other person, you say—"with imprisonment for a term which may extend to seven years". It is this differentiation of treatment between officer and rating and the awarding of greater punishment to the rating than to the officer that is derogatory to the spirit of the changes made by the Joint Select Committee. I hope the hon. Deputy Minister will consider, if not now, at least at a later stage, that this is not in tune with the changes made by the Joint Select Committee.

SHRI K. RAGHURAMAIAH: I was scratching my brain all the time, wondering where the hon. Member got the distinction, that officers are being treated gently whereas subordinates are treated very harshly in a matter like this. Sir, in the first place while striking at all times is objectionable and striking a rating would violate human dignity and would not be considered civilised conduct, striking by a rating of an officer might have much more wider repercussions. In any case it is accepted in naval service that this is a most reprehensible thing, that an officer should strike a rating—and it is considered as conduct unworthy of an officer for which there is a specific provision in clause 54. Clause 46 also applies to every person. If he is found guilty of ill-treatment of any person subordinate to him, he is made punishable under it. Therefore, considering the conditions of service, separate provisions have been made for the case of a rating striking an officer and for the case of an officer striking a rating or otherwise ill-treating or adopting a conduct unworthy of his position. This Sir, is the basis for the distinction. I would, therefore, submit that the amendments are not necessary.

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): The question is:

> 18. "That at page 20, line 5, for the words 'his superior officer' the words 'any officer or seaman' be substituted."

The motion was negatived.

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): Amendment No. 19 is barred, being consequential.

The question is:

> "That clause 45 stand part of the Bill."

The motion was adopted.

Clause 45 was added to the Bill.

Clause 46—Ill-treating subordinates

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): There are two amendments proposed to this clause 46. The first one cannot be moved and the other is by Kazi Karimuddin.

KAZI KARIMUDDIN: I do not move it, Sir.

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): The question is:

"That clause 46 stand part of the Bill."

The motion was adopted.

Clause 46 was added to the Bill.

Clause 47—Disobedience and insubordination

SHRI V. PRASAD RAO: Sir, I move:

21. "That at page 20, lines 24 to 26 be deleted."

22. "That at page 20, line 29 be deleted."

[Amendment Nos. 21 and 22 also stood in the names of Dr. R. B. Gour and Shri V. K. Dhage.]

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): Clause 47 and the amendments are open for discussion.

SHRI V. PRASAD RAO: Sir, my first amendment is for the deletion of sub-clause (b) which speaks of "intention to disobey". This is very much of a subjective thing, which is not defined at all in the whole of this Bill. It is very difficult to assess how exactly a subordinate is behaving and whether it is contempt. Suppose he does not cater to the vanity of a particular officer. It may be considered as contempt on the part of the subordinate officer. So it is a difficult thing and it is not at all defined in the body of the Bill. I think it should be deleted because for every other behaviour we have amply provided in other provisions of this Bill. So there need be no such provision here. So I think these lines should be deleted.

SHRI K. RAGHURAMAIAH: The hon. Member referred to subjective things and objective things. I would submit that even subjective things become objective in relation to facts and I am sure there is no one in service who does not know what amounts to insulting language, what amounts to insubordination and what amounts to threatening. All these are very serious things and, therefore, very serious notice has been taken under this clause. Therefore, I oppose the amendments.

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): The question is:

21. "That at page 20, lines 24 to 26 be deleted."

The motion was negatived.

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): The question is:

22. "That at page 20, line 29 be deleted."

The motion was negatived.

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): The question is:

"That clause 47 stand part of the Bill."

The motion was adopted.

Clause 47 was added to the Bill.

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): There are no amendments to clause 48.

Clause 48 was added to the Bill.

Clause 49--Desertion

SHRI V. PRASAD RAO: Sir, I move:

23. "That at page 21, lines 6 to 9, the words 'or who at any time and under any circumstances when absent from his ship or place of duty does any act which shows that he has an intention of not returning to such ship or place' be deleted.

[Amendment No. 23 also stood in the names of Dr. R. B. Gour and Shri V. K. Dhage.]

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): The clause and the amendment are now before the House for discussion.

SHRI V. PRASAD RAO: Sir, the hon. Deputy Minister referred to subjective things becoming objective ones. This also concerns a question of a subjective behaviour for it speaks of a person 'who at any time and under any circumstances when absent from his ship or place of duty does any act which shows that he has an intention of not returning to such ship'. Surely subjective things do become objective actions, but how are they to be construed? That must be provided in the Bill itself. That cannot be left to the sweet will of the executive or the officer who is present, or to the hon. Minister who may be in charge there, who may be dealing with these things when the question of reviewing the thing comes up. So, subjective things do become objective things. The question is how they take shape. How are they to be construed? That should be provided for in the Bill, but no such thing has been provided here. Here it is a question of judging intentions. It is not a question of any other thing. We are providing for people who have the intention of not returning to the ship. But it is very difficult to judge which action will lead to which thing. Unless elaborate instruments are there, which can do thought reading, in the Defence Ministry, I think such things cannot be substantiated. If the Defence Ministry provides for these things in the Bill, then they must also have some thought-reading instruments or some such things.

SHRI K. RAGHURAMAIAH: I think my hon. friend has made my task easy for me because he has argued my case. I could understand if he had said that there should be some overt act to show that the man does not want to come back to the ship. Without that how can you analyse his mind, his psychology and all that? That I could appreciate. But we have provided for exactly that here and I think the courts also function more or less on the same requirements. Very often *Mensrea* becomes relevant and courts do decide it. It does not need a psychopath. So, this provision is necessary and the amendment is opposed.

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): The question is:

23. "That at page 21, lines 6 to 9, the words 'or who at any time and under any circumstances when absent from his ship or place of duty does any act which shows that he has an intention of not returning to such ship or place' be deleted."

The motion was negatived.

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): The question is:

"That clause 49 stand part of the Bill."

The motion was adopted.

Clause 49 was added to the Bill.

Clauses 50 and 51 were added to the Bill.

Clause 52—Drunkenness

SHRI V. PRASAD RAO: Sir, I beg to move:

24. "That at page 21, lines 33-34, for the words 'drunkenness' the words 'disorderly behaviour due to intoxication' be substituted."

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): The clause and the amendment are now before the House.

SHRI V. PRASAD RAO: This does not need any great explanation because it is very obvious. Instead of the word "drunkenness" we want the words "disorderly behaviour due to intoxication" to be inserted. This is a legal expression and the hon. Deputy Defence Minister who himself was a legal luminary perfectly understands that this word "drunkenness" is nowhere defined. "Disorderly behaviour" is well understood and moreover, I think that is the expression used in the U.K. Act and for precision's sake this should be adopted.

SHRI K. RAGHURAMAIAH: My hon. friend seems to have taken this definition from the dictionary. We did not follow his example. What is in the dictionary is always there. There is nothing very sweet about it. Drunkenness is not a sweet smell. It means what it means. Everybody knows what it means and so, this may remain as it is.

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): The question is:

24. "That at page 21, lines 33-34, for the words 'drunkenness' the words 'disorderly behaviour due to intoxication' be substituted."

The motion was negatived.

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): The question is:

"That clause 52 stand part of the Bill."

The motion was adopted.

Clause 52 was added to the Bill.

Clauses 53 to 146 were added to the Bill.

New Clause 146A

SHRI V. PRASAD RAO: Sir, I beg to move:

25. "That at page 55, after line 24, the following new clause be inserted, namely:—

'146A. There shall lie an appeal from all the sentences passed under this Act to a court of appeal called the Court Martial Appeals Court to be constituted in this behalf by the President of the Indian Union.' "

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): The amendment is now before the House.

SHRI V. PRASAD RAO: Sir, I would only like to say a few words. Almost all the speakers who spoke on this Bill, including those who very ardently supported this measure, pointed out the necessity for a judicial appeal over the convictions ordered by the courts martial. Without exception, I suppose, one and all raised their voice in saying that the judicial review itself is not sufficient and that there should be some mechanism, some court of appeal, provided for. However impartial that judicial review might be—and I hope it will be impartial—and however much care the executive might take about reviewing these cases, I think that could never replace the necessity for having an appellate court over these courts martial. Our Deputy Defence Minister accused us of charging them with copying from the U.K. Act. He said that this was done on their own. I am glad for the assertion that he has made for once, but the point is, if he copies, let him copy the whole thing; let him copy the salient points also. Why take only the chaff and leave aside the kernels? That is our charge and that is our grouse against them. He has copied the chaff all right but has left out the kernels provided in the U.K. Act. There was a separate act in the U.K., the Court Martial Appeals Act of 1951 and there is a salient provision which

provides for appeals. That has been entirely forgotten. This point was impressed both in this House and in the other. Even at this late stage, I would beg of him to consider this point. It is with a heavy heart that we appeal to him not to leave reason behind, not to leave the path of justice. Even if it is not now, I hope they will consider this at a later stage when reason dawns on them. He said that during the last ten years there has been no sentence of death passed but does he mean to say that there will be no such thing? Of course, I shall be very glad if there are no such sentences passed but when there is such a sentence, you must provide for an appeal also.

SHRI K. RAGHURAMAIAH: Sir, this, of course, is a very serious matter and naturally very great attention has been paid in both the Houses and in the Joint Committee also. As I mentioned on a number of occasions, Government have given it their very serious consideration and, as I repeated this morning, it is not as if Government have a closed mind on this subject. I would like my hon. friend to remember that even in the U.K., it is only in 1950, centuries after their Army came into existence, centuries after their Navy came into existence, that they thought it wise to have this provision. We are a young nation having a young Army, a young Navy and a young Air Force. Should we not have our own experiences? Should we just blindly copy? I am not prepared for that. We would like to wait and see whether there is any injustice. I mentioned that since 1954 there has been no sentence of death passed in the Navy. My friend wants an assurance that there will be none in future. I am not prepared to give that comfortable assurance because, Sir, there are various things, offences like mutiny and so on which are punishable with death and my friend will be anxious to have such an assurance but I cannot give that assurance. I mentioned that since 1954, as a matter of fact, there has been no death sentence. That shows how well our people are behaving and how well our courts are reviewing those cases. At the moment, Sir, we are satisfied that the requirements of justice are met by the provisions incorporated here. Should, at any time, Government feel that justice is in jeopardy, Government will not hesitate to consider what best provision to make in the then circumstances of the case. The amendment is opposed.

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): The question is:

> 25. "That at page 55, after line 24, the following new clause be inserted, namely:—
>
> '146A. There shall lie an appeal from all the sentences passed under this Act to a court of appeal called the Court Martial Appeals Court to be constituted in this behalf by the President of the Indian Union.'"

The motion was negatived.

Clauses 147 to 149 were added to the Bill.

New Clause 149A

SHRI V. PRASAD RAO: Sir, I move:

> 26. "That at page 56, after line 6, the following new clause be inserted, namely:—
>
> '149A. No sentence of death passed under this Act shall be executed unless it is confirmed by the Supreme Court of India.'"

[This amendment was in the name of Shri V. K. Dhage also.]

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): The amendment is open for discussion.

SHRI V. PRASAD RAO Sir, it is not a pleasure for me to get up every time to appeal to the hon Deputy Minister to see that some justice is done in these matters. It is not a pleasure for me and it is with a very heavy heart that I appeal to him to consider these things. I am glad that he said

[Shri V. Prasad Rao.]

that the Government has no closed mind over that, but he cited the example of Britain. There are so many things which Britain did not do and which were done at a very later stage and which we adopted at an earlier stage. The franchise for women was not there in the United Kingdom in the early days, even when the House of Commons came into existence. But at the very inauguration of our Constitution, we gave franchise to women. That is not the criterion for us. It is a great pleasure to adopt it. But, anyway, I think the Government keeps an open mind and that as and when the necessity occurs, they will come out with a Court Martials Appeals Bill as such. Here, this provision is only in the case of death sentence. A question of confirmation should be there from the Supreme Court. I think it is a very necessary thing and the absolute minimum thing. We are not now pressing the question of appellate court at all. It is a question only when the death sentence is passed that the confirmation should be there from the Supreme Court. It is a very reasonable thing and I think at least at this late stage, the Government will consider this.

श्री शीलभद्र याजी (बिहार): वाइस चेयरमेन महोदय, श्री प्रसादराव ने डेथ सेंटेंस के बारेमें सुप्रीम कोर्ट से अनुमति लेकर ही फांसी की सजा बहाल रखने के लिए जो तरमीम रखी है, मैं उसका दिल से स्वागत और समर्थन करता हूं। क्योंकि आप जानते है कि दुनियां में इस तरह की आवाज उठ रही है कि डेथ सेंटेंस खतम कर दी जानी चाहिए। लेकिन दुनिया में अब भी डेथ सेंटेंस होते हैं। इसलिए यदि भारत के सर्वोच्च न्यायालय यानी सुप्रीम कोर्ट को मृत्यु सजा बहाल रखने की बात सुपर्द की जाय तो बहुत अच्छा होगा। किसी भी तरह की अपील करने की जो बात पहले आई हम लोगों ने उसको ना मंजूर कर दिया है। दोनों डिप्टी डिफेन्स मिनिस्टर सामने बैठे हैं, मेरी उनसे खास अपील है और मैं न्याय के नाम पर उनसे आग्रह करूंगा कि जो अमन्डमेंट रखा गया है और जो एकदम हार्मलेस है वे उसको मान लेने की कृपा करें।

SHRI K. RAGHURAMAIAH: Sir, my hon. friend, Mr. Prasad Rao, said that he was tired of making appeals to me. May I say that I am also chary—belonging to a party which believes in non-violence—of crossing swords with him. We are more particular and anxious about the lives of the members of the Armed Forces. We are naturally, very very anxious that, in such matters, very great consideration should be shown and that nothing should be done in any flippant mood. But I submit, Sir, that our experience has so far been that there has been no grave act of injustice in matters like this. Government, as I said, have an open mind and if, at any time, it appears that a provision like that should be made, well, Sir, Government will not hesitate. But I would require him to be patient and watch the course of events in this country. I oppose the amendment.

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): The question is:

> 26. "That at page 56, after line 6, the following new clause be inserted, namely:—
>
> '149A. No sentence of death passed under this Act shall be executed unless it is confirmed by the Supreme Court of India.'"

The motion was negatived.

Clauses 150 to 188 were added to the Bill.

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

SHRI K. RAGHURAMAIAH: Sir, I move:

"That the Bill be passed."

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): Motion moved:

"That the Bill be passed."

SHRI V. PRASAD RAO: Sir, it was with mixed feelings that I regard this Bill. As stated earlier, certainly it is an advance over what was introduced first. But it leaves very much to be desired also. Now, we are providing for the organisation of a Navy commensurate with the advancement of our Mother-land. We should see that, by our will, an efficient and conscientious Navy is created so that our Mother-land can be defended much better. But, in that pious work, unfortunately I think, some lacunae are in the Bill, there are some loopholes left in the Bill, so that a very efficient organisation may not be built up. That is the apprehension that we have. As I said earlier, I am not going to repeat them at length now, but the question of making a conscientious Navy does not depend only upon providing penal provisions and deterrent punishments, but also upon providing for their cultural uplift, for better training by providing them with better and modern arms and weapons.

At this stage, I would only like to point out that, hitherto, our Defence Ministry has been adopting a conservative outlook. This is not a charge that is hurled out by the Communists from this side, but by such a venerable friend, Dr. Kunzru, who has got a lot of experience in defence matters. I hope that, in future, while concentrating on the Navy, we should concentrate on such branches and on such things which are most useful and essential and necessary, with the potentialities that are at present inside the country. Let us not fritter away our meagre resources in such things as aircraft carriers and other things, but concentrate more on such things, say, a few submarines or more effective cruisers, so that we can defend our country far better. I hope that these things will be borne in mind by the Defence Ministry and as and when they find it that changes are necessary, they will come to the House and I trust it will be very soon also.

Thank you.

SHRI B. K. P. SINHA (Bihar): Mr. Vice-Chairman, Sir, I would like to add my voice to what Mr. Prasad Rao referred on the other side and plead that this measure could be implemented, especially its penal provisions, liberally. In any warfare, these are things which require a special treatment and we have rightly provided what is considered by some as draconian punishment in certain cases. I feel, however, that there is a case for entrusting the administration of these provisions to men of the requisite calibre and standard, men who are expected really to have a judicial approach to these problems. We are very fond of steps called punitive measures or measures which make people afraid of becoming weak at certain stages or committing what are considered crimes, according to the standards of the Naval Code. But, then, it is our experience, in the broader field of human society, that society is regulated not by the fear of punishment, but by the spirit of co-operation and goodwill and the hand of friendship that is extended by one to other. I wish that, that spirit is more in evidence in the Navy and especially in the implementation of these measures.

In this connection, Mr. Vice-Chairman, I am reminded of an incident from the American Civil War. One young soldier was sentenced to death. His crime was that while on guard duty he had dozed. That matter went to Abraham Lincoln, the Head of the State, because he was final authority in cases of death sentence. He called that young man and the young man admitted his lapse or crime. He said, "I had to walk for so many miles and had no sleep for several nights. When I came here, instead of getting rest I was posted on this guard duty, and naturally I dozed for some time." Abraham Lincoln reprieved him and said "Send him to the fighting line".

[Shri B. K. P. Sinha.]

In the evening when the list of casualties was being put before Abraham Lincoln, he learnt that that young man had fought valiantly and had died in the course of the battle. Let us put the spirit in which Abraham Lincoln treated that young man as an ideal before us. This is an ideal which I am sure cannot be set in every case. But it is an ideal which should be followed by and large.

Next, Sir, I would like to give my qualified support to the proposal of Mr. Prasad Rao that whenever any death penalty is imposed, that matter should be scrutinised or scanned by people who have had the experience of a High Court or the Supreme Court. Government have not accepted the amendment that the matter should in a routine way go to the Supreme Court. Well and good. Now it is open to Government, when scanning or scrutinising those cases in which death sentences have been imposed, to consult Judges in an advisory capacity. I think the Government should adopt some such rule or practice. If they do that, this measure would be more acceptable to the people. That is all I have to say.

SHRI H. N. KUNZRU: Mr. Vice-Chairman, Sir, I am sorry that the amendments proposed to the various clauses had been only summarily discussed and that many of those that were important had not been moved at all. I have therefore to say now what I might have said, had those amendments been moved.

The Minister who is piloting the Bill spoke very eloquently about the need for clause 114 of the Bill. He drew our attention to sections 297 and 298 of the Criminal Procedure Code. Now, Sir, what do these sections say? They lay down the procedure in regard to those cases where a jury is impanelled. They lay down the duties of the Judge and demarcate the fields in which the jury and the Judge are to operate. Now I myself said yesterday that the relations between the trial Judge Advocate and the court martial seemed to be those between a Judge and a jury, and the Minister in charge of the Bill nodded his head. If it is the purpose of this Bill to treat the court martial as a body of jurors, then as I ventured to say yesterday, a different organisation ought to be adopted, and the position ought to be made clear on the face of it in the law. He said a great deal about the impartiality of courts martial and the excellence of the work done by the Department of the Judge Advocate General. I do not think anybody conversant with court martial proceedings will question the correctness of what the hon. Minister said. He was legitimately right when he said that the procedure that was going to be followed in connection with the Navy was the same as that which was followed and which was being followed also in connection with the Army. But I ventured to say yesterday that the points that this Bill raised were in some respects the same as raised by the other Bills. But unfortunately those points did not receive that attention from us that they deserved when the Army Acts and the Air Force Acts were amended. But here I am concerned, Sir, with what the organisation should be. Now nobody will run down the work done by the Judge Advocate General and his deputies, but the question is whether the system that we are going to embody in this Bill is sound. To say that it has been going on for years is no reply to the criticism that was urged against clause 114. The reason for it is this: Sir, the Judge Advocate General's Department, however fair it may be, is also concerned with the prosecution and the department that is concerned with the prosecution ought not, in principle also, to be a Judge. There is no doubt that one person will be a prosecutor and another person will be a trial Judge Advocate, but it is wrong that the same department should undertake both these functions. If, however, there was a body of men specially trained to act as Judges, then there would be no objection to one of them advising the court martial on points of law.

Indeed I thought that the procedure laid down in the Criminal Procedure Code might well be followed. The position of the Judge will be the same as that in those cases where the aid of the jury is required, and the court martial will be regarded as a body of jurors who perhaps, in accordance with the principle that military officers or the people belonging to the Army or the Navy should be tried by their peers, should decide questions of facts. If that is the relationship, as I have already said, between the Judge Advocate and the courts martial, then the present system requires a change, and the wording of clause 114 should be so changed as to make the relationship between the Judge Advocate and the court martial much clearer than it is at the present time. It will be better in the interests of justice and better also in the interests of clarity.

Now, I come, Sir, to clause 21 of the Bill which relates to the maintenance of deserted wife and children. Now, the Minister in charge of the Bill said that it was necessary for various reasons to give the Chief of the Naval Staff the power to remit the deductions to be made on any account from the salary of an officer. No doubt the Bill lays down that the deductions made under the law, under this Bill, shall not exceed half the salary of the officer concerned and the deductions may have to be made from the salary of the officer in order to make good the damage to Government property or to make repayment to those, whose dues had been unjustly or fraudulently withheld by him. He also said that it was necessary to give the Chief of the Naval Staff the power that I have referred to because it was possible that a decree for maintenance might be obtained by collusion between the husband and the wife My reply with regard to the last point is very simple. When such a case goes before the court if the Naval authorities have any reason to fear that the application for maintenance is the result of collusion between the husband and the wife, they will be entitled to be represented when the case is heard and their own witness can appear before the court in connection with that point. If the court, however, after listening to the evidence given by the witness on behalf of the Navy and the address of any counsel that might be appointed by the Navy, comes to the conclusion that the application for maintenance should be granted, the Chief of the Naval Staff should have no authority whatsoever to say that the decree or the order of the court was secured by collusion between the husband and the wife. The court ought to be the final judge in that matter.

As regards the other point, namely, deductions to be made on other grounds from the salary of an officer, I think it would be better to lay down that when the liabilities of an officer exceed half his pay then there ought to be a *pro rata* distribution of half of his pay between his various liabilities. The Chief of the Naval Staff should not be given a general discretion to stop if he likes payment on any particular account. I think the hon. Minister said in the course of his speech that cases like this were not known in the Navy Well, I do not know whether naval officers have been guilty of neglecting their wives and children . . .

SHRI K. RAGHURAMAIAH: Did I say that cases of maintenance were not known to the Navy?

SHRI H. N. KUNZRU: I shall not deal with that point. I shall leave it

But I would say that it is necessary that the claims of a deserted wife and children should not be given the go-by whatever regard you may have about an officer. You must, in fairness and in morality, have some regard also for the wife and the children who have been deserted or who are being neglected because the officer concerned has just taken a dislike to his wife or is running after another woman. Cases of this kind are not unknown in the Defence Services. I know of cases in the Indian Army where officers have married for the second time and neg-

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lected their first wives. My hon. friend said that the remedy open to a deserted or neglected wife was plain and easily available. She should appeal to the Chief of the Naval Staff and he is a reasonable man and would certainly grant her request. Sir, I know that some women went about from door to door pleading for a just consideration of their case and received no consideration whatever because of the decision of their husbands. There sits my hon. friend Sardar Surjeet Singh Majithia. I am sure such cases are within his knowledge. It is, therefore, necessary, Sir, that the law should be such as to protect all those persons equally who have a claim on the salary of an officer. I am not in favour of the *carte blanche* that has been given to the Chief of the Naval Staff. I think that the law should be so changed as to enable the authorities to make a *pro rata* deduction from the salary of an officer when he has to make payments on several accounts.

Lastly I come to the question relating to appeal. The Minister in charge of the Bill said rightly that we cannot in this matter copy merely the examples of other countries. We have to consider our own circumstances, but he also pointed out that appeals against convictions by court martial came to be allowed in England only in 1951 There is no doubt that the law relating to the establishment of an appeal court is very recent. But we have to show that this law cannot be followed by us. I must point out again two very relevant circumstances in connection with the establishment of the appeal court in England. In the first place, the members of the appeal court are appointed by the Lord Chancellor. I think the Lord Chief Justice is one of the members of the court.

SHRI P. N. SAPRU (Uttar Pradesh): He presides over the court when present

SHRI H. N. KUNZRU: So, when he is present, he presides over the court.

Again, a man who has been convicted by a court martial will have to seek the permission of the court in order to appeal to it. I think that these safeguards should prove enough even in our special circumstances. What is there in our special circumstances that will encourage a man connected with the Army or the Navy or the Air Force to act against the discipline of the Defence Services, if such an appeal were allowed from decisions of courts martial? I cannot see how the establishment of such an authority would make people connected with the Defence Services think that their position was much easier than before and that they could commit offences with a fair chance of being let off by the appellate authority. Does the working of the appellate court in England or Australia or Canada give ground for this belief? I have yet to understand that the Defence authorities in the countries, I have referred to, are dissatisfied with the working of the appellate court. I think that, if the appellate court is constituted in the manner in which the British court is, there will be no reason to fear that any offender will think that he has got an opportunity of securing his release by urging technical legal grounds in his favour.

The suggestion was made by one hon. Member yesterday that there ought to be no special appellate court but that all appeals should go to the Supreme Court. I must state clearly that I am not in favour of that suggestion. In the first place, the Supreme Court has already plenty of work to do, and it would be most undesirable to burden it with cases of the kind that we are considering. In the second place, I think it is desirable and it is possible to constitute the court in such a way as to satisfy the public of its impartiality and at the same time to have any cases that might come before it disposed of quickly. If the appellate court were constituted like the British appellate court, I think it would give complete satisfaction and there should be no reason to suppose that it would militate against the maintenance of discipline in our Defence Services. I agree

with the hon. Minister that, if an appellate court is established, it should really be for all the three Defence Services, not only for one, but we found that, when the various Acts relating to the Defence Services were amended, they were not all amended at first in the same manner. We all learned by our experience; here in the Bill before us, there is a provision for the suspension of a sentence, a provision which, as far as I can see, does not exist at least in the same form either in the Army Act or in the Air Force Act. I am speaking from memory; I have not yet compared the three Acts on this point. If what I say is correct, no one can urge any criticism of this Bill that it is introducing a matter which is not contained in any of the other Acts. It is good that this Act should be progressive so that the other Acts might be amended in the same manner. If Government can accept our suggestion with regard to the establishment of an appellate court in connection with the Navy, I have no doubt that the other Services will have to follow suit. Unfortunately, the amendments have been disposed of much too quickly, and there is no chance of the Bill being modified at this stage, but it is all the same necessary that our point of view should be clearly stated so that Government may find itself compelled sooner or later to change the present law and procedure in some important respects.

SHRI P. N. SAPRU: Mr. Vice-Chairman, I would like to give my general support to the Bill but in doing so, I would like to point out one or two or three defects which could have been remedied but which have not been remedied by us in the course of our discussions on this Bill. The first matter to which I would like to make a reference is the one which is to be found in clause 33 of the Bill. I think that it is not right that there should be a deduction from pay or allowances authorised by or under this Act effected by the Chief of the Naval Staff in his discretion. The right of a wife or legitimate or illegitimate child should not be interfered with in the discretion of the Chief of the Naval Staff. There should be some security provided for the deserted wife or child to get the maintenance he or she is entitled to and which has been established in a court of law.

Then, I would like to say that I regret that it has not been found possible for the Government to accept the suggestion that there should be an appellate court against the decisions of courts martial. The Judge Advocate General himself may not have initiated the prosecution but he belongs to the Prosecution Branch and it is a well-established principle of law that justice must not only be done but must also seem to be done. The position in England, as I pointed out in my speech at the consideration stage of the Bill, has been changed by an Act which was passed in 1951. In Australia and in Canada too there are courts of appeal, special courts of appeal, which can go into questions of the propriety or otherwise of the decisions of courts martial. Now, I see no reason why in our country we should adopt a different procedure. Why is it not possible for us to provide for an appeal from the decisions of courts martial? I agree with Dr. Kunzru that the appellate court should not be the Supreme Court. There are various reasons why it should not be the Supreme Court, but it is possible to have a specially constituted tribunal consisting of two High Court Judges or two Supreme Court Judges specially appointed for hearing court martial appeals.

4 P.M. The court of appeal for court martial cases in England consists of the Lord Chief Justice and some Judges of the High Court nominated by the Lord Chancellor. Well, here the court of appeal should be appointed—we have no person here who corresponds to the Lord Chancellor—by the Home Minister or the Law Minister on the advice of the Chief Justice of India. I used the word 'advice'. "Advice" is perhaps not the proper word to use here. It should be "on the recommendation of" or "in consultation with" the Chief Justice of India. A court of this

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character will not have much work It will meet occasionally when there is work for it But it will inspire respect and confidence and will add to the respect in which court martial judgments are held in this country I know from actual experience that our courts martial are fairly conducted But it is not a right principle that the appellate authority should be a single person It is not a right principle that the appellate authority should be an authority who is connected directly or indirectly with the prosecution branch of the naval administration We cannot introduce this change in the Navy without introducing it in the Army and the Air Force But in this matter he should be able to take a broad view and should not be guided by the opinions of our naval officers I think the Ministry of Defence should bring to bear upon this question an intelligent mind and it should give us intelligent reasons, reasons which can appeal to the commensense of the House, why a change of this character will undermine the morale of the defence services It is a matter of vital importance for a democratic State that there should be respect for law, that there should be the rule of law, and I do not think that we add to the respect in which our democracy is held by denying to a person, who is under a special law because he has entered the Navy or the Army or the Air Force, the right to go on appeal against the judgments or against the decisions of the courts martial Why should the Central Government not be advised, if that is the form that it likes, why should the Central Government not be advised in this matter by a judicial authority or a court of appeal constituted on the lines that I have suggested? I hope the Deputy Defence Minister will take up this matter with his Chief, when he finds it convenient to attend to defence matters in this House and in this Parliament

Another thing that I would like to say, Mr Vice-Chairman, is that there was a great deal of force in the observations of Diwan Chaman Lall regarding the use of certain words in clause 114 of the Bill before us Clause 114 gives authority to the Judge Advocate to decide all questions of law arising in the course of a trial I do not object to that It authorises him to decide all questions as to the relevancy of facts which it is proposed to prove I do not object to that either It further authorises him to give decisions on the admissibility of evidence I do not object to that also But then it goes on to authorise him to decide the propriety of the questions asked by or on behalf of the parties Now this word 'propriety" is a very very difficult word It gives very wide discretion to the Judge Advocate, and he may disallow, under cover of this word, questions which are vital from the point of view of defence I remember, Mr Vice-Chairman, a case in which one of our High Courts—I remember it was the Allahabad High Court—had to interfere with an administrative order of the Inspector-General of the Police removing a Sub-Inspector of Police, and the point arose in this way Under the Police Act the Inspector-General can hold an enquiry and he was holding an enquiry against a particular Sub-Inspector Then when a witness was brought against him, the Sub-Inspector or the counsel for the Sub-Inspector began to put certain questions, and he disallowed them on the ground that they were leading questions Now, when the case came up before the High Court—I was a party to that judgment—the view taken by us was that cross-examination is impossible without leading questions If you don't allow leading questions to be put in cross-examination, you are in fact denying an accused person the right to cross-examine and therefore the procedure is completely erroneous, and the order of the Government was set aside, and they were asked to deal with the matter *de novo*.

Now I do not think that we should, in drafting our laws, use words which are difficult of interpretation, which are ambiguous expressions, which have no definite legal meaning assigned to them I should have thought

that the Deputy Defence Minister would take in this matter the opinion of the Law Department and that he would enlighten us in regard to the meaning of this word "propriety". "Relevancy" I can understand; "Admissibility" I can understand. But "propriety" I cannot understand. The word "propriety" rather suggests that the Judge Advocate should have the right in his discretion to allow questions which he considers safe to be put to the witness before him. That is a dangerous inroad upon legal principles and it is an inroad which the legal conscience of this House does not certainly like. I think, Mr. Vice-Chairman that we should view these matters, or we should approach these matters not from the point of view of certain pre-conceived notions as to how discipline should be maintained in the Navy or the Army or the Air Force, but from the broader point of view of fundamental principles. I think from the broader point of view of fundamental principles, it is wrong to introduce an ambiguous, a vague, a dangerous expression like the word "propriety" as in clause 114 of the Bill.

Let me, Mr. Vice-Chairman, say that though we are passing this measure, we cannot conceal from ourselves the fact that the sentences contemplated are in some cases far too severe. It is to be hoped that this question of sentences will be taken up at an early date. Of course, this question is connected with the question of sentences for offenders in the Army and offenders in the Air Force. Therefore, I hope that a connected view will be taken with regard to this question of sentences.

Lastly, Mr. Vice-Chairman, I would like to emphasise that the Navy should not be looked upon as a preserve of the richer classes, of the more fortunate sections of the community. It should not be looked upon as a service which provides careers for the children of the upper middle class people or the aristocracy. I am not, as I said, in favour of reservations for any particular class. There should be opportunities for ratings to qualify themselves for officer ranks in the Navy. I think we should have a system which helps the poor man to show his merit in the Navy. I hope that the Act will be worked in such a manner as to make it possible for the ratings to feel enthusiastic for the Navy they are serving.

Lastly, Mr. Vice-Chairman, I would like to say that I regret that this Bill contains a discrimination against women. I differ from Dr. Kunzru in regard to the clause concerned, I doubt if clause 9 as it is worded is constitutional. I hesitate to express a definite opinion on that matter, but I am rather inclined to the view that it is not, in its present form, constitutional. If we must discriminate against women, then let us do so administratively. You have selection boards and you generally have persons of judgment on these selection boards and in these selection boards they can reject a woman on many grounds. But let it not be on the ground of sex. I do not like this sex discrimination. It is one of the noble features of our Constitution that it does not discriminate against anybody on grounds of sex, caste or religion and I would not like our statute book to contain provisions which militate against the basic concepts of our Constitution. Thank you very much, Mr. Vice-Chairman.

SHRI K. RAGHURAMAIAH: At the outset, I would like to thank all the hon. Members who have given their generous measure of support to the Bill. All the clauses of the Bill have now been passed without any amendment.

I am, of course, deeply conscious of the volume of feeling behind this question of a court of appeal. I am not belittling it for a moment. It is a very important matter. But I would only submit that in these matters, as I said earlier, we have to take

[Shri K. Raghuramaiah.]

our own experience into account. Systems of justice, of course, vary from country to country. There are countries where judges are elected and they administer justice. I am only giving it as an example to show that there can be no question of one country blindly copying or blindly following the practices of another country. As I have said so often on the floor of this House, Government have not so far been aware of the present system having failed to render that high degree of justice which is expected. If at any time it were to appear to the Government that the present system is a failure, that justice is in jeopardy then, Sir, certainly Government would consider this as well as the other provisions and see how best to remedy the situation. I would like to repeat what I said this morning that it is not as if Government has a closed mind on this subject. We certainly watch with great care how our courts martial function. Then hon. Member, Dr. Kunzru, has gone in detail into the courts martial proceedings and he has pointed out that the functions and powers ascribed to the Judge Advocate and the functions ascribed to the court are somewhat—I am not trying to say it in his words, but I am only trying to get the meaning of it—that they are somewhat the reverse of that which obtains in the ordinary courts. I suppose I am correct.

SHRI H. N. KUNZRU: Between the judge and the jury in a jury case.

SHRI K. RAGHURAMAIAH: I suppose when a member of the armed forces hears of our judges, of our courts and of our juries, he also would feel that they are a little complicated, because the terminology is so different. What they call a court, we call a jury and on the other side, what they call a judge we call the Judge Advocate.

Sir, these differences are bound to be there. They are fundamental to the constitution of the courts martial and I would be surprised, greatly surprised indeed, if in the constitution of any court martial in any part of the world, a radically different terminology has been adopted in the matter of courts martial. Of course, I do say that I can understand a question as to why the Judge Advocate should be given this particular power or that and so on. It is here that my very learned friend Mr. Sapru has supported one point raised by my hon. friend Diwan Chaman Lall—I am glad he supported only one point—and that is about clause 114. He questioned the propriety of making a reference to the propriety aspect of the questions which is now left to the Judge Advocate.

He also enquired as to why I did not feel the necessity of consulting my law officers and come prepared with a brief. I plead guilty to this charge because I did not think it necessary. I am sure my learned friend is quite aware of the provisions of the Indian Evidence Act which are made applicable to the courts martial. I would respectfully draw his attention to section 148 of the Evidence Act and before I do that, I would like to point out that the expression "propriety of questions" occurs also in no less an enactment than the Code of Criminal Procedure, section 298. I shall read the relevant portions of the Indian Evidence Act, section 148. "In exercising this discretion, the courts shall have regard to the following considerations: Such questions are improper if the imputation which they convey relates to matters so remote in time or of such a character that the truth of the imputation would not affect or would affect in a slight degree the opinion of the court as to the credibility of the witness on matters to which he testifies." Because I was fortified by the provisions of the Code of Criminal Procedure . . .

SHRI P. N. SAPRU: I have no objection to your reproducing section 148 as it is but section 148 does not use the word "propriety". If you use

that word and divorce it from the other explanatory words used in section 148, it comes to have a different meaning. That is my trouble.

SHRI K. RAGHURAMAIAH: The Indian Evidence Act is now made part of this. We have made it applicable and, as I pointed out, the Code of Criminal Procedure also refers directly to this point.

My hon. friend, Mr. Prasad Rao, charged us with being conservative. I do not plead quite guilty to this charge because I am happy that no less a person than the hon. Pandit Kunzru himself has said that this Bill is a progressive measure in certain respects and that we are not so very conservative as all that. But, Sir, apart from that is it not better to be a little conservative than to be experimental in regard to the armed forces? Could we take risks? Is it not better to go by a procedure which has been accepted over the ages and which has kept the discipline intact? My hon. friend himself, I was very happy to note, paid the most glowing tribute to the armed forces quite rightly for their discipline, for their loyalty and all that in the opening speech of his, if I remember correctly. Great care has been taken in this Bill to see that within the limitations of human knowledge nothing is left undone to secure the comfort of the services, of course within the realms of possibility. This is a proud occasion, Sir, when we here, for the first time, formulate a complete and comprehensive code which will be the foundation for all future naval legislation of this country. And I take this opportunity of thanking those Members who have appreciated the services of our forces. They have done good work. One hon. Member yesterday called this a Draconian law which enslaves people, which discourages the best elements in the country to join this service. I was most horrified at the statement of the hon. Member. I do not know from where he got all this. Let me assure the House, Sir, that the young men in the Army, Navy and the Air Force are the best in intelligence and are given the best training which is possible. They have flown the flag of this country far and wide with dignity. They have raised the prestige of this country and I am sure, there is nothing in this measure which in the slightest degree or in any way would discourage them. On the contrary, we have tried to liberalise as much as is possible consistently with the requirements of the case.

Before I close, Sir, I would like to thank again all the hon. Members who have taken such keen interest in this measure and who have given such generous support to its provisions.

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): The question is:

"That the Bill be passed".

The motion was adopted.

SHRI V. PRASAD RAO: Sir, before we take up the other matter for consideration, may I submit that the House be adjourned at 4-30 p.m. since many Members wish to meet the delegates to the Commonwealth Parliamentary Conference at quarter to five?

THE VICE-CHAIRMAN (SHRI RAJENDRA PRATAP SINHA): Is it the pleasure of the House that the House do adjourn at 4-30 p.m.?

(*No hon. Member dissented.*)

We shall adjourn at 4-30 P.M.

THE INDIAN RESERVE FORCES (AMENDMENT) BILL, 1957

THE DEPUTY MINISTER OF DEFENCE (SARDAR S. S. MAJITHIA): Sir, I beg to move:

"That the Bill further to amend the Indian Reserve Forces Act, 1888, be taken into consideration."