

(xi) Notification No. 166, dated the 24th July, 1957, relating to the allowance of drawback in respect of duty-paid foreign jute batching oil, used in the manufacture of jute manufactures. [Placed in Library. See No. S-181/57.]

(xii) Notification No. 167, dated the 24th July, 1957, publishing the Customs Duties Drawback (Jute Manufactures) Rules, 1957. [Placed in Library. See No. S-182/57.]

**NOTIFICATIONS UNDER THE CENTRAL EXCISES AND SALT ACT, 1944**

SHRI B. R. BHAGAT: Sir, I beg to lay on the Table, under 'section 38 of the Central Excises and Salt Act, 1944, a copy each of the following Notifications of the Ministry of Finance (Department of Revenue):—

(i) Notification S.R.O. No. 1591 dated the 29th June, 1957, publishing further amendment in the Central Excise Rules, 1944.

(ii) Notification S.R.O. No. 1767, dated the 6th July, 1957, publishing further amendment in the Central Excise Rules, 1944.

[Placed in Library. See No. S-99/57 for (i) and (ii).]

(iii) Notification S.R.O. No. 2108, dated the 29th June, 1957, publishing further amendments in the Central Excise Rules, 1944. [Placed in Library. See No. S-132/57.]

(iv) Notification S.R.O. No. 2200, dated the 6th July, 1957, publishing an amendment in the Central Excise Rules, 1944. [Placed in Library. See No. S-134/57.]

(v) Notification S.R.O. No. 2486, dated the 3rd August, 1957, publishing an amendment in the Central Excise Rules, 1944. [Placed in Library. See No. S-208/57.]

**NOTIFICATIONS UNDER THE COMPANIES ACT, 1956**

Sir, I beg to lay on the Table, under sub-section (3) of Section 642 of the Companies Act, 1956, a copy of the Ministry of Finance (Department of

Company Law Administration) Notification S.R.O. No. 2105, dated the 22nd June, 1957, publishing an amendment in the Companies (Central Government's) General Rules and Forms, 1956. [Placed in Library. See No. S-124/57.]

I beg to lay on the Table, under the proviso to sub-section (4) of section 89 of the Companies Act, 1956, a copy of the Ministry of Finance (Department of Company Law—Administration) Order No. 3(I)-CL. VI/57, dated the 29th July, 1957, in respect of the Nava Samaj Limited. [Placed in Library. See No. S-167/57.]

**ANNOUNCEMENT RE ALLOTMENT OF TIME**

MR. CHAIRMAN: I have to inform Members that under rule 162(2) of the Rules of Procedure and Conduct of Business in the Rajya Sabha, I have allotted seven hours for the completion of all stages involved in the consideration and return by the Rajya Sabha, of the Appropriation (Railways) No. 2 Bill, 1957, including the consideration and passing of amendments, if any, to the Bill.

12 NOON

**THE NAVY BILL, 1957—continued.  
MOTION FOR REFERENCE TO JOINT COMMITTEE**

SHRI P. N. SAPRU (Uttar Pradesh) : Mr. Chairman, I was dealing yesterday with the speeches of Mr. Kishen Chand and Mr. Bhupesh Gupta. Now, one of the things that both the speakers stressed was this. They objected to the continuance in employment of British officers. They thought that we should dispense with the British officers. We have a few British officers in the Navy and it is said that we should dispense with the services of the British officers in our Navy. Mr. Kishen Chand did not say so but I presume that that would be his interpretation. Mr. Kishen Chand would probably like American officers to be substituted for British officers because, it is quite clear . . .

SHRI KISHEN CHAND (Andhra Pradesh): The hon. Member's imagination is rather fertile.

SHRI P. N. SAPRU: This is my deduction from his general outlook and Mr. Bhupesh Gupta would probably like Russian officers or, I do not know whether he has transferred his allegiance to China and so wants Chinese officers to be substituted for British officers. Now, Mr. Kishen Chand is quite satisfied in his mind that the British are a second rate power and that even their Naval efficiency has suffered in recent times. We had to take some officers to man our Navy and it was but inevitable— it was but right— in the circumstances which existed in 1947 that we should have asked the British officers in our Navy to continue. We could not have allowed the Navy to go to dogs and I think, Mr. Chairman, a word of appreciation is due to those British officers who agreed to serve our country and • who, I believe, have served it loyally as Naval officers. I am not ashamed of saying that I appreciate the spirit in which they have been serving us in our Navy, the spirit in which they have been endeavouring to make our Navy efficient for our purposes. I think that talk of this character does no good and Leaders of the Opposition should speak on these matters with greater responsibility.

Mr. Chairman, we were told that certain principles had been introduced in this Bill which were against certain basic principles which underline our jurisprudence. One of those basic principles is that the prosecutor should not be the judge and in the speeches that were made the assumption made was that the Judge Advocate General would be in the position of a prosecutor. A glance at clause 172 of the Bill will show that the position of the Judge Advocate General is not that of a prosecutor. Indeed, even the position of the Judge Advocate is not that of a prosecutor at all. His

position, if I may introduce an analogy from Magisterial courts, is that of a Judge who has a jury to assist him. Anyway, the Judge Advocate's functions are somewhat less than those of a Judge and it is for the Judge to decide what the sentence in a particular case should be. In the procedure for our Court Martials, it would be for the Judge Advocate to give rulings on law or to state the law to the Court Martial but it will not be for him to pass the sentence. The sentence will be passed by the Court Martial which will take the place of the Jury in an ordinary Sessions case. That I think is the position under the Bill.

I think there is a misconception, regarding this question of separation of the Judiciary from the Executive functions under the British Constitution. It is frequently said that there is a complete separation of functions in Britain and that therefore, there should be a complete separation of functions in India also. I am for a complete separation of functions but I am not going into that question now. I am just going to point out something which it is important for us to remember. If an American theorist or a jurist were to visit or were to write a commentary on the British Constitution, the first thing that would strike him would be the anomalous character of the position that the Lord Chancellor holds. The Lord Chancellor is a member of the Cabinet; the Lord Chancellor is the Speaker of the House of Lords; the Lord Chancellor is the highest judicial dignitary in the land. He presides over the House of Lords; he presides over the Court of Appeal and he presides over the Chancery division as it is today. Now you have Lords of Appeal ordinarily sitting in the House of Lords and participating in political discussion. The other day I read the speech of Lord Reed attacking the Malayan Constitution which was the result of his labours. These analogies can be stretched too far. The position of the-

Judge Advocate General will not be like that of the District Magistrate of a District. He will be, I take it, a high functionary and his qualifications have been laid down in the Bill. You will permit me perhaps to make a brief reference to clause 172 of the Bill which lays down these qualifications. I have a little difficulty of a minor character, of a drafting character with that clause and, therefore, I make a reference to it. Clause 172(3) says that "A person shall not be qualified for appointment as Judge Advocate General of the Navy unless he is a citizen of India and (a) has for at least ten years held a judicial office in the territory of India, or (b) has for at least ten years been an advocate of a High Court or two or more such courts in succession." I have no objection to the second of the conditions, *i.e.* that for ten years he has been an advocate of a High Court or two or more such courts in succession but so far as the first qualification is concerned, that is to say, that he must have held a judicial office for ten years, I would suggest the addition of some words by which we could exclude persons who have only held Magisterial positions from appointment as Judge Advocate General. We have Magistrates in our State who are called judicial magistrates. Now, if this provision remains as it is, such officers as I have mentioned may, after ten years, consider themselves as 'qualified for appointment as Judge Advocate Generals. I know the reason why the Draftsman has introduced the words "judicial office". That reason will be apparent from Explanation (c) below this clause but I think some more care should be given to drafting this clause in such a manner as to exclude persons who have merely held Magisterial office from holding the position of a Judge Advocate General. Another suggestion, Mr. Chairman, that I would like to make is this. The final decision in regard to questions of sentence and so on shall be taken by the Central Gov-

ernment. Now I do not object to that. The Central Government shall be advised by the Judge Advocate-General. I think that is all right. But there might be a further safeguard inserted here or an assurance can be given in this matter by the Defence Minister, and the further safeguard that I would suggest is that the final sentence should be passed after consultation with the Attorney-General or, in his absence, the Solicitor-General. That will ensure that a judicial mind of a high order is exercised over the opinion given by the Judge Advocate-General. It might be said that it will affect the position of the Judge Advocate-General. I don't think so. You have a hierarchy of courts everywhere already and I see no objection in principle to this suggestion which I am making in the full confidence that it will be taken into consideration by the Select Committee.

Now, Mr. Chairman, it was said that one of the bad features of this Bill is that the ratings have been given no rights at all, that whereas a rating can be hauled up for insubordination or for insulting a superior officer there is immunity so far as the superior officer is concerned. Well, that, I think, is completely wrong. There is a specific provision in the Bill which gives them the right of making representations regarding their grievances to their superior officers—I hope I am stating the position correctly. Let me refer to the relevant clause which is clause 28 where it says: "If an officer or seaman thinks that he has suffered any personal oppression, injustice or other ill-treatment at the hands of any superior officer, he may make a complaint in accordance with regulations made under this Act." So the right of representation has been conceded to the seaman in specific terms by the Bill itself. It is true that the duties of officers have not been laid down. But look at our Constitution. We have Fundamental Rights enunciated in the Constitution. Those Fundamental Rights tell us what the rights of the citi-

[Shri P. N. Sapru.] zens are. They do not say what the duties of the citizens are. Also we have the Directive Principles of State Policy. They do not tell us either what the duties of the citizens are. They are in the nature of moral precepts. Everything cannot find a place in the statute book and you cannot maintain discipline in the army by the ordinary method of voting, the officers and men sitting together and voting as if they were Members of an Assembly. You have to maintain a certain amount of discipline in the Armed Forces.

Now, one feature—I consider it to be a welcome feature—one feature of this Bill is that it is an all-comprehensive measure and it deals with the estate of a deceased person, as to how his estate shall be administered. It will be of help to the ratings and the officers. The provisions with regard to the administration of assets and so on of these persons should be of help to our ratings and our officers.

A point was made by Mr. Tajamul Husian yesterday and he spoke with the experience of a criminal lawyer on this matter, but I venture to differ from him on that question. He objected to the right which has been given to an accused person to offer himself as a witness. Now an accused person can, under the law of England, offer himself as a witness. This change was brought about in 1898 and there was a lot of controversy about it at that time. But the old law was applicable so far, so far as our defence forces or court martials were concerned. I think that it is not being fair to the accused that he should not be given an opportunity to explain anything that goes against him. The procedure for the examination of the accused persons laid down in section 382 of the Criminal Procedure Code is not very satisfactory, and you know that there have been a number of cases on section 382. Why, I ask, should an

accused person not have the right of tendering himself as a witness, why should he not have an opportunity of being allowed to offer himself as a witness? There are things that he can explain by giving evidence which no other person may be able to. Therefore I consider it a good right. In fact here the Bill does not go quite as far as the British Act. The Judge Advocate shall point out to the court martial that just because an accused person has not offered himself for examination they must not make any assumptions against him. This is provided for in this Bill. So there is everything to be said for and nothing against the proposal here.

Finally, Mr. Chairman, I would like to say one or two things about the men who found themselves dismissed from the Navy as a result of the naval mutiny. Well, we do not want, it is true, mutineers in our Armed Forces. But at that time we were fighting for our independence, and some consideration should be given to the men who suffered for the cause of Indian independence. I would not put it higher than that. I have no doubt that the Defence Ministry has every sympathy with that class of persons, the political sufferers of 1942, 1943, 1944, and those who revolted should not be penalised. Of course we want our Navy to be a good Navy and we want the spirit of cooperation to develop among our naval officers and our men. A lot has been said about this spirit of co-operation, but I cannot imagine an officer who wants to be a good officer, who will not mix freely with his men, and a tribute, I think, is due to our young-men, of the officer class also, for the interest that they take in their men. We should not be too critical of our hoys who are serving in the Army, irt the Navy and in the Air Force. We should have full confidence in them; we should have full confidence in their capacity to win the hearts of their men and therefore it is in that way that they will be able to develop

a real democratic spirit in the Army. You will not be able to develop a real democratic spirit in the Army by laying down rules or laws which will make the working of the Army or the Navy or the Air Force impossible.

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With these words, Mr. Chairman, I give this Bill my general support and I have no doubt that the Joint Committee will exercise its mind on the various clauses of this Bill and improve them wherever improvement is necessary. Thank you very much.

SHRI SANTOSH KUMAR BASU (West Bengal): Mr. Chairman, I accord my wholehearted support and welcome to this Bill as another important stage in the fulfilment of our nation's destiny. With a far-flung coastline extending over 3,500 miles, our Navy is destined to play a significant role in the defence of the country. After Indianisation of the naval personnel this Bill comes as a natural consequence as it seeks to place on the statute book a self-contained piece of legislation governing the Navy of India. Criticism has been offered on the floor of this House that this Bill is nothing more than a copy of the British Act. Well, Sir, it may be a copy but I do not think that it is a blind copy. Several important features have been introduced in this Bill, as has been indicated by the hon. Minister in his introductory speech, which mark a departure from the existing provisions in the British Act. And I am sure that with the passing of years new features will be introduced when sufficient experience has been gained in the working of this law.

The American model has been cited in this debate as a convenient system to which we can look for drawing inspiration. I am not so sure that for an organisation based on the British model, we should enact legislation based on some other model. Here we have got a set-up which is entirely constituted on the British model.

When we are going to pass legislation to put that organisation on a safe and sure footing for many years to come, shall we go to other countries leaving aside the British Act on the basis of which our present organisation has been framed and fashioned? That is a question which we have got to consider at this transitional stage of our Navy.

The main object of this legislation, so far as I can see, is to secure for the Indian naval establishment the highest standards of discipline and efficiency. The British Navy has been built on legislation passed by a democratic legislature—the British Parliament—which, one can be sure, was keen to secure the discipline and efficiency of their Navy and at the same time to secure for their naval personnel necessary safeguards in the enforcement of discipline. The British Act has provided the necessary balance in this respect.

I now turn to some aspects of the Bill which have been criticised by some hon'ble Members.

[MR. DEPUTY CHAIRMAN in the Chair.]

It has been said that the provision for the accused person to give evidence before a court-martial has got to be given serious consideration. That provision has now been made in our Criminal Procedure Code by an amendment which was long overdue. I submit that this is a very wholesome and healthy provision which has found place in this Bill. The absence of that provision in our criminal law was a lacuna which had resulted in great injustice being done in many cases. I know of municipal laws which cast a burden upon the accused person to prove his innocence although there was no provision in the criminal law enabling him to give evidence in his own favour. That is an anomaly which has now been

1 cured by the amendment of our Criminal Procedure Code and I am glad that this provision has been incorporated in this proposed legislation.

LShri Santosh Kumar Basu.] Then it has been said that in a court-martial an officer subordinate to the rank of the person who is accused before it ought not to be allowed to take part. I find that clear provision has been made in this Bill that at least one of the officers constituting the court-martial must be an officer above the rank of the person accused.

It has also been said that a High Court judge should be called upon to preside over court-martial proceedings. As a question of abstract principle, no exception can be taken to this suggestion. High Court judges are held in such great esteem in this country that whenever we find that a question of difficulty arises for solution on a consideration of evidence, we turn to High Court judges to come to our aid. But I am afraid that it will not be a practical proposition to import High Court judges into the conduct of court-martial proceedings. High Court judges are already overburdened with their own legitimate, normal work. An enormous number of cases is pending before all the High Courts and it has become a question of considerable difficulty as to how those arrears can be cleared without any further delay. So much so that tribunals are being thought of as the final court of judgment taking away the legitimate work of the High Court as it at present obtains.

Dr. Sapru in his dissertation, if I may say so, on the legal aspects of this matter has pointed out several factors which the Select Committee would do well to take into consideration. One point, I think, has not been raised so far in this debate and I think it is of very great importance. A right of appeal should be given to an accused person who has been sentenced to death by a Court-martial, a right of appeal to the Supreme Court. The Supreme Court has been constituted as the highest repository of the rights of citizens under the Constitution. Now, Sir, in

the case of death sentences, it not in the case of other severe sentences, the Supreme Court's right to intervene should not be taken away. The scrutiny by the Judge Advocate General and on his advice by the Central Government cannot possibly take the place of scrutiny and judgment by the Supreme Court in the case of capital punishment. I do Hope that Government would readily agree to allow this concession to their own personnel in the naval establishments and allow a provision in the Bill to be made by the Select Committee providing for appeal to the Supreme Court. The Supreme Court will have no difficulty in dealing with a matter which has been dealt with by a court-martial, in view of the clear provision in the new Bill that the Indian Evidence Act will be made applicable. That is a very significant departure and I congratulate the Ministry on the incorporation of that provision in the Bill. It is a standing complaint against court-martial proceedings that the Indian Evidence Act is given the go-by and hearsay evidence, report evidence, gossip evidence, everything is allowed to go in the garb of evidence before a court-martial. Now that the Indian Evidence Act has been made applicable, I think, the Supreme Court will have no difficulty in dealing with the death sentences which may be passed by a court-martial.

I do not desire to prolong my observations because many aspects of this Bill have already been discussed and considered by different speakers. But I would conclude my observations with an earnest appeal to the Government to provide for the right of appeal to the Supreme Court against death sentences passed by a court-martial.

SHRI AKBAR ALI KHAN (Andhra Pradesh): Mr. Deputy Chairman, I had no mind to speak on this Bill until I heard Mr. Bhupesh Gupta and Mr. Kishen Chand. The impression that I got from those two speeches is.

that they have given more importance to the general notions about the democratic principles and such other things and less importance to the disciplinary part of it. During the last ten years, since we achieved our independence, it is an open secret that, generally speaking, the discipline of our country has gone down. Whether you look to students, whether you look to labourers, whether you look to other persons— even responsible persons as we saw in connection with the reorganisation of the States—somehow or other we feel that the balance has been lost and by independence a certain notion has crept in that anybody and everybody can do anything, on any occasion and go scotfree. When we are considering any legislation, we have to keep our hands on the pulse of the nation. My learned friend and his party think that they represent the people, I mean the Communist Party, the Opposition Party. My friend, Mr. Kishen Chand, and his Socialist Party think that they are the representatives of the people. But when they are advocating a certain thing, have they ever thought in terms of the security and the safety of the nation, the well being of the nation and the advancement which would ultimately go to raise the level, to raise the honour and dignity of the country? I feel that in this context, in this background, we have to be very careful, especially when we have to deal with our security forces, whether it be the Army, whether it be the Air Force, or whether it be the Navy. When we look at it from that point of view, I feel that the measure that has been brought in is certainly a very welcome measure. It is a very progressive measure, at the same time a measure which fully safeguards the security of the Services.

There was another suggestion, that was more emphasised by Mr. Kishen Chand and partly by Mr. Bhupesh Gupta also, that we are following the British pattern, or in other words

they went to the extent of saying that we are blindly following the British pattern. So far as I have seen the Bill, nothing doing. It is true the British Navy is the senior most Navy; it is one of the best navies. And I think one of the reasons why this measure was delayed was that they were awaiting the report of the committee that was appointed to frame a Bill for the British Navy. I think, apart from the fact that the substance of our Constitution follows the British pattern, apart from the fact that the substance of our judicial system is based on the British model, if there is anything good we should be proud of following not only from England, with which country we had very long relations, but from any country, even from Russia and China. Let us look to the problem and see what best can we get from any country. So far as Navy is concerned, it is an acknowledged fact that the United Kingdom has got the best experience, and if we have taken certain things from that pattern and from that model, I think there is nothing to be ashamed of. Anything that is good and is available from any quarter should be welcome to us. If we really want to live and progress.

SHRI PERATH NARAYANAN NAIR (Kerala): Oman bears witness.

SHRI AKBAR ALI KHAN: It is not clear to me, Mr. Nair.

SHRI PERATH NARAYANAN NAIR: The experience of Egypt and the Middle-Eastern countries bears witness.

SHRI AKBAR ALI KHAN: Yes, I thought so. My friends are always obsessed with certain things. He says 'Oman' and he says 'Egypt'. I say I do not agree with that policy and we have made it clear. But that does not mean that if there is anything good in their enactments or in their conduct or in their military discipline, we should not take it up. We are not having our Navy in order to go and attack somebody. We never think on those lines. But at the same time it will be a very narrow view

[Shri Akbar Ali Khan.] of things to say that this particular thing should not be taken because it is-British or because it is American.

Now, Sir, coming to the Bill itself, I would submit that it is a consolidating Bill. The only enactment that we had in this connection was the Discipline Act, and this measure is definitely progressive because it does provide for conditions of service and for pension, and also it gives certain very important rights as under clause 28. Even if an officer behaves improperly with his subordinates, a right is given to him to place the matter before the higher officer and before the Government. At the same time I would say, Sir, that a very important judicial element has also been introduced, and that is, as it has been suggested by my friend, Mr. Basu, by introducing the Evidence Act. That is a very salutary provision. It would stop hearsay evidence, it would stop inadmissible provisions and it would give really a very good opportunity to the accused to see that justice is done to him.

Apart from this, Sir, I feel that there are certain other matters which will have to be looked into by the Ministry as well as by the Joint Committee. Among them I put the question of review by the Advocate-General. This, I think, does not satisfy the judicial sense, which would not be in the best interests of the accused nor of the discipline of the whole Navy. In England, Sir, as you all know, in the latest report they have provided an appeal from the Court-Martial to the High Court, and I think, our Constitution also does give very wide powers to the High Courts and the Supreme Court. And in matters where particularly very severe sentences, either of death or of long imprisonment, are imposed, it is but fair that a final appeal should be given either to the High Court or to the Supreme Court, and nothing would be lost by it. I think that this is a very good suggestion and I hope that the Ministry as well as the Joint Committee will give full consideration to it.

The other point that I crave your permission to refer to is that the maximum period of service for the Navy has been put in as 15 years. Well, Sir, it may be that in other countries also the period is only 15 years. The service generally starts from 17 and it finishes at 32. I feel that this matter also should be carefully considered in view of our present economic conditions and in view of certain other considerations. If we can extend the period of service, then we might save something also. I would like the Select Committee to consider why not extend the period of 15 years to 20 years.

Then, Sir, there is another minor suggestion. There is a provision in the Bill that if a minor joins the Navy and if the parents come and want him back, they would not be entitled to have him back. I feel, Sir, that in the conditions of our country that is rather a very harsh provision. We all know that sometimes the Children go away on some little differences from their parents and they join the Navy, and if the parents go and try to claim back their child at the very initial stage, I think in such a case there should be some discretion given to the authorities that such a minor could be returned to their parents. With these few suggestions, Sir, I welcome the measure as a very wholesome measure, and I do hope that after the deliberations of the Joint Committee it will be much improved when it comes into its final shape.

SHRI M. D. TUMPALLIWAR (Bombay): Mr. Deputy Chairman, I welcome the Bill. It has been made clear that our Navy is the smallest in comparison with the length of our coast line, and in view of that it is very necessary that we should have some legislation by which we can raise our naval force just sufficient to protect our coast and increase our trade. Well, Sir, while welcoming this Bill I have to make some suggestions.

Sir, I could not follow the discrimination made against women. In

Chapter III, clause 10(2) it has been stated as follows:

"No woman shall be eligible for appointment or enrolment in the Indian Navy or the Indian Naval Reserve Forces except in such department, branch or other body forming part thereof ..."

Even our Constitution provides equal rights to men and women both, and I think that this clause will really go against the spirit of the Constitution, and therefore I will request the Joint Committee to give its due consideration to this particular clause and try to delete it from this legislation, if possible. Then, the second thing that struck me while reading the Bill was the distinction made between seamen and officers. There was some talk about copying from this country and that country and from this pattern and that pattern. Of course, I do not object to copying provided that copying is copying of the good things. As far as the distinction between seamen and officers is concerned, I think that is copying the British pattern; it is copying the worst part of it. That is what I feel. Now we are living in the age of democracy when nobody feels himself to be inferior to anybody else. As such, I do not like that in our Services *some* people should feel that they are inferior and some others should feel that they are superior. Of course, I do not mean to say that there should be no distinction between ranks, between lower ranks and higher ranks, but there should be no legislative provision for that. Even a seaman can become an officer. That idea struck me because there are different clauses in this for seamen and different clauses for officers. While dealing with seamen and officers, provisions could be made in the same clauses, and the distinction could be removed without any harm done to the body of the Bill.

Another thing that I would like to suggest is that there should be an attempt to see that there is parity in living conditions among the ranks in our Services. The time was not long

ago when we were threatened with a strike. According to me, it is not the lower standard of living that is causing disturbances. Because we are poor and are not producing enough, we cannot have a richer life, but when we see the vast majority of the people living in wretched conditions, and a selected few are living in the best of conditions, discontent grows. Of course, that discontent is exploited for political purposes. So, we should not give any opportunity for the generation of this discontent and for the exploitation of this discontent for political purposes. I do not want to go into details, because a Pay Commission has been appointed, and that will go into the pay and service conditions of all the categories of service in the Government of India, but if it is possible for the Select Committee to go into that, I would recommend that the Select Committee should see that the living conditions of the different ranks should not differ very much, giving cause for discontent among the different ranks.

Having said this much, I welcome the provisions regarding discipline. While talking about the poorer sections of the Services or lower sections of the Services, one should not forget that these Services are mainly for the progress and defence of the country. So, it is not proper for anybody, or patriotic for anybody, to create in them a sense of indiscipline. I do not say that discipline can be brought about only by terror. There should be respect for discipline, and an attempt should be made to see that all persons in the Services do respect discipline and do not by any of their acts hamper the progress of the country. In that respect, the provisions made in this Bill, are quite sufficient. The Select Committee could go into these and see that they are made even stricter.

Another thing that I would like to point out is that there is much talk about fundamental rights, and when the Essential Services Maintenance

[Shri M. D. Tumpalliwari.] Bill was brought before the Lok Sabha, there was general criticism that fundamental rights were being taken away by the Government from the individual. It is all right to talk about fundamental rights, but the fundamental rights of one section should not come in the way of the fundamental rights of the other sections of society. It is all right for labourers in a mill or a factory to go on strike. That will affect only the profits of the proprietors of the factory or mill, while affecting the general production of the country. But when people in government service think of going on strike, it is a very serious thing. The whole country is affected when people in government service think of going on strike. They must be made to feel that they are being paid to serve the country; they are to work for the country; they have to live with the country. They should not think in isolation. They should always think that they are one with the country. If the country is poor, they will be poor; if the country grows richer, they will grow richer. This feeling must be inculcated in the Services. There is a general tendency to feel envious of the Government servants, because as compared with the poor standard of living of the masses in India, the standard of living of the Government servants is certainly a better one and anybody is likely to envy that standard; even the Government servants in the lower ranks are bound to feel it. So, from that point of view, there is a line of demarcation between Government servants and the members of the public. I do not like this sort of distinction between the two. The people in Government service should feel that it is the public who are their masters, and should feel one with them. So, there should not be much difference in the living conditions between the public and Government servants. Of course, that is also a question for the Pay Commission and the Select Committee, but I think that in the Navy which is the most important Service as far

as our defence is concerned, there should be no cause for discontent among any rank. With these words, I support the motion.

SHRI J. S. BISHT (Uttar Pradesh): Mr. Deputy Chairman, I support the motion moved by the hon. Minister for referring the Navy Bill 1957 to a Joint Select Committee of the two Houses of Parliament. Before I proceed to examine the various provisions contained in this very consolidating and comprehensive Bill, I think I should refer to certain remarks, however relevant they may be, that emanated from the opposition benches yesterday, and the hon. Member who made these remarks luckily happens to be present here—I mean my hon. friend Mr. Kishen Chand. His objection was firstly that the Bill has been modelled on the British Navy Bill. I think that the hon. Minister himself made that point perfectly clear that the British Parliament has not yet formulated a Bill. There was a Navy Enquiry Committee, and on its report the Government of India has modelled the Bill. After we pass this Bill, probably they will copy this Bill. It is not that we are copying their Bill. We are only taking advantage of a certain report that was made by a Parliamentary Committee of that country.

MR. DEPUTY CHAIRMAN: You can continue in the afternoon. The House stands adjourned till 2-30 P.M.

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

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

SHRI J. S. BISHT: Mr. Deputy Chairman, when the House adjourned for lunch, I was referring to certain remarks made by my hon. friend Shri Kishen Chand from Hyderabad. His complaint was that the Minister of Defence had blindly copied the British Naval Bill. But as I was say-

ing, there is no such Bill there. A committee had made an enquiry and advantage has been taken by the Minister of Defence here, to base this Bill partly on certain recommendations made by that committee. Mr. Kishen Chand's argument was that we should not copy the British Bill at all, because he said—I will quote him:

"So, I submit that the hon. Minister, in trying to blindly follow the U.K. tradition which has become out-of-date now, has introduced certain elements in this Bill which are repugnant to the spirit of modern India."

Sir, these are very vague words and I do not know what he means by all this. I thought that any student who has even a smattering knowledge of history will know that Britain was until the Second World War, the biggest naval power in the world, a naval power which had the supremacy of the seas for over two hundred years, and I thought if we are to learn anything about a Navy, they are the best people to teach us, being the original source.

DR. R. B. GOUR (Andhra Pradesh) : Not when they are waning.

SHRI J. S. BISHT: We do not want to learn from Russia or any other source, because we do not want to learn from a copy.

DR. R. B. GOUR: You think only of copying.

SHRI J. S. BISHT: When the original source is available, the original people who founded a Navy and almost controlled the seas and oceans of the world for over two hundred years, it is from them that we should learn. Russia does not even have a fleet. They might have a submarine fleet which as everybody knows is the naval arm of a weak power. Germany before the World War also developed a submarine fleet. I quite endorse the remarks made by Mr. Sapru that we are grateful to those British Officers -who, even after ten years of our independence are still serving us and giving of their best, in bringing up

our young boys in good traditions, teaching them the techniques, the know-how and the knowledge in these naval matters.

With regard to the point about discipline that was raised by Mr. Kishen Chand, I think my hon. friend here, Shri Bri] Behari Sharma interjected very rightly and asked' "If we have become independent, does it mean that we should not have any discipline in the Army and in the Navy?" Shri Kishen Chand, for instance, said that the pay of a junior commissioned officer goes up to Rs. 250 whereas a commissioned officer can become a colonel, a brigadier, a general and so on. He also said that the conditions of life of the Jawan and of the officers are so different that there is no co-ordination or fellow-feeling between them. Sir, if these remarks had emanated from the Communist benches I could have understood them, because they are always eager to create class war among the different sections of the people. If there is bad blood in the Army, if there is bad blood between the officers and the rank and file, so much the better for these people, because in a State which rests on force as symbolised by the Armed Forces and the police, if these become a broken reed in the hands of the State, then probably these people might jump at the opportunity and take hold of the State. But that a gentleman of the Praja Socialist Party who professes by democracy should try to drive this sort of a wedge between the officers and the rank and file, is very deplorable.

Sir, I happen to know a number of officers holding the rank of Lt. Colonels, the responsible post of officer commanding regiments, and all of them are officers who enrolled themselves as mere Jawans, as soldiers in the Army and had risen to these high ranks. There are innumerable soldiers both among the junior commissioned ranks and in the regular commissioned ranks. All those officers holding responsible positions have risen from the ranks, for there is no bar. In fact, if there is a free

[Shri J. S. Bisht.] Republic it is the Armed Forces, for every soldier, every Jawan, carries a field marshal's baton in his knapsack, provided he is a man who is capable, is competent and is gallant enough. If he can show that initiative, that courage and that leadership, there is no rank that is not open to him to rise to. And that has been the history of most of the armies. Therefore, to say all this is really very deplorable.

Then there was another precious remark made by my hon. friend Mr. Kishen Chand. He said that the men should not blindly follow what their officers say. He said that they must know what they are fighting for, the cause for which the war is waged. This is indeed, a very novel argument and I do not know of any State in the world, whether it be capitalistic, communist or monarchical, where the people would accept such a theory. I say this because, if that be so, then every time you go to war, whether a war of defence or offence, you will probably have to hold a plebiscite in the army, a sort of vote taking, and they will have to decide whether it is a cause worth fighting for. And probably every three months you will have to repeat the process, because the shape of things may change, the allies of today may be the enemies of tomorrow. Nobody knows what will happen. Sir, I am merely stating all this to show how very ridiculous the proposition is.

There is only one point on which I would like to say something. So far as the Armed Forces are concerned, I believe the Jawan, and their equivalent numbers or their opposite numbers of the Air Force and the Navy are all very well looked after. The State provides them with free ration. It does not matter to them two hoots whether rice or atta is selling at 4 seers a rupee or one seer a rupee because it is the business of the State to give them ration. It is the headache of the State to supply them free ration, to supply them quarters free, equipment free, movement free, medics', assistance free. And of course, **pay** and pension are all there. So

as far as my knowledge goes, among the Jawans and the rank and file of the Army there is not much discontent. The only discontent that might be found there really is among the officers, because as you know, their pay has been reduced from what it used to be in the case of the King's Commission ranks. The higher grade officers here are still those King's Commissioned Officers, just as on the civil side we have got the Indian Civil Service officers still drawing the old scales of pay. But in the other classes, the officers are not well off, especially when they are married and have children. They have great difficulties. They are transferred, as you know, to any place. One day he may be serving in the North East Frontier Agency and the next day he may be transferred to Trivandrum. Next year he may be in Kashmir. These are things that are happening every day. What is going to happen with regard to their wives and children, especially to the education of their children? I once raised this point in a budget speech and it was said that something was being done about it. I think Dr. Katju said that there was some language difficulty, that it had been solved and that new schools would be opened. I do not know what has been done. But these are real and genuine difficulties.

The second point is, as the hon. Deputy Minister of Defence knows, there is a great block to promotions. Persons who entered as lieutenants are likely to retire as majors, far there is no chance for their promotion since the posts of lieutenant colonels are very few. I think there are hardly 250 or 300 posts of lieutenant colonels whereas the number of majors will be nearly about 4,000. Therefore the chances of promotion are very small. A major or his opposite number in the Navy or in the Air Force gets a maximum salary of Rs. 1,050 which I think is more or less the pay of a deputy collector, without the expenses that the military officer has to incur. So that is the position. There are many ways in which this problem could be solved.

I understand that this matter is under the consideration of the Government.

I had suggested once before and I suggest it again that these are matters to be tackled from two or three angles and that is, we should upgrade the post of Officer Commanding. Instead of being a Lt.-Col. he should be a full Colonel and the second in command should be a Lt.-Col. instead of a Major. All these promotions will give you room sufficient enough for promoting these officers who will otherwise be very much dissatisfied and disgruntled. We do not want that the officer cadre of the Army should be dissatisfied and discontented. You will have to spend some money but that is worth the price because you will gain their loyalty and their contentment. Apart from that, Sir, you should also adopt another method which used to be to their advantage in the British days.

MR. DEPUTY CHAIRMAN: Please confine your remarks to the Navy Bill. We are not concerned with the Army or the Air Force.

SHRI J. S. BISHT: This is a problem common to all the Services.

You should allow those Majors who have attained their seniority to muster out on the pension of the Lt.-Colonel. That is what the British Army did. Many of the Majors will welcome this and that will give room for promotion in the case of the junior officers. I am emphasising this point because it is a very serious point.

MR. DEPUTY CHAIRMAN: It is not a general debate on Defence.

SHRI J. S. BISHT: I am discussing the Navy Bill. *If* it is not to be discussed in the Navy Bill, I do not know on what else I can speak about these things.

MR. DEPUTY CHAIRMAN: You may speak when we take up Defence expenditure.

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SHRI J. S. BISHT: Coming to certain points with regard to this particular Bill, I find that the right to complain has been conferred not only on officers but also on seamen. For instance, on page 11, clause 28, you will find that an officer or seaman may make a complaint if he thinks that he has suffered any personal oppression, injustice *or* other ill-treatment at the hands of any superior officer. This is a good thing. Of course, the Evidence Act has been made applicable to all proceedings in the Court Martial. I have got a copy each of the Army Act and the Air Force Act and this has been made applicable, there also but in the Navy Bill they have introduced certain improvements, namely, the accused has been given the right to appear as a witness in his own case if he so desires. There is no compulsion about it. Some hon. Member remarked yesterday that he should not be compelled to do so. There is no question of anyone being compelled to do so. On the other hand, it says that if he wants to do so, he will do so in writing. He will be warned beforehand by the trial Judge Advocate that if he decides to do so, he is liable to be cross-examined. Then also, he has to give in writing that he is going to be a witness in his own defence. He does so with his eyes open. It is also said that if any accused does not volunteer to be a witness in his own defence, then no presumption will be attached to such an unwillingness. It is said that his failure to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against himself or any person charged with him in the same trial. This is as fair a procedure as can be expected and this is the sort of procedure which obtains in the amended Criminal Procedure Code. So, the accused is not in any way handicapped. On the other hand, this confers a great advantage on the man. If a man is really honest, why should he be afraid of being a witness in his own case and be prepared to be cross-examined? He may be in the best position to throw

[Shri J. S. Bisht.] light on certain points on which the other witnesses may not be able to throw full light.

There was a point raised by Mr. Tajamul Husain, I think. He said that the Judge Advocate acts as a sort of prosecutor and all that. I think he was acting on some misapprehension. The word 'Advocate' may have somehow misled him into that position. The Judge Advocate is more or less like one of the Judges there and on points of law, he is the person who gives a ruling. He has nothing to do with the prosecution at all. The prosecutor is a totally different person. Clause 100(8) provides that a prosecutor shall not be qualified to sit on the Court Martial for the trial of the person he prosecutes. This is very plain. The Judge Advocate is there firstly to administer oath to the witnesses and for performing such other duties as are prescribed in the Sill. Clause 117 lays down the duties of the Judge Advocate. He is to decide all questions of law arising in the course of the trial, especially on questions which have relevancy to facts, etc. These are the duties of the Judge Advocate and he is a man who is not in the Navy proper. He is in the Judge Advocate General's Branch and the Judge Advocate General is appointed, I think, by the Central Government. Mr. Sapru has already read out the qualifications for a Judge Advocate General. He is to have ten years' experience as a judicial officer or should have been an advocate of not less than ten years' standing in a High Court. The trial Judge Advocate has very rightly been put in there because, after all, a Court Martial is to consist of military officers who do not know anything about law, do not know about the procedure, about the Evidence Act and all that. So, there should be somebody well-versed in law and who may be of help to them in deciding about the admissibility of evidence, about questions of law, etc., that may arise from time to time.

There is another point to which I would like to draw attention of hon. Members. This is an improvement even on the Criminal Procedure Code. When a Court Martial is constituted then the accused is given an opportunity to say whether he objects to any of those people who constitute the Court Martial. Under clause 105, an accused may object to a person serving on the Court Martial on the ground which affects his competency to act as an impartial judge. It is also said that objections to members shall be decided separately, etc. Further objections could also be raised under clause 106. It is only when the trial Judge Advocate is satisfied that the accused has no objection with regard to the competence or impartiality of the Court Martial, that is composed of his brother officers, that the Court Martial can proceed further.

Mr. Kishen Chand was mentioning something about certain officers of some rank or other. He will find that the law has taken great care with regard to the seniority of the officers also. Sub-clauses (12), (13), (14), (15) and (16) of clause 100 cover this point.

SHRI KISHEN CHAND: I never mentioned anything about the Court Martial. I referred to officers' promotions, etc.

SHRI J. S. BISHT: My hon. friend said that junior officers should not be appointed to be Judges in a Court Martial trying senior officers. It says, "No court-martial for the trial of a captain shall be duly constituted unless the president is a captain or of higher rank and the other officers composing the court are commanders or officers of higher rank". Similarly, "no court-martial for the trial of a commander shall be duly constituted unless the president is a commander or of higher rank and two other members are commanders or officers of higher rank." And in fact it also says: "A court-martial shall not be duly constituted unless the members thereof are drawn from at least two

ships not being tendered and commanded by officers of the rank of lieutenant or higher rank." In fact very great care, meticulous care has been taken to see that very impartial people without any prejudices and without any prepossession constitute the court-martial. The accused is given every right to question their competence or their impartiality. If he objects and if the objection is valid the men would be changed. Also before entering on his defence, the accused may raise a plea of no case to answer and the court will decide the plea after hearing the accused and the prosecutor and the advice of the trial judge advocate. Then there is the right of appeal. You might not like to call it right of appeal but there is the right of review. In the case of capital punishment, that has to be confirmed by the Central Government. All these things, I submit, are of great importance and are to find a place in the Army Act and the Air Force Act, and I hope in fact the Army Act and the Air Force Act would be brought in line with this Navy Act when this Navy Bill is passed.

There is only one point to which I wish to draw the attention of the Select Committee when it sits. It is that in both the Army Act and the Air Force Act there is provision for a general summary court-martial for misconduct in action by certain officers during times of war and during certain emergencies and all that sort of thing. Although some such thing is mentioned in clause 96 of this Bill it has not been given with as much elaboration as is given in the Army Act and in other places. I do not know what is the particular reason why this general summary court-martial is not elaborately provided for in this Navy Bill. I hope the Select Committee will go into it with reference to the Army Act and the Air Force Act so far as this particular point is concerned since, if the navy is engaged in war and the ships are far out in the sea and there are criminal acts or any acts committed that are prejudicial to the Naval Act,

there should be some provision analogous to that put in the Army Act and the Air Force Act.

With these remarks, Sir, I support reference of the Navy Bill to the Select Committee.

SHRI MAHESH SARAN (Bihar): Mr. Deputy Chairman, I have tried to go through this Bill and I find that from all points of view it has been very carefully worded and the whole substance of it is just what it should be. Of course there are some minor changes that will be necessary and I think, when the Select Committee sits, it will look into those things.

Now, Sir, so far as the defence services are concerned there are two important matters which should be kept in view. One is discipline and the other is efficiency. These are the essentials which are never to be lost sight of and if these two are well guarded, I think we can turn out one of the best navies in the world, and I feel, Sir, that an effort has been made to see that there is enough efficiency and enough discipline.

In this connection, Sir, I am sorry I have to quote the few words that have fallen from the lips of my friend, Mr. Kishen Chand, which I think is rather unfortunate. I think a responsible person should not have in the hurry of the moment said things, which really cuts at the root of democracy. He says, "One is the clause which related to discipline. Much has been made of discipline. It was a tradition in the nineteenth century in the Army and the Navy that discipline was everything. You know that poem by Tennyson 'Charge of the Light Brigade', when it was considered that the sepoy and the jawans should blindly follow all the orders given to them". My submission is: If they do not blindly follow, things will all go wrong, and instead of doing any good you will be doing harm to your country".

SHRI KISHEN CHAND: This is not nineteenth century; this is twentieth century.

SHRI MAHESH SARAN: Does that mean that the men should have the discretion to follow some orders and not to follow some orders. In that case there will be chaos; there will be confusion; nothing can prosper in the state of things which is advocated by my friend, Mr. Kishen Chand. Then he says, "And of course you remember the story of Casabianca on the burning deck. I feel that many of the clauses about discipline in this Bill are influenced by that mental outlook, that mental outlook of blind following, of a blind obedience to orders, whether sensible or insensible." There he finishes.

Now my submission, Sir, is: If the jawans are to decide, if the ratings are to decide what is a sensible order and what is not a sensible order there will be chaos and no order. This will be negation of all that is good, of all that is nice, of all that is proper, and I am glad that this Bill has carefully taken account of these things and has made certain provisions which will help the Navy for being far from what people like Mr. Kishen Chand and others want. Here I refer to clause 24(2) which says, "No person subject to naval law shall, without the express sanction of the Central Government, (a) be a member of, or be associated in any way with, any society, institution or organisation that is not recognised as part of the Armed Forces of the Union or is not of a purely social, recreational or religious nature, or (b) be a member of or be associated in any way with any trade union, labour union, political association or with any class of trade unions, labour unions or political associations." I feel how much important this provision is after I heard the speeches of some of the Members. If the ratings or the jawans go to meetings and hear speeches to the effect that they have to use their discretion in the matter of following or not following the orders of their superior officers, I do

not know to what condition we will be reduced. It is a thing which Mr. Kishen Chand should think very many times before uttering again.

SHRI KISHEN CHAND: I can quote several authors who have written on the conduct of the last war in defence of my statement. There are any number of writers. The hon. Member has not read them and he criticises. He may read Col. Liddel Hart's articles.

SHRI MAHESH SARAN: Then, Sir, I refer to clause 55 which I consider is very important. It says, "Every person subject to naval law who is guilty of drunkenness shall,—if he is an officer, be punished with dismissal with disgrace from the Naval Service or such other punishment as is hereinafter mentioned." If he is a seaman on active service or if he is a seaman not on active service, for them different punishments have also been provided for. Now I think that this is one of the most important clause that has been introduced because I have had occasion to be present in their annual functions of the Navy and I have seen that these people take a little too much of the drink, which is most objectionable, and I am glad that the attention of the Defence Ministry has been directed towards remedying this most obnoxious practice, which occurs in the Navy and in the Army. The whole point is that if a man is drunk, how can he carry on the work of the force of which he is supposed to be the captain or lieutenant. Therefore this is one of the most essential things to which the attention of the officer should be directed and it should be seen that this provision is very carefully followed. There are one or

two other things which I wish 3 P.M. to suggest and I hope the

Select Committee, when it sits, will think over them carefully and see if there is any force in the suggestion and if they find that there is some force, will incorporate them. Now, the trial Judge Advocate is a new innovation—probably a good innovation—but he is supposed to

work as a judge and therefore legal knowledge is absolutely necessary. When you say a trial judge, I do not mind who he is, but there must be a clause saying that he must have knowledge of law. That is very essential.

Then there is the clause that the Judge Advocate General will review all proceedings of trials by court-martial. That is all right; it is very nice, but I think the right of appeal should be given in cases of death penalty and it is only proper that a clause like that should be incorporated in this measure.

I then find that period of service of officers and seamen is 15 years. This is a great hardship. You know in this country people are without employment; people are running from door to door seeking employment but we find these bright young men who were able to become officers in our Navy are asked to retire at the age of 32 or 35. What will they do then? They were held in high esteem so long as they worked for the country, for the Government, but later on when the time comes for their retirement, is not the Government going to be grateful to them? Is not the Government going to look to the future of these people? Will it not see that their children are properly educated? They are deprived of all the benefits which money can bring just in the prime of their life. I think this is a position which is untenable. I therefore submit that the Select Committee should go into this matter very carefully, think about it, discuss it among themselves and see that justice is done to these people who in the prime of their life have devoted themselves to serve the country, to help the country and to make it more prosperous.

I would also submit that death penalty, if the crime is serious, is proper in the defence forces. I am not talking of other matters here but all the same I think one has to go into this very carefully and see whether the death sentences provided for in the different clauses are proper. One has to ponder over these things

because it is a serious matter—taking the life of a person for a crime—but if it is necessary in the interests of the country, for the safety of the country, it is all right, but for other crimes I do not think that the maximum penalty of death should be awarded. This matter also, I submit, requires the careful consideration of the Select Committee.

These are the few points which I wanted to bring to the notice of the House and to the notice of the members of the Select Committee who I hope will give them the attention that they deserve.

PROF. A. R. WADIA (Nominated): Mr. Deputy Chairman, I see the necessity for introducing legislation regarding our Navy and to that extent I perfectly welcome the Bill. Though I am conscious of the fact that our Navy is in a very very skeleton form. I do hope that the Government mean to expand our naval forces. We may talk of ahimsa and panchsheel as much as we like but it is wise to keep our powder dry in a world which is extremely explosive and undepend-able. To that extent I congratulate the Government on introducing this Navy Bill.

There has been a very acute controversy on the question of discipline in the Navy. I am afraid my friend, Mr. Kishen Chand holds a certain extreme position which may have the authority of some wise people or even of very learned military people, but on the whole it seems to me that the question of discipline must be supreme in our forces, whether naval, military or air. And to that extent to give a certain amount of liberty to the subordinate officers to judge whether they should carry out a certain order or not seems to be extremely dangerous. But there is one point in Mr. Kishen Chand's speech which I heartily welcome and that was when he pleaded for better relations between the officers and the ordinary soldiers. Now, we may be against the British for varied reasons

[Prof. A. R. Wadia.] but I think it is a well known fact that relations between the British officers and the soldiers were very cordial. In fact, that is what enabled the British Army to dominate India for nearly two centuries. Now, I regret that with Indian officers there is a danger of this cordial relationship being relaxed. As an Indian I am sorry to say his but it is a fact, for this reason that we are a caste-ridden people. In fact, even in connection with private offices or even in connection with some Government offices, I have often heard Indians complaining that they do not get the same treatment that they used to get in the days of the British. That danger may exist in the Army in the Navy and in the Air Force too. Of course, in private talks we all talk against caste; unanimously we vote against caste when it comes to legislation but in actual practice everything that we do is coloured by caste. We vote in elections according to caste; we make appointments according to caste; we make promotions according to caste. In fact, our whole life is regulated by the rules of caste and I am afraid the same thing may poison the relationship between the officers and the soldiers and the sailors. It is from that standpoint that I do feel that, whether as part of the Act or by means of regulations, it should be possible for the Government to set a very high standard of cordial relationship subsisting between the officers on the one hand and the jawans on the other. It is very necessary that this relationship should exist because only through such relationship there can come about a spirit of confidence and loyalty to the Army or the Navy as the case may be and to the country at large. This is very essential and I hope that the Select Committee will be *able to* find out some means of implementing this idea

Mr. Bhupesh Gupta, as usual of course, was very bitter against the British and the Americans. Unfortu-

nately he always looks at them with coloured spectacles and he is never in a position to appreciate them as they are, but I am glad that my friends, Mr. Sapru and Mr. Bisht, both have paid compliments to the British officers who have stood by us and given us the best training and the best leadership even in the days of our independence which will be of good use to us. But I do feel that Mr. Bhupesh Gupta is on much stronger ground when he pleads for a certain relaxation of rules in connection with minors for which my friend from Hyderabad also pleaded. I do agree with them that when an officer has got an opportunity of resigning, there is no reason why a minor who joined the Navy should not be permitted to withdraw, especially if he had joined in a huff or in a moment of impetuosity or as a result of some petty quarrel in the family and if the parents intervene and if they want to bring back that minor into the family, I think the Government should be a little more generous and humane in this matter. After all a minor does not continue to be a minor indefinitely. It is only a matter of a few years and he is going to be in service for at least fifteen years more. Now, even this limit of fifteen seems to be rather unjust. To say that a man is not fit for work at the age of 30, even though the work is so hard as in a ship, at least does not appeal to me. Well, I cannot say that I have direct experience of sailors, but so far as I can see sailors even beyond the age of 30, are very strong and they are people who have the special advantage of sea air day after day. And they will naturally tend to be stronger.

THE DEPUTY MINISTER OF DEFENCE (SARDAR S. S. MAJITHIA) : They can get themselves re-enrolled and there is no bar for that.

PROF. A. R. WADIA: I am glad to have that assurance from the hon. Minister and it is a very necessary-assurance because **you ought** not to

discourage people from joining the Navy merely because at the age of 30 or 32 they will be called upon to retire and that age is a little too late for them to adapt themselves to a new profession or new vocation.

There is another unfortunate distinction which Mr. Bhupesh Gupta was trying to make and that was to make a distinction between discipline during war and discipline during peace. And he pleaded for relaxation of the rules during peace. Now, that is a very dangerous precedent. I am afraid we have suffered heavily from it. We are all very much discontented with the students now. At the present moment we feel that they are disobedient, ill-disciplined. But we forget that we introduced that spirit—maybe in the interests of our country, maybe in the interests of freedom. But it did impair the sense of discipline against their teachers against their own parents, and we expected that as soon as we gained freedom our students would be so reasonable and so conscious of their sense of duty that they would turn out to be absolutely saintly citizens, an expectation unfortunately which has been completely belied. Therefore, to make ourselves feel that discipline can be a little loose during times of peace and that breaches will not be taken serious note of will create a sense of lack of discipline which may break out even during the times of war. Therefore, this distinction should never be encouraged.

Unfortunately my knowledge of naval affairs is rather superficial and I have been puzzled by the contradictory views which have been put forward on the floor of this House. Mr. Kishen Chand said, with the best of motives, that there should be ways of promotion to the highest ranks, so that if a person joins even as an ordinary sailor he can become a non-commissioned officer. And if he distinguishes himself as a non-commissioned officer, it stands to reason that he should even have a chance of

being promoted as a commissioned officer. I believe the implication is that such promotion is entirely barred. I should like to be enlightened on this point by the hon. Minister, whether it is correct or not. I find Mr. Bisht was arguing that it is always open to a 'Jawan' or a sailor to rise to the highest position. Is that correct? Can an ordinary sailor hope to become a non-commissioned officer and then a commissioned officer?

SARDAR S. S. MAJITHIA: Yes, certainly, if he is fit enough. As a matter of fact, I do not mind saying that about ten per cent, of the officers have found commission from the other ranks.

PROF. A. R. WADIA: Is there a statutory provision for that?

SARDAR S. S. MAJITHIA: No. There is no statutory provision for that. But in the normal course we do encourage when the report turns up on these other ranks—ratings in the case of the Navy—by their commanding officers. And if they recommend he goes up before a selection board and if they find him fit he goes up for a commission.

PROF. A. R. WADIA: Mr. Kishen Chand says it is only to non-commissioned officer. Or, can he go even beyond?

SARDAR S. S. MAJITHIA: He can also become a commissioned officer.

PROF. A. R. WADIA: I am very happy to get this assurance, but I would respectfully suggest that the Select Committee takes into consideration the possibility of laying down this rule in a statutory form, so that it gives them a certain guarantee and it may not deter even comparatively uneducated people from joining the Navy.

Now, Sir, there is one point which has left me a little perturbed in this Bill. We are all familiar with the distinction between a court-martial and a criminal trial in an ordinary

[Prof. A. R. Wadia.] criminal court. At least I have always understood that the court-martial is carried on in an extremely strict form, in the interests of discipline, free from all the turmoils of an ordinary legal trial in a criminal court. Now, I find that clause 134 makes the rules of the Evidence Law applicable to court-martial. I wonder how it will affect discipline in the Navy, or later on it may be in the Army and in the Air Force too. It seems to me that the Select Committee will have to look into this clause very, very carefully.

SHRI V. K. DHAGE (Bombay): Which clause?

PROF. A. R. WADIA: Clause 134. The rules of evidence are being made applicable to a court-martial. Of course, the British law is a very great institution. I would admit its greatness. But we cannot but be blind to some of its defects and those defects are that a clever lawyer can make use of the law as it exists, I would say not in the interests of justice but in the interests of injustice. It has its dangers. Now, you may allow it so far as the normal criminal trial is concerned. But where a serious military tribunal is concerned, I really do not know how far it is desirable to make the rules of evidence law completely applicable.

SHRI JASPAT ROY KAPOOR (Uttar Pradesh): A lawyer always helps the administration of justice.

PROF. A. R. WADIA: That is the theory, I know. I am also a lawyer myself, though I am not a practising lawyer.

SHRI JASPAT ROY KAPOOR: That is the reason.

PROF. A. R. WADIA: That is the reason why I did not become a practising lawyer.

SHRI JASPAT ROY KAPOOR: That is the reason why you cannot take a proper view of things.

PROF. A. R. WADIA: Now, there is another clause—clause 28—which seems to me to have again very dangerous implications and that is it gives a right—

"If an officer or seaman thinks that he has suffered any personal oppression, injustice or other ill-treatment at the hands of any superior officer, he may make a complaint in accordance with regulations made under this Act."

Now, undoubtedly this is a very democratic principle, I admit. But I have my doubts whether the principles of democracy can be blindly applied to military affairs. It says: "The regulations referred to in subsection (1) shall provide for the complaint to be forwarded to the Central Government for its consideration if the complainant is not satisfied with the decision on his complaint." Very, very justifiable in a democratic provision; but I am afraid it will impair the relationship between the officers and the ratings. There will be attempts again and again to make a complaint of personal oppression, may be right, may not be right. But there are sufficient provisions even in the Navy Bill as at present which would go to protect the rights of the ratings or of the junior officers concerned, and therefore I would again suggest that the Select Committee should very seriously take into consideration either the\* elimination of this clause or the re-draftings of it in a way which will not hamper the strictness of discipline which should be maintained in the naval affairs.

SHRI AMOLAKH CHAND (Uttar Pradesh): Mr. Deputy Chairman, I had no intention of participating in this debate, but after hearing the Defence Minister yesterday I thought I should do so and, if possible, find out some ways or make some suggestions which might be considered by the Joint Select Committee, and as such I venture to make some suggestions.

Sir, the naval history of India is, I believe, well known to the Members of this House who are going to deliberate in the Joint Select Committee. As you know, Sir, it was in the year 1612 that the East India Company came to India, and as the Defence Minister rightly pointed out in another place, they forgot to go back, and thereafter a series of Acts and attempts were made to put the naval laws in a codified way. Without entering into the various stages I might like to remind the House that in the year 1929 an attempt was made to bring the Navy Bill before the Legislative Assembly or the Council, and it was defeated by one vote. Now, after attaining independence and after working on various legislations and going through various reports the Government has come forward, after ten years, with a Navy Bill which can be well recommended to be made into law. But then, Sir, what is the aim of the Indian Navy? Indian Navy, as you know, Sir, is not only to be used to protect the shores of India but like other Armed Forces may help in maintaining the world peace, and as such when we wish to legislate, we should in all calmness not only be guided by the U.K. laws or the U.S.A. laws or the Russian laws or the Chinese laws on the subject, but try to consolidate our laws in a way that any nation which is interested in legislating its naval laws may take advantage of that Act. With all these preliminaries, Sir, I wish, if you would not come in the way, to analyse and bring before the House some of the changes which may be considered by the Joint Committee to improve the Bill, according to my view. But when I will be making these suggestions, I will be making them subject to the wisdom of the Joint Committee which may or may not consider those views. Sir, hurriedly I have tried to go through the Bill, and I will not take

the time of the House in analysing the scheme chapter by chapter, but I will immediately go to the various points on which I want the Joint Committee to deliberate.

To begin with, Sir, I will refer to the definition clause. On page 3 the definition of 'civil prison' is given. Now, Sir, according to the Indian law, as far as I have been able to follow, 'civil prison' means a prison in which persons arrested on a civil decree are put in detention, and it is different from a criminal jail. So I tried to find out if this definition of 'civil prison' has not been taken from the U.K. Act which might have some other meaning there. Now here in this Bill 'civil prison' means any jail or place used for the detention of any criminal prisoner under the Prisons Act, 1894, or under any other law for the time being in force. That means, it excludes the persons detained in connection with a decree executed against the person of the judgment debtor. Now if you compare it with section 134 of the U.K. Act, you will find that the definition of 'civil prison' there is different. It means a prison in which the person sentenced by a civil court to imprisonment can be confined. The Joint Committee might consider whether under the Indian conditions the present definition of 'civil prison' is comprehensive or it should be amended. Now, Sir, in the same clause you will find that 'criminal court' means a court of ordinary criminal jurisdiction in any part of India other than the State of Jammu and Kashmir. Probably the hon. Minister or his Deputy might like to enlighten us as to why the courts of Jammu and Kashmir have been excluded. You might remember, Sir, that only yesterday or day before yesterday we have amended the Indian Succession Act only to make the succession certificates granted by the Jammu and Kashmir courts to be at par and to be executed or acted upon in courts of India. I do not know, Sir, whether in view of this fact it is desirable or not to exclude that portion.

Now, Sir, if you see the definition No. (14), it says that 'naval custody\*' means the arrest or confinement of a person according to the usages of the Naval Service and includes military or air force custody. I do not know, Sir, what are the usages of the Naval

[Shri Amolakh Chand] Service. Probably the Joint Committee might like to have a consolidated list of the customs and usages prevalent in the Naval Service and might like to put them in the form of some rules.

Going further, Sir, I come to clause 9. This deals with the provision regarding discipline of master of merchant vessel under convoy. Here it is contemplated that every master or other person in command of any merchant or other vessel shall obey the commanding officer, I do not know how far this power is just and equitable because if he refuses or fails to obey such directions, such commanding officer may compel obedience by force of arms. That means they can kill them also. I do not know how far that would be proper, because it clearly says that "if he refuses or fails to obey such directions, such commanding officer may compel obedience by force of arms without being liable for any loss of life or property that may result from the use of such force". Probably the Joint Committee might consider this clause.

Now, Sir, I come to clause 10 which says that ".nothing in this section shall render a person ineligible for appointment or enrolment in the Indian Navy or the Indian Naval Reserve Forces on the ground that he is a subject of Nepal....". Therefore, Sir, if we can include the subjects of Nepal, the exclusion of Jammu and Kashmir courts rather appears to me to be strange. (*Interruption.*) Well, that is my view. It might be entirely wrong according to the wisdom of Mr. Rajagopal Naidu who is a much more seasoned lawyer.

Then, Sir, sub-clause (2) of clause 10 says that "No woman shall be eligible for appointment or enrolment in the Indian Navy or the Indian Naval Reserve Forces except in such department, branch or other body forming \_\_\_\_\_ part thereof or attached thereto \_\_\_\_\_". Mr. Tumpalliwar has rightly pointed out something about the equality of

sex and he made a reference to the Constitution also. I hurried to find out what the counterpart was in U.K., and there I found that there is a Women's Royal Naval Service and that is still continuing, and they are governed by Naval Rules and all that. So, the Select Committee may like to look into this.

DR. RAGHUBIR SINH (Madhya Pradesh): That is quite different, because on a British naval ship a woman is not expected to come. If she comes, she comes there only by courtesy. She is supposed to be there by courtesy.

SHRI AMOLAKH CHAND: By courtesy or by right I do not mind.

DR. RAGHUBIR SINH: When she happens to go there, she is not supposed to be there. She may visit only on some special occasions, but otherwise on a naval ship ladies are not supposed to be. They are not expected to be there.

SHRI AMOLAKH CHAND: They are not supposed to be there but they happen to be there—I am not very much interested in it.

DR. RAGHUBIR SINH: Not on active service.

SHRI AMOLAKH CHAND: Probably Dr. Raghbir Singh does not know that it is a Women's Royal Naval Service. It is not the officers' wives or lady friends going and meeting officers there. I am talking about a regular Service. He, being a member of the Select Committee, certainly will have the right to sit in judgment on my suggestions. He may or may not accept them.

DR. RAGHUBIR SINH: I was only saying that women do not serve on active service ships.

SHRI AMOLAKH CHAND: Passive or active, I do not mind. Service is service. Let them consider it for what it is worth.

Then I come to clause 12, where in sub-clause (2) it is stated—

"No person shall be enrolled as a seaman in the Indian Navy or in the Indian Naval Reserve Forces for a period exceeding fifteen years..."

I know the reasons why they want a Naval officer to retire earlier, but in view of the fact that the longevity of Indians has prolonged and in view of the fact that now instead of the retirement age being 55, the general desire of the services is to serve till the age of 58, may be thanks to the money that we are providing for the Health Ministry, the way in which they have looked after our health and the way in which they have made our life long, I would request that the Select Committee might consider this also that, as was rightly pointed out by Mr. Akbar Ali Khan this morning, the age should be extended and an enabling provision like this—"or up to the age of 40" added after the words "fifteen years". If a rating or officer joins at the age of 17, then he serves for 15 years. That means that at the age of 32, he will have to retire. So, if we add this, he may go up to the age of 40. By amending it like this, there would be no harm.

Then I come to clause 24 which deals with discipline. We have heard the previous speakers, particularly the speaker preceding me—Dr. Wadia—who spoke eloquently about discipline. As a man who has maintained discipline among students for a long time, he has very rightly pointed out that this is a very important provision, but there are persons who think that this might create a fear psychosis. When I was considering this clause, I found that this is a provision which may be copied and taken advantage of in other Acts also. We know the havoc which was likely to be created not only by labourers in factories or agricultural labourers but by Government employees running the insurance, Post and Telegraph department or by Government employees in the Secretariat and other places. Where is the question of discipline? There should be some strictness in maintaining discipline. If you do not maintain discipline, what is the result? The result

is inefficiency and inconvenience to so many other persons who depend upon these services and so on. Now, when you want to defend your shores or when you want the Navy to go and defend the shores of other countries for maintaining peace, is it not necessary that there should be stricter discipline than what is contemplated in clause 24 of this Bill?

Then, I come to sub-clause (5) of the same clause. It says—

"No person subject to naval law shall whilst he is so subject practise any profession or carry on any occupation, trade or business without the previous sanction of the Chief of the Naval Staff."

I was wondering how this provision had come in. Do they want that a naval rating or officer should carry on any profession, trade or business also while in the Navy? I was wondering how this could come in. Probably it may be that in emergency cases—as Dr. Raghbir Singh said—if you want a medical man in the Naval Service, he may go ashore and attend to a patient. But even in the medical services, the general idea these days is that those who are medical officers or Government employees employed to look after the health of the patients in the hospitals should not be allowed to have any private practice. I wonder why this provision should be there.

Then, I come to clause 28—Redress of wrongs. The Defence Minister yesterday pointed out that the ratings have been given a right to complain against their superior officers. Probably, what he wanted to say was that when there was a complaint like that, it would be disposed of with all quickness so that demoralisation may not be there amongst the ratings or officers. So, I think it would be better if somewhere some provision is made for quick disposal of such cases.

Then I come to clause 29. Now, this clause is proposed to protect persons in the Naval Services who might be either complainants or defendants in a court of law and there they say that the persons concerned may not have

[Shri Amolakh Chand] to go to the court frequently. Provision has been made that when a certificate has been given to such a person that he has been allowed to go on leave for such and such time, the courts should dispose of the case very quickly and where the Court has not been able to dispose of the case quickly, they must give reasons for the delay and so on and so forth. But, Sir, I feel that there should be a provision like this that on a certificate from the officer commanding that a rating or an officer is unable to leave the Navy, any suit or criminal proceeding pending against that officer or rating is to be automatically stayed, till he is able to come and attend the court. Or he may authorise somebody to defend or prosecute his case through lawyers.

I am afraid the House may be feeling rather impatient, but I would like to make some more suggestions. Let us take up clause 37. It is a very long clause and when I read through it, by the time I reached the tail-end of it, I forgot what was said at the top. You will find that it deals with liability for maintenance of wife and children. It is a very important clause. You find in sub-clause (4) on page 15 it is stated:

"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."

Had it been in the case where he was cited as a witness I would certainly have agreed to that proposition. But I would like to bring to the notice of the Joint Select Committee, a possible case. A man's wife and children are neglected and they want to go to a court of law to claim maintenance against that person. Now, they are in strained circumstances themselves and they still have to go to a court of law and seek the assistance of lawyers and pay the court fee etc., etc. But in addition to all this, you now want to impose this expense that if the wife or

the children want her husband or father to come and appear, he has to be paid all his expenses from the ship to the court and back to the ship, by what class and all that I do not know. It may be beyond her means or she may recover it only in another ten months. Therefore, I think provision should be inserted to say that where the case is against a rating or officer by the wife or children for their maintenance, they should be exempted from this.

Next I come to Chapter VII— Articles of War. Under these articles, the punishment is death. I was wondering if the Government of India decided one day that there should be no death sentence and the death sentence is removed from the Penal Code, what would be the effect of this provision. I tried to go through the counterpart of this article in the U.K. Select Committee's Report and I found that they have said that although they had put the death sentence even for offences ranging from treason right to sleeping on watch, in a hundred years of the administration of the naval rules and laws in England, only one man was executed. Considering all these facts, I feel that death penalty should remain. Well, I do not want to bother the House with cross references and so on. If anybody is interested he might be able to get it from me. What I say is, if a court martial is to come to the conclusion that death sentence is to be announced, it should be at least unanimous. Under the United Kingdom law, death sentence has to be unanimous, not as somewhere by majority or the like. So it would be worthwhile to consider what should be done, whether a provision would be necessary or not if death sentence is going to be abolished under the Indian Penal Code.

When I tried to understand as a lay man, leaving aside my faint knowledge of definitions of conspiracies, seditions, drunkenness and the like, I could not find in the Bill any definition of drunkenness. Then naturally I tried to find from the U.K. Bill if there was any definition like that and I could lay

my hands during the lunch hour, on a definition of drunkenness. So I thought that in a country where drinking is customary, to some extent they have tried even to define what is drunkenness. In our own Army probably there is no prohibition and I do not think Mr. Raghuramaiah, the new Deputy Minister is going to impose prohibition there. But what I feel is, if you want that your officers should join in toasts and have club life with drinks, then how is drunkenness to be decided? Naturally it becomes rather difficult for a person who had drunk before his own officer and in his company, to deny later on that he had drunk whisky or the like—I do not know all their names. If the two persons had joined and took the drink—hot, strong or whatever drink it is—how would it be possible for the officer to say later on that he did not take the drink along with the other? Who is to decide who is drunk, the person who is charged or the person who is charging? On the other hand there is definition of drunkenness even in the United Kingdom Act. Probably the Select Committee—they are experts on the subject—they might like to put in a definition for use in such like situations, of drunkenness.

Another curious conviction is for cruelty. This immediately reminded me of cruelty to animals, cruelty to human beings, or being a Jain myself, even cruelty to insects. Again I referred to the United Kingdom Act and there I found that the punishment provided for cruelty, though undefined, is dismissal. They say, if an officer or rating indulges in cruelty, he will be dismissed.

Here, if he practises cruelty or attempts to practise cruelty, he is to be sentenced to ten years. I was wondering what it meant. The Select Committee will certainly look into it.

I tried to follow clause 46 which says, "Mutiny means any assembly or combination of two or more persons subject to naval law with the common object of,—

- (a) disobeying or resisting lawful authority;

(b) showing contempt for or insubordination to or embarrassing lawful naval authority; (c) undermining naval discipline in a ship or among a body of persons subject to naval law; or (d) seducing any person subject to naval, military or air force laws from his allegiance to the Constitution or loyalty to the State or duty to his superior officers;..." Take the case of two brothers who have joined the Navy and are on one ship or on two ships. If one of the brothers is assaulted or has some complaint, reasonable or unreasonable, whatsoever it may be, and if the brothers join together and talk in the matter about further action, then, are they to be guilty of mutiny or conspiracy? What I would suggest is that this assembly of two should be increased to five. If there are two or three brothers and if they sit together and talk about the action to be taken, then they would come under the mischief of this provision. Instead of brothers, take the case of two persons who belong to the same district or the same town. Having joined together, they live together and become more than brothers and one is prepared to sacrifice his life for the other. When the officers and ratings are far away from their land it becomes rather difficult for them and it becomes easier to come within the clutches of this law. I would, therefore, suggest that the number should be five and not two. If a rating consults another rating about his case, then this becomes a mutiny. I have not been able to follow this. Probably, Mr. Raghuramaiah, who is a Barrister also, might say something about it.

Clause 47 talks about conspiracy. What is a conspiracy? Will the definition applicable in other cases apply here also? I do not know.

I now come to clause 49. It speaks about persons subject to naval law striking. Immediately I stopped and started thinking about this. Is it strike from work or what? It goes on to-

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say, " \_\_\_ strikes or attempts to strike or draws or lifts up any weapon against or uses or attempts to use any violence against his superior officer shall \_\_\_ ". Instead of this whole lot of things, perhaps assault might cover the whole thing.

I have already dealt with cruelty, drunkenness, etc. I now come to the provisions regarding punishments. They range from death to forfeiture of pay, etc. When I compared this clause 84 with the punishments provided for in U.K. I found a disparity. Here we have death as the highest penalty and then we have dismissal with disgrace and simple dismissal. I do not know what dismissal with disgrace means. Perhaps if imprisonment is for more than two years, it is with disgrace and if it is for less than two years, it is simple dismissal. If you compare clause 84 with article 43 of the U.K. regulations you find that (c) here, dismissal with disgrace from Naval service, is before dismissal from naval service. Then comes detention but detention finds a place here between dismissal with disgrace and dismissal. I wonder what detention here means. I was reminded of the detention under the Defence of India Rules under which we had the privilege of being detained. I do not know what arrangements there are nowadays in the naval shore establishments about detention or, does detention mean detention in their ships? I do not know and I would like to have clarification. If we take one particular clause from a particular Act or a proposed enactment, we should copy it wholly. Otherwise, we should be told as to why this change has been done. If this disparity would have been at one place, I would not have minded and would have thought that perhaps this has been done hurriedly, that is they have put (b) before Ca) and (d) before (c) but this sort of thing occurs in many places. This may be looked into. As was the position Uptill now, no fine could be imposed on an officer or a rating because a fine was not imposed in the Army or the Navy or the Air Force. Fine

only means that a man has done something for which he pays. The men in the Armed Forces get their salaries according to regulations. Some part of the salary can be taken over and some cannot All these formalities are there. If we follow the punishments provided for in the U.K. legislation, then we should follow them as they are. That would be more reasonable and proper.

Now, suppose, the naval ratings and officers are outside India and some offence is committed there and it is not possible to have court martial constituted by having two ships. What will happen? The U.K. Act provides something about imprisonment outside the territory of U.K. I think probably we may put some provisions like that.

Now, Sir, the Defence Minister rightly pointed out in his opening speech that while imposing the death sentence, we give an opportunity to the person condemned to have his case reviewed by the Central Government.

SHRI H. P. SAKSENA (Uttar Pradesh): Appeal and review are two different things.

SHRI AMOLAKH CHAND: Certainly, Mr. Saksena, they are two different things; otherwise review would mean appeal and appeal would mean review. They are two different words with two different meanings in the dictionaries but what I was saying was this. When a court martial passes a death sentence, it cannot be executed till it has been confirmed or reviewed, not appealed. If you go through the provisions of the Bill, you will find that there is no provision for appeal.

SHRI H. P. SAKSENA: That is what I am complaining against.

SHRI AMOLAKH CHAND: You may complain when you get your chancr but do not complain against me. I am only trying to bring to the attention of the Government a certain fact.

When you have a provision that after the court martial passes **the**

death sentence, it has to be confirmed, reviewed or whatever word you may like, by the Central Government, would it not be desirable that the President of India, being the Supreme Commander of the Armed Forces—the three Forces, the Army, the Navy and the Air Force—is given the right of review? After all, the Central Government advises the President and you can say that, instead of the Central Government, the President, who is the Supreme Commander of the Forces, gets the right to review. All the orders from the Central Government issue in the name of the President because the Central Government can issue no order in its own name. All the orders are issued in the name of the President. If the President's name is to be brought in, I respectfully submit that it would create greater confidence in the officers and the ratings if their Supreme Commander is to look into their cases when they are to be sent from this world to the other world.

DR. RAGHUBIR SINH: What a consolation?

SHRI AMOLAKH CHAND: I am glad Dr. Raghbir Singh gets consolation in . . . has just reminded me and I  
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this. Then, Sir, Mr. Saksena will just try to say what I feel about appeal. Now Sir, I tried to find if there is any provision for any appeal from a court-martial. There is the disciplinary tribunal which is going to be appointed and the powers would be exercised by that body in respect of punishments for minor offences. For major offences the court-martial will be there. Now the procedure of courts-martial has been described very elaborately. I was wondering, as Mr. Akbar Ali pointed out this morning, whether the High Court should not be given the power or the Supreme Court should not be given the power to hear appeals from them. I looked into the Constitution of India to find out whether, if a person is convicted by a court-martial or a disciplinary tribunal, that person has the right to go to the Supreme Court or not. Probably the

I Supreme Court or the High Courts j cannot come in the way. So I tried to I find out what was the practice in the U.K. regarding these appeals from court-martials. I find that they have made a provision for appeal and this Select Committee might like to consider whether, in view of the provisions and the powers given for appeal from courts-martial there, it would not be desirable that such a provision should find place in the Indian Navy Bill.

Now two more provisions I could find in the U.K. Report regarding these courts-martial and the trial there. I tried to find their counterparts in our Bill. I regret I could not. Probably the Members of the Select Committee will go through them very carefully. What I want to say is this. In clause 52 and clause 61 of the U.K. Report they have provided for limitation of time for trial and the courts will be open courts. We are acquainted with the law of limitation, and in criminal cases there is no limitation except that under our Constitution when an offence is committed the accused has to be arrested and brought before a court of law within twentyfour hours. But in this case you will find that the arrested person can be produced before his commanding officer within even a period of forty-eight hours of such arrest excluding the time necessary for the journey from the place of arrest to such commanding officer. Certainly the Select Committee would like to say if the Parliament can give more powers of detention than the Constitution itself has given^ namely, that a person arrested shall be brought before a magistrate within twenty-four hours of such arrest. Here it is forty-eight hours. Then in the U.K. Act what you find is that a person who has committed an offence cannot be tried after three years. That is the maximum period of limitation provided there. As far as we are concerned we are advanced and I do not doubt that, if a person has committed an offence, which has to be ti-ied by a court-martial, the court-martial will not take more time than is absolutely necessary to insti-

[Shri Amolakh Chand] tute the proceedings and to bring them to a prompt close. But then the question arises: What would be the status of these courts-martial, whether it would be an open court or not? I looked into the U.K. provisions and I find there that that is an open court. Probably that may be necessary here.

Now, Sir, I think I have taken much time, but then I will try to finish as early as possible by referring to one other provision which I tried to follow. Now, Sir, all proceedings of trials by court-martial shall be reviewed by the Judge Advocate General. As the Defence Minister rightly pointed out, the review would be practically automatic and every three months. The remission might be one year in deserving cases because, as we know in the jail reforms, a probationary period is given and during that period if a particular person is well behaved in jail—some of the political prisoners were also given remissions, which they did not like but anyway—if a person behaved well, his sentence can be remitted or condoned, something like that. Now, Sir, when I went through the corresponding provision in the U.K. I find they have given a definite list of the powers of the reviewing Judge Advocate. It is in their clause 72. I would like just to ask whether it was considered by the Ministry while drafting this Bill, I mean, the clauses 150 and 151 herein, which deal with "Judicial Review of Courts-Martial Proceedings." Clause 70 of the U.K. Bill is entitled "Review of finding and sentence." Their clause 72 says:

"72. (1) On the review of a sentence under section 70 of this Act the Admiralty may, subject to the provisions of this section" \_\_\_\_\_  
—now they have given what would be the powers of the reviewing authority—

"(a) annul the sentence; (b) remit the sentence in whole or in part; (c) compute the sentence for a sentence of a punishment provided

by this Act less than the punishment or the greatest of the punishments imposed by the sentence commuted; (d) if the sentence is for any reason invalid, substitute such sentence as they think proper, being a sentence which could lawfully have been awarded in respect of the relevant finding or findings, not being a sentence of greater severity."

Now, would it not be desirable, when we are codifying the naval law which would be referred to not only in India but also outside, to enumerate such powers as are to be vested in the reviewing authority. Of course "Modification of findings and sentence, pardon, commutation, remission and suspension of sentence" has been exhaustively provided for in clause 166 of the Bill.

Now, Sir, I wish to close my observations by congratulating the Government for bringing out such a comprehensive Bill and leaving it to the Select Committee in their wisdom to improve upon it and to send it back to us for farther consideration and passing of the same, and I think we can congratulate our Defence Minister for compiling such important provisions for the better discipline of the armed forces.

Thank you, Sir.

SHRI P. N. SAPRU: In the U.K. Report is provision for appeal to the Privy Council or the House of Lords made?

SHRI AMOLAKH CHAND: I just wanted to read that too, but then, I thought probably no one would like it. So I passed over it. It is in clause 77 of the U.K. Bill and it says:

"77. (1) The operation of any order made under section 76 of this Act on conviction by a court-martial or disciplinary court shall be suspended—(a) in any case, until the expiration of the period prescribed under Part I of the Court-Martial (Appeals) Act, 1951 as tha period within which an application

for leave to appeal to the Courts-Martial Appeal Court against the conviction must be lodged;"

I am not aware, being a very lay man, not knowing much about these things, whether the Courts-Martial Appeal Court means the Privy Council or some other tribunal there. What it says here is the "Courts-Martial Appeal Court" constituted under the "Court-Martial (Appeals) Act, 1951." Then it says further:

"(b) if such an application is duly lodged, until either the application is finally refused or is withdrawn or the appeal is determined or abandoned; and where the operation of any such order is suspended under this sub-section, the order shall not take effect if the conviction is quashed on appeal."

I wanted to support the contention of Mr. Akbar Ali that even after court-martial an appeal is permissible and is allowed in the U.K., and when there is the feeling in this House that there should be a similar appeal provided for herein I think our corresponding clause in the Bill can be very well looked into by the Select Committee.

Thank you.

SHRI H. P. SAKSENA: Sir, I give my unstinted support to the Navy Bill which is intended to consolidate and amend the law relating to the government of the Navy. As we all know, our Navy is just an infant institution which we have got very carefully to nurture and bring up.

Sir, I give, at the very start, my sympathies to my friend, Mr. Kishen Chand, for, throughout the day I have been listening to the criticising speeches delivered by hon. Members bringing his entire speech—every paragraph of it—under fire. So, as a colleague, it is up to me to give my sympathies to him and to advise him to be more careful in his utterances in future.

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One proposition that he adumbrated was with regard to discipline. Now, I only wish and pray that none of us has been influenced by the dangerous proposition that he adumbrated and that was with regard to discipline. What he virtually said was that there should be no sense of discipline between the ratings and the officers and all that. He might not have said this in so many words but what he virtually meant was that there should be no sense of discipline between the ratings and the officers. On other planes than those of duty, they may meet on social terms, on friendly terms, but so far as duties are concerned—those too the duties of a sailor or shipman—there should be complete discipline and without discipline it will not be a Navy; it will be a market place for people to do whatever they like, to talk whatever they like and to act in any manner in which they think proper.

I am very sorry that all the time that Mr. Kishen Chand spent on complaining about copying the U.K. Navy Act could have been very profitably spent, had he mentioned some inspiring names of British naval history, like Sir Phillip Sydney, Nelson. . . .

SHRI KISHEN CHAND: Thanks for the information.

SHRI H. P. SAKSENA: ... and had he mentioned the fact of England having been the mistress of the sea for centuries together. My friend did not even mention the route of the Spanish Armada. These naval actions have had absolutely no meaning, no use for his diatribe on the Navy Bill of the Indian Union just on the ground that it was a facsimile copy of the U.K. Navy Act which is perhaps non-existent. As was pointed out by most of the Members, only a committee has been appointed and it has forwarded certain recommendations. Anyway, he has got full right to talk, relevant or non-relevant. That is his prerogative and he used it extensively.

[Shri H. P. Saksena.]

Now, the speeches delivered in this House have clearly shown that there is practically unanimity in this House so far as the right of appeal from a sentence of the court-martial is concerned and I hope the Select Committee will give weighty and due consideration to this recommendation, to this feeling of the Members of the Rajya Sabha in the matter of right of appeal to be given from the sentence of the court-martial. Review and appeal, as I pointed out while my friend, Mr. Amolakh Chand, was speaking, are not one and the same. The review is done by the very officer who pronounces the sentence and appeal, as we all know, is to go to the High Court and to the Supreme Court afterwards. So I earnestly and fervently appeal that this right of appeal should be allowed to the person who is sentenced by the court-martial.

Now, a point was raised by more than one Member that a minor if in a huff joins the Navy as a rating and if his parents do not like him to be working in the Navy as a rating, they should have a right to see the officer of the Navy and to request him to return the minor to them as he was not to be trained in the Navy. So I hope this little concession to the minors and to their parents will be duly considered by the Members of the Select Committee. And it should be conceded; it should be statutorily laid down in the Bill that if a minor so desires or if the parents so desire, he may be returned to their custody, to their care.

Now, strong feelings have also been expressed with regard to the time of retirement of naval men. As embodied in the Bill now, it is only 15 years. Arguments have been advanced to the effect that a period of 15 years is too short a time for a person to retire, for a person who has selected sea life as his avocation. If he is able-bodied, if he is physically fit, if his record is untarnished by any sort of complaints or bad remarks, he should be permitted to continue till the age of 40 and

I support the suggestion made by my friend, Mr. Akbar Ali Khan and I hope that the Members of the Select Committee will consider it very carefully.

Now, my friend, Prof. Wadia, very strongly suggested that there should be *entente cordiale* between the ratings and the officers. There should be no discrimination; there should be no distinction. No finger should be pointed at the ratings that they are only ratings; no hallelujah should be sung for the officers that they are officers and therefore there should be a gulf between the ratings and the officers. Nothing like that. That is again a proposal which should not enter anybody's mind and it should never be put into practice. This is a Bill, as I said, for an infant institution known as the Indian Navy. I am reminded of the efforts which were made in the old Legislative Council by my very esteemed and old friend, Mr. S. N. Haji, who always—poor fellow—pleaded for the extension and the expansion of the coast line shipping in India, not even dreaming of having a Navy of our own. They were the days of our abject slavery and bondage and we never thought that a time would come, a day would come when India will have its own Navy and our ships would no longer ply under the Royal Navy insignia.

With these remarks I again give my full support to this Bill.

MR. DEPUTY CHAIRMAN: Mr. Krishna Menon.

THE MINISTER OF DEFENCE (SHRI V. K. KRISHNA MENON) : Mr. Deputy Chairman, some of the observations and criticisms, if not many of them, are directed towards matters which do not come directly within the purview of the motion that is before the House or indeed of the Bill. It may be that *per se* they have their validity. If I had the time and if you permitted Mr. Deputy Chairman, I could have dealt with them; but more immediately we are concerned with the Bill as

such, the text of which is before the House? There have been a number of preliminary observations intended to characterise the Bill that is presented to the House as though it was a facsimile of the laws of another country, that is, of the United Kingdom in this case. Of course, if it suited our conditions and if Parliament so decided, the fact that it was a facsimile would not by itself be a fault. But it is arguable that in drafting a Bill one may not have taken the national conditions into account and probably may have referred only to the text of foreign legislation and precedents. The main objection to what is alleged to be copying U.K. legislation, we are told, is that all the legislations of the United Kingdom or those of other countries do not take into account the experience of the two world wars and, therefore, we are out of date. Mr. Deputy Chairman, so far as my information goes, the British Navy did take part in the two world wars and, therefore, if that is the only reason for the objection that is not commendable. But it is not our purpose to defend the legislation of another country. We have drawn from experience wherever it is necessary and available. Much of the Bill is really based upon our own practice and upon the Navy (Discipline) Act.

There is a very natural concern, and if I may say so with respect, concern which one welcomes, that the relations between the officers and ratings shall not be such as to create hide bound castes and condemn the ratings as belonging to some lower order of creation. That is a very natural emotional reaction which one might expect from a democratic House. But if I may say so, in fact, the Navy is perhaps the most democratic of our Armed Forces. In this Bill there is provision, as I said when I presented the Bill, which places greater burdens and more onerous responsibilities on the officers. The punishments are heavier in regard to offences where an officer is court-martialled. He is dismissed from service. A rating is not necessarily. It is also believed—I think

it is a misunderstanding—that there is some impenetrable barrier between the other ranks of the Navy and the "officer class". That is not the case. Not only does the Bill not say so, but, in fact, during the last five years ten per cent, of the officers have been commissioned from the ranks. Not by direct public recruitment, but from the people who come from the ranks themselves. And the Navy, as other navies, is very dedicated to this idea that a boy who goes on a ship can become the Admiral of the fleet. That is a commendable idea. But here I cannot give the figures, because if I give the percentages and figures I would be publishing the strength of the officers of the Navy which is not permitted. Therefore, the House can take it from me that in the last five years, ten per cent, of the present officer strength has come from the ranks.

It is also considered that recruitment is only for a period of fifteen years and, therefore, a boy who comes into the Navy at the age of 15 and after fifteen years he will be 30, and in the prime of life, rather at young, middle-age, he will be thrown on the scrap heap of unemployment and, therefore, it is not a good career. In fact, this provision is inserted in the interests of the men who are recruited. That is, their commitment is only for fifteen years. But there is nothing to prevent them, not merely to get extension but to spend the whole of their active life in the Navy. This period of fifteen years is the minimum. That is the idea. The people who would object to lengthening this period most would be those who are in the Navy, who are mainly concerned. They do not want—some of them—more than fifteen years. And it should be remembered that during this period while it is true that the Indian Navy is not a University, they go through very considerable experience which would fit them in various walks of life, technical or otherwise, so that there is nothing ominous about this 15 year clause. It would be a hardship for many people if it were extended and the entrants to the Navy

[Shri V. K. Krishna Menon.] thereby would be rather prejudiced than otherwise.

It has also been asked why is it that the Bill does not mention the various ranks of officers that there will be in the Navy? First of all, as I said a while ago, when I introduced the Bill, apart from any law or as the Bill itself provides, it is the practice that the custom of the Navy should be taken into account. It is well known who are the officers in the Navy and what their ranks are. In any case, as I just explained, they will be provided in the regulations which will be promulgated and which will be laid before Parliament before it becomes law.

There is a considerable amount of misunderstanding regarding courts-martial, especially with regard to the Judge Advocate. The name is rather confusing, because an advocate, as the word suggests, does advocacy or pleading at the bar. The term comes from an old Roman word "judex advocates". That is, in effect, he is the trial judge of the court-martial. He is not a pleader. He is the trial judge of the court-martial though he does not pronounce the sentence. The sentence is promulgated by the court as a whole. Therefore, in one sense, at a particular stage he becomes part of the entire court-martial and also goes into the question of facts. But normally speaking the main concern is to provide the expertise for the interpretation of the law. Therefore, there is no danger as seems to be apprehended and there is nothing here which makes the judge and prosecutor the same person. If it were so, it would not conform to modern conceptions of law. The provision for the Judge Advocate is something in the interests of the defendant whereby the legal aspects of a case will be fully gone into. Facts sometimes rather largely tend to be coloured more by emotions, by the circumstances of the time, while law is more likely not worked in that way.

Mr. Sapru was rather concerned about the procedure of the accused

giving evidence. Now, this is in fact an improvement in this Bill.

SHRI P. N. SAPRU: I supported that.

SHRI V. K. KRISHNA MENON: I beg his pardon.

SHRI P. N. SAPRU: I pointed out that the Indian law was defective in this matter.

SHRI V. K. KRISHNA MENON: Indian law on this point has now been altered by us in this Bill and it has not been amended to suit us. All that is here on this point is in conformity with the Criminal Procedure Code.

With regard to the relation of punishment and the gravity of offence, that is laid down in the Bill. And what is more, as in all other laws, the period prescribed is always the maximum period and what actually is awarded would depend upon the proceedings before the court-martial and the circumstances in which the offence was committed, particularly whether it is a case of a first, second, third or fourth offender. Over and above that, the House will remember that I said when I introduced the Bill that there is a provision in the Navy Bill which does not obtain anywhere else. That is, a sentence ought to be reviewed— a mandatory provision—before it is promulgated. The Judge Advocate General—not the Judge Advocate— who is the senior most officer of the Navy in the department of law, who has qualifications to be a High Court Judge—it is all prescribed in the Bill— a person of that calibre reviews it. Over and above that, once the person is sentenced, his case has to come automatically every three months to be reviewed. The punishment for mutiny is very high. Well, of course, we can have all our opinions about this matter. Sir, our Government, and if I may say so, the Ministry of Defence are not advocates of the severity of punishments, but mutiny and treason are the highest offences in the Armed Forces. Either we have Armed Forces that are capable of action, that can work as the sword arm of this

country, or we do not have them. If we cannot rely on them in certain particular circumstance. What does 'mutiny' mean? It really means either disregard of law or the taking of law into your own hands. It is no doubt a fact that mutineers of ope age had become rulers of another, but they are exceptions which characterise the onward march of civilisation at particular stages, and that cannot be made a normal practice in an institution. Therefore we need not in any way apologise for prescribing in this Bill the death sentence for mutiny. In many ether countries there would not even be a trial. They would just be shot summarily. There is no other way of running the Armed Forces, Sir, except to have in reserve sanctions of this character in extremely difficult conditions. What would happen to our country if in regard to the Armed Forces there were no strict punishments in the conditions in which we find ourselves? There is every possibility of the Army being permeated by forces which are external to this country. Our security is always the concern and the responsibility of the Defence forces. This is not merely an academic issue. Therefore, I hope that the Joint Committee which will go into this matter will not be unduly moved by any sentiment in this matter. It is not a normal daily punishment, but it indicates that mutiny is not a thing to be lightly treated. Otherwise a naval force will perform its duties in its own sweet way and they may down their tools, and then we will have a situation for which we will have to introduce other legislation afterwards. And there is no navy in the world where mutiny is not regarded as the highest crime.

I may be asked one question because I have my experience of the debate in another place. What happens to an officer who strikes a rating? The Bill provides that rating that strikes an officer will be treated in such and such way. An officer who strikes the rating is guilty of several offences. He is guilty of breach of discipline. And what is more, he is guilty of conduct,

which is unbecoming of an officer. If he is tried and punished, he would be liable to dismissal and he will not be reinstated. As I have explained to the House the other day, the burden on the officer is far heavier than that on the rating. If a rating strikes an officer, he is not necessarily excluded from the Navy. He still continues to be a member of the force, if so decided by the powers that be. But so far as the officer is concerned, there is no escape. And what is more, it is not the tradition of the Navy and this country would not permit officers of the Armed Forces taking the law into their own hands. Their business is to use such force as they may have to use against the external authority and not against these ratings. Therefore, the problem does not arise.

Then, Sir, we are told that there is no provision for the education of ratings in the Navy. That is not quite correct, because there are naval schools where they have to work for various technical purposes. Those who come into them have the minimum education already. It is quite true, of course, that the Navy does not have the charter of the university for somebody becoming an economist or a physicist as in other places. A person who has been in the Navy first of all has got the basic qualification and a degree of discipline and experience by working with the people. And what is more, in the modern technical age by the handling of very proficient and complicated instruments and weapons, he just derives for himself the experience and the information which is part of education, and I hope, also the other element of education, namely, the building of character and the capacity for team work. Therefore, while the Bill certainly can perhaps be charged as not providing for the establishment of educational institutions as part of the law of the Navy, it does not preclude at any time the establishment of an institution for any purposes, either refresher or for the understanding of public affairs. And what is" more, it is usual in the Armed Forces, particularly in the Indian

[Shri V. K. Krishna Menon.] Armed Forces, that the men have a reasonably good acquaintance and knowledge of what is going on in the world. They certainly defend our liberty, whether it be the soldiers on the pickets on the high mountains of Kashmir or those fellows who are out in the desert in the Middle-East, serving the cause of international peace and co-operation, or those who are engaged in very dangerous occupations, in the ordnance factories or in the training establishments. The average soldier has got reasonable acquaintance of the public affairs, and the officers in the Armed Forces, particularly the Navy, take good care that the men do not, by the conditions obtaining, relapse into a kind of mental darkness. That is all that can be provided. You cannot provide for naval ratings to qualify for a university degree taking courses and still be engaged in running a ship. The two things cannot go together. The kind of education which we speak of and which we have in other countries and here is not necessarily the whole of education.

Then, Sir, there is a fear that these law officers of the Navy—the Judge Advocate and the Judge Advocate-General—may be military men and therefore may have a military mind. Now that is not the case. The Bill takes good care to prescribe their qualifications. It does not exclude the entry of a civilian with experience. But in the normal course of things it is more convenient to have a lawyer who has some acquaintance with the Navy, who has some acquaintance with the smell of salt water and who knows the ways and procedures in the Navy itself. But on the other hand it is not as though a captain of a ship is next day appointed as Judge Advocate-General. Proper qualifications are laid down for such appointments. And the pleasure of the President means that he is not subject to the orders of the executive, and his duty is very important—to exercise his judicial discretion. The officer is charged with the

responsibility of appeals. His conduct is always well within the purview of public opinion. Of course, if the Joint Committee has any other views in this matter and if by majority it decides otherwise, it will be for the House ultimately to decide.

Well, Sir, this takes me on to the question of appeals. There are two issues in this. There is an appeal *pro forma* according to the procedures relating to appeals in our lower courts according to the law of this country. It applies in so far as the constitutional provisions are concerned. On the other hand, the substantive element of appeal may have been taken away and the difference is not only one of procedure of appeal. My submission to the House is that the substantive element of appeal remains. If the case of a rating has to wait, to go through all the procedures of the court, how long he will have to wait? And what is more, in what civil court is it provided that a sentence cannot be executed? A sentence by a Sessions Judge can be executed without being confirmed by the executive authority or the Higher court unless in the meantime the aggrieved party files an appeal. But in this particular case no sentence becomes operable unless it is confirmed. Therefore it is weighted in favour of the men at sea largely because they are in one sense a country by themselves and they have not got all the impacts that they would get if they were in land throughout the whole of our country. I would ask the House to remember that in this matter there is no danger to the liberty of the subject or of abuse of law. First of all, a court martial itself has all the elements of a legal trial by a judge as well as a trial by jury. He is defended either by officers who have commanded him or from whose ranks he must have come up or by the expert lawyers that he would like to get and is able to do so. Then, the sentence, when it is passed, has to come up for confirmation, and can be reviewed by the Chief of the Naval Staff and must be reviewed by the Judge Advocate-General or by both,

the Judge Advocate-General's review being mandatory.

Mr. Sapru suggested that while appointing the Advocate-General, we should take care not to appoint people whose experience was merely of a magisterial character, *i.e.* persons who have been only magistrates and who have not come through the mill of law and whose mind therefore has not had the impact of legal learning and therefore not endowed with a judicial outlook. I think it is a very legitimate apprehension; but after all we can provide for it only in the rules. We could not in a Bill exclude any class of citizens even if they are well-qualified and say that a person who was a magistrate could not be employed. We can say "persons who have had wholly or exclusively magisterial experience". A magistrate may be a good lawyer too. Therefore it is rather difficult except in practice to work out that way, but the intention is not to appoint to those offices those who have had experience or learning as required as will be seen from the provisions laying down qualifications.

With regard to the accused giving evidence on oath, which has been referred to by Mr. Sapru—that is the point I was thinking about—it would not be in the interests of the defendant to have that kind of procedure because it would put him in double jeopardy of saying something stupid against himself and also of committing perjury. This matter has been gone into carefully not only by us but by such expert advisers as we sought and also, though not formally but by canvassing opinion in the Navy itself and what is more, by looking at our own law. The present position that we have in regard to this is exactly the same as in the Criminal Procedure Code. In the circumstances of our country where, while we are a litigious people compared to the size of our population and the general complexity of our social organisation, the machinery of law is small—it may not so appear and others talk of us as litigious—if we put in this the idea of

giving evidence on oath, and since it has been provided that the Act should attract the provisions of the Indian Evidence Act and the Indian Penal Code, you have placed or attempted to place that man in triple jeopardy. That is why after a careful examination, the Bill, as it has been presented to the House, conforms to the position as in the Indian criminal law.

There have been many observations about the right of appeal to the Supreme Court in regard to death sentences or the right of reprieve and of review of sentences by the President. I believe myself that these matters are really worthy of further examination, but it would be the view of the Government and certainly of the Armed Forces that any attempt to bring it in line with what may be strictly the logical or correct position should not have the result of delaying the cause of justice or affecting the interests of the Navy or of making it so protracted that the man is kept with a Damocles' sword hanging on his head all the time. That is why the provisions about which my friend over here had some apprehensions have been introduced. Under the criminal law, a criminal is a criminal and has to pay the penalty of imprisonment or otherwise and purge himself of his crime whenever that crime discovered or the person is charged with it but in the law of the Navy three-year limit is provided before which an offender has got to be brought for trial. Otherwise, it is impossible to maintain the position of the Armed Forces. It is necessary that matters like offences should be cleared up quickly and not always be hanging over men's heads. There are those who think that the three-year period is too long, but the reason for putting this in is not to shield naval men from the rigours of the law but in order not to permit it to be abused or cause delays in execution.

There has been considerable criticism with regard to the review by Judge Advocate-General. Here again it is not a question of just an individual who out of his whim says

[Shri V. K. Krishna Menon.] His sentence is too much or too small and should be set aside. It is an appeal process except that there is no jury trial. I would say that the House is in cases of this kind the appeal procedure cannot be in the same manner as in a criminal court of appeal, bringing evidence even in the appeal proceedings themselves. That does not normally happen even in our civil and criminal courts, and therefore, while Government is very anxious that the substantive right of appeal should be maintained, that the defendant should be protected in every way by all the principles of law and by the protection it affords, one has got to be extremely careful that an attempt to make it more logical, do not take away the substance of what the Navy must have is ready, fit and upright justice, and we have to bear in mind that the circumstances that obtain in the life of sea-farers are somewhat different. But if it be the view of Parliament after proper deliberations in the Joint Committee : some further provisions should be made about it, that would lie in its domain.

There is some concern expressed since the boys are recruited when they are young, they should be allowed to come whenever they want to, which is not obtain even in a school or college, not to mention that it cannot happen in the Navy. They cannot duck and drake with the law. There is a period before which a boy can make up his mind. I brought there with the parents' consent. One can think of many instances when after a week or two a boy may feel that he wants away and regret it for the rest of his life. In fact, the experience of the Navy is this capacity of getting that line under the circumstances which he lives. There are adequate provisions that way. First of all, he has to go there without the consent of his parents. There is a probationary period of three months and in special cases there are provisions a person can go away. As I when the Bill was introduced,

there is the facility of resignation in the Navy, though the acceptance of the resignation depends upon the Commander or the Government, which does not obtain in the Air Force or in the Army. If we gave parents the right to claim minors, it is very likely that when a vessel is going to take off for action or for operation elsewhere, we may have a demonstration of parents who might go on hunger strike or something of that kind, and the vessel may not be able to take off in time. We cannot have double authority in the Navy, that of the parents and of the law of the Navy. In the light of what I have said about the various provisions made, perhaps the House will look at this matter in a rather different way, than suggested by the Honourable Member who expressed his—in fact—unqualified concern.

There has been a misunderstanding for which largely the Bill itself, i.e. those responsible for the drafting of the Bill, has to blame, in regard to Jammu and Kashmir. There is nothing sinister about this. This is a law relating to the defence of India, and the defence of Jammu and Kashmir under the law is part of the responsibilities of the Central Government and so it is as under this Act. This Act applies to the whole territory of the Union. Where the exception comes is with regard to criminal courts, and that is a matter of definition. A civil offence in the Navy under the definition means an offence triable by a criminal court. When the Bill was drafted, our criminal law did not apply to the criminal courts of Jammu and Kashmir. In other words, in the eyes of our law, in the eyes of our Union law, criminal offences could not exist in Jammu and Kashmir. A Navy Bill cannot alter the relations between Jammu and Kashmir and the Union in the federal context. I do not know the law of Jammu and Kashmir but supposing the law there is more lax than ours, then anybody can take advantage of it. This is purely a drafting matter. It does not go to the substance of the

Bill. It does not exclude Jammu and Kashmir. If you read article 2, I think it is, and its various sub-clauses, it will be found that this applies to all persons who have anything to do with the Navy, with offences of any kind against the Naval law and it is all-pervasive in this matter. It is unthinkable that a law relating to the defence forces should exclude any part of the Union of India. I thought I should explain this because it may have political repercussions elsewhere. I do not blame anybody for misunderstanding it. It is purely a matter of the definition of criminal law. If you say "triable by a criminal court" then somebody who is not triable by the criminal court of Kashmir might say it is not an offence. So there will be legal complications. But it could be drafted more happily. And if I may say so, Sir, there are similar provisions in the Army Act as well I have no desire to give numbers, but this country and the whole world knows that part of the Army of India is in that part of India known as Jammu and Kashmir, and all these years from 1949, there had been no difficulty with regard to this. It is purely a legal necessity owing to the complex condition of the Federation and the historic conditions in which our judicial system has developed.

There have been, especially yesterday, from the Opposition benches, speeches suggesting that the imposition of discipline is something analogous to beating somebody up. We make no apologies for the disciplinary provisions in the Bill and I am sure, the House by a considerable majority will approve of them.

SHRI V. K. DHAGE: We are not able to follow the speech. It should be a little louder.

SHRI V. K. KRISHNA MENON: Discipline, it was said was a "barrier" between the officers and the men. It is not a barrier. On the other hand, it is part of the bond that keeps the forces for the purpose for which they are intended, and speeches will not

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alter the situation, because whether it is in the naval institutions or even in the ordinary colleges or universities, I hope sir, even in this your own House, according to the particular context of life and procedure that obtains, some degree of discipline, namely, rules of adjustment of relationship is necessary. You could not run a Navy, if on parade every morning, the officer had to stand before men who would take the salute. That would be a very difficult way of doing things.

In this connection criticism was also made that there are not enough berths for officership in the whole ranks in the Navy. That is not correct. What are called non-commissioned officers, who do not correspond to what were Viceroy's Commissioned Officers in the Army—they are sergeants and so on—of them there are probably one among four, or one to five, and for every 10 of these noncommissioned officers there is a commissioned officer. In fact, there are not as many officers in the Navy as in the Air Force. But there are more officers to the bulk of the personnel as compared with the Army, so that it is not as if there is no place or provision for people to move up.

There is a suggestion from the other side that instead of liberalising the laws, we should make provision for summary court martial. Except in so far as is provided in the Articles of War, it is not helpful or desirable in a civilized society like ours that we should have summary trials. That used to obtain in the navies of the world, including ours, some 400 or 500 thousand of years back, when the Master of the Ship punished, and either put the man in irons or pushed him into the sea, as I described in the other House, or made him pay as many ounces of silver as the times he used that language and so on. But then law was less complex and society was less civilized and people had less respect for law and there was summary procedure. But in the context of the present, the introduction of

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summary procedure in the Navy would be a step not consistent with our general life and it would be a process of reversal of progress. Even in the older navies of the world, the tendencies are in this way. There are very considerable differences between the British Navy Act, the law relating to the Royal Navy in England, and our own Navy. Some of it would be regarded by some people as an advance and by some others to be the other way. One of this is in regard to the appeal to the Supreme Court which is not provided for in this Bill. It is easier for a small country surrounded by the sea where the people say, "The sea is us". That is not our position.

I confess I am somewhat surprised that there is any apprehension owing to the provision made in the Bill that the Indian Evidence Act should apply. Whenever there are legal procedures by tribunals even in other contexts,— administrative tribunals, and so on,— where a man can be summoned and where he can be put on trial and where a penalty can be imposed by the judge or a panel of judges, it is my humble submission, Sir, that the Evidence Act is the protection of the citizen. Otherwise every bit of hearsay, every anonymous letter, every predilection of the judge might go against him. If it true the demeanour of the witness can and should be observed, but that can only be done if he is protected by the other provisions of the Evidence Act. Government has given very serious consideration to this and this is one of the innovations in the Bill, that before the Court Martial, the procedure should be such as to correspond to, and as takes into account, the Law of Evidence. And this should be particularly so in regard to hearsay. You can always find a number of people who have been told by somebody that something had happened.

But it is always difficult to find who heard first, the primary audience or the person who had seen it You are always told that somebody had seen

and if a person is to be sent to prison on that evidence, it would be a great hardship. I hope the House at no stage will remove the provisions relating to the Evidence Act. More and more we are bound to have administrative jurisdiction. The rule of law can be maintained by a parliamentary system if it is applied with all the safeguards that are available, and if that law is not operated by the un-instructed discretion or merely by the whim of a particular person or, even where discretion is exercised, there is this safeguard of the provisions of the Law of Evidence that would make it well-nigh fool-proof, and guard against a number of errors that a human judge or a human jury might make in this matter. I confess that some of the rules of evidence appear to the lay man rather ludicrous in the procedure. But in life we have to take the rough with the smooth and on the whole, the Law of Evidence is a safeguard for the liberty of the subject.

I think Sir, I have covered practically everything that has been raised in the debate which appertains to the provisions of this Bill. We have had a discussion which if I may say so, to a certain extent tresspassed upon what should have taken place in the Joint Select Committee. Government does not stand on any false notion of prestige in this matters no Government should. The Committee in its wisdom will no doubt amend or add anything or take away anything to or from what there is in the Bill. We have however put it forward as a code of law for the Navy that we consider suits our present purposes.

There is one thing more. In introducing this Bill at this time it is believed or feared, it is done either because the Defence Minister was born on the sea coast or because it was copied from another place where an old fashioned navy had been, built up. That is not factually correct. The law for the Army and the Air Force was passed in 1950 and seven years is a long enough interval for this legislation. There is another

legitimate complain about what I would call, not modification but the inroads into the Fundamental Rights of our Constitution.

5 P.M.

In the other House one of the earlier observations made was that the Bill does make inroads into the Fundamental Rights of the citizens. So does the Army Act and the Air Force Act and the Constitution envisaged the necessity of such an inroad. It is provided for in article 33. Any inroads that are made in the Fundamental Rights as affecting the citizens are in pursuance of this article 35. In other words, there cannot be an unlimited right. The Fundamental Rights in our Constitution are limited by other parts of the Constitution which are as valid as the Fundamental Rights themselves. The Fundamental Rights do not stand on suspended animation. They exist only in the context of the other provisions. Article 33 is as much part of the Constitution as any clause in the Chapter on Fundamental Rights and this article 33 affects Fundamental Rights. The Bill has made inroad into the Constitution in pursuance of this article of the Constitution and there can be nothing unconstitutional in it. There is nothing here that is not envisaged or permitted by the Constitution itself in regard to the Armed Forces. On the other hand, the House will easily understand and accept this if they know that the same applies to the Army and the Air Force.

There were some remarks with regard to employment of women in the Navy. There is nothing in this law which says that a person shall not be admitted in the Navy because that person is of the female sex. It says that ordinarily it is for men. There are certain specific occupations for which women can be recruited but whether we should say no women shall be recruited except for such or we should say that women may be

recruited except for such and such is a matter of phraseology. But, taking account of the conditions of life in the Navy, the accommodation that is available and the tasks to be assigned, the House will, I venture to think, accept the fact that this is not a discrimination as such against women. Such women as are capable, as are entitled and as far as there are facilities, can be taken into the Navy and that is provided for in the Bill. It is not discriminating against women; perhaps the criticism would be valid if clause 10(2) had read thus: "No woman shall be eligible for appointment or enrolment in the Indian Navy". If it had stopped there, then the critic would be correct but the clause goes on to say: "... except in such department, branch or other body \_\_\_\_". In fact, the general clause proposes and provides for the exception. If we put it the other way, it may perhaps be all right. It depends upon the desire of the Joint Committee to alter the drafting. For legal purposes, and for taking women into the Navy the exception made in this way is adequate. It also reserves for the Central Government power to extend these things by notification.

I believe, Sir, I have covered all the objections that were made, and all the points on which information has been sought. Even more, I am happy to correct any impression that has been created either by inadequate draftsmanship and even more by inadequate presentation of this clause by the Mover of this Bill but it is always useful to avoid what we need not fight about and get it by way of information. That is the reason for not making a rather long statement and wading through the different clauses which have in any case to be examined in the Joint Committee.

I do not think there is anything else to speak about. With these observations and with the answers that I have been able to provide, I commend

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MR. DEPUTY CHAIRMAN: The question is:

"That this House concurs in the recommendation of the Lok Sabha that the Rajya Sabha do join in the Joint Committee of the Houses on the Bill to consolidate and amend the law relating to the government of the Navy, and resolves that the following members of the Rajya Sabha be nominated to serve on the said Joint Committee, namely:—

1. Dr. R. K. Mockerjee
2. Dr. W. S. Barlingay
3. Dr. Raghbir Singh
4. Shri Sonusing Dhansin? Patil

5. Shrimati K. Bharathi
6. Shri T. S. Pattabiraman
7. Sardar Raghbir Singh Panj hazari
8. Shah Mohamed Umair
9. Shri Mahabir Prasad
10. Shri B. K. Mukerjee
11. Shri H. N. Kunzru
12. Shri V. Prasad Rao
13. Shri V. K. Dhage."

The motion was adopted.

MR. DEPUTY CHAIRMAN: The House stands adjourned till 11 A.M. on Tuesday, the 20th August, 1957.

The House then adjourned at five minutes past five of the clock till eleven of the clock on Tuesday, the 20th August 1957.