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17th December, 1949

THE CONSTITUENT ASSEMBLY OF INDIA (LEGISLATIVE) DEBATES

(PART II—PROCEEDINGS OTHER THAN QUESTIONS
AND ANSWERS)

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of the
CONSTITUENT ASSEMBLY OF INDIA (LEGISLATIVE)
1949



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CONSTITUENT ASSEMBLY OF INDIA (LEGISLATIVE) DEBATES

(PART II—PROCEEDINGS OTHER THAN QUESTIONS AND ANSWERS)

Saturday, 17th December, 1949.

The Assembly met in the Assembly Chamber of the Council House at a Quarter to Eleven of the Clock, Shrimati G. Durgabai (one of the Panel of Chairmen) in the Chair.

QUESTIONS AND ANSWERS

No Questions: Part I not published

REHABILITATION FINANCE ADMINISTRATION (AMENDMENT) BILL

The Honourable Dr. John Matthai (Minister of Finance): I beg to move for leave to introduce a Bill to amend the Rehabilitation Finance Administration Act, 1948.

Mr. Chairman: The question is:

"That leave be granted to introduce a Bill to amend the Rehabilitation Finance Administration Act, 1948."

The motion was adopted.

The Honourable Dr. John Matthai: I introduce the Bill.

INSOLVENCY LAW (AMENDMENT) BILL

The Honourable Dr. B. R. Ambedkar (Minister of Law): I beg to move for leave to introduce a Bill further to amend the law relating to insolvency.

Mr. Chairman: The question is:

"That leave be granted to introduce a Bill further to amend the law relating to insolvency."

The motion was adopted.

The Honourable Dr. B. R. Ambedkar: I introduce the Bill.

[*At this stage Mr. Deputy-Speaker (Shri M. Ananthasayanam Ayyangar) took the chair.*]

ABDUCTED PERSONS (RECOVERY AND RESTORATION) BILL—*contd.*

The Honourable Shri N. Gopaldaswami Ayyangar (Minister of Transport and Railways): Sir, when the House rose last evening, I was dealing with the criticism that had been urged against the provisions in the Bill which empowered Assistant Sub-Inspectors to take action for recovery of these abducted

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persons from wherever they are found to be, and I pointed out that there was no very great risk of their abusing the powers that are entrusted to them because they take action ordinarily on information supplied by social workers practically all of whom are women and these recoveries are made when the social workers are present with them. I can assure hon. Members who have expressed doubts as to the possibility of abuse of authority in these matters that no cases of any consequence have come to our notice so far of any such abuse, and after all an Assistant Sub-Inspector is an officer who is in charge of a Police Station and if he does misbehave, there are ways of pulling him up and seeing that such abuses are not repeated. It is obviously a very desirable thing that these Police Officers should have this authority so that any possibilities of non-recovery of abducted persons known to be in particular places might be avoided.

Then, Sir, towards the close of the debate, stress was laid on the fact that in the amendments of which I had given notice already, I had accepted only certain suggestions of hon. Members but there were two or three other important matters in respect of which they would like me to reconsider my attitude and to see if it was not possible for me to meet them so far as these objections are concerned. One of the most important things that they laid stress on was the inclusion of children born after 1st March 1947 to abducted women in the definition of abducted persons. This is an addition to the definition of abducted persons, an addition which is not found in the two Ordinances that were already promulgated and this is also a matter which is not included in the definition of abducted persons in the Pakistan Ordinance. But in the actual working of the law, our own officers felt a considerable amount of inconvenience which was caused by the fact that there were children born to these persons after they had been abducted and that the presence of these children was an impediment in the way of their being taken out of the environment in which they were with a view to enable them to make a free choice, and as a result of the examination of this suggestion, it was thought desirable to add these words to the definition of abducted women.

Shri H. J. Khandekar (C.P. and Berar: General): On a point of information; if these children born in India are allowed to go back to Pakistan with their mothers—abducted ladies—will not these children be called by the Pakistanis as the children of the *kafirs*?

The Honourable Shri N. Gopaldaswami Ayyangar: If the hon. Member's observation is intended to suggest that these children born after the 1st March 1947 in India would not be welcome in the original homes of these abducted persons when they go back, I think there is a good deal to be said for his point of view, and that was one reason why this definition was proposed to be amplified. These children are in a very unfortunate position; in the home in which they happen to be born, the only person who is anxious about their welfare is the mother with the departure of whom they would not be very welcome in that home. When this person is recovered and sent to Pakistan, if she takes the child with her, in ninety cases out of one hundred, it will not be welcome in the original home of the Muslim woman. They are really children who in many cases are unwanted, but they have been brought into this world and humanity requires that they should be properly looked after. It is desirable that they should be taken out of the home where they were born and where they will not be welcome after the mother had been taken away. They cannot be thrown upon a home which does not welcome them, but the mother when she leaves the abducted person's home, naturally wishes to take the child away from surroundings where it would not be welcome, and

that was one reason why along with the person originally abducted, it was thought desirable that the child born to that person after abduction, should also get the benefit of this law as regards recovery. What after recovery should be done to the child is a matter to be decided in each case. Sometimes if the original home is willing to take such children, they are sent to the other Dominion. If on the other hand, they are not welcome there, other arrangements are made for their being put in homes and their rehabilitation and up-bringing arranged for otherwise. That was the reason why this definition was enlarged.

Shri V. S. Sarwate (Madhya Bharat): May I ask the hon. Minister whether this provision is to over-ride the law of guardianship?

The Honourable Shri N. Gopaldaswami Ayyangar: I do not know about the law of guardianship. It all depends upon how you treat the child, whether it is a legitimate child or an illegitimate child and with regard to a child so long as it is a baby, I think the mother should have the first preference as regards the custody, and when she cannot have the custody, her wishes must have the greatest possible consideration. I am, however, at one with Pandit Thakurdas Bhargava when he suggested that even if those words could not be dropped from the definition, it is very desirable that the case of each child should be judged on its own merits, and custody arranged for according to the best interests of the child itself and according to the wishes as far as possible of the mother concerned. I should ask the House to let me retain these words in the definition. I have already taken steps to persuade the Pakistan Government to introduce similar words in the definition of an abducted person in Pakistan, and I would ask that this very desirable improvement of the definition should be allowed to remain.

Now, Sir, a great deal was said about an abducted girl not being forced to go to Pakistan against her will. I have already said a great deal about it and I can give the assurance to the House that if after being placed in surroundings when the abducted person could make a free choice, she does want to go back to the abductor, she will not be forced to go back to her original home. I can give that assurance.

There was something said, Sir, about the extension of the Act to the United Provinces and to Rajasthan. In both these cases, we have had the consent of the Governor of the U.P. in the one case and the Rajpramukh of Rajasthan Union in the other case for the application of this legislation to their respective areas.

Shri Ajit Prasad Jain (U.P.: General): Are the Government aware that the disturbances in the U.P. were confined only to the Western Districts, 11 A.M. that is, the Division of Meerut and parts of Rohilkhand and in Rajasthan where they were confined to a few states and not to the whole of Rajasthan?

The Honourable Shri N. Gopaldaswami Ayyangar: I believe the hon. Member is correct in what he said. I would only say this that there have been some recoveries, not very many from the U.P. and so far as Rajasthan is concerned in all about three months ago there had been recoveries to the tune of 275. That is why these areas have been included so far as the application of the Act is concerned.

Then, Sir, my hon. friend, Shri Rohini Kumar Chaudhuri made a number of suggestions, namely, that after these persons were recovered, there should be some provision for releasing them on bail. They should be produced before a magistrate within twenty-four hours and there should be some kind of a

[Shri N. Gopaldaswami Ayyangar]

trial in a magistrate's court for acts of indiscipline which may be committed under the regulations framed for running the camps. Now, Sir, it is, I think, not quite appropriate that we should look upon these recovered persons as akin to accused persons, persons accused of offences. What we do is to recover persons who, as a result of coercion are in confinement in particular places, to remove them to a place where they would feel freer and to look after them in that place until they are restored to their original relatives. To apply the provisions of the Criminal Procedure Code which appertain to accused persons to these recovered abducted persons would be wholly beside the mark, and I think, it is altogether unnecessary, nor is it desirable that these provisions should be incorporated in legislation of this type. In fact, my hon. friend went on to ask: Why not simply invite applications from abducted persons who wish to go to the other Dominion, to their original relatives, and after receiving those applications, why not make arrangements to facilitate their going there? Well, if that is the policy to be adopted, then we could not have recovered this large number of over 12,000 persons whom we have recovered in India. They are in such surroundings that they could send no applications of that sort and they will be prevented from sending applications. We have in our experience found that it is necessary and in many cases we have had to pull them out of their existing confined surroundings for the purpose of enabling them to make a free choice.

Lastly, Sir, something was said about limiting the duration of the Act and I wish to assure the House that I am quite in sympathy with that idea and, at the proper time, I shall be accepting one of the amendments that have been given notice of for the purpose of limiting the duration of the Act. I do not wish to say more.

Shri Brajeshwar Prasad (Bihar: General): On a point of information, I want to ask the hon. Minister, two clear questions: Do the Government recognise the conversions that are said to have taken place of these abducted women from Islam to Hinduism? Secondly, do the Government recognise the marriages that are said to have taken place between the abductors and the abducted?

The Honourable Shri N. Gopaldaswami Ayyangar: I thought I read out from the Inter-Dominion Agreement statements which related to both the observations that my hon. friend has raised. The two Governments have agreed that neither forced conversion nor forced marriages would be recognised by either Government.

Mr. Deputy-Speaker: The question is:

"That the Bill to provide, in pursuance of an agreement with Pakistan, for the recovery and restoration of abducted persons, be taken into consideration."

The motion was adopted.

Sardar Hukam Singh (East Punjab: Sikh): Sir, I move:

"That in part (a) of sub-clause (1) of clause 2 of the Bill, for the words 'who is, or immediately before the 1st day of March 1947,' the words 'who is, or on the 15th July 1947' be substituted."

Sir, my object in moving this amendment is this: I feel that certain innocent persons have been included in this definition who ought to have been kept outside the scope of this clause. It is common knowledge that whereas all these troubles, abductions or other political disorders began in Pakistan, in Rawalpindi district and other places on 1st March 1947, here on this side,

there was no trouble up till 1st August. During this period from 1st March to 1st August,—I have given a date 15 days earlier, 15th July 1947—my belief is that, there may be cases—their number may be small—which are not covered as cases where any coercion has been used, or where any force was exercised. Some persons may have got themselves converted honestly as they were doing before and it was a mistake, I believe, if it is contained in the provisions of the agreement to give one and the same date for both the Dominions. Therefore, my object is that those persons, who during the period when there was no trouble at all on this side, when there was no force or coercion on this side, got themselves converted should not be included in this definition, and therefore a different date should be put in this clause.

The second point is that these words "or immediately before that date" are very wide. Why should these words be there? They are indefinite. They do not specify any period. When this recovery work is left to Assistant Sub-Inspectors or police officers specially authorised by the Government who may be even of lower rank, I feel I have an apprehension that persons who honestly got themselves converted may be harassed and these words "or immediately before the 1st day of March 1947" may be misused, and those persons made over and sent to Pakistan, though really they are not victims of circumstances and not subjected to passions, or bias. Therefore, my submission is that this amendment should be accepted by the Mover.

Mr. Deputy-Speaker: There are four amendments here limiting it to an earlier date or extending it to a later date. They fall under one category. If the hon. the Minister agrees, I shall ask all these amendments to be moved so that once for all he may reply to all these. Then we may go to the other amendments regarding "against his or her wish".

Sardar Hukam Singh: Sir, I move:

"That in part (a) of sub-clause (1) of clause 2 of the Bill, after the words 'after that day,' the words 'and before the first day of January, 1949,' be inserted."

The object of this amendment I explained when I took part in the general debate.

Mr. Deputy-Speaker: May I suggest that the hon. Members, including the hon. Members who have tabled these amendments, have taken part at great length in the original discussion and these matters have been covered; therefore, they may merely move the amendments and place the matter before the House without elaborate discussions.

Sardar Hukam Singh: I only want to submit that there must be a date because, otherwise, even voluntary conversions would be included and that is not the purpose of the Bill. That is all I want to say.

Sjt. Kuladhar Chaliha (Assam: General): Sir, I move:

"That in part (a) of sub-clause (1) of clause 2 of the Bill, for the words '1st day of March, 1947' the words 'after the 16th day of August, 1947' be substituted."

I shall give my reasons. If you put in a date other than the date of declaration of Independence, then, you open up a series of dates. As you know, in Calcutta on the 16th August 1946, there was a great massacre, there were abductions and all sorts of things. One never knows where it will lead to. If you limit it to the date on which Independence was declared or was given, then, if there was any abduction subsequent to that date, on both sides, by Hindus and Muslims, they may be taken cognisance of. Beyond that date, the position was different. There was a certain procedure and

[Sjt. Kuladhar Chaliha]

certain rules; The Indian Penal Code could have been invoked and redress had. Not having taken advantage of that, I think we should not go back. I have not been able to understand why this date 1st March has been given here. If this date is given, people in West Bengal may have every reason to say that the date should be 16th August 1946, and Government may find it very difficult not to concede to that request. Therefore, the best course would be to accept the date on which Independence was declared or we were given this status. That is my suggestion.

Mr. Deputy-Speaker: Pandit Thakur Das Bhargava's amendment is covered by the second amendment of Sardar Hukum Singh. I shall put these amendments before I allow further discussion.

The Honourable Shri N. Gopalaswami Ayyangar: May I point out that I have given notice of an amendment more or less the same as the amendment of Pandit Thakur Das Bhargava and Sardar Hukum Singh?

Mr. Deputy-Speaker: Amendments moved:

(i) "That in part (a) of sub-clause (1) of clause 2 of the Bill, for the words 'who is, or immediately before the 1st day of March 1947,' the words 'who is or on the 15th July 1947,' be substituted."

(ii) "That in part (a) of sub-clause (1) of clause 2 of the Bill, for the words '1st day of March, 1947,' the words 'after the 16th day of August, 1947' be substituted."

(iii) "That in part (a) of sub-clause (1) of clause 2 of the Bill, after the words 'after that day,' the words 'and before the first day of January, 1949,' be inserted."

श्री लक्ष्मीनारायण साहू : माननीय उपवाचस्पतिजी, क्लॉज २ (clause 2) के बारे में पहले तो इतना कहना चाहता हूँ कि एबडक्टेड पर्सन्स (abducted persons) कौन होते हैं इसका जानना हमारे लिये बहुत मुश्किल होता है और एबडक्टेड पर्सन्स के लिये हमें मैन (men), वीमैन (women) और चिल्डरन (children) तीनों को ही सोचना चाहिये। यहाँ तक हमने जितनी आलोचना की है उस आलोचना में चिल्डरन और वीमैन को ही गिनते हैं कि कितने एबडक्ट (abduct) हुये हैं। लेकिन मैं यह जानना चाहता हूँ कि मैन भी एबडक्ट हुये होंगे, इसके बारे में कोई आलोचना नहीं हुई है।

Shri Mahavir Tyagi: Are men also abducted by women?

Shri Lakshminarayan Sahu: Yes.

Shri Mahavir Tyagi: Women cannot abduct men.

श्री लक्ष्मीनारायण साहू : फिर जिस तरह लोग एबडक्ट हुये हैं वह किस एटमासफियर (atmosphere) में एबडक्ट हुये हैं इसको भी हमें सोचना चाहिये। इस सब बखड़े को निकालने के लिये मैं देखता हूँ कि जिस रोज हम स्वराज्य पा गये और इस देश के २ टुकड़े हो गये वही रोज हमको मान लेना चाहिये। उसी टाइम (time) से जो कुछ एबडक्शनस (abductions) हुये हों उनको पाकिस्तान को ठीक करना चाहिये और वही हिन्दुस्तान को ठीक करना होगा। लेकिन जब तक पाकिस्तान हम लोगों के साथ ठीक तौर से व्यवहार नहीं करता तब तक हम कुछ नहीं कर सकते हैं। इस घर में कई दफा आलोचना हुई है कि हम लोग जितना काम करते

हैं उसमें पाकिस्तान हम लोगों की मदद नहीं देता। कभी कभी मुझे तो ऐसा ख्याल आता है कि हम लोग इतना नरम हो गये। रामकृष्ण परमहंस का एक उद्देश है। एक सांप आदमियों को काटता था और आदमी सांप को मारते थे। तो एक रोज एक सन्यासी आया। सांप उनका भक्त बन गया और फल यह हुआ कि सांप ने किसी को नहीं काटा। फिर जो लड़के थे वह उस सांप को घर से निकलने पर मारते थे और वह सांप घर के भीतर चला जाता था और उसको इस तरह खाने पीने को कुछ नहीं मिला। तो वह बहुत दुबला पतला हो गया। फिर सन्यासी वापस आया तो उसने पूछा कि तुम्हारी यह हालत कैसे हो गयी तो उसने कहा कि आपने मुझे किसी को मारने के लिये मना किया था। तो सन्यासी ने कहा कि मैंने काटने के लिये मना किया था लेकिन यह नहीं कहा था कि अपने बचने के लिये फूँ फूँ भी मत करना। तो हम लोग इतना नरम हो गये हैं कि फूँ फूँ भी नहीं करते। तो इस लिये मैं चाहता हूँ कि जो कुछ हो गया वह हो गया। अब यह बखेड़ा खत्म करके १५ अगस्त से स्वराज्य हो गया है और १६ अगस्त से बरताव क्या है उसका सोच विचार करना चाहिये। इस बात को दो वर्ष हो गये हैं। तो मैं चाहता हूँ कि १६ अगस्त से जो कुछ हुआ है उसका विचार करना चाहिये और इसी लिये मैंने १६ अगस्त इस दफा में रखा है।

(English translation of the above speech)

Shri Lakshminarayan Sahu (Orissa: General): Sir, as regards clause 2, in the first place I would like to say that it becomes very difficult for us to ascertain as to who are the abducted persons and we must take into consideration men, women and children all the three in this category. The result is that in the course of the discussions here we have taken into consideration only the number of women and children that have been abducted. But I wish to say that some men also would have been abducted. There has been no discussion on this point.

Shri Mahavir Tyagi (U.P.: General): Are men also abducted by women?

Shri Lakshminarayan Sahu: Yes.

Shri Mahavir Tyagi: Women cannot abduct men.

Shri Lakshminarayan Sahu: Then we have to take into consideration the circumstances under which the people have been abducted. In order to overcome this difficulty I say that we should accept that date from when we attained *Swarajya* and the division of our country took place. The abductions that have taken place since that time should be set right by Pakistan and India will have to follow suit. But till the time Pakistan does not behave squarely with us we cannot do anything. It has been alleged several times in this House that Pakistan does not accord us any help in whatever efforts we make in this direction. At times I begin to think that we have become too humble. Shree Rama Krishna Paramhansa has given an example. A snake used to bite people and the people waited for an opportunity to kill it. One day a *sadhu* came there. That snake became his votary and the result was that the snake did not bite any more persons. Then afterwards it so happened that whenever that snake came out of his hole the children used to strike him, and so he had to draw inside the hole. Thus for a long time he could not get anything to eat and so became very lean and thin. When

[Shri Lakshminarayan Sahu]

the *sadhu* returned he asked the snake as to how he came by that condition. The snake replied that he himself had asked him not to bite anybody. The *sadhu* retorted that he had asked him not to bite but had never asked him not to hiss even in order to save his life. We have become so humble that we do not even hiss. So I wish to say that let bygones be bygone. Since 15th August the matters have come to a head as we have attained *Swarajya*. Now we should take into consideration the attitude after the 16th August. Two years have passed since this incident took place. So I wish that whatever has taken place after 16th August should be taken into consideration and for this reason only I have substituted the word 16th August in this clause.

The Honourable Shri N. Gopalaswami Ayyangar: Sir, I may straightaway say that I accept the last amendment by Sardar Hukum Singh. In fact I have myself given notice of an amendment to the effect:

"That in part (a) of sub-clause (1) of clause 2 of the Bill, after the words 'after that day,' the words 'and before the first day of January, 1949,' be inserted."

As regards the other amendments moved by two hon. Members, one referring to July 1947 and the other to August 1947, I have first of all to say that the clause as it stands which fixes the 1st March 1947 as the crucial day is the result of an agreement between the two Dominions. The disturbances in connection with which these abductions took place started round about that date and that is why the words "immediately before the first day of March 1947" are mentioned. With regard to the intervening period, between 1st March 1947 and either July 1947 or August 1947, I can see the point that so far as India is concerned there was not as much of this kind of activity on the part of our people during that intervening period as there was on the Pakistan side of the border. But we had to get an agreement with the Government of Pakistan and our social workers could not rule out altogether the possibility of there having been a few stray cases of this description between these two dates and for the purpose of ensuring the recovery of non-Muslim girls who were abducted in Pakistan immediately before the 1st March 1947 it was considered right and reasonable that we should accept this date.

As regards the possible abuse of the provisions of this clause in India I can only say that the recovery staff are our own people, the social workers are our own people, and there is hardly any possibility of any wrong cases being subjected to this procedure in this connection. I would therefore ask that the terms of the agreement should be adhered to in this clause and this particular amendment should not be incorporated in the clause as it stands.

Mr. Deputy-Speaker: The question is:

"That in part (a) of sub-clause (1) of clause 2 of the Bill, for the words 'who is or immediately before the 1st day of March 1947,' the words 'who is, or on the 15th July 1947, be substituted.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That in part (a) of sub-clause (1) of clause 2 of the Bill, for the words '1st day of March, 1947,' the words 'after the 16th day of August, 1947,' be substituted."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That in part (a) of sub-clause (1) of Clause 2 of the Bill, after the words 'after that day,' the words 'and before the first day of January, 1949,' be inserted."

The motion was adopted

Sjt. Rohini Kumar Chaudhuri (Assam: General): Sir, with your permission I shall move both of my amendments. I move:

"That in part (a) of sub-clause (1) of clause 2 of the Bill, after the word 'living', the words 'against his or her wish' be inserted."

I also move:

"That in part (a) of sub-clause (1) of clause 2 of the Bill, for the word 'control,' occurring in line 5, the word 'restraint' be substituted."

Sir, the object of my amendments—at least of the first one—is to find out definitely whether it is the intention of the author of this Bill to apply the provisions of this Bill to those persons who are living peacefully and who do not wish to be forced to go out of their present place of residence. Is it intended that those persons who technically come under the definition of the expression "abducted persons" but who have settled down here and are living here peacefully and wish to continue to live here should be forced by virtue of the provisions of this Bill to be taken out of their present place of residence where they are living happily? Sir, if you have not followed me, let me illustrate my point by an example. Suppose Mr. K is a progressive Hindu and is an aggressive supporter of the Hindu Code Bill. Suppose during the last riots in Delhi he saved the life of a Muslim girl and suppose on account of the fact that neither her relations cared to take her away nor did the authorities separate them they are living happily or are married in the meantime, or suppose, if Mr. K is a bachelor, he is going to marry her—everything is settled and he is going to marry her—will you compel that girl to be taken out of her present place of residence? Again, suppose that Mr. K is not a bachelor but is a married and elderly person and he has rescued the girl and has adopted her as his daughter. Will you compel her to be separated from Mr. K?

Shri Suresh Chandra Majumdar (West Bengal: General): Will you concede this privilege which you will claim for your own people here to the Pakistan also?

Sjt. Rohini Kumar Chaudhuri: I am not thinking of Pakistan at all.

Shri Suresh Chandra Majumdar: But if this thing is good here it must be good for the Pakistanis too.

Sjt. Rohini Kumar Chaudhuri: What is good in one place must be good in any other place. But my point was this. Let us be perfectly clear about this. I submit that if my amendment is accepted, those who are not living here against their wish will not be disturbed by the provisions of this Bill.

Incidentally I want the word "restraint" to be used in place of the word "control". I think we have not yet come to a stage when a husband does not control his wife or a father his daughter. If my hon. friends the lady Members of this House mean that there should be absolutely no control of the husband over his wife and of the father over his daughter, that is a different thing. But I submit that up till this day husbands do exercise some control over their wives.

Mr. Naziruddin Ahmad (West Bengal: Muslim): No, no. It is the wives who control the husbands.

Sjt. Rohini Kumar Chaudhuri: That may be your experience, but that is not my experience. I submit that if my first amendment is accepted then my second amendment necessarily follows. So long as the woman is not left astray she ought to be allowed to remain here.

Mr. Deputy-Speaker: What is the reaction of the hon. Minister? If he does not propose to accept it, possibly the hon. Member may not press his amendments.

The Honourable Shri N. Gopaldaswami Ayyangar: I am not accepting the hon. Member's amendments.

Sjt. Rohini Kumar Chaudhuri: Sir, this is an important point and the whole principle of the Bill is involved. You may put the amendments to the House.

Mr. Deputy-Speaker: The question is:

"That in part (a) of sub-clause (1) of clause 2 of the Bill, after the word 'living', the words 'against his or her wish' be inserted."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That in part (a) of sub-clause (1) of clause 2 of the Bill, for the word 'control', occurring in line 5, the word 'restraint' be substituted."

The motion was negatived.

Shri Mahavir Tyagi: I wonder if you are going to permit a general discussion on the clause before it is put to vote. In that case I may not like to move my amendment.

Mr. Deputy-Speaker: After all the amendments are disposed of, if any hon. Member wants to speak on the clause he will certainly have an opportunity.

Shri Mahavir Tyagi: I think, Sir, I better move my amendment.

The Honourable Shri N. Gopaldaswami Ayyangar: Perhaps the hon. Member will reconsider his present intention if I inform him that I have practically accepted the substance of his amendment and have myself given notice of one. That carries out his idea but I have put it in different language.

Mr. Deputy-Speaker: The hon. Member may compare his amendment with that given notice of by the hon. Minister.

Shri Mahavir Tyagi: If the amendment of my hon. friend Shri Gopaldaswami Ayyangar is accepted it would read "under the control of any other individual or family". Now, "family" has been talked about previously, but the word "individual" has not been used in any of the lines above. So, if it is put as "any other individual or family" then one would be at a loss to know as to what the former individual is—against whom this "other" individual is being distinguished. So I think the position may be made clear by a reshuffling of both the amendments; my amendment namely "any individual or family" seems better.

Mr. Deputy-Speaker: It obviously applies to cases where any such woman is living with another. If she is staying here independently there is no question of abduction—she cares to be in this country and this Bill does not apply to her. She is not an "abducted woman" as she is not under the control of any person. I think there is no necessity for the word "individual" to appear in an earlier place.

Shri Mahavir Tyagi: In his amendment there are the words "any other".

Mr. Deputy-Speaker: "Any other" individual means that she is under the control of some persons other than herself.

Shri Ajit Prasad Jain: The whole objection is this. The word "family" has been used before. An abducted person must have been separated from his family and must be living in another family. But before this another individual comes in no mention of any individual is made and so the words "any other individual" create a sort of confusion.

Mr. Deputy-Speaker: "Abducted" is not the word used but "separated". "Abducted" qualifies the word "person" but in a later line you find "separated from his or her family". There may be a person separated but who may not be abducted. It is open to a lady to live by herself in a particular place.

The Honourable Shri N. Gopalaswami Ayyangar: May I explain the position. I quite appreciate the drafting finesse which both the previous speakers have stressed. Their drafting conscience has been oppressed by the use of the word "other" which qualifies both individual and family, but as no individual is mentioned in the previous part of the clause they think the use of the word "other" is perhaps inappropriate. That, I take it, is my hon. friends' point. But a woman who is separated from her family can either live with a person or an individual or in another family. Now, that person must be an individual not belonging to her own family, the family from which she has been separated. Though it may be possible to use some form of words in a more elaborate way which would carry out the idea which the two hon. friends have, I don't think in substance there need be any objection to the language that has been used. It is recommended by our own drafting experts and it is unlikely to be misunderstood.

Shri Mahavir Tyagi: I have no objection because the sense is there, but then the words "an individual or family" will be clearer as I have proposed. In the list of amendments my amendment reads "and individual or family". I don't know how the word "and" has crept in. My amendment was "an individual or family". Instead of "any other", it would be better if you accept the amendment "an individual or family".

The Honourable Shri N. Gopalaswami Ayyangar: We have got to say some family other than the original.

Mr. Deputy-Speaker: If she is back in her own family what will happen?

Shri Mahavir Tyagi: That can't be because she cannot be separated and at the same time live with her own family.

Shri B. L. Sondhi (East Punjab: General): The words are "has become separated" and not "had become separated" which means that even up to this date she continues to be separated.

Shri C. Subramaniam (Madras: General): The difficulty if we use the words "an individual or family" will be this. A Muslim girl in Pakistan married to a Muslim boy in India between these two dates will be separated from that family and will be living under the control of an individual or family in India. Technically speaking, the definition will apply to her also. She will be an abducted person under the definition:

"'Abducted person' means a male child under the age of sixteen years or a female of whatever age who is, or immediately before the 1st day of March 1947, was a Muslim....."

So here is a Muslim girl who was a Muslim girl before that date and who on or after that date has become separated from her family.

The Honourable Shri K. Santhanam (Minister of State for Transport and Railways): The family includes husband.

Shri C. Subramaniam: Before the marriage she had a family, from that family she becomes separated because of the marriage and technically she is living with another individual or under the control of another individual or family. Therefore, I am afraid this definition will apply even to such a girl. We have not used the words "taken by force" to qualify "abducted". That being so, even if it is voluntary separation from family and living with another individual, it will bring her under the definition of the "abducted" person.

The Honourable Shri N. Gopalaswami Ayyangar: The main ground on which I agreed to accept the substance of my hon. friend Shri Mahavir Tyagi's amendment is this, that there have been cases where abducted Muslim girls have been found living with Muslims in this country. That is to say, there have been Muslim abductors as well and girls have been recovered from such persons. I thought that my hon. friend's position was that it should not be limited to non-Muslim families or individuals but must cover Muslims also and that is why I agreed to accept this position. There have been cases of that sort.

As regards the point raised by my hon. friend here that there may be cases of legitimate marriage between a Muslim girl of Pakistan with a Muslim of India between these two dates and that they also might come within the four corners of this definition, it is possible that such a thing might happen, but we have got to take this into consideration that even if there is an initial recovery of such a person further enquiries are held and if it is found to be a legitimate union and she is living with a person from whom she does not deserve to be separated, then she is allowed to go back to the person from whom she was taken. But I don't think any such cases have occurred, they are not likely to occur either.

Shri C. Subramaniam: The police officer is given power to go and seize and put her in a camp. Can you allow that to happen when there has been a legitimate marriage? Suppose a police officer goes and seizes a person under the definition as it stands you cannot find fault with him. He will say, "She is an abducted person and I am acting only under the four corners of the Act". If supposing a police officer takes into his head, even though she is legitimately married and lives voluntarily with her husband, to spite a person he might go and seize that person and say, "I am within the four corners of the law and you cannot find fault with me". Therefore, we should take care that such cases don't occur and the definition of abducted person suitably altered.

Shri Ajit Prasad Jain: I would request the hon. Member to carefully examine this definition of an abducted person. I think it will become a little too broad after the amendment which the hon. Minister has suggested. Who is an abducted person? If it is a male he must be less than 16 years of age. If it is a female no age-limit is prescribed. He or she must have been a Muslim before the first day of March 1947. After the first day of March he or she must have been separated from the family and at the time of recovery he or she must be living in another family or with another individual. Now, let us forget the case of Pakistan. Supposing there is a girl who was a Muslim before the first of March 1947. Immediately after the 1st of March, 1947, she marries. Now she is separated from her family. She goes and begins to live in her father-in-law's family. Now, according to this definition

such a girl will be deemed to be an abducted person and any police officer who is authorised under this law to take possession of her and to put her in the camp, will be perfectly justified in doing so.

Now I would request the hon. Minister to examine the whole of this definition from that point of view but if there is any difficulty, let us hold it over and frame it in such a manner that all this type of confusion may not arise.

Shri Mahavir Tyagi: I am opposed to the views expressed by my friend Mr. Ajit Prasad Jain. A married girl's family is the family of her husband and if a family is not to include a wife I think many of us will go family-less. I submit that if she goes to her father-in-law's house, that house becomes her family. Family means wife and husband living together.

Sardar Suchet Singh (Patiala and East Punjab States Union): In this definition of abducted persons, supposing there is an unmarried Muslim girl and a boy under 16 whose parents are living in this country, supposing such a boy is in the employment of a non-Muslim and secondly supposing there is a married Muslim girl whose husband is living in this country and if such a girl sought employment in a non-Muslim family in this country, she would, according to the present definition, come under category of abducted person particularly when clause 7(2) says that she should be restored either to her relatives or sent to Pakistan.

The Honourable Shri N. Gopalaswami Ayyangar: All these criticisms proceed upon the footing that people engaged on this work are likely to abuse their power. If you take the whole of the Criminal Procedure Code and the powers that have been conferred upon the various officers for dealing with offenders and so forth, it is quite possible that almost everyone of them could be abused to net any innocent person but the point for us to consider is, we have to deal with a case where there have been mass separations or abductions of this description and we have to take powers for the purpose of rescuing people who have been victims of mass abductions. - It is possible that as the last speaker pointed out, a person who is a Muslim girl is only doing domestic service in a Sikh or Hindu family.

Shri C. Subramaniam: Under law there is no separation.

The Honourable Shri N. Gopalaswami Ayyangar: That is one way of looking at it. But some lawyer can interpret the language literally, if he is so minded, and argue that, when the husband is in Agra and the girl is in a Sikh family, there is some physical separation. All these arguments are quite possible but I may tell hon. Members that in the application and implementation of this law we have got rules and instructions issued which give very detailed instructions to our workers to avoid cases of this kind, and they will be avoided. I think the provision which the hon. Mr. Tyagi did want to put in was a very necessary amendment *viz.*, as there have been cases where abductors themselves have been Muslims, we had to cover those cases and that is why I accepted that amendment. I hope the House will accept that.

Shri Ajit Prasad Jain: My difficulty is this. Are you laying down a correct definition? Why do you want to supplement it by departmental instructions? Now that we are framing the law, it is our duty to lay down a correct definition. To my mind this definition is not a correct definition and it does not fully translate the intention which you have in mind.

The Honourable Shri N. Gopalaswami Ayyangar: I don't think I need say anything more. I think the practicalities of the case are met by this definition.

Sardar Suchet Singh: If you say "who have migrated to Pakistan" it will be alright.

Mr. Deputy-Speaker: Is it intended that if a Muslim girl is abducted inside Delhi by one person who is another resident of Delhi, it is part of the agreement with Pakistan that this girl should be restored to her parents in Delhi or does it apply only to cases where the family is in Pakistan? Cannot the ordinary law take care itself so far as those persons within India are concerned?

Pandit Thakur Das Bhargava (East Punjab: General): Clause 7(2) will throw light on this subject. It says "restore such person to his or her relatives or convey such person out of India".

The Honourable Shri N. Gopalaswami Ayyangar: The only thing I can say is I did not want to say that at an earlier stage but I do wish to bring it to the notice of the House that this argument about Muslim girls being employed as domestic servants has been used as cover for abduction of girls. They are in the family but they are put out as mere domestic servants. A number of them had to be recovered for the purpose of being restored to original relatives. We cannot forget circumstances of that nature also. I think what we really require is a law which in agreement between the two Dominions we shall enforce for a limited period for the purpose of making these recoveries on a large scale.

Sardar Suchet Singh: There are cases of the parents of unmarried girls living here.

Mr. Deputy-Speaker: The hon. Minister is fully aware of these points. His opinion is that all these cases cannot be covered and any loopholes can be corrected by departmental instructions. Of course there must be some latitude though not enormous latitude on this matter. I will now put this amendment to vote.

Sardar Bhopinder Singh Man: (East Punjab: Sikh): Certain incongruities are being removed and I would also like to bring to the notice one peculiar case which is not covered by this. There is a case of certain Hindu girls abducted by Muslims and who are settled in India. The case will be quite apparent if I bring to his notice the cases of certain Kashmiris' positions when the raiders came to Kashmir and the local population got up and abducted many Hindu girls in Rajauri.

Mr. Deputy-Speaker: That does not form part of the agreement with Pakistan. It is unnecessary. Our Government will take care of those cases under the ordinary law of the land if it comes to their notice.

Sardar Bhopinder Singh Man: A very expeditious law is being enacted in respect of Muslim girls whereas Hindu girls who are here and are still retained by Muslims, for them we have to apply ordinary law?

Mr. Deputy-Speaker: The ordinary law of the land is sufficient and Government can invoke that or any citizen can do that. I am not prepared to enlarge the scope of the Bill. It is limited to the agreement entered into with Pakistan. The internal administration here is not a subject-matter of agreement with Pakistan. I shall now put this amendment to vote.

Shri Mahavir Tyagi: Will there be no amendment? Are you taking vote separately?

Mr. Deputy-Speaker: I am disposing of amendment by amendment.

Shri Mahavir Tyagi: How will you allow general discussion on this clause?

Mr. Deputy-Speaker: I have told the hon. Members repeatedly that after all the amendments are over there will be a general discussion on the clause. Normally, if any amendments are accepted, the clause as amended by that amendment would stand part of the Bill. I am afraid the hon. Member has forgotten the procedure.

The Honourable Shri N. Gopaldaswami Ayyangar: Sir, I move:

"That in part (a) of sub-clause (1) of clause 2 of the Bill, for the words 'a non-Muslim', the words 'any other' be substituted."

Mr. Deputy-Speaker: The question is:

"That in part (a) of sub-clause (1) of clause 2 of the Bill, for the words 'a non-Muslim', the words 'any other' be substituted."

The motion was adopted.

Sardar Hukam Singh: Sir, I beg to move:

"That in part (a) of sub-clause (1) of clause 2 of the Bill, the following be omitted:

'and in the latter case includes a child born to any such female after the said date;'"

Mr. Deputy-Speaker: The hon. Member has already spoken about this matter during the general discussion.

Sardar Hukam Singh: Sir, I do admit that it has been sufficiently discussed during the general discussion. But, with your permission, I would like to bring out one or two points—I will not dilate upon it much.

We have been assured, Sir, by the hon. the Mover of the Bill that he would persuade the Pakistan Government to fall in line with this clause. But I am doubtful whether Pakistan would agree to it, as they have not responded to various other protests of ours.

Then again, Sir, the hon. the Mover said that the mother is the person who is most concerned with the child who is born here. I beg to differ from him there as well. I feel that there may be cases where the mother might not be willing to take that child to Pakistan and the father might be very much anxious to keep that boy or girl here. Even those cases are not excluded here. I would, therefore, humbly request the hon. the Mover to give careful consideration to such cases.

It was said during the course of the debate that these children would be illegitimate. Well, if they will be illegitimate on this side, they will be illegitimate on the other side too and I think it would be a matter of shame for the girl to take the child to that place. Even if such children are taken by the girls, they would be murdered or done away with. Therefore, even considering the matter from a humanitarian point of view, it would be better to keep such boys and girls here.

My next objection is about the fixation of the date, that is the 1st day of March 1947. I have already moved an amendment on this matter. I want to say again that if a child is born on or about the 1st of March 1947, it means that it was conceived somewhere about July 1946 when the Cabinet Mission was here and the partition of India was only under contemplation. My contention is such cases should be excluded from the purview of this clause.

When we see that there is no such corresponding provision even in the Ordinance that Pakistan has promulgated, there is no reason why we should have such a provision. If and when the hon. Mover succeeds in persuading Pakistan to have such a provision, we can have a similar clause.

[Sardar Hukam Singh]

I do not mean to say that all these children should be kept here, but I feel that some discretion should be left to the authorities. There may be cases where it would not be just to send them away. Therefore it should be left to the discretion of the authorities to decide which children should be retained here and which children should be sent away.

The Honourable Shri N. Gopaldaswami Ayyangar: Sir, I have already explained the position with regard to these children. The inclusion of children in the definition of an abducted person only enables the recovery of the child along with its mother in the first instance. Then the recovered persons are taken to a camp and a definite decision is taken by the Tribunal as to what should be done with the child, whether the child should go with the mother to Pakistan or whether it should be sent back to the home from which it was recovered or kept in a home for unwanted children in the country. We have had cases of all these descriptions and the mere inclusion of children in the definition of abducted persons does not mean that those children are necessarily sent away to the other Dominion. If the hon. Member who has moved this amendment will keep this point in mind, I am sure he will not press it. We propose to exercise this discretion in the best interests of the children themselves. The mere inclusion in the definition, does not really require that we should send them elsewhere.

Sardar Hukam Singh: The discretion can be exercised even if that definition is not there.

The Honourable Shri N. Gopaldaswami Ayyangar: The point is we cannot recover the children from where they are. In some cases inability to recover the child, impedes the recovery of the mother. Therefore it is that we have got to take the child along with the mother.

Pandit Thakur Das Bhargava: In clause 6 there is no mention of the child at all and the discretion given to the Tribunal will be effective if, as in the definition, child is included in the category of abducted person. Now the Tribunal is competent to decide about the future fate of the child. If child is excluded from the definition of abducted persons such jurisdiction shall cease.

The Honourable Shri N. Gopaldaswami Ayyangar: If the hon. Member will read clause 6 as it will be amended by me, he will probably accept the position that it will be provided for.

Mr. Deputy-Speaker: May I know whether the hon. Member still wishes to press his amendment?

Sardar Hukam Singh: I would, Sir.

Mr. Deputy-Speaker: The question is:

"That in part (a) of sub-clause (1) of clause 2 of the Bill, the following be omitted: 'and in the latter case includes a child born to any such female after the said date;'"

The motion was negatived.

Sjt. Rohini Kumar Chaudhuri: Sir, I beg to move:

"That in part (a) of sub-clause (1) of clause 2 of the Bill, for the words 'a child', occurring in the last time the words 'an illegitimate child' be substituted."

The object of this amendment, Sir, is that a mother has always the custody of an illegitimate child and the father has no right whatsoever on that child.

Therefore I want to introduce the words "illegitimate child". If you want to take away a child from the control of the father, you can do that only so far as an illegitimate child is concerned. So far as legitimate children are concerned, the father has absolute control. You have not introduced any legislation whereby the marriage of a non-Muslim with a Muslim girl who comes under the definition of an abducted person can be nullified. You have not introduced any legislation to declare that marriage *null* and *void*. I understand that there is an agreement between the two Governments by which they agree not to recognise such marriages. They may not recognise such marriages, but society will recognise. If there is any sanctity in marriage law, the courts will recognise these marriages.

Shri Krishna Chandra Sharma (U.P.: General): Is there such a thing as marriage law?

Sjt. Rohini Kumar Chaudhuri: According to the law, it will be a valid marriage, if the parties agree. I do not know what is the experience of my hon. friend, the interruptor, whether a marriage can be torn as under, even though the husband and wife may be living together, whether such a marriage can be nullified.

Shri Krishna Chandra Sharma: A man and a woman by living together do not become a married couple.

Sardar Bhopinder Singh Man: Certainly it is so in the Punjab. Among the Jats, if a man and a woman live together as husband and wife, it is considered to be marriage, apart from any ceremony performed.

Mr. Deputy-Speaker: Let there be no cross-argument.

Sjt. Rohini Kumar Chaudhuri: In some parts of India, where a man and a woman live together, it becomes a marriage. I am not now dealing with that kind of marriage at all. I am dealing with a regular valid marriage which cannot be nullified by anybody, by any third person, and if a child is born out that wedlock, can that child be taken away from the control of the father? So long as you have not repealed the provisions of the Guardians and Wards Act which I hope my hon. friend, the Minister, remembers, the father is always entitled to make an application to a judge to allow him to keep the child in his custody. How is this law going to take effect? The hon. Minister is an astute lawyer himself, and I think he will certainly agree with me that under the Guardians and Wards Act, any taking away of such a child from the custody of the father can be set aside by a Judge. If your intention is that you are going to turn out all Muslim women from this country, no matter whether there is any law or not, and also to turn out all children born of a Muslim mother and a non-Muslim father, I can understand that and you accept this law. But my objection is that so long as the Guardians and Wards Act is not repealed, so long as there is no law by which the marriage between a Muslim and a non-Muslim can be declared invalid, this clause should be changed in the manner I have proposed.

Shri C. Subramaniam: May I point out the absurdity that will ensue if the hon. member's amendment is accepted. Suppose an abducted person was a married woman and on the date of abduction, she was already pregnant and was abducted after that. The child born to her in this case will be a legitimate child born to her lawful husband. If we accept the amendment of my hon. friend, such a child cannot be removed at all because it would be a legitimate child, even though born after the abduction.

Mr. Deputy-Speaker: It has been sufficiently discussed now.

The Honourable Shri N. Gopalaswami Ayyangar: I do not accept the amendment.

Mr. Deputy-Speaker: The question is:

"That in part (a) of sub-clause (1) of clause 2 of the Bill, for the words 'a child', occurring in the last line, the words 'an illegitimate child' be substituted."

The motion was negatived.

Shri Mahavir Tyagi: Sir, I am very glad that the hon. Minister has accepted my amendment and thereby made this clause look better in meaning as well as in effect. The previous position was that only abducted persons living in non-Muslim families were covered. Abducted women residing with Muslim families were left out of consideration. That was a very invidious distinction and that has been removed. I still feel, Sir, that generally speaking this is a Bill for the rescue of Muslim abducted women alone. That is the difficulty. In fact in a secular State, should not we do away with the words "Muslim" and "Hindu"? All abducted women and children, wherever they are living, we should rescue.

Mr. Deputy-Speaker: There is the ordinary law of the land. This is for an exceptional circumstance arising out of partition.

Shri Mahavir Tyagi: Even these cases can be covered by the ordinary law of the land.

Pandit Thakur Das Bhargava: There is no law in India at least whereby a person who is living in a family while being separated from his original family can as such only be recovered.

Shri Mahavir Tyagi: These cases are also covered by the ordinary law of the land. This law has been made not because Pakistan thrust it on us, but because of our sweet-will. We wish that the abducted women who are so many in number must be rescued and they must be sent to their proper places. That is the real spirit of this law, and therefore, we are enacting it. Sir, I would have much preferred if we had enacted this law without making any invidious distinction of religion because these abducted women are the culprits of the disturbances that had occurred and in these I know for a fact that Hindu women have been abducted as for instance in Rajaori as mentioned by my hon. friend in the other bench.

Mr. Deputy-Speaker: Does the hon. Member mean "victims" or "culprits"?

Shri Mahavir Tyagi: I am sorry it is "victims". Culprits were men both Muslims and Hindus. They are all culprits who had abducted women. The Muslims are also culprits. There are a number of abducted women, who were Hindu, in possession of Muslims in Rajaori, Kashmir. There are, say 2,000 or so, I cannot vouch for the exact figures. But the fact is that Hindu women had been abducted during the Kashmir trouble, and now if the rescue of these women is left to the ordinary law of the land, I think it is a very invidious distinction, Sir. The Hindu women in Kashmir have been victims of the disturbance in Kashmir and they are said to be still in possession of Muslims of Rajaori—that part of Rajaori which is in our own possession. In the case of Muslim abducted women this Act does not deal only with the cases of these women whose parents or families are now in Pakistan, but it deals also with such muslim women who have been abducted and their families are residing in India. The cases of the latter category could as well be

covered by the ordinary law of the land. But, we have made an exception in their case. We thought that with the help of the ordinary law of the land, it will not be very easy to bring all those abducted persons from these stranger families and deliver them to their proper families. Therefore, we have included in this Bill the work of rescuing such Muslim women also whose parents or families are living in India. How is it that similar cases of Hindu women who have been abducted on account of the disturbances in India and are still residing with rammies other than their own in India are not covered? Where is the law which deals with their fate? Are they to be treated by the ordinary law of the land? If so, why? That is my complaint, Sir.

About thousands of abducted women are in Rajaori, a part of which is in our hands and the other part is in the hands of the Pakistan people. And there are among those abducted persons are both Hindu and Muslim women. Even the Muslims in Rajaori could not be rescued if my amendment were not accepted.

Shri Jaspal Roy Kapoor (U.P.: General): This Act will not be applicable to Kashmir.

Shri Mahavir Tyagi: I am afraid if it does not apply to Kashmir, then it is really bad enough. I am sorry if that is so. Therefore on that point I really seriously suggest that either there should be another act of similar nature which might control Kashmir or if the Kashmir Hindu girls are not rescued, I tell you, this Bill will not be welcomed in India. They are also abducted girls, their families are living here and their cases we have left to the ordinary law of the land to control. This is invidious, Sir. I would have, preferred if the hon. Minister really said that any person whether Hindu or Muslim who had been abducted in connection with the disturbances either here or in Kashmir will be rescued and sent to his proper family, to which he or she belongs, that would have been a better thing. The good work that has been carried on under the captaincy of Shrimati Mridula Sarabhai is going on undisturbed and the insertion of the word 'Muslim' here or the exclusion of the word 'Hindu' does not add more power or force which is employed, nor withdraws any power from their hands. So I think just a change of word would make the thing look better and it will be more popular and secular. I therefore submit, Sir, that the hon. Minister might further think if he can so change this clause as to enable the Government to operate in such cases where Hindu women have been abducted.

Pandit Thakur Das Bhargava: Sir, I am sorry to think that Mr. Tyagi has misunderstood the whole scope of this Bill. The Bill is to provide, in pursuance of an agreement with Pakistan, for the recovery and restoration of abducted persons. Clearly I can quite see that the Hindu girls will not come within clause 2. At the same time, Sir, I do not think how possibly this Bill could refer to Kashmir. Kashmir has acceded to India and if we want to have any provision like this to meet the cases which Sardar Bhojiinder Singh Man has adverted to, then it should be provided by way of a separate Bill, if necessary. In this Bill, we cannot think of such a contingency.

Mr. Deputy-Speaker: It does not extend even to the whole of India; it extends only to particular states mentioned here.

Pandit Thakur Das Bhargava: Yes, Sir. You will be pleased to see in the preamble the following: "And whereas the Governors of the United Provinces and East Punjab and the Rajpramukhs of Patiala and the East Punjab. . ." and this is limited again in sub-clause (2) of clause 1. This is quite right.

[Pandit Thakur Das Bhargava]

I have to make another observation. In my humble opinion this word "abducted person" whose definition is given is a misnomer. As a matter of fact, as I submitted before, an abducted person according to ordinary connotation of the word as well as the plain meaning of the section 362 of the Indian Penal Code means a person who is compelled by force or induced by deceitful means to go from any place. In respect of persons who are separated this word "abducted person" is not appropriate. I know of thousands of good Hindus who gave protection to such Muslim girls. I know in Pakistan also there are good Mohammadans who gave protection to innocent Hindus. Muslims from Pakistan sent letters to the Hindus here and similarly Hindus in India sent letters to Muslims in Pakistan informing each other of the whereabouts of these separated persons. They can by no manner be called abductors if they give protection. The proper word should have been "separated persons" or some other name. If any person wants to make over some child or some woman to the State, he is by use of this word likely to think that he is really guilty of a crime, though there is no legal offence committed. Similarly the person given protection may think that she is an abducted woman whereas there was really no abduction but only protection given. Really speaking they are separated women and though the two Governments have agreed that in regard to such persons as are described as abducted persons, such persons may be recovered and restored, they should not be called abducted persons. It is wrong to call them abducted persons; they are only separated persons.

In regard to the other matter referred to by my hon. friend Sardar Bhopinder Singh Man, if it is true that there are such persons like that, I would also add my humble voice to that of Sardar Bhopinder Singh Man and my hon. friend Shri Mahavir Tyagi that the Government should at once see that in the Acceding States such things are not allowed to continue or to happen.

Shri Jaspal Roy Kapoor: Sir, I am afraid not only my friend Shri Mahavir Tyagi is labouring under a misapprehension, but even my hon. friend Pandit Thakur Das Bhargava is also labouring under a misapprehension, though he made an attempt to remove the misapprehension of Mr. Tyagi.

Sjt. Rohini Kumar Chaudhuri: Only my hon. friend has no labour trouble.

Shri Jaspal Roy Kapoor: That wonderful phenomenon can be exhibited only by my hon. friend Shri Rohini Kumar Chaudhuri. Reference has been made in the course of the debate to Hindu women who have been abducted in Kashmir and who may well be within the State. While my hon. friend Mr. Tyagi would have welcomed that this Bill should have been extended to Kashmir also, and should have brought within its purview cases of Hindu abducted women there also, my hon. friend Pandit Thakur Das Bhargava suggests that there should be a separate Bill on the subject. I am afraid none of these two courses are possible.

An Honourable Member: Why?

Shri Jaspal Roy Kapoor: My hon. friend to my right asks why. I shall answer that question. I think it is well that hon. Members of this House realise on this occasion, if they have not realised so far, that our jurisdiction, our power to make laws with regard to the Kashmir State, is of a very limited nature, unfortunate though it may be.

Shri Ajit Prasad Jain: It can be extended.

Shri Jaspal Roy Kapoor: That is an entirely different thing. So far as Kashmir is concerned, it has acceded only, much to our disappointment, in regard to three matters communications, external affairs and defence.

Pandit Thakur Das Bhargava: We can enter into a similar agreement or acquire powers if necessary.

Shri Jaspal Roy Kapoor: With regard to this matter they have not acceded and however much it is our wish, it is not within our power to make any legislation applicable to Kashmir. It is very unfortunate and very disappointing; but we are in a very helpless position so far as abducted women in Kashmir are concerned. I only hope and wish that we can make an earnest request in this behalf to the hon. the Minister.....

Shri Mahavir Tyagi: May I just enquire from my hon. friend.....

Mr. Naziruddin Ahmad: On a point of order, Sir, any hon. Member may ask for a personal explanation. But, there is no means permitted by law by which he can physically touch a member to draw his attention.

Shri Jaspal Roy Kapoor: I can assure my hon. friend Mr. Naziruddin Ahmad that it was a very gentle and a welcome touch to me.

Shri Mahavir Tyagi: I want to enquire from my hon. friend Mr. Kapoor: when defence is in our hands and there is a war going on and our armies are advancing—it is unfortunate that they could not proceed further, for, there came the "cease fire" order just when a few more days would have enabled us to reconquer Rajaori—could we not under the very authority of defence send persons to their homes and protect them? If we cannot do that under the civil law, we can do that under the military law, because military is in full possession of Rajaori and they are entitled to effect law and order in that area.

Mr. Deputy-Speaker: May I ask hon. Members not to dilate upon this matter? It is all unnecessary and not relevant as to what the military authorities can do and what the terms of the agreement are. They are far beyond the scope of the Bill.

Shri Jaspal Roy Kapoor: I have hardly anything further to add. I only hope that the interpretation and view of my hon. friend Mr. Tyagi were accepted as correct. What I was submitting was that we should appeal to the hon. Minister sponsoring the Bill to make a specific effort in this direction, to persuade the Kashmir Government to make some special law on the subject so that the relief that we are going to give to the Muslim abducted women in the various provinces to which this Bill will be applicable, may also be given to the abducted Hindu or Muslim women, whatever their religion may be in the State of Kashmir also.

Sjt. Rohini Kumar Chaudhuri: Sir, the hon. Minister did not care to reply to points raised by me and I am afraid he is suffering from a mild form of obstinacy. My submission to the hon. Minister is.....

Mr. Deputy-Speaker: I do not want that there should be a repetition of the whole thing. If an hon. Member moves an amendment, he sets out certain arguments in favour of that. It is open to the hon. Minister to refute some and say some other arguments are not necessary to be refuted. Once again, when I put the general clause to the vote, to start once again with regard to some amendment which has been defeated, I do not think it is right to take the time of the House.

Shri Brajeshwar Prasad: On a point of order, Sir, is it parliamentary to use the expression, "suffering from an attack of obstinacy"?

Sjt. Rohini Kumar Chaudhuri: A mild form of obstinacy.

Shri Brajeshwar Prasad: Is "obstinacy" parliamentary?

Mr. Naziruddin Ahmad: It is a humorous and an affectionate expression.

Mr. Deputy-Speaker: Order, order.

Sjt. Rohini Kumar Chaudhuri: I want to put a question to the hon. Minister which he may be pleased to reply. It is this. Does this provision bar the jurisdiction of the civil court to entertain or decree a suit for restitution of conjugal rights or any suit under the Guardian and Wards Act for the appointment of guardian of these children which are referred to in this clause? Shall I repeat?

The Honourable Shri N. Gopaldaswami Ayyangar: I can assure my hon. friend that I have listened to his remarks quite well and I may assure him also that I have not forgotten all my law. I would only say this that, far from my being guilty of mild obstinacy, I am afraid the hon. Member is guilty of something more than mild obstinacy.

An Honourable Member: He is wild.

The Honourable Shri N. Gopaldaswami Ayyangar: With regard to the question of the jurisdiction of the civil court, there is a special clause in this Bill which indicates what particular matters would be excluded from the jurisdiction of the civil court. Beyond that, if the hon. Member can go and persuade the civil court to assume a jurisdiction which is not barred, we can do nothing in the matter; we will try to meet that litigation as best as we can.

As regards the point that was raised by my hon. friend Mr. Tyagi, there are only two answers to it. The first is, as pointed out by my hon. friend Pandit Thakur Das Bhargava, this is legislation in implementation of an agreement with Pakistan. We have got to implement that agreement substantially in the terms in which we have entered into that agreement. In the second place, there has been no amendment suggested in regard to the widening of the Bill, even as he wants it to be done. He wanted its widening in a particular part of the clause and I have accepted it. In regard to the other aspect of widening which he has suggested, unfortunately, he himself omitted to give notice of an amendment. But, I may tell him at once that, even if he had given notice of an amendment, I would not have accepted it because it would commit a breach of the terms of the agreement. We cannot put into this legislation something to which we have not got the other party's consent. I think, Sir, I have nothing more to say.

Mr. Deputy-Speaker: The question is:

"That clause 2, as amended stand part of the Bill."

The motion was adopted.

Clause 2, as amended, was added to the Bill.

Sjt. Rohini Kumar Chaudhuri: Sir, I move:

"That after sub-clause (1) of clause 3 of the Bill, the following new sub-clause (2) be inserted and the existing sub-clause (2) be renumbered accordingly:

(2) The Provincial Government may appoint officers not below the rank of a Magistrate of First Class as officers in charge of camps established under the preceding clause."

As far as I can see this Bill does not lay down the qualifications of a camp officer inasmuch as this camp officer will have the power to try and punish the abducted persons kept under his control. In my opinion he should be an officer not below the rank of a first class magistrate, for such an officer will have experience of trial and the kind of punishment to be meted out on a particular kind of offence. There is no mention of this in this Bill because I suppose the Government want to provide for all these in the regulations to be framed hereafter. I want that this should be stated here clearly. If it is left to regulation we will have no opportunity to discuss it before it is adopted. This is a very vital matter and we want to make it clear that a responsible officer ought to be placed in charge of the camp. The indications are that the author of the Bill does not care very much what class of officers should be in charge of a particular duty. They have already prescribed that a man of the rank of an assistant sub-inspector, the lowest officer over the constable, shall be responsible for keeping abducted women in custody, a thing which no other law would contemplate. I want it to be made clear what sort of a camp officer there should be so that we can express our opinion as to whether we approve of it or not. In my humble opinion that officer should not be a person holding a position less than that of a first class magistrate.

Mr. Deputy-Speaker: There does not seem to be any judicial function given to the officer. He is only an administrative officer. He has no right to decide whether he ought to receive an abducted person or not. The matter has to be decided by the tribunal.

Sjt. Rohini Kumar Chaudhuri: The words "trial" and "punishment" are used in clause 5. What sort of trial it will be is not laid down.

The Honourable Shri N. Gopaldaswami Ayyangar: These camps are in charge of social workers and practically all of them are women. I do not think it is consistent with the kind of discipline that we wish to maintain in this kind of camp, which is primarily intended for the purpose of putting the inmates into contact with such relatives as may have to come and see them, that we should have a magistrate or any person of that kind of authority in charge of the camp.

As regards the general manner in which a camp is conducted, whether it is conducted on proper lines and so forth, the deputy commissioner of the district has a kind of overall supervisory jurisdiction but he cannot interfere with the internal discipline of the camp. The trial that is mentioned is only in regard to cases of indiscipline under the regulations that may be framed may occur in the camp. As a matter of fact I have not heard of any case of trial or punishment so far.

Sjt. Rohini Kumar Chaudhuri: Will you put a police or military officer in charge of this camp? You must mention clearly whom you are going to put in charge, otherwise it will be open to the Government to appoint anybody, a police officer or a *daroga* just as a *jamadar* is made responsible for the purpose of arresting.

The Honourable Shri N. Gopaldaswami Ayyangar: Hon. Members will realise that Government have not so far misbehaved. Instead of thinking of such officers, to whom he takes objection, Government have so far appointed only women social workers to be in charge of the camps.

Shri H. V. Pataskar (Bombay: General): Is there any objection to mention here that these camps will be in charge of social workers, in which case there will be no objection. Why should it be so vague as it is here?

Mr. Deputy-Speaker: Social worker is such an indefinite expression. It will have to be defined here.

In this amendment it is said "Provincial Governments may appoint". The Provincial Governments are authorised to appoint first class magistrates but it is not obligatory. The Provincial Government may appoint a first class magistrate or even a judge. Does the hon. Member wish to press his amendment?

Sjt. Rohini Kumar Chaudhuri: Yes, Sir.

Mr. Deputy-Speaker: The question is:

"That after sub-clause (1) of clause 3 of the Bill, the following new sub-clause (2) be inserted and the existing sub-clause (2) be renumbered accordingly:

'(2) The Provincial Government may appoint officers not below the rank of a Magistrate of First Class as officers in charge of camps established under the preceding clause.'

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 3 stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill.

Mr. Naziruddin Ahmad: Sir, I move:

"That in sub-clause (1) of clause 4 of the Bill, for the words 'an Assistant sub-Inspector', the words 'a sub-Inspector' be substituted."

We are going to give police officers very wide powers. In case the police officer is merely of opinion that there may be found any abducted persons in any home we clothe him with absolute authority to enter the house to make a search and do a lot of other things. The officers who would be entitled to use these drastic powers have been described thus:

"any police officer, not below the rank of an Assistant Sub-Inspector or any other police officer specially authorised by the Provincial Government."

I believe that an Assistant Sub-Inspector of police is the lowest police officer in the East Punjab and the other places where the Bill will apply.

Sardar Hukam Singh: The head constable is there below him.

Mr. Naziruddin Ahmad: He is not an "officer".

Sardar Hukam Singh: He is.

Mr. Naziruddin Ahmad: I do not think there is any difference between the head constable and the Assistant Sub-Inspector. I have two reasons: First of all, an Assistant Sub-Inspector of police is the lowest grade of a police officer: he should not be below the rank of a Sub-Inspector of police. The second reason is that as we are going to give power by statute to these officers it is very necessary that we should empower only experienced and qualified officers to discharge this difficult and responsible duty. My amendment says that the duty should be entrusted to a Sub-Inspector of police or an officer who is superior in rank. In case the Government finds that an Assistant Sub-Inspector is individually competent and is able to properly discharge this duty, he can be empowered under this clause to exercise this power. That is provided for by the words "or any other police officer specially authorised". If an Assistant Sub-Inspector is personally a qualified and reliable

officer, he can easily be specially authorised by the Government. So that would not exclude any Assistant Sub-Inspector who is really a competent, reliable and a tactful officer. For this purpose he can be specially authorised. I therefore submit that this amendment should be accepted.

The Honourable Shri N. Gopaldaswami Ayyangar: I have only one or two words to say. The whole idea of this is that generally speaking an officer in charge of a police station should have these powers. In certain Provinces we have got this grade of Assistant Sub-Inspector. But I believe in those Provinces there are Head Constables who occupy a lower rank, in the hierarchy of police officers, than Assistant Sub-Inspector. In certain cases where police stations are in charge of Head Constables, as they sometimes are, it may be necessary to empower them to exercise these powers. As a matter of fact it has not been found necessary to empower any such officers below the rank of Assistant Sub-Inspector. I think on general principles the officer in charge of a police station should have these powers and the clause should stand as it is.

Pandit Thakur Das Bhargava: May I inform the hon. Minister that in the Punjab it is the Sub-Inspectors who are in charge of police stations.

The Honourable Shri N. Gopaldaswami Ayyangar: Yes, I know.

Mr. Naziruddin Ahmad: Sir, I find that there are other hon. Members who have given notice of this very amendment. Personally I would have been glad to withdraw my amendment but that will deprive the others of the opportunity of placing their amendments before the House.

Mr. Deputy-Speaker: I will now put the hon. Member's amendment to vote.

The question is:

"That in sub-clause (1) of clause 4 of the Bill, for the words 'an Assistant sub-Inspector', the words 'a sub-Inspector' be substituted."

The motion was negatived.

Mr. Deputy-Speaker: The next amendment is barred. In respect of the next amendment when the hon. Minister has expressed himself against the substitution of the words "a Sub-Inspector" for the words "an Assistant Sub-Inspector", is there any chance of his accepting the substitution of the words "an Inspector"?

Sardar Hukum Singh: Still I do want to say a few words about it.

The Honourable Shri K. Santhanam: If by implication the House has rejected the idea of raising the status—even to that of Sub-Inspector—how does this amendment arise?

Mr. Deputy-Speaker: That is what I said that the House has rejected the amendment to substitute even "sub-Inspector" and therefore there is no chance of its accepting this amendment. But technically I am not able to say whether it is barred or not.

Sardar Hukum Singh: Sir, I move:

"That in sub-clause (1) of clause 4 of the Bill, for the words 'Assistant sub-Inspector' the word 'Inspector' be substituted."

I also move:

"That in sub-clause (1) of clause 4 of the Bill, the words 'or any other police officer specially authorised by the Provincial Government in this behalf' be omitted."

[Sardar Hukam Singh]

Sir, there is a misapprehension in the minds of certain hon. Members about this matter. In East Punjab the Head Constable occupies a lower rank than the Assistant sub-Inspector. He is never put in charge of a police station. Ordinarily a Sub-Inspector is in charge of the police station. Normally an Assistant sub-Inspector is only a senior Head Constable. But because sometimes it is required that a senior officer might be put in charge of the police station, they were promoted to this office of Assistant sub-Inspector. So this man, namely, the Head Constable, is not lower than the Assistant sub-Inspector really. And he is not in charge of the police station.

Arguments have been advanced that if an Assistant sub-Inspector comes to know that there is an abducted girl in some house it would cause delay if he is required to report to a higher officer. I wonder how after one and a half years there is so much hurry and it is said that if an Assistant sub-Inspector comes to know that there is an abducted girl somewhere he cannot wait for a day or two to take orders from his higher officer. If we have not been able to trace a certain number of females up to now I do not think any harm would be caused if another day or two days pass after this Assistant sub-Inspector gets that information. I am afraid that only one side of the matter is being considered and this is being done to hurriedly take out these women. The other side, that it can cause havoc and mischief when it is abused and when it is left to officers who are only Constables, is not being considered. My submission therefore is that it is necessary that some senior police officer, more responsible, more experienced and more conscious of his duties should be put in charge of this work.

The Honourable Shri N. Gopalaswami Ayyangar: I have hardly anything to say. I have said all that I had to say.

Mr. Deputy-Speaker: The question is:

"That in sub-clause (1) of clause 4 of the Bill, for the words 'Assistant sub-Inspector' the word 'Inspector' be substituted."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That in sub-clause (1) of clause 4 of the Bill, the words 'or any other police officer specially authorised by the Provincial Government in this behalf' be omitted."

The motion was negatived.

Shri Mahavir Tyagi: Sir, I beg to move:

"That in sub-clause (1) of clause 4 of the Bill, after the word 'has' occurring in line 3 the words 'on receipt of a written report' be inserted."

The Honourable Shri N. Gopalaswami Ayyangar: May I interrupt my hon. friend at this stage, Sir? In this case also I have accepted the suggestion of my hon. friend. Only I have put it in different words. I have tabled an amendment:

"That in sub-clause (1) of clause 4 of the Bill, after the words 'he may', the following be inserted:

'after recording the reasons for his belief.'"

Shri Mahavir Tyagi: Sir, I speak from my own personal experience. During the last disturbances when I had taken over the administration of my district in my own hands and was managing the law and order position of the district. The District Magistrate had kindly agreed to hand over to me and for four days I kept the district. I know how difficult it became for me

to send my police forces from one place to another. Sometimes alarming news came to me asking for police help and military help too. And I was sitting in the *botwali* ordering the police to go here and there. When reports started coming I thought I had better enquire and verify the truth of the reports first. So I divided my town into five circles and appointed a number of Special Magistrates, which I created myself. The gazette notifications came later on. I asked these Special Magistrates to verify on spot and send me their reports as to whether the reports that had come were accurate or not. In most of the cases I found that the reports that came were highly exaggerated. A report would come that there was a great trouble, that the *Mohalla* was on fire and all that. During the days when I was the organiser of the Tyagi Police which was formed by the Provincial Government of U.P.—I had about 500 Congress volunteers enrolled into the police, they had taken constables' uniforms and we were deputed to help the maintenance of law and order in the Province. I found that the reports that came were always exaggerated. Informers would give such a colour to their reports that an officer would at once be inclined to believe it. This is generally the case with oral reports. But whenever I asked them to give it in writing they said they would not. So I submit that by asking a report to be given in writing you would really bring the report much nearer accuracy. I have therefore added the word "written". The police might take action. But let all this action not end in a wild goose chase.

Mr. Deputy-Speaker: You have not stated on receipt of report from whom:

Shri Mahavir Tyagi: Whosoever brings information must give it in writing to the police so that he may realise that giving wrong reports to the police is an offence. If a written report is asked for, everybody will be afraid of giving an exaggerated report. There must be a safeguard against wrong reports and against action being taken and houses of gentlemen searched on the basis of such oral reports. If, however, the hon. Minister feels that insistence on written reports would obstruct the free action of the police squad or the rescue squad, if he feels that they really cannot work with this little restriction I have proposed for putting them on their right track, if he thinks it is necessary that they depend even on oral reports, if he thinks so from his experience, I am prepared to reconsider the position. But let the hon. Minister give the House the benefit of his experience of this work for so long. The reports may at least be written so that a police officer may know that he has some written evidence in his possession and may be able to defend himself against a futile action because it becomes really very bad when the police officers or civil workers go to a place, enter the house, search it and don't find any abducted persons. That way they simply bring unpopularity on the whole Government policy. Therefore, to avoid these dangers you might just take written reports from the informers before taking action. My amendment is a very simple one, but if the hon. Minister has something to say which convinces me, I will change my mind.

The Honourable Shri N. Gopalswami Ayyangar: I only wish to say that the amendment of which I have given notice goes much farther in the direction that my hon. friend wants to go than his own amendment. What I have suggested in the amendment is that the police officer who takes action must record the reasons for his belief. It is not merely that he should be enabled to take action as soon as he gets a written report. He may get a written report or he may get an oral report, but he has got to decide that he has good reasons to believe it and he has got to put down those reasons in writing so that really it is a much better safeguard in the direction intended by my hon. friend than his own amendment. I hope he will accept what I have suggested.

Shri Mahavir Tyagi: Sir, I am not inclined to press it in that case.

Mr. Deputy-Speaker: Therefore, I need not put it to the House. Then Mr. Naziruddin's amendment. It is a verbal amendment.

Mr. Naziruddin Ahmad: I don't wish to move it unless it is acceptable.

The Honourable Shri N. Gopalaswami Ayyangar: I don't think it is necessary. The clause as it stands is good enough. But the hon. Member is not moving it.

Mr. Naziruddin Ahmad: I am prepared to move it—I am only awaiting the pleasure of the hon. Minister.

The Honourable Shri N. Gopalaswami Ayyangar: Then I don't accept this particular amendment of his. Sir, I move:

"That in sub-clause (1) of clause 4 of the Bill, after the words 'he may', the following be inserted:

'after recording the reasons for his belief,'"

Mr. Deputy-Speaker: The question is:

"That in sub-clause (1) of clause 4 of the Bill, after the words 'he may', the following be inserted:

'after recording the reasons for his belief,'"

The motion was adopted.

The Assembly then adjourned for Lunch, till Half-Past Two of the Clock.

The Assembly re-assembled after Lunch at Half Past Two of the Clock, Mr. Deputy-Speaker (Shri M. Ananthasayanam Ayyangar) in the Chair.

Shri H. V. Pataskar: Sir, I move:

"That in sub-clause (1) of clause 4 of the Bill, after the words 'is an abducted person and', the following be inserted:

'produce such person with the least possible delay, before the nearest magistrate of the first Class, who shall immediately proceed to examine the person so produced and who shall if satisfied grant a certificate that the person is *prima-facie* an abducted person and after obtaining such a certificate the police officer shall'

With the amendment the clause will read:

"(1) If any police officer, not below the rank of an Assistant Sub-Inspector or any other police officer specially authorised by the Provincial Government in this behalf, has reason to believe that an abducted person resides or is to be found in any place, he may, without warrant, enter and search the place and take into custody any person found therein who, in his opinion, is an abducted person, and produce such person with the least possible delay, before the nearest magistrate of the first Class, who shall immediately proceed to examine the person so produced and who shall if satisfied grant a certificate that the person is *prima-facie* an abducted person and after obtaining such a certificate the police officer shall deliver or cause such person to be delivered to the custody of the officer in charge of the nearest camp with the least possible delay."

The only object of my amendment is that when an abducted person or rather the person called 'abducted' under the definition of this Act is taken into custody by a Police Officer then before being taken over to Camp I want that person to be produced before a Magistrate, not for any detailed enquiry or trial but in order that he may ascertain by examination of the person himself immediately whether it is really a *prima facie* case of abduction and if satisfied he might grant a certificate after which that person may be taken to the camp.

My argument is that this procedure does not in any way involve any judicial or other enquiry of a protracted nature because that, I understand, was the main objection and I have avoided that. It is a simple method of checking the extraordinary powers which we are giving to the Police in particular cases where something might be done which are not justified in the interest of the person concerned. We know when we were discussing the definition, it was felt that the definition was certainly very wide. It covers not only persons who are abducted in the sense of being persons who on account of coercion or fraud are detained but also persons who may not fall in that class. My friend Pandit Thakur Das Bhargava has expatiated on the subject to which I recall the attention of the hon. Minister in this connection. You are aware, Sir, that it was admitted that this definition is rather too wide and that technically many persons may come under the definition who should not be included in the definition and it was stated that it was not the intention of Government that such persons should be dealt with under this Act. If that be so, then I believe it is necessary that the extraordinary powers—which were going to be given not only to Sub-Inspectors of Police but to persons who are subordinate to them and who may be called Officers-in-Charge of Police Stations—are used properly. I don't want to put any hitch in the way of such Police Officers taking action without consulting Magistrates for I do realize the objection may be that as soon as that Officer gets information if he were to approach the Magistrate before taking action, then the abducted person may be removed in the meantime. Similarly it may be argued that after a person is taken into custody, if a regular enquiry were to be held, probably the proceedings will be protracted and the matter may remain hanging for long. The hon. the Mover of the Bill said when a question was asked that it would be open for anyone to take the matter to a Court which may arrive at a proper decision. But in my view this Bill is to meet extraordinary circumstances and we are trying to oust the jurisdiction of the Court. Therefore I don't want that to be reopened by an inquiry or trial because that might come in the way of the very object of this Bill.

The police officer, even though he may be a subordinate, should produce the person before a magistrate before he is taken to a camp from where probably he may be despatched to Pakistan without any further interference except that of the Government authority. It may be very difficult for such recovered person to approach Government. Therefore, to minimise the risk of a person being straightway despatched to Pakistan in this manner. I have suggested this check. I am not for a moment suggesting that the magistrate should hold any elaborate enquiry. All that he need do is to interrogate the person recovered and issue a certificate to the effect whether the person in question is a *bona fide* abducted person. While, therefore, we are arming the Police with such vast and unusual powers, and when we are defining an "abducted person" in a wide manner, it is very necessary that there should be a check like this. We know, Sir, that the subordinate ranks of our Police, for instance, are not manned by very responsible persons who can be expected to carry out the spirit of the legislation that we are putting on the Statute Book. As my hon. friend Shri Mahavir Tyagi said of his district in many cases their reports are highly exaggerated and such men may take hurried action, when such action is not warranted.

Now, Sir, I anticipate one difficulty in regard to my amendment and I have been rather worried about it. Well, I have been closely listening to the debate in this House. I may be told that according to the terms of the agreement with Pakistan and India in regard to this matter, Pakistan may not agree to such a provision as I have proposed and it may come into conflict with the agreement. I do not know whether it will or will not. It may on the other

[Shri H. V. Pataskar]

hand be therefore argued that this is beyond the terms of the agreement as it exists today. But I for one am inclined to think that, our consideration of what Pakistan is going to do or is not going to do has in more ways than one clouded the whole issue. I entirely agree with hon. Members who have plainly said that it is the primary duty of ours to restore every abducted women wrongfully detained in this country whether she is a Muslim or not. But to base it on the consideration that our ladies who have been forcibly detained there in Pakistan, would be restored to us as a result of this action is neither in keeping with the realities of the situation nor as a matter of principle of good conduct on our part.

Sir, as a matter of principle it has all along been our culture and tradition to respect women; that has all along been our history. If unfortunately, certain unhappy events have taken place, even as a result of the reaction to the horrors that took place in Pakistan at an earlier stage, we should not be guided by any considerations as to what Pakistan will or should do. We must do the right thing; we have to restore every single abducted woman if there be still any who has been wrongly detained in this country. Other considerations should not be allowed to vitiate our action. Whether Pakistan reciprocates or not is not our concern. We are, as I said the proud inheritors of the culture of Rama and so far as my part of the country is concerned, of Shivaji. We, Sir, in our part of the country follow the traditions of that great personage. There is a story connected with him which I may tell the House. In those days a beautiful daughter of a Muslim Subedar was brought to Shivaji—as a present. He refused to accept her saying: "If my mother had been as beautiful as this young lady, I would have been more handsome than what I am". Sir, that is the tradition of our people, that is the way in which we have been respecting the womanhood not only of our religion, but also of the other religions. There should, therefore, be no doubt that we have to restore every single woman wrongfully detained in this country. But it is wrong to base it on the condition or hope that corresponding action will be taken by the people of Pakistan.

Sardar Bhopinder Singh Man: As descendants of Rama we have to bring back every Sita that is alive.

Shri H. V. Pataskar: I am just coming to that point. What I was saying was that our action should not be vitiated by any such ulterior considerations.

So far as Pakistan is concerned, agreement or no agreement, I am convinced in my mind after hearing the speech of the hon. the Mover that they are not going to reciprocate. It was said that about two thousand Hindu women are in the possession of Pakistan Government servants. Apart from everything else cannot the Pakistan Government, if its intentions were *bona fide* and genuine at least see that these helpless ladies are restored to us? The very fact that not a single woman of this class has been restored shows that Pakistan is not serious about this matter. It does not require any elaborate machinery for the Pakistan Government to recover these 2,000 women who have been detained by their servants, if they had the least sense of honouring their pledged word. This itself is a clear indication to my mind that it is not possible to expect Pakistan to do the right thing provided we do it on our side. That is not the method by which Pakistan will ever restore our women.

I know the instance of a corrupt Muslim official who during the years 1941 or 1942 was in responsible charge of a district occupied by backward people called the Bhils. After partition he opted for Pakistan. There were so many charges against him. But unfortunately our Government could not do anything. I understand that in Pakistan he has got accelerated promotion and is now a

high official. There are so many instances of this kind. I do not, therefore, have the slightest hope that Pakistan will ever restore any of our women.

Shri Lakshminarayan Sahu: What about the 6,000 women who were restored by Pakistan.

***Shri H. V. Pataskar:** That was because the Military Evacuation Organisation was functioning then. Military force is the only language that Pakistan can understand. I would like to tell my hon. friends that a very large number of these women were restored prior to the agreement and not in terms of any agreement. They were restored because of the Military Evacuation Organisation. That is a clear indication of the *mala fides* of Pakistan.

I have absolutely no doubt that this legislation will not help us to bring back any of our sisters or mothers. I understand that many of the women who had been abducted not only from Rajaori but from other places in West Punjab also were sold in foreign countries. I, for one, have no hope that any of them could ever be returned to us.

I will come now to my amendment. My amendment is very simple. Whether the passing of this legislation or any of its provisions or the entering into an agreement with Pakistan brings about the desired result or not from Pakistan, I think we will have to have this legislation from the point of view that we would have to do our duty and that rightly. Our tradition demands, our culture demands that all the unfortunate women who have been reduced to this condition whether as a result of passion, as a result of reaction to what happened in Pakistan, should be rescued. I have tabled my amendment only for the purpose of seeing that the police officers on whom we are conferring such wide powers do not misuse those powers. It is dangerous that a police officer should be authorised to take a woman from her husband or guardian and take her directly to a camp which may be under the charge of Pakistani people. If I have understood the position correctly,—of course I am subject to correction—the arrangement seems to be that camps in India will be managed by Pakistanis and those in Pakistan will be managed by Indians. So such enormous powers in the hands of unscrupulous Police Officers may mean the spiriting away to Pakistan of many unfortunate women without any remedy, without any help. I have therefore moved this amendment that before any person is sent to a camp, she should be produced before the nearest First Class Magistrate who shall immediately proceed to examine the person so produced and who shall, if satisfied, grant a certificate that the person is *prima facie* an abducted person. We should take care to see that these unfortunate women are not taken to Pakistan against their wishes. I know, Sir, that this is to be done only with her consent, but there may be circumstances in which she may not be able to express her consent freely. It is to safeguard this position, I suggest that she should be taken before a First Class Magistrate who will immediately examine her and find out whether the person is *prima facie* an abducted person.

Mr. Deputy-Speaker: Amendment moved:

"That in sub-clause (1) of clause 4 of the Bill, after the words 'is an abducted person and' the following be inserted:

"produce such person with the least possible delay, before the nearest Magistrate of the first class, who shall immediately proceed to examine the person so produced and who shall, if satisfied, grant a certificate that the person is *prima facie* an abducted person and after obtaining such a certificate the police officer shall."

Sardar Hukam Singh: My amendment is similar to the amendment that has just been moved. I want that she should be produced by the officer in charge of the camp before a First Class Magistrate. My suggestion is that if I am allowed to move my amendment now, the hon. Minister may be saved the difficulty of answering it twice.

Mr. Deputy-Speaker: There is an amendment standing in the name of Surdar Hukam Singh. He says that he may be allowed to move that amendment now and to speak and the hon. Minister may reply to both the amendments later on, in which case we shall have the other amendment also by Mr. Naziruddin Ahmad: "least practicable delay" for the words "least possible delay".

Mr. Naziruddin Ahmad: I will leave it to the hon. Minister but I shall require to explain it.

The Honourable Shri N. Gopalaswami Ayyangar: I only wish to point out to my hon. friend that, if I accept his amendment, he will be making a concession to me which other hon. Members may not like to make. "Least possible delay" ties my hands more tightly than "least practicable delay". Personally I would like to have it, but other hon. Members may not like it.

Mr. Naziruddin Ahmad: I had better move my amendment, Sir.

Mr. Deputy-Speaker: The hon. Minister himself does not want to be provided to such an extent.

Mr. Naziruddin Ahmad: Sir, I move:

"That in sub-clause (1) of clause 4 of the Bill, for the words 'least possible delay' the words 'least practicable delay' be substituted."

I am moving this only out of practical considerations. If we say, "least possible delay", it means an absolute limit of logical possibility. "Least possible delay" means a delay which is conceivably possible or even mathematically possible. So, when a Police Officer has in his custody an abducted woman, even if he is impelled to answer calls of nature, the text as it is, requires that he must give up answering such calls and run at once with his charge without any possible delay. "Least practicable delay" is actually "least possible delay" modified by practical consideration. It means that there may be any practicable delay on practical considerations.

Shri Mahavir Tyagi: Delay cannot be practised.

Mr. Naziruddin Ahmad: "Least practicable delay" is a recognised expression. I do not think this will in any way unduly strengthen the hands of the police.

Sardar Hukam Singh: Sir, I move:

"That after sub-clause (2) of clause 4 of the Bill, the following new sub-clause be added:

(3) The officer in charge of the Camp shall, with the least possible delay, cause the person, delivered to his custody, to be produced before a magistrate of the first class, who shall, after summary enquiry, satisfy himself whether the person is really an abducted person, and may, in his discretion after considering all the circumstances, either recommit the person to the custody of the officer who produced him or discharge him forthwith."

Sir, this appears to be similar to the one which has already been moved by my hon. friend, Mr. Pataskar. He says that as soon as a police officer gets an abducted person in his possession, he should without any possible delay produce her before a first class magistrate. My amendment differs from that in this respect that, when the police officer gets that person in his custody, he should hand her over to the Camp. Then that officer should produce that person before a first class magistrate. I agree entirely with the object that my hon. friend has and also the grounds he has given. The particular suggestion that I want to make here is that, when we have given these wide powers to police officers—Asstt. Sub-Inspectors or any other officer that might be authorised in this behalf by the provincial government—he may be of lower rank than an

Asstt. Sub-Inspector, we leave this question whether a person is an abducted person or not to the decision of a Tribunal which we thought would be a sort of judicial authority, but we are told that this Tribunal would consist of S.Ps. of the two Dominions. Therefore it becomes all the more necessary that at some stage a judicial officer should have a chance of ascertaining whether it is a *bona fide* case of abduction or not.

[At this stage, Mr. Deputy-Speaker vacated the Chair, which was then occupied by Shri S. V. Krishnamoorthy Rao (one of the Panel of Chairmen).]

Various provisions have been suggested in these amendments and these powers might be abused. My submission is that there should be some officer at some stage at least. The Tribunal cannot be entrusted with this matter. There is another point that I want to stress here. There have been cases where two Police Officers have disagreed. A matter like this causes me greater concern: because I find that both the Superintendents of Police will not unite together and discuss the differences existing in their minds. Our Superintendent of Police working there will think that every girl has to be returned and the other Superintendent of Police would say that every girl has to be taken away and none should go back. With all this diversity they can certainly go to a judge with these attitudes of mind and I support entirely that every girl should be restored and every citizen or officer of this Dominion shall have the same mental attitude. The other side may have a different attitude. When both of them agree, it is not that both decide judicially or everything was decided on merits. I agree that we are very good boys and we have behaved well. But this might be abused and justice may not be done, even though the cases may be very few. My suggestion in this amendment is 'at one stage' and I have suggested that when an abducted person has been made over to the camp, she must be produced before a magistrate and whether she wants to go or not is not to be left simply with the workers and there has not been a case when she has expressed unwillingness when the environments have changed. There ought to be at some stage some judicial officer who can bring his judicial training and intellect to bear upon the matter when he can say that we are agreeing to this bail, certainly it is a *bona fide* case and if he finds that it is a *bona fide* case, which is included in the definition of an 'abducted person', or the circumstances are such that she should be made over, if the magistrate finds that she should be made over to the camp again, he would send her there and if he finds that it is not a *bona fide* case, then he may release the person forthwith. That is my amendment and I commend it to the House.

Mr. Chairman: Amendment moved:

~That after sub-clause (2) of clause 4 of the Bill, the following new sub-clause be added:

(3) The officer in charge of the Camp shall, with the least possible delay, cause the person, delivered to his custody, to be produced before a magistrate of the first class, who shall, after summary enquiry, satisfy himself whether the person is really an abducted person, and may, in his discretion after considering all the circumstances, either recommit the person to the custody of the officer who produced him or discharge him forthwith."

The Honourable Shri N. Gopalsswami Ayyangar: Sir, I would like to say only two or three words. First of all I think it is wrong for us to look upon a recovered abducted person as occupying the position of an accused person under the Criminal Procedure Code. I am afraid we are too familiar with the provisions of the Criminal Procedure Code and the way in which it deals with police officers and magistrates and whenever any legislation mentions a Police Officer, we think we should put a magistrate on the top in order that the vagaries of the Police might be checked.

Shri H. V. Pataskar: My amendment does not make an abducted person an accused person.

The Honourable Shri N. Gopalswami Ayyangar: It does not, but I say the mentality is there.

Sardar Sukam Singh: It is because the Police Officer would not behave properly unless he goes to a magistrate.

The Honourable Shri N. Gopalswami Ayyangar: After all the police officer under the provisions of this legislation is merely an instrument with the minimum of power given to him for the purpose of taking a girl who is under coercion confined in a particular place to some place where she can breathe more freely and the clause particularly requires the Police Officer should with the least possible delay hand the recovered person over to the officer in charge of a camp. As I have told the House the officer in charge of a camp is a woman social worker and it is much better that persons recovered under these circumstances should be handed over to a woman social worker who is the officer in charge of a camp than that she should be treated as an accused person, on the lines of an accused person, and taken to a magistrate for his disposal.

Secondly, there is a particular point which we should always bear in mind, apart from the agreement. This is a matter in which both Dominions are to some extent interested. The decision whether a particular person is an abducted person or not is a matter in respect of which the representative of the other Dominion might also be allowed to have his say and that is why when we created the tribunal under clause 6, we provided for a joint tribunal consisting of an officer from each of the Dominion. As soon as this person is taken to the camp, if there is any dispute about her being an abducted person, the tribunal gets jurisdiction. The officers of the two Dominions confer with each other and come to a decision as to whether the person should be treated as an abducted person or not. I think it is a much more satisfactory way of dealing with this matter than taking this person before a magistrate. For instance, the abductor might claim to be represented before a magistrate; he may get all sorts of evidence adduced before a particular magistrate and all sorts of things will happen. It only makes the life of the poor abducted recovered girl more miserable than perhaps it was before, and that is the reason why we have provided for a tribunal. We do not want to keep the person in the camp longer than is absolutely necessary for the purpose of determining whether she is an abducted person or not. Sir, I very strongly oppose these two amendments that have been moved.

Mr. Chairman: The question is:

"That in sub-clause (1) of clause 4 of the Bill, after the words 'is an abducted person and', the following be inserted:

'produce such person with the least possible delay, before the nearest magistrate of the first class, who shall immediately proceed to examine the person so produced and who shall, if satisfied, grant a certificate that the person is *prima facie* an abducted person and after obtaining such a certificate the police officer shall.'"

The motion was negatived.

Mr. Chairman: Then amendment standing in the name of Mr. Naziruddin Ahmad.

The Honourable Shri N. Gopalswami Ayyangar: I do not think I will accept it. I will stick to my own language.

Mr. Naziruddin Ahmad: Then I do not press it.

Mr. Chairman: The question is:

"That after sub-clause (2) of clause 4 of the Bill, the following new sub-clause be added:

(3) The officer in charge of the Camp shall, with the least possible delay, cause the person, delivered to his custody, to be produced before a magistrate of the first class, who shall, after summary enquiry, satisfy himself whether the person is really an abducted person, and may, in his discretion after considering all the circumstances, either recommit the person to the custody of the officer who produced him or discharge him forthwith."

The motion was negatived.

श्री लक्ष्मीनारायण साहू : स्थानपति जी, इस धारा ४ में जो क्षमता दी गई है मैं उस क्षमता को नहीं चाहता। सर्वप्रथम यह जो शब्द एबडक्टेड पर्सन (abducted person) प्रयोग किया गया है वह बहुत खराब मालूम होता है। एबडक्टेड पर्सन किसको बोलते हैं इसका हम डिक्शनरी मीनिंग देखते हैं तो मालूम होता है कि एबडक्शन (abduction) यह है "carry off or lead away illegally a wife, a child, a voter, etc." इसी लिये मैं कहता था कि जब हम एबडक्टेड पर्सन कहेंगे तो इसमें सब तरह के आदमी आ जाते हैं A child or woman, इतना ही नहीं आता। इसी लिये मेरी आपत्ति है कि एबडक्टेड शब्द को निकाल देना चाहिये।

फिर यहां जो क्षमता दी गई है assistant sub-inspector or any other police officer, specially authorised by the Provincial Government in this behalf, इसके लिये मैं इतना ही कहना चाहता हूँ कि जो कैम्प अभी बनाये गये हैं वहां कैम्प में उद्धार करने के लिये घर से निकाल कर लावेंगे और उनको वहां कैम्प में रखेंगे क्योंकि हम कहते हैं कि वहां उनको स्वतन्त्रता मिल जायगी और स्वतन्त्रता मिल जाने के बाद वह अपने दिल की बात कह सकते हैं। इसमें मेरा विश्वास नहीं होता क्योंकि कैम्प का जो एटमास्फियर (atmosphere) है उसमें भी डर लगता है। पहले तो यह देखना चाहिये कि जो दो वर्ष कहीं भी रह गया है तो उसके लिये अब एबडक्शन नहीं हो सकता। मैं ने तो बम्बई में जा कर देखा कि वहां कितनी ही औरतें एबडक्टेड करके लाई गईं और वहां वह अब प्रास्टीट्यूशन (prostitution) करती हैं। वह निकल कर आने की कोशिश करती हैं तो आ नहीं सकतीं। उसको हम एबडक्शन कहते हैं। यहां तो वह कोशिश ही नहीं करती हैं कि घर से निकल कर बाहर जायं तो इसको एबडक्शन कैसे कहेंगे। इसी लिये मैं चाहता हूँ कि इतनी क्षमता नहीं देनी चाहिये।

फिर सबसे मेरा यह कहना है कि अब जो रिकवरी (recovery) होती है वह बहुत कम हो गई है और हमारे इन्डिया के जो डिप्टी हाई कमिश्नर लाहौर

[Shri Lakshminarayan Sahu]

में हैं उन्होंने अपनी ऐसी राय दे दी है कि यह कैम्प चलाने की जरूरत नहीं है क्योंकि जो कुछ हो गया वह हो गया और इसकी अब जरूरत नहीं है। इस लिये मैं चाहता हूँ कि हम उनको जो इतना पावर (power) दे रहे हैं वह नहीं देना चाहिये कि कोई औरत तकलीफ में है और बाहर नहीं आती है लेकिन कोई दूसरा आदमी आकर रिपोर्ट करेगा तो उसके फैक्ट्स (facts) को लेकर उसका उद्धार करने की कोशिश की जायगी। यहां पर मैं तो यह पावर देने के लिये तैयार नहीं हूँ क्योंकि जैसी कि यहां बहुत लोगों की राय है पुलिस के हाथ में जो पावर होती है वह बराबर खराबी के लिये होती है। फिर जो ट्रिब्यूनल (tribunal) है तो वह दो पुलिस वालों के हाथ में है। इस लिये मैं चाहता हूँ कि यह बहुत डेंजरस (dangerous) है और इसको हटा देना चाहिये और अगर नहीं हटाते तो कम से कम इतना ही करना चाहिये कि इन्स्पेक्टर या सब इन्स्पेक्टर को रखें और any other police officer specially authorised जो उसके नीचे का होगा, सब इन्स्पेक्टर के नीचे का आदमी होगा, उसको पावर नहीं देना चाहिये।

(English translation of the above speech)

Shri Lakshminarayan Sahu: Sir, I am not in favour of the power that has been given under clause 4. In the first instance, the word 'abducted person' that has been used appears to be very much inappropriate. Who is an abducted person? When we look up its dictionary meaning we find that 'to abduct' means 'to carry off or lead away illegally a wife, a child, a voter, etc.' So I say that the expression 'abducted person' includes all kinds of people. Its scope is not limited to a child or woman. Hence, I object to the word 'abducted' which should be discarded.

Again, I wish to say something about the power given to an 'assistant sub-inspector or any other police officer, specially authorised by the provincial government in this behalf.' The abducted persons would be taken out of their homes and brought into the camps, that have been set up, for being helped. They would be kept there because we say that there they would have freedom and with freedom they would be able to speak out their mind. I cannot believe in that because the atmosphere of the camp too would inspire fear. In the first instance we should consider the fact that anyone who has lived at a place for two years cannot be regarded as an abducted person. I found in Bombay a number of abducted women now carrying on prostitution. They try to come out of it but cannot. That is what we call abduction. In the present case they make no attempt to come out of their homes. How can we call this abduction? Hence, I want to say that so much power should not be conferred.

Besides, I want to say that the rate of recovery has fallen very low now and India's Deputy High Commissioner in Lahore has given his opinion that it is no longer necessary to run these camps because what is done is done and there is no further need. Hence, I want that we should not give them so much power as we are going to. For instance, some woman is in distress but would not come out, but that if some third person makes a report it would be taken up and efforts made to help her. I am not in favour of such a power being conferred because, as most of the people hold the view, such power in the hands of the police is often used for evil. Again, the tribunal is sought to be composed

of two police officers. I think this would be a very dangerous provision and should be scrapped, and if we do not scrap it we should at least restrict it to an inspector or sub-inspector so that the person referred to as 'any other police officer specially authorised' upon whom such power is conferred should not be below the rank of a sub-inspector.

Shri Mahavir Tyagi: Sir, I have not much to say. In fact the personality of the hon. Minister is so tall and over-towering in stature, both moral and physical, that whenever he stresses a point on which I do not really see eye to eye with him, I succumb to his hypnotic influence and as a rule I begin to doubt my own wisdom. And more so when I dare into the field of legal interpretations. But what does the hon. Minister think about the legal consequences of his shifting the elderly adult women into camps, without really obtaining their consent, that is a question which I am afraid, contravenes the fundamental rights granted to citizens. Women, as I understand, are such a creature that they reconcile themselves with strange environments sooner than men. Because, once they get into a place and exchange their secrets with other members of the family, they become intimate at once. They are the repositories of secrets. They get accustomed to the place where they be. That is their nature. Now about these abducted women, my feeling is, that already violence has been committed on them once, and they have been torn from their families. Now, if they have readjusted themselves and reconciled to the changed environments and established in other families, would it not be another act of violence if they are again uprooted and taken away to the proposed camps against their wishes? Supposing she goes to a camp, here for a month and for a month there, will these two not be the months of torture to her. You cannot be absolutely sure, or even she herself cannot be absolutely sure where she was more secure and comfortable. In fact, we are doing this as part of an agreement. But the question arises whether the hon. Minister has some machinery to see that no adult woman is taken away against her will from here, or even brought here from Pakistan—I am not actuated by any Hindu Muslim feelings, I am speaking purely from the humanitarian point of view. If a woman either here or there gets reconciled, in that case, I am inclined to doubt whether it would not really be another violence on her either to take her here or there without obtaining her consent.

The question then arises whether these women who were born in India and who have been abducted, are or are not the citizens of India. They are citizens of India; their citizenship has not ceased. They were born in India; they have not yet gone to Pakistan; they were not abducted from Pakistan; they have been abducted on the soil of India itself. They are in fact citizens of India. In taking them to Pakistan without their consent, even if the agency be the police or the sanction be the proposed Tribunal, shall we not contravene the fundamental rights sanctioned by the Constitution? They are citizens of India. The fact that their husbands have gone to Pakistan does not deprive the adult wife of her rights of citizenship. They have their own choice to make. In that case, I wonder whether this law which we are enacting will withstand the fundamental rights. Under this Act there is the possibility of women being taken to Pakistan without their consent. Therefore I had proposed that a proviso be added that her consent should be taken before she is removed from where she is. I did not press it because the hon. Minister thought that it would not fit well with the scheme, this Bill envisaged. Therefore I have hesitated to move it. Could the hon. Minister please assure the House that there will be no such case where an adult woman would be taken to a foreign country without obtaining her previous consent?

The Honourable Shri N. Gopaldaswami Ayyangar: Sir, I am anxious to respond to my hon. friend's suggestion that I should make this position clear. I thought I had made it clear already but in order to remove what is obviously troubling the hon. Member's mind at the present moment I should like to repeat in other words I have said already.

Women or abducted persons are rescued from surroundings which *prima facie* do not give them the liberty to make a free choice as regards their own lives. The object of this legislation is to put them in an environment which will make them feel freer to make this choice. We first take them to a transit camp and then pass them on to a base camp, where the attempt will be to put her original relations in touch with her. It is possible that those original relations, if they happen to have migrated to Pakistan, also might come over to this base camp in Indian territory and contact her. If that is done there is no need to pass her on to Pakistan. But there are cases where the original relatives are in Pakistan and will not have the facilities to contact her in, say, a camp at Jullunder and in those cases we have agreed that these persons should be transferred to a camp in Lahore, where these relatives can go and contact her. Now when they contact her it is open to this recovered person, if she is an adult, and she has the right to make her own choice. She can say "I do not want to go back to you; I should like to get back to the family from which I was recovered in India". In that case the procedure is that she is not to be compulsorily handed over to the relations in Pakistan even if they are her original relations. Her wishes have got to be respected, she will have to be sent back to India and she will be allowed to go where she likes. That is the position. So that, I give this categorical assurance to the hon. Member that where an adult abducted person who is recovered and whose choice is finally to remain where she was, no attempt will be made to hand her over to persons to whom she does not want to go, even if those persons were either her former husband or parents.

Mr. Chairman: The question is:

"That clause 4, as amended, stand part of the Bill."

The motion was adopted.

Clause 4, as amended, was added to the Bill.

Shri Lakshminarayan Sahu: Sir, I move:

"That after the existing Proviso to sub-clause (2) of clause 5 of the Bill, the following new Proviso be added;

'Provided further that no girl of the age of 18 years and more be detained in a camp unless she expresses her willingness to be sent to Pakistan.'

इस में मुझे कुछ ज्यादा कहना नहीं है।

(I do not want to say anything more in this matter.)

The Honourable Shri N. Gopaldaswami Ayyangar: I do not accept it.

Mr. Chairman: The question is:

"That after the existing Proviso to sub-clause (2) of clause 5 of the Bill, the following new Proviso be added;

'Provided further that no girl of the age of 18 years and more be detained in a camp unless she expresses her willingness to be sent to Pakistan.'

The motion was negatived.

Mr. Chairman:

The question is:

"That clause 5 stand part of the Bill."

The motion was adopted.

Clause 5 was added to the Bill.

The Honourable Shri N. Gopalaswami Ayyangar: Sir, I move:

"That in sub-clause (1) of clause 6 of the Bill, for the words 'is an abducted person or not', the following be substituted:

'is or is not an abducted person or whether such person should be restored to his or her relatives or handed over to any other person or allowed to leave the camp,'"

This amendment enlarges the functions of the tribunal. In the clause as it stands in the Bill the tribunal has jurisdiction only to this extent, to decide whether a person is or is not an abducted person. But after discussion with hon. Members who have given notice of amendments I came to the conclusion that it is necessary that this tribunal should have these further powers also in order that they might give a decision on all aspects of a person's detention in the camp and his or her disposal from the camp. That is why this has been enlarged.

Shri Jaspat Roy Kapoor: Sir, I would like to move my amendment subject to the acceptance of the hon. Minister. It is a very small amendment which my hon. friend may be pleased to accept. It only suggests that the words "conveyed out of India" should also be included. That may also be one of the alternative issues referred to the tribunal.

The Honourable Shri N. Gopalaswami Ayyangar: I am quite prepared to accept it.

Shri Jaspat Roy Kapoor: In that case I will formally move my amendment:

"That in the amendment moved by the Honourable Shri N. Gopalaswami Ayyangar, after the words 'handed over to any other person' the words 'or conveyed out of India' be inserted."

Shri H. V. Pataskar: Sir, I move:

"That in sub-clause (1) of clause 6 of the Bill, after the words 'a tribunal' the following be inserted:

'presided over by a Judge of the High Court and'."

If this amendment is accepted, clause 6 will read like this:

"If any question arises whether a person detained in a camp is an abducted person or not, it shall be referred to, and decided by, a tribunal presided over by a Judge of the High Court and constituted for the purpose by the Central Government."

The amendment is a very simple one. I can understand any objection with respect to a long procedure being followed before a person is taken into custody and after that when the person is brought to the camp. Under clause 8 of the Bill the jurisdiction of the court in such matters is being taken away. But I find that the amendment that has now been moved by my hon. friend the mover in charge of the Bill widens the scope of the present clause 6. Clause 6 was only confined to giving the tribunal or authority the power to decide whether a person is or is not an abducted person. Now it is proposed to widen the clause so as to include in it powers not only to decide whether a person is or is not an abducted person but to decide "whether such person should be restored to his or her relatives or handed over to any other person or allowed to leave the camp." These three things are also now sought to be brought within the purview of the proposed Tribunal. That will, I submit,

[Shri H. V. Pataskar]

seal the fate of the person who is taken custody of and produced in the camp. Therefore it becomes all the more necessary that instead of allowing these matters to be decided by two District Police Officers, one from Pakistan and one from India, it should be in the charge of some judicial authority like a High Court Judge. By this legislation which gives such wide powers to the police officers and to the social workers, we are trying to take away all jurisdiction from the court. I have nothing against the social workers, but their work will end when the abducted person is rescued and produced in the camp. Beyond that the social workers will have nothing to do in this matter and the matter will be decided by the police officers of the two Dominions. It is a misnomer to call this body a Tribunal which is going to decide the fate and liberty of the so-called abducted person. We use the word "tribunal", and what is it to consist of? Only two police officers.

It was said that we who are suggesting some amendments to this Bill are thinking in terms of an abducted person being like an accused, because there is provision of the police as persons who take the abducted persons "into custody". It is not certainly so. Apart from that, I believe it is right that when we call it a "tribunal" it does mean some judicial authority. Otherwise can a "tribunal" be said to consist of two police officers of whom one does not even belong to our Dominion—he belongs to the other Dominion. In that case it is better that we do not have any such tribunal and the fate of the person is allowed to be sealed by the D.S.P. of our Dominion rather than that we should give under this exalted name and judicial appearance such powers to a body which is to consist of two district police officers, over one of whom at any rate we can have no control. I cannot comprehend of such a body being regarded as a tribunal. Looking to the amendment proposed, by the hon. Mover himself and which I may say is going to be accepted, and in view of what I have already said with regard to the other part of the provisions, in a measure which is giving such extraordinary powers to the executive—the police—and social workers. I think that the tribunal must be presided over by a person with a judicial temperament. I hope my amendment will be accepted by the mover.

Shri Upendranath Barman (West Bengal: General): Sir, I beg to move:

"That in sub-clause (1) of clause 6 of the Bill, the following be added at the end:

'but if such person expresses unwillingness to be restored to his or her relatives, the matter shall be decided by a judicial tribunal constituted for the purpose by the Central Government'."

Sir, I recognise that the hon. Minister has also accepted in his own amendment the same principle and purpose for which I have moved my amendment, save and except this that while he empowers the same tribunal with those powers namely to decide whether the person is willing to be restored to the original family or to remain where she is, by my amendment I propose that after the question whether the person is an abducted person or not is decided by the tribunal as has been agreed to by the two Governments, if any occasion arises whereby it is necessary to ascertain the wish of the person whether she should be restored to the original family or be allowed to remain where she is, such matters should not be decided by the tribunal that is at present proposed—which will be constituted only of the S.Ps. of the two Dominions—but by a judicial tribunal. That is the difference. I think that the original clause as it was, meant something different. It was only to decide whether a person is an abducted person or not. After that it was obligatory upon each of the Governments to restore the persons to their original families. If that position remains I have no objection because they are to be restored to their original families and after they go back to their original families they

will reconcile themselves to their old position. But opinions have been expressed on the floor of this House and, along with other Members, by lady Members also that those young girls who do not like to go back to their original families should not be forced to go back. I suppose that in pursuance of their wishes the hon. Minister has expanded the scope of the clause by his own amendment. If that view of the case be held up or conceded, my opinion is that the two S.Ps. constituting the tribunal should not decide the question whether the abducted person is really willing to go back to the original family or not, because police officers are not generally accustomed to do such work. Their duties are generally confined to executive matters. Under the ordinary criminal law in respect of matters like abduction or kidnapping when occasion arises for ascertaining the wishes of the person it is generally done by Magistrates who have got a judicial temperament and judicial notions in these matters. It also happens that sometimes at the first instance when young ladies are brought to the court they remain under the influence of their environment and they have sometimes to say things under coercion and undue influence. In that case, generally the Magistrate after taking a statement takes her alone to a separate room and gives her an assurance that she can speak her mind without any fear and after that she is allowed to go to some place where she may like to go. After ten or fifteen days or a month, the Magistrate again calls for that woman and then giving her all assurances of safety asks her to speak.

Shri Krishna Chandra Sharma: There is no such procedure.

Shri Upendranath Barman: There is. But if the tribunal which is composed of the two S.Ps. has to handle too many cases at a time and as the police officers are generally not accustomed to doing such work, I think their decision may not be quite correct. Apart from that, it is a question of the two Dominions being concerned. When a Hindu girl is taken away from Pakistan and brought to India or when she is asked by the Tribunal in Pakistan, in Lahore or at any other place, as to where she would go, when the matter is decided by the two S.Ps. of the two Dominions, then the other Dominion may not be satisfied if the girl does not choose his Dominion. But if the matter is decided by some judicial authority or by a tribunal composed of judicial members of both the Dominions, then I think it will claim better confidence from both the Dominions. For this reason, I suggest that either a judicial tribunal should be entrusted with the duty of ascertaining the real wish of the abducted woman, or if the other Dominion agrees then the tribunal which is proposed under clause 6 may be constituted by, instead of two police officers, two judicial officers.

Mr. Chairman: I will place the amendments before the House. First of all, I will put the amendment of the Honourable Shri Ayyangar. Amendment moved:

"That in sub-clause (1) of clause 6 of the Bill, for the words 'is an abducted person or not,' the following be substituted:

'is or is not an abducted person or whether such person should be restored to his or her relatives or handed over to any other person or allowed to leave the camp.'

To this, Mr. Jaspat Roy Kapoor has moved an amendment. Amendment to amendment moved:

"That in the amendment moved by the Honourable Shri N. Gopalaswami Ayyangar, after the words 'handed over to any other person', the words 'or conveyed out of India' be inserted."

Then Mr. Pataskar's amendment. Amendment moved.

"That in sub-clause (1) of clause 6 of the Bill, after the words 'a tribunal' the following be inserted:

'presided over by a Judge of the High Court and'."

[Mr. Chairman]

Then Mr. Barman's amendment. Amendment moved:

"That in sub-clause (1) of clause 6 of the Bill, the following be added at the end:

'but if such person expresses unwillingness to be restored to his or her relatives, the matter shall be decided by a judicial tribunal constituted for the purpose by the Central Government.'

Pandit Thakur Das Bhargava: Sir, I congratulate the hon. Mover of this Bill for being pleased to make the amendment which stands in his name. Now, it is absolutely clear that the scope of the jurisdiction of this tribunal will be enlarged if this amendment is accepted and it will be in their power to hand over such person to any other person or to restore her to the custody of other persons or to allow her to leave the camp. As a matter of fact, unless this existed in this clause the jurisdiction of the tribunal would have been very narrow and the assurance which the hon. mover has given to this House could not have possibly been implemented if this provision was not enlarged. Now, with the enlargement of this provision much of the objection of hon. Members goes away. At the same time, as was just stated by the hon. mover, it is not within his power at present to see that any other kind of tribunal is appointed because according to the agreement with the Pakistan Government the two S.Ps. constitute the tribunal. I quite see the point but he himself was pleased to say that he would try to see that certain modifications are made in regard to the agreement so that it might meet the wishes of the House. I beg of him to kindly consider the point and do all he can so far as this matter is concerned.

We heard in Assam Kamrup Desh men were turned into animals by magic and we also heard of the Kazi of Jaunpur who had the capacity of turning an ass into a man and a man into an ass. But it was left to the two Governments to turn two S.Ps. into a tribunal. The very word "tribunal" denotes to my mind that there is some sort of a judicial person presiding over it. I cannot understand why it is that in no case was there any difference of opinion between the two S.Ps. Either the two S.Ps. were too good, or as a matter of fact they never troubled themselves or they may have bargained that one girl is sent to one side and the other is sent to the other side.

The Honourable Shri N. Gopalaswami Ayyangar: Or all the recoveries were very straightforward?

Pandit Thakur Das Bhargava: That may be so, and if that is so then I have nothing to say if my friend is satisfied because I have nothing with me to controvert him. All the same, having practised in the Courts for the last forty years, I know the S.Ps. are the least competent to decide a complicated question of this sort. What are the questions referred to them? They are: whether a person is abducted or not, whether the person should be made over to the previous husband or the later husband or whether she should be allowed to go away. These are most intricate questions and the S.Ps. are the least competent to decide on them. Moreover, this question relating to abducted persons is a most important question because once it is decided that an abducted person is to be made over to Pakistan it will be difficult for that person to come over to India. And may I just humbly enquire as to what would happen to those provisions of the Constitution which relate to the liberty of the citizen? It is the Courts alone which can decide such intricate questions. If there is no controversy as my friend is pleased to say, then there is no occasion for a tribunal. If the question is so easy as he thinks then there is no occasion for a tribunal. But if he wants a tribunal let him have a good tribunal appointed to decide for all time whether the person is to remain a citizen of India or not.

I can understand that he cannot have any tribunal at all and say that we are helpless as there is nothing in the agreement, but if you want to have a tribunal I would beg of the hon. Minister to kindly see that a proper tribunal is appointed. Section 8 says:

"Notwithstanding anything contained in any law for the time being in force, no Court shall have jurisdiction—

(a) to entertain or adjudicate upon any question whether a person is or is not an abducted person;"

I know the hon. Minister has given an amendment to this. I am very happy about it and I congratulate him in advance that he has taken away sub-clauses (a) and (c). But if the clause is allowed to remain there without amending it, then the decisions which this tribunal takes will be of a very delicate nature and will be of very great importance to persons in the predicament in which they will find themselves. My humble submission, therefore, is that not only should (a) and (c) be taken away but (b) also should be taken away. Therefore, the scope of the tribunal should be enlarged. This is a good reason for the personality of the tribunal also to be changed because whereas this was a simple question now it is a much more complicated one.

Therefore, I would beg of the hon. Minister to do his very best to see that there is an agreement about this that the tribunal to be appointed consists of judicial persons and persons experienced in judicial tribunals because the question before them will be of a very complicated nature.

Shri Ajit Prasad Jain: Sir, much of what I wanted to say has already been said by my hon. friend Pandit Thakurdas. As it will be seen from the amendment of the hon. Minister, the scope of the matters on which this tribunal will be entitled to adjudicate has been very much widened. The Tribunal will have the authority not only to decide whether a person is or is not an abducted person but it will also pass orders as to whether the person should be restored to his relatives or handed over to any other person or be allowed to leave the Camp or be conveyed out of India. Obviously the recovered person is a domicile of India. He or she may have been separated from the family and may at the time of recovery be living in another family but the Tribunal will have the right to send that person out of India. That is a very serious thing and no one except an independent authority should have the power to decide a question like that. It will be too much to entrust these powers to Superintendents of Police and I do hope that whatever may be the difficulties arising from the agreement, the hon. Minister will see that a matter of such great importance is not left to the decision of Police Officers who, I may submit, are by no means very judicial-minded but to persons competent to decide questions of that nature. The proposition is such an eminent one that Pakistan should have no difficulty in accepting a proposal of that kind and in fact it will be a reciprocal proposal. Whatever may be its effect on India, there will be corresponding effect in Pakistan but the liberty of the citizens is a great thing and it will be unfortunate if that liberty is left to the hands of incompetent persons or persons who are not well-equipped to decide those questions. I do hope that the hon. Minister will make it a point to see that a proper kind of tribunal is set up.

श्री लक्ष्मीनाराण साहू : जो मेरा संशोधन है वह इस तरह है :

(My amendment is as follows:)

"That in sub-clause (2) of clause 6 of the Bill, for the words 'shall be final' the following be substituted, namely:

'shall be appealable to the High Court.....'"

Mr. Chairman: I am sorry that will come later.

The Honourable Shri N. Gopaldaswami Ayyangar: I fully appreciate the point of view that has been put before the House by those hon. Members who have expressed a preference for a strictly judicial tribunal to function under clause 6 of this Bill. Now as my hon. friend Pandit Bhargava has recognized, it is not possible for us to put into this Bill anything of the kind that has been suggested in the shape of these amendments, either a High Court Judge presiding over this Tribunal or a Special Judicial Tribunal to be constituted by the Central Government. So long as the agreement stands, we have got to work it but I might point out to the House that if it is possible for the two Dominions to agree upon to changing the Constitution of this Tribunal on the lines suggested by hon. Members or in other ways there will be nothing in this Bill which will prevent that so long as an agreement is arrived at. That is a matter of negotiation between the two Dominions.

So far as the criticisms regarding the functioning of the Police Officers' Tribunals are concerned, I wish to tell the House that this Tribunal has worked very satisfactorily. In cases where the two members of the Tribunal were unable to agree in the first instance, they referred the matter for advice to two high-powered officers, viz., a Commissioner of a Division in India and a Chief Secretary of a Province in the other Dominion. After getting their advice, they considered it and came to a decision finally in agreement. In cases where the intricacies of the particular dispute were such as to involve questions of policy, one or two cases have been referred to me, for advice and on the other side to the Minister in-charge of this work in the other Dominion and that has guided.....

Shri Jaspal Roy Kapoor: Will this procedure be possible to be adopted hereafter in view of sub-clause 2 of clause 6?

The Honourable Shri N. Gopaldaswami Ayyangar: There is nothing which prevents it. This is only a question of taking the advice of people who are of a higher status with more experience and who can determine questions of policy and so forth. There is nothing to prevent it. Therefore I am only mentioning that to show that we have this point which hon. Members have stressed so much always in view and have tried to see that satisfactory decisions are arrived at. But if we want to change the character of the Tribunal, that should be a matter of further negotiations with the other Dominion and if there is necessity for doing so, we shall take necessary steps.

I hope hon. Members will accept the amendment I have moved as amended by the further amendment of Mr. Jaspal Roy Kapoor.

Mr. Chairman: What about other amendments?

The Honourable Shri N. Gopaldaswami Ayyangar: I do not accept any of the other amendments.

Mr. Chairman: I will put the amendment of the hon. Mr. Gopaldaswami Ayyangar. There is an amendment to this amendment by Mr. Kapoor. I will put it first.

The question is:

"That in the amendment moved by the Honourable Shri N. Gopaldaswami Ayyangar, after the words 'handed over to any other person', the words 'or conveyed out of India' be inserted."

The motion was adopted.

Mr. Chairman: I will now put the amendment of Shri Gopaldaswami Ayyangar as amended by Mr. Kapoor's amendment.

The question is:

"That in sub-clause (1) of clause 6 of the Bill, for the words 'is an abducted person or

not', the following be substituted :

'is or is not an abducted person or whether such person should be restored to his or her relatives or handed over to any other person or conveyed out of India or allowed to leave the camp,'"

The motion was adopted.

Mr. Chairman: The question is:

"That in sub-clause (1) of clause 6 of the Bill, after the words 'a tribunal' the following be inserted :

'presided over by a Judge of the High Court and'."

The motion was negatived.

Mr. Chairman: I will now put Mr. Barman's amendment.

Shri Upendranath Barman: I would like to withdraw my amendment.

Mr. Chairman: Has the hon. Member leave of the House to withdraw his amendment?

The amendment was, by leave of the Assembly, withdrawn.

Mr. Chairman: We go to sub-clause (2) of clause 6. There are three amendments. Are any of them acceptable to the hon. Minister?

The Honourable Shri N. Gopalaswami Ayyangar: I do not accept any of the amendments.

श्री लक्ष्मीनारायण साहू : मेरे नाम में दो संशोधन हैं । मैं दोनों एक साथ मूव करता हूँ :

"That in sub-clause (2) of clause 6 of the Bill, for the words 'shall be final' the following be substituted :

'shall be appealable to the High Court of the Province in which the Tribunal is situated, or where there is no High Court, to the Supreme Court.'"

Mr. Chairman: The other is a negative amendment and it is therefore out of order. •

Shri C. Subramaniam: It only relates to sub-clause (2). You will be putting the whole clause to vote. So, it will be a substantial amendment, and not merely a negative amendment.

Mr. Chairman: The hon. Member may move it then.

Shri Lakshminarayan Sahu: I move:

"That the Proviso to sub-clause (2) of clause 6 of the Bill be omitted."

इसके बारे में मैं ज्यादा बहस नहीं करना चाहता हूँ । एक मत यह है कि जो विचारशील व्यक्ति हैं उनका यहां प्रबन्ध होना चाहिये और जो क्रियाशील, एग्जीक्यूटिव टाइप (Executivetype) का है वह आदमी ट्रिब्यूनल (Tribunal) में रहना ठीक नहीं है । इतना ही कहना काफी है और ज्यादा कुछ नहीं । ट्रिब्यूनल जब हम कहते हैं तो बराबर यह ख्याल आता है कि जज के मुवाफिक आदमी होना चाहिये, वह एग्जीक्यूटिव टाइप का आदमी नहीं होना चाहिये । इसीलिये मैं ज्यादा समय नहीं लेना हूँ और यह दोनों संशोधन मैं मूव करता हूँ ।

(English translation of the above speech)

Shri Lakshminarayan Sahu: Two amendments stand in my name. I move both the amendments simultaneously:

"That in sub-clause (2) of clause 6 of the Bill, for the words 'shall be final' the following be substituted:

'shall be appealable to the High Court of the Province in which the Tribunal is situated, or where there is no High Court, to the Supreme Court.'"

Mr. Chairman: The other is a negative amendment and it is therefore out of order.

Shri C. Subramaniam: It only relates to sub-clause (2). You will be putting the whole clause to vote. So, it will be a substantial amendment and not merely a negative amendment.

Mr. Chairman: The hon. Member may move it then.

Shri Lakshminarayan Sahu: I move:

"That the Proviso to sub-clause (2) of clause 6 of the Bill be omitted."

I do not want to enter in detailed discussion on this matter. The first suggestion is that persons of considerate disposition should be appointed on the Tribunal. It is not proper to appoint persons of executive type having active temperament on this Tribunal. It is sufficient to say so much only and not more. Whenever we talk of Tribunals we always keep in mind the fact that the persons appointed thereupon should be agreeable to the hon. Judge, they must not be of the executive type. Therefore I do not take any more time and move both the amendments.

Shri Jaspal Roy Kapoor: Sir, I beg to move:

"That in the Proviso to sub-clause (2) of clause 6 of the Bill the following be added at the end:

'after giving to the person or persons interested or concerned, reasonable opportunity of being heard.'"

Sir, the sub-clause after the incorporation of my amendment would read thus:

"(2) The decision of the tribunal constituted under sub-section (1) shall be final:

Provided that the Central Government may, either of its own motion or on the application of any party interested in the matter, review or revise any such decision after giving to the person or persons interested or concerned, reasonable opportunity of being heard."

Sir, I venture to move this amendment in the hope and belief that hon. **Shri Gopalaswami Ayyangar** would consider it not only reasonable, but very necessary. Obviously when the Central Government is going to review or revise the decision of the Tribunal, it must before passing its final order, give a reasonable opportunity to the person or persons concerned or interested in the matter to represent their case. This, I think, Sir, is an elementary principle of jurisprudence. But it may be said that principles of jurisprudence find no place here. Be that as it may, there is no doubt about the fact that a person who is going to be affected by the order must have an opportunity to be heard. I am sure, Sir, that this principle will be acceptable to the hon. the Mover.

Mr. Chairman: Amendments moved:

(i) "That in sub-clause (2) of clause 6 of the Bill, for the words 'shall be final' the following be substituted:

'shall be appealable to the High Court of the Province in which the Tribunal is situated, or where there is no High Court, to the Supreme Court.'"

(ii) "That the Proviso to sub-clause (2) of clause 6 of the Bill be omitted."

(iii) "That in the Proviso to sub-clause (2) of clause 6 of the Bill the following be added at the end :

'after giving to the person or persons interested or concerned, reasonable opportunity of being heard.'

The Honourable Shri N. Gopalaswami Ayyangar: Sir, with regard to the first amendment, my only answer is that it does not fit into the scheme of this Bill at all. I have given my reasons for it in connection with other clauses which raised more or less the same issue more than once and I do not wish to repeat what I have already said.

As regards the second amendment, in a sense, it is not different from the first amendment, but as I did not accept it, it is necessary there should be an authority to review, to revise a decision of the Tribunal and that should be vested in the Central Government. Therefore, that proviso as it is should remain.

As regards my hon. friend Shri Jaspat Roy's amendment I quite see that ordinary principles of jurisprudence would require this thing to be done, but the mere fact that these words do not find a place in a particular clause does not necessarily mean that that opportunity will not be given. I should also like to mention that as the power of revision or review is vested in the Central Government it will oftentimes not be necessary for them to give a fresh opportunity to a party interested or concerned, because all the facts, all their contentions, will be reported on to the Central Government before they take a decision. Nor will it be convenient for them in every such case to give an opportunity and hold a regular hearing before coming to a decision. I think hon. Members might well trust the Government to see that the point of view of the party interested or concerned is always placed before them before they take a decision. So I suggest that he does not press his amendment.

Shri Jaspat Roy Kapoor: I agree not to press it, Sir.

Shri Lakshminarayan Sahu: I want my amendments to be put to the House.

Mr. Chairman: The question is:

"That in sub-clause (2) of clause 6 of the Bill, for the words 'shall be final' the following be substituted :

'shall be appealable to the High Court of the Province in which the Tribunal is situated, or where there is no High Court, to the Supreme Court.'

The motion was negatived.

Mr. Chairman: The question is:

"That the Proviso to sub-clause (2) of clause 6 of the Bill be omitted."

The motion was negatived.

Shri Jaspat Roy Kapoor: Sir, I wish to withdraw the amendment.

Mr. Chairman: Has the hon. Member leave of the House to withdraw his amendment?

The amendment was, by leave of the Assembly, withdrawn.

Mr. Chairman: The question is:

"That clause 6, as amended, stand part of the Bill."

The motion was adopted.

Clause 6, as amended, was added to the Bill.

Sjt. Rohini Kumar Chaudhuri: Sir, I move:

"That in sub-clause (2) of clause 7 of the Bill, for the words 'and hold the person in custody', the words 'the person' be substituted."

The amended section will read thus:

"Any officer or authority to whom the custody of any abducted person has been delivered under the provisions of sub-section (1) shall be entitled to receive the person in custody and either restore such person to his or her relatives or convey such person out of India."

What I object to under this clause is that there are so many bringing in and bringing out of the custody under this law that it is very objectionable. First of all, the Asst. Sub-Inspector takes charge of the woman. He keeps that woman in his custody for some time; no definite period has been prescribed for detention in his custody. As I had once before, even in the Criminal Procedure Code there is a time limit prescribed, 24 hours, but here under this law no such time limit has been prescribed. After keeping the woman in his custody for some time, he makes her over to the Camp, and in the Camp she remains for some length of time. What is the length of time during which she can be detained has not been prescribed in this latter case also. After that what happens? She is handed over to any other officer and that officer is entitled to keep her in his custody for some time. And so three opportunities are given for her to be detained: The woman can be detained once by the Asst. Sub-Inspector, then by the officer in charge of the Camp and then again by another officer who keeps the woman for some time and then either takes her out of India or restores her to her relatives. What is the idea of this third officer keeping the woman in his custody? The woman can be brought out of the camp only when everything is ready, when she can either be restored to her relatives or sent out of India. Where is the necessity for this woman being kept in his custody for any length of time. In the first case, there is some qualification. It is said that she should be handed over to the Camp as early as possible with the least possible delay. In the third case, in the final stage, there is no limit of time during which the woman can be kept in custody? Why this generosity to this third officer I do not understand. So, Sir, I submit that the clause should be amended in the manner I have suggested so that you should make enquiries immediately and either hand her over to her relatives or send her out of India. That is my whole point.

Mr. Chairman: Amendment moved:

"That in sub-clause (2) of clause 7 of the Bill, for the words 'and hold the person in custody', the words 'the person', be substituted."

Shri Ajit Prasad Jain: Sir, I beg to move:

"That in sub-clause (2) of clause 7 of the Bill, the following be added at the end: 'as the Provincial Government may direct'."

In order to appreciate the implications of this amendment, I would like to explain the procedure for the recovery of abducted persons that is laid down in this Bill and contemplated in the Inter-Dominion Agreement. As soon as a Police Officer gets information about an abducted person, he goes and recovers that abducted person and with the least possible delay, he will carry that abducted person to what are known as primary camps. From that camp, that person is liable to be sent to a transit or basic camp, if both the superintendents of police—one from India, and the other from Pakistan—agree that a person is an abducted person or otherwise, the matter ends. In case of doubt, the person has necessarily to be carried to the transit camp. I am referring, Sir, to paragraph 8 of the Inter-Dominion Agreement, which says:

"When in doubtful or resisting cases, no recovered women will be given up or released without being brought to the Provincial Transit Camp at Lahore or Jullundur, except where the Provincial Organiser of the other Dominion agrees to such a course in any special case."

After the recovered women are brought to the Provincial Transit Camp at Lahore or Jullundur, each doubtful or resisting case should be enquired into and resolved by the S.Ps. The case may be referred to High Powered Officers of the two Dominions for resolution."

Now, these transit camps according to para. 2 of the Inter-Dominion Agreement are managed in the case of the Jullundur Camp by the two social workers of Pakistan, and in the case of the Lahore Camp by the two social workers of India. From these transit camps....

The Honourable Shri N. Gopalaswami Ayyangar: Base camps.

Shri Ajit Prasad Jain: I am referring to paragraph 2, and then they call these camps as transit camps.

The Honourable Shri N. Gopalaswami Ayyangar: Now called Base Camps.

Shri Ajit Prasad Jain: Now from these Base Camps, abducted persons can be transferred from Jullundur to Lahore and from Lahore to Jullundur. Arrangements for transporting from Jullundur to Lahore will be under the workers of Pakistan. Now, Sir, this means that once an abducted person is handed over to the Base Camp at Jullundur, that person will continuously remain in the custody of the social workers of Pakistan. Now, the present clause authorises any officer in charge of the camp to deliver any abducted person detained in the camp to the custody of such officer or authority as the Provincial Government may, by general or special order, specify in this behalf. What are the powers of the person to whom an abducted person has been entrusted under sub-clause (1)? He is entitled to hold that person in custody and either restore such person to his or her relatives or convey such person out of India. It is a very serious thing that a citizen of our Dominion should be sent out of that Dominion and that such decision should be in the hands of the persons managing the Base Camp at Jullundur. Such orders should be passed by the Provincial Government so that the people may have confidence. In fact, during the past two or three days that this Bill has been under discussion, much has been said against the method in which recovery of abducted person is being done. I do not necessarily subscribe to those complaints, but I do submit that the procedure laid down in this Bill should be one which will inspire confidence in this country, and therefore I have suggested this small amendment that final orders as to whether a person should or should not be conveyed out of India should be passed by a responsible authority and *i.e.* the Provincial Government, and not by persons managing the Base Camp at Jullundur.

The Honourable Shri N. Gopalaswami Ayyangar: May I draw the hon. Member's attention to the amendment to clause 6 which we have just passed. The decision as to whether a person should be conveyed out of India will be in the hands of the Tribunal.

Shri Ajit Prasad Jain: Section 7 is independent of Section 6 of the Bill. In fact, this sub-clause (2) refers only to cases where a person has been delivered to the custody of a person, not under clause 6 at the instance of the Tribunal but at the instance of the Provincial Government.

The Honourable Shri K. Santhanam: Clause 7 can come into operation only after the procedure in clause 6 has been observed, and the officer has to be appointed by the Provincial Government; not by Pakistan but by our own Provincial Government.

Shri Ajit Prasad Jain: If no person will be sent out of India except under the orders passed by the Tribunal, I have no objection, but if clause 6 and clause 7 contemplate some cases in which even a single person can be sent out of India without the orders of the Tribunal, then I have very strong objection to that

[Shri Ajit Prasad Jain]

My view is that if a person is to be sent out of India, it should be done only under the orders of the proper authority, and even supposing it is an Indian official, as hon. Mr. Santhanam has said, I do not feel inclined to agree with him.

Mr. Chairman: I do not think that section 7 applies to the case which you are contemplating. It applies only to the custody of persons here in the Dominion of India.

Shri Ajit Prasad Jain: It says person or authority and the social workers managing the Jullundur Camp are also authority and abducted persons may be entrusted to their custody.

The Honourable Shri N. Gopalaswami Ayyangar: I think the hon. Member's difficulty will disappear if I explain that under clause 7(1) it is the officer in charge of a camp that may deliver an abducted person to the custody of an officer or authority appointed by the Provincial Government. Now the officer in charge of a camp who is in charge of the persons detained in that camp has to submit cases of such persons to the Tribunal for disposal under the powers given to that Tribunal under clause 6. Therefore, although the custody is handed over to the officer named by the Provincial Government that officer who has got custody in that regular way has the right to receive and hold a person for the purpose of restoring her to his or her relatives or conveying such person out of India. That can only follow from the order of the tribunal.

Shri Ajit Prasad Jain: May I take it that it is a definite undertaking that no abducted person shall be sent out of India except under the orders passed by the tribunal?

Some Honourable Members: Yes, yes.

Mr. Chairman: Amendment moved:

"That in sub-clause (2) of clause 7 of the Bill, the following be added at the end: 'as the Provincial Government may direct'."

Shrimati Purnima Banerji (U.P.: General): Will the hon. Minister inform us that under clause 6 is this tribunal going to be expanded or will it be constituted by the two Superintendents of Police of the two Dominions?

The Honourable Shri N. Gopalaswami Ayyangar: I have already said that the constitution of the Tribunal is now determined by the terms of the agreement between the two Dominions and as to whether it should be changed, how far it might be changed and so on, is a matter of further negotiation between the two Dominions.

Pandit Thakur Das Bhargava: May I know if this Tribunal will exercise jurisdiction in the case of the registered unwilling cases?

An Honourable Member: All cases which are referred to it.

The Honourable Shri N. Gopalaswami Ayyangar: In other cases it is perfectly accepted by everybody.

Shri H. V. Pataskar: Section 7 may come into operation without section 6 being applied at all. In section 7, it says: "Any officer in charge of a camp may deliver any abducted person detained ..." and without a case coming under section 6, what will happen? A person could be removed by the officer in charge of the camp and the officer will send him out of India.

The Honourable Shri N. Gopalaswami Ayyangar: The person who is the subject of these proceedings is a person detained in a camp. There is an

officer in charge of that camp and there is a tribunal which sits over persons in the camp, which passes orders as to what should be done with persons and in accordance with that order, the person is handed over to any authority that may be designated by the Provincial Government.

Shri H. V. Pataskar: After the question is decided by the tribunal, then alone he may be transferred. Some such provision should be there.

Shri Ajit Prasad Jain: There may be cases where the Tribunal may not come in. Will it not be open to the social workers in charge of the basic camp to send such persons away to Pakistan straightoff?

Mr. Chairman: I think these questions may be put after the hon. Minister replies. Probably, if he replies, all these doubts will be made clear.

Shri Jaspat Roy Kapoor: I only wish to say if the Chair would point out one amendment which the hon. Minister proposes to move hereafter, it will solve the difficulty.

Mr. Chairman: That will be clear after the hon. Minister moves the amendment. He can hold on till then.

Shri Lakshminarayan Sahu rose—

The Honourable Shri N. Gopaldaswami Ayyangar: May I tell the hon. Member the officer is always a lady.

Shri Lakshminarayan Sahu: Then, I do not move the amendment.

The Honourable Shri N. Gopaldaswami Ayyangar: I do not think there is anything really to add to what I have already said. The main thing is that we are providing for immediate detention in a camp. There is an officer in charge of a camp. There is also a Tribunal which gives decisions about the disposal of persons in the camp and after those decisions are given, they are handed over to particular people or conveyed out of India or they are handed over to an officer or authority nominated by the Provincial Government and until the actual conveyance out of India is completed the person has to be in the custody of the officer concerned. The idea is during that intervening period she has to be in some kind of custody at the end of which she is handed over to her original relatives or conveyed out of India or disposed of otherwise.

Dr. P. S. Deshmukh (C. P. and Berar: General): There is a doubt in the minds of many hon. Members and the doubt is something like this: Is the Tribunal the only constituted body which will declare a person to be an abducted person? As it appears from the speeches certain persons are declared to be abducted persons without any reference to the tribunal. So long as there is no clause that there shall be no abducted person declared as such unless the case is referred to the tribunal, the apprehension in our minds is, I think genuine. Because any workers or any other people without reference to the camp or the Tribunal may by mutual understanding declare a certain person to be an abducted person and an officer who is purported to act on behalf of the Provincial Government may take upon himself the responsibility of sending that person away. The clarification asked for refers to this contingency arising.

The Honourable Shri N. Gopaldaswami Ayyangar: What the hon. Member fears apparently is that without a case being put before the Tribunal somebody might take a decision that the person concerned is an abducted person and then proceed to hand over that person to an officer nominated by the Provincial Government who might dispose of her in any way he likes. Now the actual experience is that in a very large number of cases, there is absolutely no dispute.

[Shri N. Gopaldaswami Ayyangar]

as to whether a person is an abducted person or not, and from the beginning, from the point of recovery to the point of taking to the camp and coming to a decision as to whether she is an abducted person or not, nobody raises any objection. Everybody is agreed about it. So in order to smoothen the early restoration of the person to her relatives action is taken for the purpose of handing over, but if any question is raised about whether she is an abducted person or not, then the thing is put before the tribunal. That is what is done at present. I can also tell the hon. Member that we have got checks against this sort of abuse. One is that these camps are run under the general supervision of the Deputy Commissioner of the District who has got to go to the camps and see which persons have come in, who have been handed over, and so forth. The Tribunal itself when it sits over a particular case, also looks into the working of a particular camp and sees that things are properly done, and so on. That is what happens at present. It is quite within our power in regulating the procedure, to issue instructions to the Tribunal that the Tribunal should look into every case before a final order is made as to particular persons. If the hon. Members are anxious that I should issue the instructions, I shall do so.

Dr. P. S. Deshmukh: That should be the only body which will declare any person to be an abducted person. Unless this is done, there are likely to be difficulties.

Sjt. Rohini Kumar Chaudhuri: I withdraw my amendment.

Mr. Chairman: Has the hon. Member leave of the House to withdraw his amendment?

The amendment was, by leave of the Assembly, withdrawn.

Shri Ajit Prasad Jain: In view of the assurance given by the hon. Minister that no abducted person will be sent out of India except under the orders of the tribunal, I withdraw my amendment.

Mr. Chairman: Has the hon. Member leave of the House to withdraw his amendment?

The amendment was, by leave of the Assembly, withdrawn.

Mr. Chairman: The question is:

“That Clause 7 stand part of the Bill.”

The motion was adopted.

Clause 7 was added to the Bill.

The Honourable Shri N. Gopaldaswami Ayyangar: Sir, I propose to move my amendment so that the other amendments may be avoided. This particular clause is an elaboration of the corresponding clause in the ordinance now in force. That clause is in keeping with and in the same terms as the corresponding clause in the Pakistan ordinance. After considerable discussion, I agreed to restore the clause in the existing ordinance for the main reason that at present the Pakistan ordinance does not contain it and it is best to make a change in this particular clause after an agreement has been reached with Pakistan. So I move:

“That for clause 8 of the Bill, the following be substituted :

‘8. *Detention in camp not to be questioned by Court.*—Notwithstanding anything contained in any other law for the time being in force, the detention of any abducted person in a camp in accordance with the provisions of this Act shall be lawful and shall not be called in question in any court.’”

Mr. Chairman: Amendment moved:

"That for clause 8 of the Bill, the following be substituted:

'8. *Detention in camp not to be questioned by Court.*—Notwithstanding anything contained in any other law for the time being in force, the detention of any abducted person in a camp in accordance with the provisions of this Act shall be lawful and shall not be called in question in any court."

Prof. Shibban Lal Saksena (U. P.: General): Sir, I beg to move:

"That clause 8 of the Bill be omitted."

Mr. Chairman: It is a negative amendment; it is out of order.

Prof. Shibban Lal Saksena: This is a clause in a Bill.

Some Honourable Members: No, No.

Mr. Chairman: This is a full clause.

Pandit Thakur Das Bhargava: I do not propose to move my amendment; but I propose to speak on the clause.

Sardar Hukam Singh: My amendment has been virtually accepted by the hon. Minister; I need not move it.

Mr. Chairman: Part (b) does not exist in the new amendment. Does the hon. Member Sjt. Rohini Kumar want to move his amendment?

Shri C. Subramaniam: It still exists; an amendment to the existing clause has just been moved by the hon. Minister. The existing clause is still there.

The Honourable Shri N. Gopaldaswami Ayyangar: That won't exist. That is the amendment.

Mr. Chairman: It won't exist if that amendment is accepted, and that amendment has been moved by the hon. Minister. In view of that, does Mr. Rohini Kumar Chaudhuri want to move his amendment?

Sjt. Rohini Kumar Chaudhuri: I do not quite follow, Sir. If the hon. Minister's amendment is for having a new clause, we have a right to amend it.

Mr. Chairman: But, the hon. Member has not sent in any amendment to that.

Sjt. Rohini Kumar Chaudhuri: It has been circulated now.

Mr. Chairman: Sufficient notice of that has been given. The hon. Member should give three days' notice for any amendment.

Sjt. Rohini Kumar Chaudhuri: If you hold my amendment out of order, I do not move; otherwise I shall move. If you think it is in order, I shall move it.

Mr. Chairman: I cannot rule it out of order. In view of the amendment moved by hon. Shri N. Gopaldaswami Ayyangar, this should be out of place. It is for you to move or not.

Shri T. A. Ramalingam Othettiar (Madras: General): That amendment may be put to vote and if that is accepted this will not arise.

Mr. Chairman: I shall put it to vote and if it is not accepted, you can move your amendment.

Shri Jaspat Roy Kapoor: On a point of order, Sir. Will it be in order to put one amendment to a clause to vote and not allow the others to be moved simultaneously? It is possible that some of us—I am only talking about

[Shri Jaspal Roy Kapoor]

the propriety of the procedure—may accept Mr. Rohini Kumar Chaudhuri's amendment. The ordinary procedure adopted so far has been that all the amendments to a particular clause are allowed to be moved and then they are put to the vote.

Mr. Chairman: This is a clause which substitutes the whole clause. If that is adopted, all other amendments will be out of order. It has always a preference.

The Honourable Shri N. Gopaldaswami Ayyangar: There is no point in any amendment being moved to some clause which I do not own.

Mr. Chairman: The new amendment is under discussion.

Shri Jaspal Roy Kapoor: I do not think the position is like that. It is not as if the original clause is not owned by the hon. Shri N. Gopaldaswami Ayyangar. If it is not owned by him, there is no section to which an amendment can be moved by him. I think the procedure is, first the original clause 8 should be moved. That is always taken to be moved formally. It is only when that does exist, that any amendment from any Member, even though he may be the Minister in charge, can be moved.

Mr. Chairman: Since this is an amendment substituting the old section, it has preference over other amendments. If that is accepted, all the other amendments will be out of order. I think it is perfectly all right.

Pandit Thakur Das Bhargava: Sir, I again have to congratulate the hon. the mover of the Bill for bringing this amendment before the House. The original parts (a) and (b) of clause 8 were objectionable. I am very glad that they have been removed by this amendment.

But, the proposed amendment contains the same words existing in the provisions of the Pakistan Ordinance. What I object to both in this amendment as well as in the Pakistan Ordinance are, these words: "and shall not be called in question in any court", which means, Sir, that even the Supreme Court, when it comes into existence, will not be competent to call in question any such detention. If you will kindly see the agreement between Pakistan and India, there is no such provision, that the power of the High Courts and the Supreme Court wherever existing shall be taken away. It may be contended that the Supreme Court has not come into existence. But, we know very well that the Supreme Court is coming into existence and we cannot deliberately frame our laws in such a manner that we ignore the possibility of jurisdiction being exercised by the Supreme Court. The detention contemplated under this Bill shall not be questioned by any court of law and it takes away the fundamental rights of the citizens of India. So far as the detention is concerned it is perfectly right to say that it is lawful. But to say that this detention will not be questioned any more is too much. Therefore I submit that this is opposed to the fundamental rights guaranteed in the Constitution and is opposed to section 491 of the Criminal Procedure Code. The writ of *habeas corpus* is always open and I do not think that we shall be doing the right thing by using these words and specially when this agreement does not bind us to have a provision like this, I do not think we are justified in having these words.

Sjt. Rohini Kumar Chaudhuri: Sir, I want to have the position made clear. Clause (c) says:

"to question the legality of any action taken under section 4 or section 7 by any police or other officer or authority for the recovery and restoration of any abducted person."

In the new amendment of the hon. Minister this has been omitted with the result, I hope, that it will be competent for any person to question the legality of any action under section 4 or 7. That would be reasonable also, because although there is a provision for an appeal or revision under clause 6, the "Central Government may either of its own motion or on the application of any party interested in the matter, review or revise any such decision." But so far as the more objectionable clauses 4 and 7 are concerned where police officers have been given authority, there is no provision for appeal. Therefore it stands to reason that clause (c) should be dropped. The new amendment only covers clause (b), viz., "to question the detention of any abducted person in a camp in accordance with the provisions of this Act." That cannot be questioned but the rest of the matter can be questioned. If that is the view I would have no objection.

The Honourable Shri N. Gopalaswami Ayyangar: The hon. Member is a lawyer and he can certainly interpret the clause. If only detention is mentioned as being barred from the jurisdiction of a court of law, other things are left open.

Pandit Hirday Nath Kunzru (U. P.: General): What does the hon. Minister mean?

The Honourable Shri N. Gopalaswami Ayyangar: I only wish to mention in answer to Pandit Thakur Das Bhargava....

Pandit Hirday Nath Kunzru: Does any detained person have a writ of *habeas corpus* to the Supreme Court or not?

The Honourable Shri N. Gopalaswami Ayyangar: As it is there is no specific barring of *habeas corpus* in the Bill that is before the House now. But in view of the fact that my hon. friend Pandit Thakur Das Bhargava referred to what might or might not happen under the new Constitution the only thing that I can draw attention to is, if it is considered that it is a curtailment of personal liberty and it affects article 21 of the Constitution, so long as we prescribe a procedure by law for the curtailment of such liberty, that procedure will be followed under article 21. Of course hon. Members know that there is a clause about the Supreme Court's interference in the shape of writ of *habeas corpus* or other kinds of writs. If the interpretation should be that what we have provided in this particular Bill is not quite in accordance with article 21 or any other provision of the Constitution, then of course the remedy under the Constitution for a writ of *habeas corpus* will remain. Or if it is considered that the Central Legislature has overstepped its bounds in enacting this law and that it is not consistent with the constitution, it becomes invalid after the constitution comes into force, unless as the hon. Member knows the President meanwhile issues some order to bring the provisions of a previous law into conformity with the Constitution. That, so far as I am able to say at present, on a cursory look into the Constitution, will be the position.

Pandit Hirday Nath Kunzru: Should not that matter be considered further? This particular clause which the House is considering may be in accordance with the law now but in a very short time the Constitution of India will come into force. Is it not necessary for Government then to see whether the provision that they have included in the Bill will be in consonance with the Constitution of India? My hon. friend Shri Gopalaswami Ayyangar has drawn attention to article 21 of the Constitution, which is as follows:

"No person shall be deprived of his life or personal liberty except according to procedure established by law."

[Pandit Hirday Nath Kunzru]

We all know that when this particular article was under consideration it gave rise to a great deal of debate and the form in which it has been cast did not give satisfaction to the Constituent Assembly. But then we found under another article that the Supreme Court will have the right to consider whether a person has been lawfully detained or not. It may be that if a person has been detained in accordance with the law the Supreme Court may be unable to do anything. Is the object only detention or will it prevent a person from making an application to the Supreme Court to consider the legality of his detention?

When it is said that action taken under this Act shall not be questioned in any court of law what we should like to know is whether this prevents an aggrieved person from applying to the Supreme Court to consider whether his detention is in accordance with law. If this procedure will allow an appeal under this Act what is the purpose of having such a provision in the present Act?

The Honourable Shri N. Gopalswami Ayyangar: May I explain the position? I do not think that anything in this law would, after the coming into force of the new Constitution, prevent any person detained in a camp from applying to the Supreme Court for redress on the ground that he had been deprived of his personal liberty against the law of the land. The application can certainly be made. If the hon. Member wants me to say whether he will necessarily obtain a writ of *habeas corpus* on such application, it is not a matter on which I can give a ruling today. That will depend upon what the Supreme Court then thinks of the validity of this particular law.....

Shri C. Subramaniam: It will depend upon the circumstances of each case.

The Honourable Shri N. Gopalswami Ayyangar: Yes. So far as the question whether we should not consider this matter now fully and enact something which may not be in accordance with the powers of the Central Legislature under the Constitution, all I have to say is that when the time arrives for our examining the existing laws for the purpose of seeing whether they are in conformity with the Constitution, if we come to the conclusion that there is something in this Bill which is not quite in accordance with it but that still we want the substance of it to be retained, in order to bring the provisions of this law into conformity with the Constitution we have taken power under the Constitution for enabling the President during a certain period after the Constitution comes into force to issue such orders as may be necessary to bring it into such conformity. That is what I referred to in my previous remarks.

Dr. P. S. Deshmukh: I do not think the position is quite clear. What my hon. friend Pandit Hirday Nath Kunzru wanted to know was whether by this legislation it was the intention of the Mover to keep the *habeas corpus* petition open or not. It is no use saying it will depend on the Supreme Court to decide. What is the intention of the Government in this respect? Are these provisions expected to bar it or is the position otherwise?

Shri C. Subramaniam: We cannot bar it, even if we wish to.

Pandit Thakur Das Bhargava: Such a provision will be void and the President or the Committee which will be appointed to adapt these laws with reference to the provisions of the Constitution will ultimately decide the matter under section 372 of the Constitution.

Mr. Chairman: I think the hon. Minister has made the position clear.

The question is:

"That for clause 8 of the Bill, the following be substituted:

'8. *Detention in camp not to be questioned by Court.*—Notwithstanding anything contained in any other law for the time being in force, the detention of any abducted person in a camp in accordance with the provisions of this Act shall be lawful and shall not be called in question in any court.'

The motion was adopted.

Mr. Chairman: The question is:

"That clause 8, amended, stand part of the Bill."

The motion was adopted.

Clause 8, as amended, was added to the Bill.

Clause 9 was added to the Bill.

The Honourable Shri N. Gopalaswami Ayyangar: Sir, I move:

"That in part (b) of sub-clause (2) of clause 10 of the Bill, for the full-stop at the end, a semi-colon be substituted and the following new part be added:

'(c) the manner in which any abducted person may be delivered to the custody of any officer or authority under Section 7 or restored to his or her relatives or conveyed out of India by any such officer or authority.'

This results from the enlargement of the functions of the Tribunal which we have carried out in clause 6. We take power to frame rules for governing the procedure in respect of all these matters.

Mr. Chairman: Mr. Jaspat Roy Kapoor has tabled two amendments to clause 10. Are they acceptable?

Shri Jaspat Roy Kapoor: I think they will be helpful to the Government. They are only intended to fill in a *lacuna*. If the hon. Minister feels like accepting them I will move them, otherwise not.

The Honourable Shri N. Gopalaswami Ayyangar: Sir, I do not think they are very necessary. We have the general power to make rules.

Mr. Chairman: The question is:

"That in part (b) of sub-clause (2) of clause 10 of the Bill, for the full-stop at the end, semi colon be substituted and the following new part be added:

'(c) the manner in which any abducted person may be delivered to the custody of any officer or authority under Section 7 or restored to his or her relatives or conveyed out of India by any such officer or authority.'

The motion was adopted.

Mr. Chairman: The question is:

"That clause 10, as amended, stand part of the Bill."

The motion was adopted.

Clause 10, as amended, was added to the Bill.

Clause 11 was added to the Bill.

Shrimati G. Durgabai (Madras: General): There are two amendments standing in my name. They are in the Revised Consolidated List.

Mr. Chairman: Are they acceptable to the hon. Minister?

The Honourable Shri N. Gopaldaswami Ayyangar: I think I gave the hon. Member a different impression. If she has no objection I shall accept the substance of one of her amendments to Clause 1.

Shri Jaspal Roy Kapoor: Sir, I beg to move:

"That in sub-clause (2) of clause 1 of the Bill, the words 'the United Provinces' and the words 'and the United State of Rajasthan' be omitted."

Sir, this is an amendment about which I have strong feelings and views. I consider that it is absolutely unnecessary to rope in the United Provinces and the United State of Rajasthan within the four corners of this legislation. There is absolutely no justification for it. I do not think it will be possible for the hon. Mover to take his stand on any provision of the Agreement between this Dominion and the other Dominion. The Agreement nowhere lays down the particular States to which this legislation should be made applicable. The underlying idea of the legislation I understand is simply this that such a legislation should be enacted for the purpose of recovering women and children from States where they have been abducted. But the United Provinces and the United State of Rajasthan are the two particular places which I find were not guilty of having abducted many women and children.

The Honourable Shri N. Gopaldaswami Ayyangar: Did the hon. Member say "any" or "many"?

Shri Jaspal Roy Kapoor: I said "many", but then I will be absolutely on safe ground so far as the United Provinces is concerned if I use the word "any". In the original Ordinance which was promulgated in January 1949 the United Provinces was not mentioned at all. I do not understand what new circumstances have arisen between January 1949 and now to have necessitated the incorporation of the United Provinces within the purview of this Bill. I would like to refer the hon. mover of this Bill to the *Rehabilitation Review* which has been published by the Rehabilitation Department which gives the figures regarding recovered persons between the 1st of August, 1948, and June 1949. During this period I find from table 3 printed on page 44 of this *Review* that only ten persons were recovered from any portion of the country outside East Punjab and the P.E.P.S.U. So far as the U. P. is concerned, I think not one abducted person has been recovered during this period from U. P. I am also inclined to the view that even during the period subsequent to June 1949, and up till now, there has been no case of an abducted person having been recovered from U. P. Why then should this legislation be made applicable to the United Provinces and to the United States of Rajasthan? We in the United Provinces have behaved like very good boys. Nobody has been abducted there and no recovery has been effected there and I see no reason why our fair name should be tarnished like this. Sub-clause (2) says:

"It extends to the United Provinces, the Provinces of East Punjab and Delhi, the Patiala and East Punjab States Union and the United State of Rajasthan."

The rest of India is not touched, and rightly so. But then what applies to the rest of India must also apply to the United Provinces because there has been hardly any case of abduction in the United Provinces. I do not want the impression to go about that there has been a large number of abductions in the United Provinces and that therefore it has been necessary to rope in the United Provinces also for the purpose of this drastic executive legislation.

The Honourable Shri N. Gopaldaswami Ayyangar: May I answer this particular point straightaway? I gather from the hon. Member's speech that he does not object to the United States of Rajasthan. From the statement from which he did draw some inferences, it will be found that about 270 people have been recovered from the Rajasthan Union.

Shri Jaspal Roy Kapoor: Not during the period 1st August 1948 to June, 1949 or up to now. Prior to that there were cases so far as the Rajasthan Union is concerned. But why bring in the U. P.?

The Honourable Shri N. Gopaldaswami Ayyangar: We have not had any definite report that there are not more people to be recovered from Rajasthan. We have recovered about 270 so far. So far as the U. P. is concerned, there is no attempt to throw any dirt upon U. P. What really happens is this. Though there may not have been abductions from the U. P. itself, there are cases where abducted women, perhaps abducted elsewhere, have been taken into the U. P., and quite a considerable number too. It is necessary to recover them and the particular officers in that Province have got to have the powers to do the recovery.

Prof. Shibban Lal Saksena: Are there any cases?

Shri Jaspal Roy Kapoor: The Government report and the figures quoted therein do not support this contention.

The Honourable Shri N. Gopaldaswami Ayyangar: I am afraid the hon. Member is laying too much stress on the literal wording of the statement from which he has read. What happens is that we do not have any special organisation in the U. P. but recoveries are made, and the recoveries made in U. P. go into the statistics of Delhi Province. That is why it is not separately shown.

Mr. Chairman: I will put the amendment to the House. The question is:

"That in sub-clause (2) of clause 1 of the Bill, the words 'the United Provinces' and the words 'and the United State of Rajasthan' be omitted."

The motion was negatived.

Mr. Chairman: Shrimati Durgabai.

Shri B. L. Sondhi: Are we going on still? We have got a committee meeting.

Mr. Chairman: If the House agrees we may finish this Bill.

Sardar Bhopinder Singh Man: Sir, I may clear a point in this connection. I have to move an amendment to the Preamble. It is a very substantial amendment and it will be a rather difficult and uphill task for me to build up my case, as the nerves of the hon. Members are strained. My speech may be a bit longish and it may be irksome for them. I may certainly take a very long time to dispel the erroneous impression that the hon. Mover has created and also to build up my case.

Mr. Chairman: Then the House will stand adjourned.

The Assembly then adjourned till a Quarter to Eleven of the Clock on Monday, the 19th December, 1949.