

## NAVAL AND AIRCRAFT PRIZE BILL\*

**THE MINISTER OF STATE (DEFENCE PRODUCTION) IN THE MINISTRY OF DEFENCE (SHRI VIDYA CHARAN SHUKLA) :** I beg to move for leave to introduce a Bill to provide for the establishment and procedure of Prize Courts and for matters connected therewith or incidental thereto.

**MR. DEPUTY-SPEAKER :** The question is :

"That leave be granted to introduce a Bill to provide for the establishment and procedure of Prize Courts and for matters connected therewith or incidental thereto."

*The motion was adopted.*

**SHRI VIDYA CHARAN SHUKLA :** I introduce the Bill.

I beg to move :†

"That the Bill to provide for the establishment and procedure of Prize Courts and for matters connected therewith or incidental thereto, be taken into consideration."

The objects and reasons of this Bill before the House have been circulated to hon. Members along with the draft Bill. This measure is essential to discharge our duty towards the international community in accordance with the international conventions and practices.

The Bill purposes to set up tribunals which will go into the merits of each case of seizure of contraband and decide whether the cargo should be sentenced to condemnation or should be returned to the owners. The Bill aims at safeguarding the interests of the neutral States and their nationals. The Prize Courts proposed to be set up would have to adjudicate upon the seizures of cargo and ships in a judicial manner with an opportunity available to the parties concerned to present their cases. We propose also to appoint an appellate authority so that a second opportunity is also available to such parties as are aggrieved by the decisions of the tribunal.

This Bill thus provides for a judicial

scrutiny of the acts which may be carried out by our defence forces in the course of their duties in connection with the defence of the country. During the armed conflict, it becomes the duty of our Navy to enforce contraband control, that is, to ensure that the enemy is denied access to goods which will be of direct and indirect use to him in the prosecution of hostilities. This necessarily entails our boarding neutral vessels and scrutiny of cargoes which are carried therein. The naval authorities have been instructed to exercise their authority with discretion and flexibility. When such cargoes fall under the category of contraband, ships are brought to the nearest port and then the contraband cargo is removed. But even then, the owner of the cargo will have an opportunity under the proposed Bill to represent their case before the Prize Court and have a judicial verdict on the naval seizure.

I am sure that this measure which is in accordance with the international conventions and procedures would be appreciated by all Members and will be appreciated by countries, neutral countries with whom we have maritime relations.

I would like to add that this Bill conforms to the normal rules and practices of international conventions.

It provides for the adjudication of cases by judges of legal competence and integrity and safeguarding of the properties until the prize courts have given their verdict, and appeal to the appellate authority which will hear appeals against the verdicts of the prize courts. I move.

**MR. DEPUTY-SPEAKER :** Motion moved :

"That the Bill to provide for the establishment and procedure of Prize Courts and for matters connected therewith or incidental thereto, be taken into consideration."

**SHRI SOMNATH CHATTERJEE (Burdwan) :** I welcome this measure which has become necessary due to the armed conflict through which we are passing as a result of the Pakistani aggression. We welcome it also because we are certain that

\*Published in the Gazette of India Extraordinary, Part II, Section 2, dated 15-12-71.

†Moved with the recommendation of the President.

we are going to have a rich haul of enemy property.

It is a long-standing practice in international law that nations, which are in a state of belligerency at the outbreak of war, enact laws dealing with substantive and procedural rules and in keeping with international practice, with regard to enemy property seized in the course of hostilities. In view of this, such a law in our country has become necessary in keeping with our international obligations. If I may quote from one of the most recognised authorities on international law, Oppenheim, "one of the objects of prize courts is the wish of the belligerents to be guarded by decisions of the court against claims by neutral states regarding alleged unjustified capture of neutral vessels and goods." In keeping with our position in the comity of nations, it has really become necessary to constitute such prize courts. It is also well known that it is only through an adjudication that an enemy property captured can finally be appropriated.

The Bill was received by us only this morning and we had no occasion to submit our amendments. But I wish to submit two points concerning two provisions for the Minister to consider.

The first relates to cl.6 which says :

"Any person aggrieved by an order or decree of the Prize Court may prefer an appeal to the Central Government within a period of ninety days..."

The Prize Court is to be presided over by a person who is not only a citizen of India but has been or is qualified to be appointed a judge of a High Court. So it is intended to be a judicial proceeding. To provide for appeal from such a judicial authority to the Central Government, is, on principle objectionable. I submit Government should consider this. After all, it will be a matter of policy decision or political expediency that will be paramount when the Central Government would be sitting in appeal against the decision of a judicial tribunal. Instead of this, a judge of a Supreme Court may constitute the appellate authority. On the principle of jurisprudence, I object to the provision making the Central Government as appellate authority. It does not redound to the credit of our judicial set-up that the execu-

tive should sit in appeal over a judicial authority. Therefore, I would request the hon. Minister to consider this aspect. I could not table an amendment to this effect for want of time.

The other point concerns cl.11 which says in the latter part :

".....the Central Government may purchase on account or for the service of the Central Government all or any of such stores."

This gives the right of pre-emption to the Central Government. International law does not require our Government to purchase these stores or properties. Further, nothing has been indicated in the clause as to what will be the basis of calculation of the purchase price. Why should not these goods be condemned as well, as has been provided in the Bill in other cases. I do not find any rational justification for the exemption in cases contemplated by clause 11.

I hope Government will consider these two suggestions concerning the Bill which we certainly welcome and support.

**SHRI INDRAJIT GUPTA (Alipore) :** Sir, it is of course difficult for us to go into the provisions of this Bill because nobody knew till we came to the House that it was going to be taken up today.

There are one or two points I would seek clarification upon from the Minister. I would like to know whether the powers given under this Bill relate to goods which are seized from vessels or aircraft belonging to the power or powers with whom we are in a state of belligerency or whether they also extend to goods carried by neutral ships but whose destination may be the country with which we are engaged in hostilities. This is not clear to me. I am not much of a lawyer, and I do not know much of international law ; may be what I say is a very elementary thing, but I would like, for my own satisfaction, that this matter is made clear.

I am glad that the Minister of Shipping is also here. I invite the attention of both the Minister of Shipping and the Defence Minister to a case which has just occurred, three or four days ago, in the port of Madras, and which has been brought to my attention. Out of that case certain points arise, and that is why I would like to have this clarification,



[Shri Indrajit Gupta]

A Dutch vessel by the name *Abbeckerke*, carrying cargo meant for Pakistan, has been docked in the Madras harbour. I do not think it was captured or anything like that on the high seas. It is a neutral ship; it is not a Pakistani ship. It was a Dutch ship, but then, after being docked in the Madras harbour. It was found mainly I may say due to the vigilance of the dock workers themselves, to be carrying different types of cargo meant for East Pakistan. It was the workers who kept a watch on the ship and reported it to the relevant authorities, the Chairman of the Madras Port Trust and so on. Then, the Principal Officer of the Mercantile Marine Department, Madras, directed the officers to board the vessel to find out what it contained. Then it was found that there was a whole number of items which were meant for East Pakistan including 25 trucks and miscellaneous types of cargo of about 2,000 tonnes. The list of cargo, I am told, contains, for instance, items which are listed, among other things, as refrigerators, cigarette paper, and so on.

I will just read the relevant part of the letter which has reached me from the dock workers' union. It says :

"The Principal Officer and others of the Mercantile Marine who met us about an hour ago say that we may get into touch with the Government of India, and if the Government of India orders them to confiscate all this cargo bound for Pakistan, then they will do so. But in the absence of any clear orders, they say they have to go by the list which has been supplied to them... .."

I presume from this that a list covering what is called contraband cargo is in operation at the moment, and any goods which do not figure on that list can be carried if any neutral vessel so wants to go to Pakistan even in the midst of the hostilities that exist between India and Pakistan. I would like to know what exactly is the position.

THE MINISTER OF PARLIAMENTARY AFFAIRS AND SHIPPING AND TRANSPORT (SHRI RAJ BAHADUR) : May I give a clarification, because the hon. Member has mentioned my presence also. There is a list of contraband

which is given. Apart from that, there is a notification that all exports to or imports from Pakistan, directly or indirectly, are also prohibited. And under that list, hardly any item can pass.

SHRI INDRAJIT GUPTA : I am glad that you have given this clarification. In that case I may say that the Mercantile Marine Department's officers should be better informed. They do not seem to know what you are saying here. That is precisely why I raised this matter, because it seems to be common sense that when we are in a state of belligerency and hostility with another country, even any neutral vessel which is carrying cargo which is consigned to that enemy country is liable to have all that cargo at least confiscated.

SHRI RAJ BAHADUR : I only wish to say that we have just to take one precaution. We have got to trace the ownership of a particular commodity or consignment. If it is FOB, the ownership becomes that of Pakistan. If it is CIF the ownership does not pass till it reaches there and payment is made. That is the only qualification. Because we do not want in the process to do anything which will upset the shipping world or undermines the confidence in our ports. I seek your permission, Sir, to take this opportunity to assure international shipping community and everybody concerned, particularly people who are bringing crude oil and other things to our country that our ports are completely free and they are working normally and we are not taking steps which are not warranted by international law.

SHRI INDRAJIT GUPTA : It seems that the Minister has taken this opportunity to make a much bigger speech than he himself anticipated he would.

But I am confused further. Does it mean that by transacting documents under C.I.F. it is possible for a neutral vessel to carry cargo to Pakistan and you cannot lay your hands on it, though they may be of direct and indirect assistance to the enemy? If the ownership has according to the documents not passed to a Pakistani, by this simple subterfuge any amount of contraband cargo can be carried and you cannot do anything.

**SHRI RAJ BAHADUR :** There was no confusion. The intention is clear. If we suspect something to be Pakistani ownership, we try to find out and the ship will not go till it is cleared. The question is something different. We have to follow the international law on this subject and I do not think that there is anything which is against international law.

**SHRI INDRAJIT GUPTA :** I have not said that you had contravened international law. I want you to understand the position. In any case I think the officers of the mercantile marine department should be better instructed. If cargo meant for Pakistan can be held up by us, it should be done so. The workers there are agitated and I think, quite rightly so.

As for this Bill it is meant to provide for the Prize courts and so on and I believe it is in conformity with the requirements of international law and convention. I have nothing more to say on that matter.

I just wanted you to make this clear whether there are means by which ships can carry cargo to Pakistan which according to the provisions of international law you may not be able to lay your hands on; you better look into that.

**\*SHRI J. M. GOWDER (Nilgiris) :** Mr. Deputy Speaker, Sir, while welcoming the Naval and Aircraft Prize Bill, 1971, I would like to seek some clarification from the hon. Minister of Defence.

You are aware, Sir, that we had a similar conflict with Pakistan in 1965. I am not able to understand why such a legislation was not enacted at that time. I would like the hon. Minister to inform the House whether such a measure was not considered necessary then. Sir, with the huge and sprawling administrative machinery at their disposal, it is really surprising that the Government should have introduced this Bill only today morning and the House is to pass in such a hurry. If it is considered so essential now, why was it not done in 1965 ?

I would like to say that just because some neutral ships belonging to other countries carry cargo to Pakistan whether it is contraband or otherwise, I don't think it is advisable to allow them to go without a

proper and thorough investigation of the nature of cargo. The Government should not be hesitant to do this thing because of certain international shipping conventions and procedures. In fact, I would say that the Government should have necessary authority to check even neutral ships which carry cargo to Pakistan. This is very essential especially when we are at war with Pakistan.

I recall, Sir, that in the 1965 conflict also we captured a few ships belonging to Pakistan and similarly Pakistan also captured one of our merchant ships. In addition to ships, we also got some other enemy property. I do not know whether we have returned all of them to Pakistan and also whether we could get back our ship captured by Pakistan. Since this law was not there in 1965, how did we dispose of the enemy property at that time ? I am constrained to refer to this because I see in the newspapers different kinds of compromise formulae being worked out by many countries to end the war between India and Pakistan. I would urge upon the Government that, having been fortified with this law, they should at no cost return the enemy property captured by us during this war to Pakistan. I have referred to this in particular because we cannot afford to commit the same mistake again.

Before I conclude, I would stress that the Government should not as a matter of routine allow neutral ships belonging to other countries but carrying cargo to Pakistan to proceed ahead without proper verification and checking. Secondly, I would like to know from the hon. Minister as to what happened to the enemy property we captured during 1965 conflict with Pakistan. Thirdly, I would request the hon. Minister not to hustle the House by bringing such important legislature measures at the last moment.

**SHRI SAMAR GUHA (Contal) :** I want to draw your attention to a very important news. The Seventh Fleet has already entered the Bay of Bengal. The whole House is feeling concerned, and the Government should make a statement.

श्री आर० बी० बहू (सरगोन) : उपाध्यक्ष महोदय, यह जो नवल एण्ड एयरक्राफ्ट प्राइज

\*The original speech was delivered in Tamil.

[श्री आर० वी० बड़े]

बिल सदन में प्रस्तुत हुआ है उसका मैं समर्थन करता हूँ। लेकिन ऐसा लगता है कि यह बिल एमर्जेंसी में बड़ी हरीदली लाया गया है। इसमें उन्होंने पहले यह कहा है स्टेटमेंट आफ ग्रान्जेक्ट्स एण्ड रीजन्स में :

"In India, the High Courts at Madras, Bombay and Calcutta having Admiralty jurisdiction under the Letters patent of 1862 had been declared Prize Courts by the Naval Prize Act, 1864 and had to be commissioned in accordance with the procedure prescribed in the Prize Courts Act, 1894."

और इसके बलाज 19 में यह कहते हैं :

"The Naval Prize Act, 1864, the Naval Appointments and Distribution Act, 1864, the Prize Courts Act, 1894, the Prize Courts Procedure Act, 1914, the Prize Courts Act, 1915, the Naval Prize Act, 1918, the Prize Act, 1939, in so far as they apply in India are hereby repealed."

अब जब यह रिपील हो गये हैं तो हाईकोर्ट का जूरिस्डिक्शन एकाडिग टु बलाज 3 जो है उसमें यह कहते हैं :

"Subject to the provisions of section 18, the conditions of service of a member of a Prize Court shall be such as the Central Government may by order determine."

और उसकी क्वालीफिकेशन के बारे में यह है :

"A person shall not be qualified for appointment as a member of a Prize Court unless he is a citizen of India and has been or is qualified to be appointed as a Judge of a High Court."

उसके साथ में 1894 का देखा जाय तो उसमें यह था कि हाई कोर्ट्स आफ बाम्बे, कैलकटा एण्ड मद्रास जो हैं वह प्राइज कोर्ट्स होंगी।

इसमें हमने एपीलेट एचरिटरी रख दिया। लेकिन एपीलेट एचरिटरी इज दी सेंट्रल गवर्नमेंट नाट दि हाई कोर्ट। मैं पूछता हूँ कि यह हाई कोर्ट को देने में शासन को क्या प्राप्ति थी ?

दूसरी बात यह है अभी आपने कहा कि जो दूसरे देश के शिप्स आते हैं उनका जो माल

आयेगा वह इन्टरनेशनल ला के अनुसार गवर्न होगा। लेकिन 1965 में वह लागू नहीं था। उस वक्त यह क्यों नहीं आप ले आये ? 1965 में जो गुड्स पाकिस्तान ने लिए वह 109 करोड़ के थे और आपके पास केवल 27.5 करोड़ के थे उसमें भी एक चौथाई शायद छोड़ देना पड़ा लेकिन मैं जानना चाहता हूँ उस 109 करोड़ का क्या नतीजा हुआ ? क्योंकि इस के अनुसार देट बीकम्स दी प्रापर्टी आफ दि सीजिंग गवर्नमेंट। तो वह तो प्रापर्टी हमें मिली नहीं और आपको पता है बिरला साहब को अपनी इण्डस्ट्री याह्या खां के रिश्तेदार को बेचनी पड़ी।

तो मेरा कहना यह है कि यह जो कानून बनता है इसे बनाने में इतनी देरी क्यों की गई ? इसका कोई खुलासा मंत्री महोदय ने नहीं किया। दूसरे जो हमारा 109 करोड़ का माल पाकिस्तान के कब्जे में था उसका क्या हुआ यह भी उन्होंने नहीं बताया। इसके अलावा यह जो तीन हाई कोर्ट्स थे बाम्बे, मद्रास और कैलकटा, यह प्राइज कोर्ट्स थे तो इनके अतिरिक्त कुछ और हाई कोर्ट इंडोइयस करने वाले हैं क्या ? वैसे एमर्जेंसी के टाइम में इसकी जरूरत है, इसलिये मैं इस बिल का समर्थन करता हूँ।

SHRI VIDYA CHARAN SHUKLA : Sir, Mr. Chatterjee raised a relevant point when he asked, what would be the appellate authority. Although it has not been specified in the Bill, it is implied that although the Central Government is the appellate authority, the Central Government would appoint a person of a judicial standing higher than the standing of the judges who will constitute the tribunals. We have stated in the Bill that people who will constitute the tribunals would be persons qualified to be judges of a High Court. Therefore, the appellate authority would be person of a higher judicial standing than the judges of the tribunals. Therefore, on this point, he should have no misgivings about the Central Government itself hearing and disposing of the appeals.

Then, he referred to clause 11 and he



was a little doubtful about the question as to why and how we should pay any money or purchase anything which is taken in our action to seize the contraband goods. This provision has been made only to enable Government to act in cases where the position is not absolutely clear. There may be borderline cases where condemnation may take a long time or it may be doubtful whether condemnation of those goods as contraband may come about or not. In such cases, if we think it is necessary in the interests of our country, we may take over the goods and pay the amount.

**SHRI SOMNATH CHATTERJEE :**  
Who will fix the price ?

**SHRI VIDYA CHARAN SHUKLA :**  
I suppose that it would be the tribunals themselves or the appellate authority or the authority which will be nominated under the rules to be framed under this Act.

Mr. Indrajit Gupta asked, how do we decide what are contraband goods and whose goods should be seized and in what manner. A normal distinction that is made, on which we are proceeding, is that the goods which are seized on high seas from neutral shipping, which are bound for enemy countries or in the territorial waters of countries with which we have belligerency, will constitute contraband. There is an exhaustive list of contraband goods, which includes almost everything which can directly or indirectly help the country in prosecuting hostilities against us. The cargoes which are seized in the Indian ports would not necessarily be subject to this particular Act now before the House. They may be dealt with under the Sea Customs Act and other existing Acts. This Act will mainly relate only to such seizures which are made on the high seas from neutral shipping or in the territorial waters of belligerent countries.

The goods or ships that are captured that belong to Pakistan Government are not contraband ; they become the booty and outright they become the property of the nation. These courts will have no jurisdiction over the capture of goods or ships that belong to a belligerent State. This Act deals with only neutral ships and neutral shipping. The ships which belong to the belligerent nation become the property of the nation outright and those seizures will not come under the purview of this Act.

Shri J. M. Gowder asked for a clarification why we did not pass such an Act in 1965. The reason is that in 1965 we did not effect any seizures of contraband in the high seas. The Pakistan Government captured some of our ships and we also captured some of their ships in our ports. Later on the ships were exchanged. During the hostilities of 1965 no, goods were captured on the high seas.

There were certain British Acts on the subject which were made applicable to us. They were old Acts. We wanted to have a modern Act which is in consonance with the modern world. That is why we have brought this measure before the House.

I have replied to the point raised by Shri Bade, though in different words. I want to assure him that in this case nobody will have an escape route. There will be judicious adjudication in the case of neutral shipping and in case any goods have been wrongfully seized they will be returned. If the aggrieved party does not have full satisfaction with the decision of the tribunal, we have also provided for an appellate authority. Therefore, there need be no apprehension in the minds of any friendly maritime powers about this measure.

**SHRI R. V. BADE :** What about an appeal to the High Court ?

**SHRI VIDYA CHARAN SHUKLA :**  
We have done better than that. The people who constitute the tribunal will have the standing of High Court judges and the appellate authority will have an even greater standing than that. That is our intention. Therefore, I hope this Bill will receive the unanimous approval of the House and will be passed.

**MR. DEPUTY-SPEAKER :** The question is :

"That the Bill to provide for the establishment and procedure of Prize Courts and for matters connected therewith or incidental thereto be taken into consideration."

*The motion was adopted.*

**MR. DEPUTY-SPEAKER :** Since there are no amendments, I will put all the clauses together. The question is :

"That Clauses 2 to 20, Clause 1, the

[Mr. Deputy-Speaker]  
Enacting Formula and the Title stand  
part of the Bill"

*The motion was adopted.*

*Clauses 2 to 20, Clause 1, the Enacting  
Formula and the Title were added  
to the Bill*

SHRI VIDYA CHARAN SHUKLA :  
I beg to move :

"That the Bill be passed"

MR. DEPUTY-SPEAKER : The ques-  
tion is :

"That the Bill be passed"

*The motion was adopted.*

12.56 hrs.

#### RE: MOVEMENT OF SEVENTH FLEET OF U.S.A.—*Contd.*

MR. DEPUTY-SPEAKER: We have four  
more minutes. I have received a slip from  
Prof. Madhu Dandavate saying that the  
Seventh Fleet of the American Navy has  
entered the Bay of Bengal. Since this is a  
matter which has been agitating the members  
of the House, he may say what he wants to  
say in one or two minutes.

PROF. MADHU DANDAVATE  
(Rajapur) : Mr. Deputy-Speaker, just now  
an announcement has been made over the  
All India Radio—probably the way in  
which it is given might not be correct ; it  
might be a garbled version probably—that  
the Seventh Fleet has already come to the  
Bay of Bengal.

We would very much like the Govern-  
ment to clarify two or three important  
points. What is the official communication  
that the Government of India has already  
sent ? What is the attitude that our re-  
presentative in the United Nations has  
taken ? In the United Nations, for the last  
two days, the issue has been coming up.  
What are the implications ? Can an indi-  
vidual member of the United Nations  
unilaterally, on its own, take such an action  
and move the fleet in the direction in which  
probably there can be an escalation of war.  
Today, it is a localised war in one region  
but it may escalate into a world war.  
Fortunately, Soviet Russia...

MR. DEPUTY-SPEAKER : No speech  
please. You have made your point.

PROF. MADHU DANDAVATE : I am  
only seeking information. Since Soviet  
Russia has, fortunately, already announced  
that they want all the nations of the world  
not to get themselves involved in this con-  
flict, and if there is going to be an escala-  
tion of this conflict into a world war, in  
view of this, what is the further categori-  
cal statement that the Government of India  
wants to make. These clarifications should  
be made on the floor of the House.

SHRI S. M. BANERJEE (Kanpur) :  
The news that has come is that some forces  
have moved from Singapore and that the  
*Enterprise* accompanied by some other  
destroyers has reached the Bay of Bengal.  
As far as we are concerned, we are not  
worried about the 7th fleet or the 14th fleet,  
whatever the fleet may be. The question is  
that the Government of India should make  
a statement and allay the fears. The Prime  
Minister has said something about the  
American intervention. She has made a  
statement outside. The statement should  
be made only in this House. If America  
tries to do anything like that, they will meet  
the same fate as they met in North Korea  
and Viet Nam.

MR. DEPUTY-SPEAKER : These feel-  
ings and submissions of the hon. Members  
may be conveyed to the Government.

12.59 hrs.

#### INDUSTRIES (DEVELOPMENT AND REGULATION) AMENDMENT BILL

THE MINISTER OF INDUSTRIAL  
DEVELOPMENT (SHRI MOINUL  
HAQUE CHOUDHURY) : Mr. Deputy-  
Speaker, Sir, I beg to move :\*

"That the Bill further to amend the  
Industries (Development and Regula-  
tion) Act, 1951 be taken into considera-  
tion."

MR. DEPUTY-SPEAKER : You can  
continue tomorrow.

The House stands adjourned to meet  
again tomorrow at 10 A.M.

13.00 hrs.

*The Lok Sabha then adjourned till Ten of  
the Clock on Thursday, December 16, 1971/  
Agrahayana 25, 1893 (Saka)*

\*Moved with the recommendation of the President.