into consideration :—

*'Clause 2*

"That at page 2, lines 5-6, the words 'without exciting or attempting to excite hatred, contempt or disaffection towards the Government' be *deleted.*" '

*The motion was adopted*

MR. SPEAKER : The question is :

*'Clause* 2

"That at page 2, lines 5-6 the words 'without exciting or attempting to excite hatred, contempt or disaffection towards the Government' be *deleted.*" '

*The motion was adopted*

SHRI K.C. PANT : I move :-

"That the amendment made by Rajya Sabha in the Bill be agreed to"

MR. SPEAKER : The question is :-

"That the amendment made by Rajya Sabha in the Bill be agreed to".

*The motion was adopted*

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**10.08 hrs**

## CONTEMPT OF COURTS BILL

THE MINISTER OF LAW AND JUSTICE (SHRI H. R. GOKHALE) : I beg to move :-

> "That the Bill to define and limit the powers of certain courts in punishing contempts of courts and to regulate their procedure in relation thereto, as passed by Rajya Sabha, be taken into consideration."

As the hon. Members are aware, it was felt generally that the present law relating to contempt was uncertain undefined and unsatisfatory. It really touched on two very vital rights of the citizens, namely the right to personal liberty and the right to freedom of expression. That is why in 1961, an expert committee was appointed, presided over by the then Additional Solicitor General, Mr. Sanyal. The Committee had made a comprehensive examination of all the aspects of the matter. They obtained information prevailing in our country and in other countries. When the recommendations were made, they took due note of the right of freedom of speech and personal liberty and various provisions of the Constitution relating to contempt of court. The recommendations of that Committee were generally accepted by the Government. Before accepting the recommendations, the Government took into account the considered views of various State Governments, union territory administrations, Supreme Court and other courts. On that basis, a Bill called the Contempt of Courts Bill 1960 was moved before the House.

It was referred to a Joint Committee of two Houses and, after the report of the Joint Committee, the present Bill as moved in the Rajya Sabha is on the basis of the recommendations of the Joint Committee It is true that in the Rajya Sabha certain amendments were proposed by the Government mainly because the Government felt that in some respects if the recommendation of the Joint Committee were accepted, they were likely to infringe on the constitutional position as obtained in articles 129 and 215 of the Constitution.

But excepting for one amendment which was accepted by the Rajya Sabha ultimately, two other amendments were not acceptable to the House and following the consensus of the opinion in the Rajya Subha, those amendments were not pressed in the Rajya Sabha by Government.

The Bill which is now before the House is as accepted by Rajya Sabha. It takes care of all possible situations which arise in the law relating to contempt. I commend the Bill for consideration by the House.

MR. SPEAKER : Motion Moved ?

> "That the Bill to define and limit the powers of certain courts in punishing contempts of courts and to regulate thair procedure in relation there to, as passed by Rajya Sabha, be taken into Consideration "

SHRI MADHURYYA HALDER (Mathurapur): This Bill has been introduced from a class-outlook. This Government speaks loudly of socialism, but still they are giving a separate class-status to the judges Ours is a class-ridden society. In spite of the formal statement, "We, the people of India", the State-structure evolved out of the Constitution is class-ridden. It is an instrument of oppression by the oppressing minority against the oppressed majority. Today the role played by judiciary as an arm of the State structure comes very often under discussion and people having different philosophical and political outlooks have their respective points of view of it. Whenever a particular point of view which our party has given expression to in publice, it is taken to amount to contempt of court. We find that the judiciary by its strict legalistic and technical interpretation of the law misinterprets the will of the people and the spirit of the law. The judiciary offends the sentiments and aspirations of the people. The judiciary as it is today is constituted by people who naturally have a particular class affiliation. Therefore, the judges are guided and dominated by class-hatred, class-interests and class-prejudices, and where the evidence is balanced between a well-dressed, potbellied rich and a poor ill-dressed, illiterate person, the judge favours the former. Therefore, our judges have got to be corrected. Why should the courts be free from public scrutiny, public vigilance and public criticism in this respect so that the people can also say what they feel about the judges ? They are surely not going to be dominated or influenced by a single utterance or a single publication. They are men of learning and knowledge. The peple who administer justice should be men of guts, men of learning and knowledge. Justice means social justice in social background. We are not satisfied with the manner in which the judiciary interprets, understands and administers the law. A common man who has been seeking justice all the time has been denied it all his life.

There are other reasons also to criticise courts. When from 1962, to 1965, Fundamental Rights were suspended and leaders of our party were put behind the bars for holding a certain view, we moved from court, but they did not protect us. Under legal and constitutional niceties, they invalidated some Acts of Parliament very recently. They issued injunctions in favour of jotedars and zamindars regarding vested lands against the spirit of tht law and thus against the wishes of the people. They issued injunction in favour of jotedars restraining the Government from collecting levy of foodgrains. They issued injunctions in favour of monopolists against the workers, who *gheraoed* against closure, lay-off, dismissal and many other grievances.

They issued injunctions in favous of the dishonest school managing committees who misappropriated Government monies and even the teachers' provident fund money. All these are done in the name of legal and constitutional niceties. They have been incurring people's disrespect, if not hatred, and this disrespect comes from the judges also.

I may give you some instances. Sir Biren Mukherjee, an eminent industrialist made a statement attacking the UF Government of West Bengal in 1967 and Mr. Wanchoo, a Judge of the Supreme Court, congratulated him over trunk telephone. Sir Biren Mukherjee while narrating this to Mr. Jyoti Bosu, the then Deputy Chief Minister of West Bengal, commented—these are the judges.

Another Judge, Mr Bachawat was transferred from Punjab High Court to the Supreme Court because the Birlas wanted this and they recommened his name to the Chief Justice, Mr Gajendragadkar....

MR SPEAKER : Please dont comment on the conduct of the Judges. That is not allowed according to our Rules. They may be facts, but they are not allowed according to the Rules.

SHRI MADHURYYA HALDER : This disrespect is also created by the ruling party. Mr. Ramaprasad Mukherjee was appointed a Judge of the Calcutta High Court, when his brother, Dr Shyamaprasad Mukherjee was a Union Cabinet Minister and Mr. Sankar Prasad Mitra was appointed a Judge of the Calcutta High Court.

MR. SPEAKER : This Bill is not about the conduct or appointement of Judges. It deals with contempt of courts.

SHRI MADHURYYA HALDER: Another Judge has been appointed who was a member of the Congress Cabinet. He has been...

MR. SPEAKER: Why do you raise these things at this time?

SHRI MADHURYYA HALDER: Immediately after his defeat in Assembly elections.

MR. SPEAKER: If Judges and the people are not read our proceedings, then I can keep quiet. But people read the proceedings and naturally they will ask as to who was presiding, who was the Speaker. That is why I have to interrupt you.

SHRI DINEN BHATTACHARYYA (Serampore): In that case, nothing can be said against the Judges in spite of the fact that they were against it and our feelings are....

MR. SPEAKER: I am against so many things, but I cannot express it.

SHRI DINEN BHATTACHARYYA: Even the Parliament cannot express?

MR. SPEAKER: The Parliament is not allowed to comment on the conduct of the Judges. There is a special procedure for that.

SHRI MADHURYYA HALDER: In view of all these that I have said this Contempt of Court Bill is unnecessary. Further, the definition is very vague and wide. The area of uncertainty is there. The definition is exactly on the same lines on which the Courts have been awarding punishment for contempt of court. By this law you can net in any person whom you want to.

If you look at the wording of clause 2(c) (ii) and (iii), you will see that the Criminal contempt has been defined this way. I am saying this because actually this is the criterion on which the courts have been punishing persons for their supposed decision for cantempt of corut.

Once a Chief Minister of West Bengal, while explaining certain policy in a radio broadcast, was held for contempt of court. Another Chief Minister was charged with contempt of court for his general criticism of the judiciary. Journalists are very often convicted under this Act.

So, contempt of court should be as put by Oswald in his book entitled *Contempt of Court*, namely:

> "General criticisms on the conduct of a judge not calculated to obstruct or interfere with the course of justice or the due administration of the law in any particular, even though libellous, do not constitute a contempt of court."

As the definition of contempt of court is very vgaue and wide, we feel that this law is intended to defend the touchiness of judges rather than to ensure the proper administration of justice. So, I oppose the Bill I feel that there is no need for a measure of this nature. Both criminal and civil contempt may be tried under the Indian Penal Code Therefore, this Bill is unnecessary. Hence, I oppose the Bill once again.

SHRI C M STEPHEN (Muvattupuzha): Mr. Speaker, Sir, the measure which is now before the House is certainly a welcome one, because it seeks to define and specify beyond the realm of confusion the law relating to contempt of courts. So far, the law relating to contempt of courts was being governed by judicial pronouncements and general jurisprudential concepts. But after the Constitution was enacted, an abridgment of this concept of contempt of courts was attempted, because the Constitution provided freedom of expression, freedom of ideas and freedom of faith etc.

Therefore, it was tested before the courts of law whether where there is a conflict between Fundamental Rights and freedom of expression and the law relating to the contempt of courts, we should have the higher position. It has now been established by a *catena* of rulings that the freedom of expression will stand limited by the restrictions to be placed on the rights of a citizen by the claims of the court to be above contempt at the hands of the people.

Nevertheless, the law continues to be

[Shri C.M. Stephen]

confused and all sorts interpretation are possible and are attempted to be injected into it. This particular law seeks to define specifically what exactly is contempt of court, and what exactly the procedure should be to proceed against cases of commission of contempt of court, and what exactly the punishment to be inflicted should be. So, this law is certainly welcome because it has long been overdue.

Having said so, I feel that certain aspects of this law deserve closer examination, because in the attempt to define the procedure and the concept, certain other fundamental concepts have been overstepped or overlooked. But the basic scheme of the measure seems to be this, that the law of contempt of court must remain as it has been, that the defences available to the citizen against charges of contempt of court as they were before the law enacted should continue to be available to him, and whatever was not contempt of court before this law is enacted must not become contempt of court by reason of the fact that this law is enacted. That is to say, this law attempts to limit the sphere of contempt of court to where it was, and from there seeks to take out certain exceptions and say that these shall not be contempt of court. Some new exceptions there are about which I have got my own misgivings.

One of the new ideas introduced in this Bill is the idea of *mensrea* with respect to the distribution of documents. With respect to the publication of documents, *mensrea* continues to be irrelevant But under clause 3 (3), with respect to the distribution of documents, the law says that unless the person who distributes a document is aware or has reason to be aware that the document contains any Statement tantamount to contempts of court, the act will not be a contempt of court.

Honestly, I fail to understand the necessity for the distinction So far contempt was not related to *mensreu*. Now with respect to everything else, contempts continue to be unrelated to *mensrea* but with respect to distribution of documents, it is sought to be inducted into the concept. I would like a clarification as to why this is necessary.

There is another distinction. With respect to documents which are published under the Newspapers and Books Act, this protection is available, whereas with respect to distribution which does not fall under this category this protection will not be available. If *mensrea* is really a basic factor in the whole concept. The distinction is uncalled for because it is a criminal offence. Criminal offence must be a criminal offence by whatever means it is committed. If by puplication of a book under the rules of this particular Act there is no contempt of court, publication of the same statement through a document outside these rules cannot under the provisions of the penal law amount to contempt.

Another point, If a contempt is committed before a presiding officer, then action can be taken. Understandable. But there is another thing. It is stated that the presiding officer need not be asked to give evidence. A statment would be enough. That Statement will have evidentiary value against the accused. May I submit that this is a very fundamental departure from the concept of the rule of law we have been following so far because the accused is entitled to cross-examination of the complainant before he is charged? Therefore, this departure is certainly untenable.

The third point to which I wish to draw specific attention is whereas it is specified that in a civil contempt he may be imprisoned in a civil jail when a criminal contempt is committed, he may be imprisoned elsewhere. I do not really follow this distinctinon. Civil contempt is where there is wilful disobdience of the order of a court According to me, the offence there is more grave because if the orders of the court are disobeyed and they go scot-free, no order of a court can properly be implemented, particularly the order of a civil court. Therefore, this distinction is uncalled for. I would request the Minister to look into this.

One more point. Here there is a drafting difficulty which needs looking into. According to this Bill, any proceeding under contempt has got to be tried by a

division bench, but subsequently in cl, 19, we find :

> "An appeal shall lie as of right from any order or decision of a High Court on the exercise of its jurisdiction to punish for contempt, (a) where the order or decision is that of a single Judge, to a Bench of not more than two Judges of the Court."

Once you say that every proceeding must be before a Division Bench of two Judges, how does the question of an appeal against an order of a single Judge arise ? It does not. Either the one or the other must go. This may be an oversight which has got to be scrutinised.

Lastly, here is a provision which says that the praceedings which says that the proceedings with respect to contempt of court can be initiated by the Advocate Generel or by anybody with his consent. This is a very dangerous provision. I may cite an example. In Kerala, when Shri Shankaran Namboodiripad was the Chief Minister, he made a certain statement, according to some. proceeding were sought to be initiated. The advocate-General was approached. But he declined. The Bar Association initiated the proceedings. The Advocate-General appeared in defence of Mr. Namboodiripad and opposed the petition. Finally, the high court held Mr. Namboodiripad guilty. Mr. Namboodiripad took up an appeal before the Supreme Court. The Supreme Court upheld the decision of the high court and found that the contempt was committed. Here is a case where the appointment of the Advocate-General is generally supposed to be a political appointment. Governments come and governments go, and a Chief Minister or somebody makes an attack on the judiciary, very naturally as was done in Kerala ; the Advocate-General refuses to come in. The Advocate-General refuses to give the permission also. What happens about it ? Is it not the people's right, anybody's right, to move the high court and bring to their notice that a contempt has been committed ? That has been the law so far. Why should that law be departed from ? Is it the intention that if contempt is committed by the Minister, then that contempt must go unchallenged through the instrumentality of the Advocate-General ? Why should they give protection to anybody ? Once it is accepted that contempt, is contempt whoever may commit it, once it is admitted that the prestige and the inviolability of the judiciary is something which has got to be maintained by the people also, once it is accepted there is a penal thing involved in it, why should yon insist that the Advocate-General must give you permission ? May be the court may feel that they must proceed, but the persons being what they are, it is not likely that they will initiate proceedings. We must give it to the people, give the right to the people to move in this matter. My Submission is, a departure from the current law with respect to this particular provision may kindly be not insisted upon, because in that case, contempt will go scot-free if it is committed by people who have got an authority on the Advocate-General. These are a few points which I wanted to bring to the notice of the hon. Minister in order that he may have a second look into the matter.

One last point and I shall finish. Here it is stated that a contempt committed *per se* in the province of the high court and the Sugreme Court can be proceeded against immediately and the person can be detained. But a contempt committeed *per se* before a subordinate court cannot be proceeded against and the person cannot be detained. Is this distinction warranted ? Contempt against the judiciary, whether it is in the high court or the Supreme Court or the subordinate court is contempt ; wherever it may be. Here you say that if it is contempt committed before the high court that person can be detained but then if it is committed before the sessions court, the judge can only blink and send up his report and wait for the final decision of the high court. Is this distinction warranted—that the detention is permissible in the case of the high court or the Supreme Court only ? May I enquire whether detention is not warranted if the contempt is committed before a subordinate court ? The attempt must be to protect the judiciary, to protect the fair name of the judiciary, to protect the prestige of the judiciary, and any violation

[Shri C.M. Stephen]

must be met, if at all it has to be met, equally, whether it is before the Supreme Court or before the lower court.

These are the few observations I wanted to make. I request the hon. Minister to look into this aspect and give a clarification when he replies to the debate on the motion for consideration of the Bill.

SHRI S. M. BANERJEE (Kanpur) : Sir, since we had no time to put in any amendments—I was a member of the Joint Committee—and since we wish to express our opinion, I may be given some time. We know we cannot put in any amendment...

MR. SPEAKER : If you were a Member of the Joint Committee, you could not give an amendment.

SHRI S. M. BANERJEE : I have given a Minute of Dissent which is four pages long.

MR. SPEAKER : Why are you worried about it ?

SHRI S.M. BANERJEE : I shall repeat what I wrote in the minutes of dissent before it was finalised. I said the law of contempt of court is one of the begacies of the British rule in this country.

MR. SPEAKER : It is already there before the House.

SHRI S.M. BANERJEE : I wrote :

> "Under the colonial regime, the concept was transplanted into India and then distorted and vulgarised to suit the convenience of the British rulers."

We find that some of the judges I do not want to mention the particular judge behaved like judicial touch-me-nots. They may say whatever they like but whenever anything is said either by the concerned people or the organised political parties against some of the judgments which according to them may be correct but according to us may not be correct, immediately we are told that it amounts to contempt of court.

At the time the bank nationalisation case was going on before the court, it was brought to our notice that two judges had some share in one of the nationalised banks, the Punjab National Bank and we said in this House that those two judges should not sit in judgment on this particular case. This was raised by the learned council who pleaded in that case but since objection was not taken by the Attorney General the judges remained where they were. But is it fair on the part of the judges to sit in judgment over a case where they are shareholders of a bank which has been nationalised ? If those two judges are criticised will it amount to contempt of court ?

The same question was posed by Subodh Banerjee, the then Labour Minister in Calcutta. Mr. Bhandare my hon. friend who was there put in a question to support the judges. Suppose when the judges go to attend the court, to attend to their duties, there is a peaceful *gherao* will it amount to contempt ? The reply was that if the *gherao* was peaceful it should not be. That was the reply given by Shri Subodh Banerjee.....(*Interruptions*)

SHRI R. D. BHANDARE (Bombay Central) Do not put in my mouth the words which, I had not spoken.

SHRI S.M. BANERJEE : You put the question and he replied.

MR. SPEAKER : Tomorrow if some Members of Parliament are *gheraoed*, what will be the position?

SHRI S. M. BANERJEE : There are certain clauses in the Bill and my point was that people should be permitted to make honest criticism of the judges and their judgments. I am not talking about the conduct of judges ; in judges their personal life may or may not do something; I am not bothered; I am only concerned with their judgments.

I am told that recently the Chief justice of India had written a letter to the Prime Minister about some proceedings which

took place in the House on the 25th and 26th Constitution amendment Bills Though it has been contradicted, the fact whether he has written a letter or not has not been contradicted Perhaps in that particular letter he had not mentioned this or thrown any aspersions on the conduct of the Members of the House, while delivering speeches here, especially the speech delivered by my friend Shri Gokhale I would like to know from him whether any letter has been written by the Chief Justice, and if so that letter must be placed before the House

MR SPEAKER They have already contradicted it

SHRI S M BANERJEE I am putting this question It may not be on the 25th amendment it may be on the 26th amendment

MR SPEAKER They may be writing on a number of things

SHRI S M BANERJEE If it concerns the functioning of Parliament at any time I would request the hon Minister to place it on the Table of the House There are various aspects to it

As I have already mentioned, some of the judgments, according to us, are not progressive but retrogressive, what we call in our political language 'reactionary judgments," There, we should have every right to criticise

It is provided here

> "A person shall not be guilty of contempt of court for publishing any fair commenton the merits of any case which has been heard and finally decided-"

What is meant by fair comment" My fair comment can be that the Judges were unfair, but according to the Judges the comment may be unfair The word "fair" is not definedet at all

Again, it is provided

> " A person shall not be guilty of contempt of court in respect of any statement made by him in good faith concerning the presiding officer of any subordinate court to—
>
> (a) any other subordinate court, or
>
> (b) the High Court, to which it is subordinate"

What is meant by 'statement made in good faith"? I make a statement in good faith that the Judges should never have held shares in the Punjab National Bank and sat in judgment in the Bank Nationalisation case I make this statement to remove and apprehension in the minds of the people of this country about the integrity of the Judges, to save the integrity of the Judges Will that be taken as being in good faith or not? So, I would like the hon Minister to define those two expressions

Clause 16 says

> "Subject to the provisions of any law for the time being in force, a judge, magistrate or other person acting judicially shall also be liable for contempt of his own court or of any other court in the same manner as any other individual is liable are the provisions of this act shall, so far as may be, apply accordingly "

This is also not very clear to me

Suppose I appear as a witness befor a court and make a statement which is true according to the best of my knowledge, but the facts mentioned by me do not suit the convenience of the hon Judge or the hon Court, will that be contempt ?

That is why I say that we should not hurry up with this Bill. Let us wait for some time This particular Note of Dissent was not given by me alone, but by one of the most learned Members of this House, Shri Tenneti Viswanattham

In our Minutes of Dissent, we have said

> "We must also add a word of our profound appreciation to the evidence given before the Joint Select Committee by several eminent jurists "

[Shri S.M. Banerjee]

The Chief of the Bar Council, one of the oldest lawyers of Calautta, appeared before the Joint Committee. He is 72 or 73 years old. He is not a very radical lawyer, and I have verified that he was neither a Communist nor a Socialist nor anarchist nor terrorist. He said in his evidence that what we were doing in the Bill would simply make any observation of any man impossible as far as the judges were concerned. The Judges are also citizens of this country which is supposed to be moving towards socialism. If any judge does anything which harms socialism, I want to know whether this Parliament or the peoples chamber will have any authority to remove that judge. Changes are taking place in this country. Changes have taken place. We have seen the conduct of the judges in the matter of abolition of privy purses and bank nationalisation. I am surprised that they could not keep pace with the country. When the judgment was delivered, there were 10,000 people waiting at the Supreme Court shouting slogans. If that is also going to be contempt, I do not know how people can possibly express their indignation dissatisfaction or anger against a particular pronouncement of the Supreme Court or High Court,

> "We will consider our collective effort amply rewarded if the changed law brings some relief and assurance in the Press and the Public, constantly haunted by the spectre of the law of the centempt of Court."

Freedom of the press is very dear to us. I am not talking of the jute press. I am talking of the press whose judgment will not be coloured by big bourgeois, big capitalists and monopolists. The press, the public, trading organisation and political organisations are all haunted by the spectre of the law of contempt of courts.

> "We are confident that the future will justify not only the correctness of our stand in the Joint Select Committee but also the need for further radical changes in this particular law. We hope our judiciary will take due cognizance of the mood and wishes of the people which were partially mirrored in the work of the Joint Select Committee."

When I read this sentence, I am sounding like a prophet. At that time, not only me, but our leaders like Mr. Viswanatham, Mr. Bhupesh Gupta, Mr. Sen Gupta and others who jointly signed this, visualised that a day will come when this Government shall try to move towards more radical reforms and there will be a clash between the Parliament and the judicary. Both are creatures of the Constitution, but it has been amply proved that this House is supreme and the Supreme Court is not supreme.

With these words, I hope the Minister who during the discussion of the Constitution Twenty-fifth Amending Bill in this House tried to expose the conduct of the judges and who analysed their pronouncements and dissected them, will definitely hold the banner of parliamentary democracy aloft and save the press and the peoplefrom this spectre of the law of contempt which is haunting us.

SHRI H. R. GOKHALE : Sir, the discussion shows that the impression is that the law as it were is intended only to protect the judges. It is not only intended for that purpose but it is also as much intended to protect the accused in a criminal trial and the litigant in a civil case. The principle is that while the adjudication of a dispute in a civil court is in progress, or when a trial of a criminal offence is in progress, criticism of what is taking place in the trial or in the civil litigation in the press or outside on the platform should not affect the independent judgement of the court which is dealing with that particular litigation. Therefore, I would first like to dispel the impression that the whole object of the law is only to protect the judges and has no other object. In fact, the law relating to contempt of court is primarily intended to see that the litigation or adjudication pending before a court of law is protected from unfair criticism when the progress of the litigation is on in a court of law. It is also intended to protect the accused against whom charges are levelled in a criminal court so that while the trial is in progress—and a fair trial, of course, is what is

intended to be there by everybody—criticism made outside on the platform or in the press should not affect the conduct of a criminal prosecution. That also is an important, perhaps an equally important, basis of the law relating to contempt which, I respectfully submit, has been ignored in the discussion which has taken place so far. Therefore, let us not look at the Bill only from the point of view as if it is intended to protect the judges. No doubt, judges are intended to be protected because if judges are subject to all kinds of criticism in such matters in which they are required to adjudicate, they will not be able to apply their mind fairly and independently to the case or the adjudication on which they are called upon to sit in judgment. Therefore, let us look at the Bill in a more comprehensive way and not only criticise it on the ground that it seeks to protect the judges and does nothing more

Then, as I mentioned in the opening remarks, there was a Joint Committee of Parliament on this Bill. No doubt, there were some dissenting notes and my hon. friend, Shri Banerjee, was one of those who dissented. But the government accepted the opinion of the majority in the Joint Committee and the Bill gives effect to the recommendations of the Joint Committee. At the stage when the Bill was before the Rajya Sabha I had felt, Government had felt, that if all the recommendations of the Joint Committee were accepted, there was a danger of some of the provisions at least being struck down by the courts on the ground that they took away the right which is guaranteed to the Supreme Court and the High Court in articles 129 and 215 of the Constitution as courts of record. Only in respect of one matter, I think clause 14 of the Bill, my recommendation was accepted by the Rajya Sabha. With regard to others, not only one only section of the House but the general consensus of the House was not in favour of accepting the amendments which I had proposed before the Rajya Sabha. In deference to the wishes of a large body of members of all sections of the House in the Rajya Sabha, I gave up the amendments with the result that for all practical purposes the Bill which is before the House now is as was recommended by the Joint Committee.

Some hon. Member asked me in the course of the speech as to what are the improvements that have been effected. In some matters it was found that the intention which was there in the Report of the Joint Committee should be expressed in a better way, with better elegance, so that there will be no difficulty in interpretation ; some verbal expressional changes were made to improve the Bill. So far as the basic recommendations of the Joint Committee are concerned, they have been incorporated and these alterations are only to make the drafting more accurate to see that there is no difficulty about interpretation. The changes that were made, and they were not many, were made to improve the Bill so that the Bill can be saved from any attack on the ground of vagueness or any similar criticism.

Several questions were raised on how judges behave. I have been at the bar for at least thirty years and I know here and there we found judges who had behaved in the way in which they should not in the discharge of their duties by making uncalled for remarks, losing their balance and hurting many people, litigants as well as others. Nobody wants to say that this kind of making remarks by judges should be justified But I am also proud of mentioning that by and large the entire judiciary do not use such expressions while deciding things which come before them.

As to the criticism of judgments, hon. Members know that there is an express provision made in the Act that when a judgment is delivered the case ceases to be before the courts and fair criticism of that judgment is now permissible. Now what is fair and what is in good faith are such well-accepted terms in law. They have come in for interpretation all through in Indian courts and courts outside that my hon. friend, Shri Banerjee, if he opens up a few cases will find that there is complete safeguard, because if it is not motivated by malice, motivated by ill-will, then it is permissible.

SHRI K. MANOHARAN (Madras North) : Who decides whether it is fair or not ?

SHRI H. R. GOKHALE : Certainly the court.

Either you have some faith reposed in the courts or you do not have. If you have still some faith reposed in the courts and you charge them with the duty of dispensing justice, while you want to protect the litigant, you want to protect the accused, you want to protect the judiciary also. There is a three-fold objective underlying the provisions of this Bill. The final word must be given to the judiciary. Until the court is satisfied that this was actuated by nothing else but malice, that this was actuated by facts which have no basis at all, the court will not accept it. If the facts are there which substantiate the criticism, if it is shown that intention was not to bring the court to contempt but to expose a certain situation in the public interest, that is a different thing.

Recently, there was a case and on the remarks by a Member of the house the matter was taken to and court, following the observation of law, the Supreme Court said, "We need not be so sensitive, so hyper-sensitive." That was the word used, It said, "We should also work under public gaze." So, they took the view that it was not contempt of the court. The cases are not wanting where a fair view of all these matters is taken. I think, we need not be very critical because some Judges may have behaved in a particular way. As I mentioned, I do not want to justify those cases. But, by and large, I think, it is wrong to criticise Judges on that ground. Unless you protect Judges from unfair criticism, I think, it is also wrong to expect an independent, a fair and an impartial judgment from them. If individual cases arise, they can be dealt with, When a fair criticism has been levelled, the Judges have corrected themselves. If they do not correct themselves, there are other ways.

My request to the House is not to regard this measure only as being for protection of the Judges. For example, you keep in mind an accused who is facing a murder charge. What happens if even before the completion of the trial and the verdict delivered, the person is already judged in public. Therefore, we do not go to that extent as in some other countries they have gone. We have followed this measure that when the court is seized of the matter, an unfair criticism should not be allowed while the litigation or the trial is in progress. That is basic the idea underlying this Bill.

I would again like to repeat that the Bill which has now come before the House is substantially in conformity with the majority of the recommendations of the Joint committee. The changes are only formal and verbal only to put the various provisions beyond doubt.

Then, a few things were mentioned by the hon. Member, Shri stephen. When he came here, I pointed out the difficulty to him. Article 129 refers to the powers of the courts as a court of record to punish for the contempt. I had made clear before the Rajya Sabha that while in deference to the wishes of the House I was agreeing to drop the amendments. I have always the fear and have it now that some of the provisions may not stand scrutiny in a court of law. What is a right to punish for contempt by a court as a court of record has been very well established at and those powers have been protected by two express provisions in the Constitution. We are not amending the Constitution, and we are only trying to make a law so as to fit in with the four corners of the constitutional provisions.

**11.00.hrs**

A reference was made to the right of appeal. It was said, if it has to be heard by two Judges, where is the need for referring to a single Judge ? What has not been noticed is that the provision says that the two Judges must hear the case relating to criminal contempt. But it does not say that in the case of civil contempt, a single Judge cannot. Therefore, the right of appeal takes into account all cases, criminal contempt as well as civil contempt. If a Judge has decided in a Single Bench, then it is a protection given to the accused that he has a right of appeal to go before a Division Bench, and further an appeal as of right to the Supreme Court. Now, there is a two-pronged protection, one to the Division Bench if the Single Bench has decided and second, a right of appeal to the Supreme Court even when a Division

Bench has decided against him. Only in the case of the Judicial Commissioner an exception is made because most of the Judicial Commissioner courts are composed of only one Judicial Commissioner. It is impossible to find two persons in those courts to sit and adjudicate on a case. Even then when a Single Judicial Commissioner has decided, a right of appeal has been provided as of right to the Supreme Court.

Now, a reference has been made as to why the intervention of the Advocate-General is necessary. These are two extreme points of view. On the one hand it has been said that there should be absolute freedom of speech, nothing like contempt of court. On the other hand, it is said that one should have the right to go to the court for prosecution for contempt. Now, the provision really finds out the *via media* that the highest Law Officer of the High Court, only if he is satisfied that a *prima facie* case is made out for prosecuting contempt of court, then only at his instance prosecution for contempt of courts can be taken. These are not provision for the first time found in this law. The Advocate-General has figured in the CPC. He is a lawyer, he knows. In many matter there at the instance of the Advocate-General, these matters are initiated. Therefore, this is a sort of *via media*. While, on the one hand saying 'No contempt at all', on the other hand,- an individual who for his own presonal reasons might move a court for contempt, he is prevented from doing so because a third officer, a highest officer of the court, namely the Advocate-General, has to step in before proceedings can start So, this will be really a protection from frivolous cases of contempt. This is the whole idea underlying this Bill.

SHRI C. M. STEPHEN : I tell you what really happens. In Kerala that is the danger. There is the danger. That is why I instanced that particular occuurence. The Advocate-General can go on to screen persons who want to carry on their contempt activites and they may be screened. So far, under the contempt law Advocat-General was not necessary. Anybody can go to the court. What is the specific consideration that weighed with the Government to make a change in the taw?

SHRI H.R. GOKHALE : I have already answered it. If you proceed on the basis that the Advocate-General in Kerala or in some other State is going to act *mala fide*, that is a different matter. The law proceeds on the basis that an officer holding a constitutional post under the Constitution as Advocate-General, he will act in good faith and without ulterior motives, and I think the assumption is not wrong, merely because in Kerala, as my friend says, something might have happend. It is wrong to think that in Kerala the Advocate-General is not fair and somewhere-else he is fair...

SHRI INDRAJIT GUPTA (Alipore) : What you are saying is not political realism.

SHRI H. R. GOKHALE: He was referring to Kerala and I assume even in Kerala the Advocate-General will perform his duties according to his conscience and without any ulterior motives.

I think I have clarified most of the points raised and I would recommend that the Bill be taken into consideration.

SHRI S.M. BANERJEE : He has not said anything whether a letter has been received. Otherwise, impression will go round in the country that the letter has been received.

MR SPEAKER: I am not allowing it. Now, the question is :

> "That the Bill to define and limit the powers of certain courts in punishing contempts of courts and to regulate their procedure in relation thereto, as passed by Rajya Sabha, be taken into consideration."

*The motion was adopted.*

MR SPEAKER: There being no amendments, I will put all clauses to vote. The question is :

> "That Clauses 2 to 24, clause 1, the Enacting Formula and the Title stand part of the Bill."

*The motion was adopted.*

*Clauses 2 to 24, clause 1, the Enacting Formula and the Title were added to the Bill.*

SHRI H. R. GOKHALE: Sir, I move:

" That the Bill be passed."

MR. SPEAKER: motion moved:

"That the Bill be passed."

SHRI V.K. KRISHNA MENON (Trivandrum): with great respect, I entirely agree with the Law Minister in saying that there must be provision to protect a citizen against comments of newspapers in matters that are pending before the courts, particularly in criminal cases. But again, with regret and yet with respect, I should say that the Law Minister should not use this argument which is necessary to defend something which it is necessary to defend, to defend something which is indefensible. It is necessary for this House to realise that the whole law of contempt of court is an inroad into the system or the concept of natural justice. It is the judge who is the prosecutor and the judge in this case.

I fully agree that there must be some provision for what is called contempt *ex facie*. That is to say, if a man throws a bottle of ink against a judge or does something of that kind, there must be some provision to punish him for contempt and some limitations in regard to punishment. But under the law as it stands, that is not the situation. It would be entirely defensible if there was a special provision that matters that are *sub judice* should not be commented upon in regard to the subject-matter so as to prejudice the trial. Otherwise, you will have situations where newspapers may try cases. I entirely agree with the hon. Minister there. But the situation in this country is different.

I regret that some reference has been made here to the Kerala case. I had also something to do with it. The crux of the matter was that the person who was the contemner made some comment of a philosophical character, and I believe he said that the judges were dominated by class prejudice, because they came from particular classes. He did not say that any particular judge was ; he did not say that the court was. In fact, the person concerned did not say that the judgment should be in a particular way and so on, but he had merely given a quotation, and rightly or wrongly he had quoted the sentence that judges were dominated by class prejudice. This sort of thing has been said by very conservative judges like Justice Cordozo and also by liberal judges before, who said that you could not take away from a judge his sub-conscious impulses; the fact that he belongs to a particular calss which believes in protection of property would make him believe that any talk of inroads into property would be regarded as very inexcusable. So, to meet this kind of situation, this kind of observation was made; Justice Corodozo was dominated by this feeling so much so that he had to impose the guilt upon himself or the guilt consciousness and he had put it that way.

Therefore, when you have a situation where the judge is the prosecutor and the judge at the same time then it is a very serious position, especially when a person can be held guilty of contempt of courts by judges at any level and you cannot make any distinction in regard to them.

My submission would become clearer if I narrate two or three facts in history. In the legal history of India, there is a very famous case of contempt of court, and the same law continues now also. That was the worst case of contempt of court, namely the case of *Lala Agar Krishna Lal;* this case had gone even to the Privy Council for contempt upon contempt. At that time, they could not deal with this at the level of the judiciary, and, therefore, they had dealt with it in other ways. There, it was a matter of judicial prosecution. That machinery is still there.

All the World over, there has been oppositon to the utilisation of contempt of court in many cases. In countries like the UK, very few judges take notice of small matters. But we cannot say tnat, that is the situation in our country. And what was the answer given when the contempt law was sought to be removed? There is the famous judgment which says that while this law may not be necessary in other countries, in the case of colonial countries

or countries inhabited by coloured people, you cannot remove this law. And that is the law which the Law Minister wants to perpetuate now, because he also seems to feel that in the case of colonial countries or in the case of countries inhabited by coloured people —where the colour goes into the brains also —this kind of law must be upheld. Then, there was the famous case of a newspaper which had said something about the system of law in this country

Then, we had the Namboodiripad case. First of all, I would like to take this opportunity of saying that it is very wrong even to allow a suggestion that there was any attempt on the part of the Advocate-General not to go on with it. I am not trying to defend him here, because he can defend himself. But let me tell you what the correct position was, and it was that the Government there did not want to go on with it, just as it happens in criminal cases where other private parties are involved. Therefore, it is not correct to have made any such remarks in regard to the Advocate-General.

If the law is merely for the protection of the citizen, than we are all at one with the hon. Minister. But if the law is for the protection of a judge as against a citizen, we are entitled to turn round and ask what exactly Government have in view. A judge is protected by various laws. For instance, there is the penal law of the country. The judges should not be more sensitive than anybody else. Then, there are other provisions to protect the judges. So, why should we add these proisions here ? And what is more, there may be cases of the type of the Namboodiripad case which has been referred to earlier. That is an instance where it would unleash that type of feeling, to put it very midly, and in fact, one of my colleagues in the Bar who is now a judge of the Supreme Court, said that there was no contempt. . Another colleague said ; 'there is contempt, but a small fine would do'. A third judge said : 'I would like to send him to imprisonment'—that is to say for an expression of opinion. And this will happen once there is the power to do so. You cannot expect human beings—even judges are, I believe, human beings—not to use it according to their prejudice. You cannot escape the fact that we have a judiciary which, for good reasons, I think, is comparatively isolated from the trends of public opinion. When great social changes take place, and very sharp words had been used, if the courts were to go by the technicalities and say 'this is contempt', there is no freedom of speech.

There is also a provision here which says that anything by way of fair comment is not contempt. There I think the Minister gives the case away. Who decides what is fair comment ? The judge. Fair comment has always been —even if it is *libel*—overlooked. My submission is that judges should not live in an ivory tower in this way. They should be open to the glare. They can go to court for action under sedition, slander, libel or whatever it is. All provisions for it are there in the code. If it is a question of spreading hatred, setting one class of people against another, that also is provided for in our penal law. Our penal law is so drastic, left as Macaulay drafted at that time, that there is no necessity for anything else. With the contempt law as provided which makes an inroad into the fundamental rights in the Constitution and says that it does not cover the law of contempt, with a special exemption, you are handing it over to the judges who will say : the matter has been before Parliament and Parliament still thinks that we should have this power. I think the power of imprisonment is unjustified except in cases where there is comment on a criminal cases pending action or where there is a provision which says that there is room for appeal and so on.

It must be understood that these are very expensive and lengthy proceedings. Contempt action is an extremely lengthy proceeding. In this particular case, to which reference was made —otherwise I would not heve alluded to it—the longest judgment was a dissertation on Marxist theory which could itself have led to comment afterwards. The main contention of the judge was that he knew German and counsel did not know German.

So these things happen. I do not think the law of contempt should be allowed to have such wide scope and create a

[Shri V.K. Krishna Menon]

situation as happened in the case of Lala Har Kishan Lal whe e the proceedings dragged on for years, the man was im poverished and rendered bankrupt and everything gone, because the Chief Justice did not like him—that was all there was to it.

The other case was, as I said, that in colonial countries, in places inhabited by coloured peoples this kind of law was necessary. If we accept that, we can have this. But I thought we had gone past that.

I may sound a bit unorthodox if I were to refer to the way Parliament works over here. But this has been put in, God knows why. It is an instrument of oppression in the hands of the judiciary, nothing else. After all, the judiciary can and should stand criticism. In writing, we criticise judges. We say the judgment is perverse. You cannot do anything about it. Everyday you go to the superior court and say that the judgment of the lower court is perverse, *mala fide*, this that and the other. That can be said there. It can be said here also. But a newspaperman cannot publish it. I can say here that a judge has been actuated by malice. But if the newspaper chap publishes it, he gets into trouble. I can say it here but I can not say it outside.

AN HON. MEMBER : That is his privilege.

SHRI V. K. KRISHNAMENON : The whole of this law of contempt is like setting fire to a house in order to get rid of a house or something like that.

There is enough provision already in existing laws. We should not have a law which is of an omnibus character. It should be confined to the judicial processes, where either by tampering with evidence or by maligning the character of somebody who Is under trial, as it often happens, for example, you have situations in the United States where newspapers try cases, the whole trial is vitiated and brought into contempt. There I agree with the Law Minister that that should be prevented. But I was very surprised to see that it has come back. 1 thought it had died down in course of time. Instead of that, it has come back. We have to solidly fight this contempt of law. They are arming the judiciary-and judiciary includes, the magistrates, I presume, or, any magistrate for that matter,—and arming them with the power to sentence people to undergo imprisonment in jail. The Corporations of course would be in a different position. I therefore think this measure aims at curbing our fundamental rights, the free expression of opinion and speech and also it prevents even academic comments about the nature of society, about what the Government thinks; these are matters of the sub-conscious mind; if you say I have my own views in my sub-conscious mind, it is in my head or somebody else's head, then, it cannot be brought into or within the ambit of the contempt of judges Act. There should be no case for contempt even in regard to a general statement in regard to the institution as a whole in order to change it. That is what we want. When there is no particular contempt or when there is no contempt of a particular judge or a particular court or a particular cause of action, why is this necessary? There may be a provision saying that it must be of a serious character. But there is no provision, if I have understood it, but even then, a judge again has to decide what is substantial and what is not substantial.

SHRI C. M. STEPHEN : Not the same judge.

SHRI V.K. KRISHNA MENON : May be; they are of the same brother-hood of judges, because other factors come into it. If it is not done in this way, then it may come back on him and there may be a contempt of judiciary and so on. If there is a real contempt, as I said, in the court, when somebody insults a judge, the person concerned may be given punishment; it may be a case for punishing immediately, but these long cases go on for months just because he expresses his opinion in regard to the state of society or he may be a person who knows anything about the social psychology. So, the judges are not dominated by one way or the other. The judge of a particular community may have one view; the judge of a particular area

may have one view or something like that.

I remember in a small magistrate's court in England, when an Indian seaman walked in to give evidence, the magistrate said, "Yes; I know what he will say." It goes on every day. The magistrates say, "I know him; I know what he is going to say." That can be cited here. Conferring powers, arbitrary powers on people who are prosecutors and judges at the same time is violation of the principle of natural law, natural justice where a judge sits in judgment on whether he has been attacked or not.

Therefore, these measures should be limited merely to cases which are sub-judice, where the citizen is affected. The provision says that only in the case of fair comment it is not contempt. It does not mean anything at all, because fair comment is decided by the judge ; whether it is fair or not.

I would say that the law of libel has provision for a penal law and the general respect in which the community holds the judiciary, which happens fortunately in our country, is adequate protection for a decent judge, and we should not be so sensitive as to be worried about something of what the newspaper says.

**श्री आर० वी बड़े** (खारगोन) : माननीय अध्यक्ष महोदय, यह जोकन्टेम्प्ट आफ कोर्ट बिल पास होने जा रहा है, मैं यह समझता हूँ कि पहले यह कन्टेम्प्ट आफ कोर्ट था, जब तीन जजेज़ होते थे, ब्रिटिश गवर्नमेन्ट के बारे में कन्टेम्प्ट आफ कोर्ट था। पहले जितने जजेज़ होते थे, वे समझते थे कि हम कोई सुप्रीम अथोरिटी हैं, हम विदाउट प्राइवेट प्रेजुडिस है। वे समझते है हम न्याय मन्दिर में बैठे हैं तो हम कोई देवता है, कोई भगवान हैं, वे लोग कैसे इस में प्राइवेट प्रेजुडिस लाते हैं। उसके बारे में जजमेन्ट में स्ट्रिक्चर्स पास करते हैं और उसी तरह से उन के जजमेन्ट आते हैं। अगर कोई क्रिटिसिज्म करे तो वह क्रिटिसिज्म केअर हैं या नहीं, इस का निर्णय करने वाले जजेज़ का क्या तरीका है, वे अपनी कोई ओपीनियन फार्म कर लेते हैं। जैसे कोई वकील आता है, अमुक वकील बहुत बोलता है, कन्टेम्प्ट करता है, उसके बेसिज पर वे स्ट्रिक्चर्स पास करते है। उसके बाद कोई दूसरा जज आता है तो वह भी ऐसा ही सोच लेता है। इस मे दिया गया है। ऐसे ही क्लाज ३ मे लिखा है :

"For the purpose of this section, a judicial proceeding is said to be pending until it is heard and finally decided."

What do you mean by that ? He should wait for the decision of the Supreme Court ?

इसके बारे में भी माननीय मन्त्री जी को साफ करना चाहिए।

दूसरी बात जो इसमें लिखी है कन्टेम्प्ट आफ कोर्ट के बारे में वह कोर्ट को प्रोटेक्शन देने के वास्ते है। आज 25 साल की आजादी के बाद यही कोर्टस को कटेम्प्ट आफ कोर्ट की इस प्रकार से तलवार दे दी जाये तो मैं कहता हूं कि न्यूजपेपर में आना या कही बात करना भी गुनाह हो जायेगा। उसमें पांच सौ रुपए और इम्प्रिजनमेन्ट की बात दी है। और जहां तक क्षमा मागने की बात है, क्षमा मांगने के बाद में कोर्ट मे उसका फैसला होना चाहिए था लेकिन इसमें उसका प्राविजन नहीं है। इसमें कटेम्प्ट आफ कोर्ट के लिए पनिशमेन्ट दिया हुआ है। तो यह बात भी गौर करने की है। इस बिल में इतनी बात जरूर है कि कटेम्प्ट आफ कोर्ट की डिफनीशन दी गई है और मैं समझता हू इसके बारे में कोर्ट में काफी छिलके निकाले जायेंगे। जब कंटेम्प्ट आफ कोर्ट का कानून बनाया जा रहा है तो मैं समझता हूं इसको अच्छी तरह से कपड़े पहनाकर एक अच्छा कानन बनाना चाहिए। यहां पार्लियामेन्ट मे तो क्रिटिसिज्म हो सकता है। गोलकनाथ केस के जजमेन्ट के खिलाफ बहुत कुछ हुआ। यहां पार्लियामेन्ट में तो हम जो चाहें कह सकते हैं लेकिन यदि इसी प्रकार हम बाहर बोलें तो हमारे खिलाफ कंटेम्प्ट आफ कोर्ट हो सकता है। तो मैं माननीय मन्त्री जी से इतना ही कहना चाहूंगा कि मैंने ज्वाइंट

[श्री आर०वी० बड़े]

कमेटी की रिपोर्ट पढ़ी है और उसके साथ में जो नोट है उसको भी देखा है, मैं चाहूँगा कि कटेम्प्ट आफ कोर्ट से कुछ इस प्रकार के प्राविजन किए जायें जिससे कि यह तलवार न्यूज पेपर्स और पब्लिक पर लटकी न रहे।

SHRI SEZHIYAN (Kumbakonam) : I do not want to take much of the time of the House. I want to endorse a particular point ear stressed by Mr. Krishna Menon, as it deserves the serious attention of the Government and the House. When comment is made on a particular judgment or on a particular trial, that can be taken into consideration. But suppose an opinion is expressed on the state of affairs in society and if that is also treated as contempt of court, I thing we may not be able to express any radical opinion in the country. In one particular case, Mr. Namboodiripad was reported to have said at a Press Conference that judiciary was not impartial in a class rule, that it was an instrument of oppression and judge's were guided by class prejudicies..... (Interruptions). This opinion may or may not be correct; it is for the society to judge.

SHRI PILOO MODY (Godhra) : What is your reading ?

SHRI SEZHIYAN : I do not agree with him totally ; to a certain extent I agree.....(Interruptions) Mr. Namboodiripad expressed an opinion on the state of society and he was held before the court for contempt and fined a thousand rupees or sentenced to imprisonment for one year.

MR. SPEAKER : We are in the third reading,

SHRI SEZHIYAN : Even in Tamil Nadu, Mr. Annadurai once said that courts are like dark chambers and where light is provided by costly advocates, it helps the people to get justice, Somebody may say that he called the courts dark chambers and hence committed contempt of court. Therefore, I say that if some one expressed an opinion about the state of society, it should not attract the provisions of this law. If anybody takes up a specific case and comments upon the conduct of the judge, that can be gone into, I endorse the views expressed by Mr. Menon.

SHRI H. R. GOKHALE : I have nothing to add, except to point out that in Clause 19 of the Bill there is a printing mistake. In line 4 the word "less" is missing. It should be "notless than".

MR. SPEAKER : The printing mistake will be corrected.

The question is :

"That the Bill be passed"

*The motion was adopted*

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**11.26 Hrs.**

## PREVENTION OF FOOD ADULTERATION (EXTENSION TO KOHIMA AND MOKOKCHUNG DISTRICTS) BILL

THE MINISTER OF WORKS AND HOUSING AND HEALTH AND FAMILY PLANNING (SHRI UMA SHANKAR DIKSHIT) : I beg to move :

> "That the Bill to extend the Prevention of Food Adulteration Act, 1954, to the Kohima and Mokokchung districts in the State of Nagaland, be taken into consideration."

Prior to 1954 almost every State in India had its own food laws to deal with the prevention of food adulteration and, as such, the laws and standards were not uuiform. The need for a uniform legislation was keenly felt and the result was that the Central Government enacted the Prevention of Food Adulteration Act, 1954. The Act applied to the whole of India except the State of Jammu and Kashmir and Kohima and Mokokchung Districts in Nagaland. A Bill to extend the Act to Jammu and Kashmir has been passed by both the Houses of Parliament.

At the time of the enactment of the aforesaid legislation the State of