

16.31 hrs.

**NAGALAND APPROPRIATION BILL\*, 1975**

**THE MINISTER OF STATE IN THE MINISTRY OF FINANCE (SHRI PRANAB KUMAR MUKHERJEE):** Sir, I beg to move for leave to introduce a Bill to authorise payment and appropriation of certain further sums from and out of the Consolidated Fund of the State of Nagaland for the services of the financial year 1974-75.

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

"That leave be granted to introduce a Bill to authorise payment and appropriation of certain further sums from and out of the Consolidated Fund of the State of Nagaland for the services of the financial year 1974-75."

*The motion was adopted.*

**SHRI PRANAB KUMAR MUKHERJEE:** I introduce the Bill. I beg to move†:

"That the Bill to authorise payment and appropriation of certain further sums from and out of the Consolidated Fund of the State of Nagaland for the services of the financial year 1974-75, be taken into consideration."

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

"That the Bill to authorise payment and appropriation of certain further sums from and out of the Consolidated Fund of the State of Nagaland for the services of the financial year 1974-75, be taken into consideration."

*The motion was adopted.*

**MR. DEPUTY-SPEAKER:** We now take up clause-by-clause consideration of the Bill. I put the clauses to vote.

The question is:

"That Clauses 2 and 3, the Schedule, Clause 1, the Enacting Formula and the Title stand part of the Bill."

*The motion was adopted.*

*Clauses 2 and 3, the Schedule, Clause 1, the Enacting Formula and the Title were added to the Bill.*

**SHRI PRANAB KUMAR MUKHERJEE:** I move:

"That the Bill be passed"

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

"That the Bill be passed"

*The motion was adopted.*

16.30 hrs.

**STATUTORY RESOLUTION RE DISAPPROVAL OF AIR FORCE AND ARMY LAWS (AMENDMENT) ORDINANCE, 1975 AND AIR FORCE AND ARMY LAWS (AMENDMENT) BILL**

**MR. DEPUTY-SPEAKER:** We now take up the Statutory Resolution by Shri R. R. Sharma seeking to disapprove the Air Force and Army Laws (Amendment) Ordinance, 1975, and the Air Force and Army Laws (Amendment) Bill by Shri J. B. Patnaik.

Shri R. R. Sharma.

श्री रम रतन शर्मा (बाँदा) उपाध्यक्ष  
सहोदय मैं निम्नलिखित मकल्प पेश करता हूँ —

'यह सभा राष्ट्रपति द्वारा 25 जनवरी 1975 को प्रख्यापित वायु सेना

\*Published in Gazette of India Extraordinary Part II, section 2, dated 25-3-1975.

†Introduced/moved with recommendation of the President.

तथा स्वयं सेना विधियों (संशोधन) अध्यादेश 1975 (1975 का अध्यादेश संख्या 3) का निरनुमोदन करती है।”

16.31 hrs.

[SHRI ISHAQUE SAMBALI in the Chair]

यह संशोधन बहुत छोटा है और इसे बहुत पहले आ जाना चाहिये था। मेरा संशोधन से कोई विरोध नहीं है लेकिन यह संशोधन जिस प्रकार अध्यादेश के द्वारा लाया गया है उसका मैं विरोध करता हूँ।

आपको ज्ञात है कि यह सरकार अध्यादेशों के द्वारा ही शासन कर सकती है। अभी 1974 में ही रिप्रजेंटेशन आफ पीपल एक्ट में संशोधन करने के लिये इस सरकार ने अध्यादेश जारी किया था। श्री चावला सुप्रीम कोर्ट में इलैक्शन पैंटीशन हार गये थे और उसके कारण ऐसी परिस्थितिया आ गई थी कि सुप्रीम कोर्ट का वह निर्णय बहुत से कांग्रेसी सदस्यों के खिलाफ जाता जिनके विरुद्ध इलैक्शन की याचिकाएँ हाईकोर्टों और सुप्रीम कोर्ट में उस समय पड़ी थीं। इसीलिये आप अध्यादेश लाये थे। यह सरकार जो अध्यादेशों के द्वारा शासन करती है उसको कबम किया जाना चाहिये। इस प्रस्ताव के द्वारा मैं अध्यादेशों द्वारा शासन करने की सरकार की प्रवृत्ति की भर्त्सना करता हूँ।

इस विधेयक के द्वारा धार्मी एक्ट 1950 और एयर फ़ोर्स एक्ट 1950 में एक बहुत साधारण मा संशोधन किया जा रहा है जो अपने में बहुत अहम है। इस संशोधन के द्वारा ये शब्द हटाये जा रहे हैं ‘अन्दर दैन दी स्टैंट आफ जम्मू एण्ड काश्मीर।’ यह संशोधन बहुत पहले हो जाना चाहिये था। आखिर यह आज तक क्यों पड़ा रहा? 1950 से आज तक क्या कोई ऐसे मामले नहीं आये थे जिनमें कि उसको अमंड करने के लिये सोचा जाता? मन्त्री महोदय सिर हिला रहे हैं लेकिन मेरी जानकारी है कि ऐसे बहुत से मामले आये

होंगे और उनको किसी प्रकार से हल-अप कर दिया गया होगा। लेकिन 1950 के बाद अब 1975 में ये संशोधन लाये हैं।

इसी सन्दर्भ में दो बातें मैं और कहना चाहूंगा। पहली तो यह कि काश्मीर की समस्या जटिल से जटिलतर होती जा रही है। आपको पता है कि अभी आर्टिकल 370 के बारे में इस सदन में बहुत बड़ा विवाद उठ खड़ा हुआ था। आप एक तरफ तो काश्मीर को सांविधानिक तरीके से देश का अंग नहीं मानते और दूसरी तरफ कुछ एनेक्टमेंट्स के द्वारा आप इसको अपने देश का अंग मान रहे हैं। आखिर आप दुविधा में क्यों हैं? आप स्पष्ट रूप से क्यों नहीं कहते हैं? आर्टिकल 370 क्यों नहीं समाप्त करने हैं?

दूसरी बात यह है कि धार्मी और एयर फ़ोर्स में अब डिमिप्शन की बहुत बड़ी गड़बड़ी होती जा रही है। उसके कारण ये हैं कि धार्मी और एयर फ़ोर्स के अधिकारियों और कर्मचारियों का प्रमोशन उनकी राजनीतिक गतिविधियों के आधार पर किया जाता है। इसी सन्दर्भ में मैं अपने एक प्रश्न का जवाब देना चाहूंगा। 13 मार्च को सरकार ने मेरे प्रश्न संख्या 329 का जवाब दिया था। प्रश्न इस प्रकार था :

“Will the Minister of Defence be pleased to state the names of those Army, Navy and Air Force Officers who have retired prematurely during the last three years because of supersession and other reasons?”

सरकार ने अपने जवाब से एक लिस्ट दी जिसमें धार्मी के 191 अफसरों जिनमें मेजर और लेफ्टिनेंट कर्नल आदि थे, एयर फ़ोर्स के 25 और नौवीं के लगभग 94 अफसरों के नाम थे जिन्होंने सुपर सैशन की वजह से प्री-रीटायर रिटायरमेंट सीक किया था। यह क्यों होता है? क्या यह सही नहीं है कि आपको जो आवसी सूट नहीं करता है चाहे वह कितना ही ईमानदार और कर्मठ हो, चाहे उसने देश के लिये

कितना ही त्याग और बलिदान किया हो लेकिन अगर वह आपकी सुविधानुसार काम नहीं करता है अगर वह आपकी इमारतों पर काम करने के लिये तैयार नहीं है तो आप उससे जूनियर को उस पर बिठा देते हैं जिसको वह बर्बात नहीं कर पाता है और रिटायर हो जाता है। इसीलिये हमारी फ़ौज और वायु सेना का स्तर नीचे जा रहा है कुछ दिन पहले अखबारों में था कि वायु सेना के दो अधिकारी रुस के लिये जासूसी करने हुए पकड़े गये थे जिसके बारे में आपने कुछ एक्शन भी लिया था।

इन बातों से प्रकट है कि सेना के सम्बन्ध में आपकी व्यवस्था और कार्यकलाप सही नहीं हैं जिसकी वजह से सेना में स्थल सेना, वायु सेना और जल सेना में, आदमियों को निष्ठा से काम करने की प्रेरणा नहीं मिलती है और इस तरह की बातें सामने आती हैं।

यह विषयक बहुत छोटा है। इसके बारे में मुझे और कुछ नहीं कहना है। इन शब्दों के साथ मैं अपने संकल्प को प्रस्तुत करता हूँ और सदन से निवेदन करना चाहता हूँ कि वह इसको बहुमत से समर्थन देकर पास करे।

MR. CHAIRMAN: Resolution moved:

"This House disapproves of the Air Force and Army Laws (Amendment) Ordinance, 1975 (Ordinance No. 3 of 1975) promulgated by the President on the 25th January, 1975."

THE DEPUTY MINISTER IN THE MINISTRY OF DEFENCE (SHRI J. B. PATNAIK): I beg to move:

"That the Bill further to amend the Air Force Act, 1950 and the Army Act, 1950, as passed by Rajya Sabha, be taken into consideration."

The Bill is to suitably amend these two Acts so that they are universally applicable to all parts of the country.

At present these two Acts make a distinction between the State of Jammu and Kashmir and the rest of the country in regard to the trial of civil offences committed by service personnel. The limited purpose of the Bill is to remove that distinction.

The purpose of bringing one Bill for amending both the Acts is that both the Acts contain similar provisions to civil offences. According to these two Acts, a civil offence committed by a person subject to these two Acts is triable by a court partial and not by an ordinary court of criminal justice. There have been certain exceptions and these exceptions are in regard to major offences like murder, culpable homicide not amounting to murder or rape in relation to persons not subject to military, Naval or Air Force law which are only triable by ordinary courts of criminal justice. The latter offences are however also triable by court-martial when service personnel are on active service or at any place outside India or at a frontier place specified by the Central Government in this behalf. This is provided for because otherwise this would involve these persons in prolonged litigation resulting in harassment and consequential loss of morale and discipline which should be zealously safeguarded in the armed forces. According to the Air Force Act of 1950, and Army Act of 1950, the provisions do not include the State of Jammu and Kashmir. This was so because of the conditions obtaining at that time when this Act was passed by the honourable House. Consequently civil offences committed by service personnel in that State were covered under this clause and they were considered as acts committed outside India. For the purpose of law there was no practical difficulty experienced by the Government; however, the situation changed when the High Court of Jammu and Kashmir observed that civil offences committed in that State could not be tried by Court Martial but by ordinary courts of criminal justice according to the law of the State namely, the

Ranbir Code. As a result of this the Government was faced with a situation, either to see that the Army Act of 1950 or the Air Force Act of 1950 be suitably amended so that it would be applicable to the State of Jammu and Kashmir or the service personnel accused of civil offences would be left to the mercy of prolonged litigation which would result in loss of morale and discipline in the army. Government immediately moved the Supreme Court in this regard. But it was found that it would take some time for the decision of the Supreme Court. In the meanwhile case after case got piled up in which service personnel were involved. And, therefore, Government, came out with a Bill to amend these two Acts. The hon. Member, Sharma said, this Bill has not come before the House earlier. I would like to remind him that this Bill was earlier brought before the Rajya Sabha in the last session but as Parliament adjourned this Bill could not be passed. Therefore we took resort to the ordinance. This was meant to benefit those people who otherwise were going to be seriously affected by this decision of the High Court of Jammu and Kashmir to which I have already made a reference. Government has the highest regard for Parliament and for this House. We would not have promulgated this ordinance had the House not adjourned. There are a few amendments which are proposed. One is to repeal the ordinance which has been promulgated and the other one are in regard to amending the year of the Bill and the year of the Republic.

As regards the other points made by him, I would refer to them when I reply to the debate.

With these words, I commend the Bill to the House and I appeal to the hon. Member to withdraw his Resolution.

**MR. CHAIRMAN:** Motion moved:

"That the Bill further to amend the Air Force Act, 1950 and the Army Act, 1950, as passed by Rajya Sabha, be taken into consideration."

**SHRI P. G. MAVALANKAR** (Ahmedabad): If you permit me, I only want to make a submission—a point of order—on this Bill, Army and Air Force (Amendment) Bill, which the Minister has brought forward.

My point of order is this. By this Bill, the Government is seeking extension of certain provisions of the Army Act, 1950 and the Air Force Act, 1950 to Jammu and Kashmir was excluded from their purview so far. Now, Sir, the High Court of Jammu and Kashmir has given a judgment according to which this provision may not apply to Jammu and Kashmir. The point is that they, that is, the Central Government, have gone in appeal before the Supreme Court against the decision of the High Court of Jammu and Kashmir. When Government of India have gone in appeal to the Supreme Court precisely on the point arising out of the judgment of the Jammu and Kashmir High Court, my point of submission or point of order is this. How is it that such an order and such a legislation can ever come? The whole difficulty is this. Suppose we pass this Bill into an Act. That means although an appeal is pending before the Supreme Court, the Government of India have, through this Amending Bill, forced the Supreme Court to take a particular line.

I could have understood if the Government had not gone in appeal. But, having gone in appeal in the Supreme Court and then subsequently to come with this kind of order which will be converted into a Bill which we are now asked to pass only means that it is a very extraordinary situation. I would like the Minister to reply to this.

One more point is this. This matter had come up in the other House. With your permission, I would like to read out an extract.

**THE MINISTER OF WORKS AND HOUSING AND PARLIAMENTARY**



**AFFAIRS (SHRI K. RAGHU RAMAIAH):** You cannot read the extract.

**SHRI P. G. MAVALANKAR:** I shall only refer to what happened there. That of course, I can. Otherwise how do I meet my point? I cannot just talk in the air I must raise a point. How can I do it if I cannot refer to the proceedings of the other House?

**SHRI K. RAGHU RAMAIAH:** He can, with his full throat, cite what he likes as if from his own internal sources.

**SHRI P. G. MAVALANKAR:** I am grateful to the Minister for Parliamentary Affairs for this guidance. My information is that the Full Bench of the Jammu and Kashmir High Court held that the service personnel charged with civil offences are not liable to be tried by a court martial, and that such offences have to be tried under the penal laws of Jammu and Kashmir. My further information is that the number of such cases involved is very small, I believe. I am right in giving this information. As on 24th January 1975, the number of such cases was just 37. In order to enable the Government of India to carry on with the prosecutions or courtmartialing or whatever it is, against these 37 army and air force personnel, they have brought forward this Bill before the House.

If we are involving some serious questions of defence in the border area of Jammu and Kashmir—international frontiers, etc., or whatever it is, I could have understood. But, what is the harm in waiting for the appeal in the Supreme Court to be disposed of? Are these thirty-seven people to be tried immediately? Could you not wait for the disposal of the people having gone already in appeals? How can the Government of India issue any such order and come forward with a legislation? I feel that this is an affront on the judiciary. It is trying to force the

judiciary to pre-judge the issue on which Parliament has to pass a law and then force the judiciary to accept the *fait accompli*. That is my point of order.

**MR. CHAIRMAN:** This is not a point of order.

**SHRI R. V. BADE (KHARGONE):** Sir, I rise on a point of order. What Mr. Mavalankar says is this. This is a *sub-judice* matter because the matter is pending before the Supreme Court. This matter is *sub-judice* and so, we cannot discuss this here.

नभारनि महीदव : यह प्वाडट आफ आर्डर नही है । यह उन्होंने मवमिशन किया है । परी म्पीच उन्होंने दे दी । यह प्वाडट आफ आर्डर नही ह यह सबमिशन है ।

**SHRI DINESH JOARDER (MALDA):** Mr. Chairman, apart from the legal points that have been raised by my learned friend, Mr. Mavalankar, there is also the appeal which is still pending in the Supreme Court. Therefore, I want to submit whether we have the competence to pass this legislation. Apart from that question it is a question of propriety that the Government should have waited till the decision of the Supreme Court and then only should have come with this legislation. That would have been much better. I also hold the same views as the mover of this Resolution, Mr. Sharma, who has opposed the issuance of this sort of Ordinance. I may say that major part of our functioning in this House has become to regularise Ordinances passed by the President at the instance of the Central Government. This has become a regular feature. It has to be deprecated. I have no objection regarding the necessity or the reasons that have been put forward by the Minister for enactment of this law but in this connection we should also discuss the functioning of the court martials, the nature of the trial that is administered through those court martials. We have been experiencing since Independence that the procedure followed in the court martials is the

same old procedure. There is a tendency among the high officials of the Defence personnel to employ their near relations and also giving promotions to their near relations and the people liked by them, and also at the time of forming the Court Martials, these aspects are looked into, who are the culprits, who are the delinquent officers, who should be tried and in that case, who should form the Court Martial. A few high officials in the Defence services have formed a coterie for this purpose. All these things are very much complained of very often. Sir, in the case of offences committed by the junior officers or the officers in the lower ranks they seldom get any justice from the court martial. But, in the case of higher officials, they are not sent for trial before the court martial even if they commit certain offences like corruption and indulge in indiscipline. They are not sent for trial before the court martial and they are not tried even. In recent past, in the Eastern Command, one Major disclosed certain facts of corruption. What happened? That was investigated into and it was found that the higher officers were very much guilty of indulging in corruption and in some transactions, they were found guilty, but, no punishment was given. They were ignored. Their offences were ignored. But, that poor fellow, the Major, was the man who was caught and he was dismissed from service. This is the thing going on in the defence services. Not only that. The court martial is supreme and if anything is done injudiciously and if any injustice is done to anybody, there is none to check and there is no provision for appellate jurisdiction. So, Sir, it would be better if there are certain committees comprising of Members of Parliament and other judicial officials, which will act as a body of appellate jurisdiction. It would be necessary in regard to certain offences, not in regard to all petty offences, but in regard to certain offences, that the trial and the judgement of the court martial should be reviewed by a higher body. This

should comprise of accredited judicial-minded people or those who are already in service in the judiciary or those who are Members of Parliament. There should be an appellate body comprising of such people who can go through and review from time to time the trials of the court martials. Secondly, Sir, the procedure in regard to trial by the court martial should also be changed to fit in with the present circumstances of our country and in keeping with the need for security and a sense of justice among the service personnel, from the lower ranks to the higher ranks, so that they may feel that in serving in the defence of India, they will not be meted out with any injustice.

Sir, as regards the service code, there has been a long standing demand for a thorough change of the service code of the three services. Now, there is no equality in pay for equal job and there is no equal opportunity for the service personnel in regard to promotions, recruitments and other benefits. The same old code followed by the British imperialists is continuing. It should be changed so that the low-ranking officers and poorly paid employees get justice and better remuneration.

17 00 hrs.

There are complaints about recruitment to the defence forces. A coterie gets the largest quota, resulting in imbalance in the recruitment. I do not want to mention any particular State. In defence forces, all parts of India should get the same opportunity of employment. This has been discussed many times here. This inequality and imbalance should be removed.

Defence personnel are being used for curbing popular movements like the railway strike last year. This should be stopped. We are now living in a very peaceful atmosphere and there is no immediate danger of

war with neighbouring countries. Still, we are increasing the defence budget. A large part of the national resources is going to be wasted like this. We are not getting better results. There is also rampant corruption in the defence administration; Hindustan Motors of Birlas were to supply some vans. The order was placed at a very low rate, but when the supply was made, they charged a very high rate, almost double. The payment was made at the higher rate. Nothing has been done about it. This sort of irregularities in monetary transactions and corruption should be looked into.

We do not object to the spirit of the Bill. We want that the service personnel who are being court-martialled should get justice and should have an opportunity to appeal to some supervisory body, like a judicial committee, who can go into the decisions of court-martials.

**SARDAR SWARAN SINGH SOKHI (JAMSHEDPUR):** Sir, I welcome this Bill. Some of my hon friends have raised some points of orders about this Bill. I do not think there is any validity in those points of orders. Because, Parliament is supreme and is the highest body which can make any law at any time. Further, this was already passed by Rajya Sabha.

As I said, I welcome the Air Force and Army Laws (Amendment) Bill, amending the Act of 1950, which would not only achieve its objects, but has been widely welcomed by the Indian people, particularly the amendment to omit the words "other than Jammu and Kashmir". Jammu and Kashmir is no doubt an integral part of India and this amendment has further removed all doubts of the people of India that the same Act which is applicable to India is now applicable to Jammu and Kashmir, though it has a different Constitution.

I am of the opinion that any person subject to this Act who commits an offence should be tried by a court-martial, as long as he is in service, whether active or otherwise, and should not be tried by any civil court, to further boost the morale of the armed forces, because the civil courts have a very lengthy process which does not suit the armed forces personnel, because of their training and temperament.

Here I want to make a reference to the case of Squadron Leader R. Jasuratram, who has challenged the legality of the authority of Air Marshal G. D. Sharma, Air Officer in charge, Air Headquarters, before the Delhi High Court. I would suggest that the Act should be further amended so that no officer, or staff in the army, navy or air force could challenge the legality of the GCM, sentence, in any court of law in the country or outside. There should be no lacuna or loophole in the Act in this respect.

It is really surprising that the Military, Naval and Air Force Attache of the Soviet Embassy in India is involved in this case. The Government of India should protest to the USSR Government and request them to take the necessary action against that officer of the Soviet Embassy who indulged in such an act of espionage in our country. It should not be allowed to happen again and severe action should be taken against the Air Force officer, to set an example for the future and to maintain discipline.

Lastly, the personnel of the armed forces should be fully conversant with the Army, Navy and Air Force Act. For this up to date booklets of the Acts should be distributed to them in their mother tongue for their guidance, so that they do not violate the law simply due to their ignorance of the law and indulge in criminal and such like acts.

SHRI D. K. PANDA (Bhanjanagar): Sir, in this case also it is a rule by Ordinance. In spite of the repeated objections raised in this House, we find that this has become the usual and regular practice of the Government. Eleven months have elapsed already when the High Court judgment was passed. Thereafter, immediately, action could have been taken. Some such measure could have been introduced in the House even during the last two sessions of Parliament. But that has not been done. So, my objection is that this rule of Ordinance should not be used because it is repugnant to the very concept of parliamentary democracy.

Now, the hon Minister comes from a State like Orissa which is a very very backward State. Sometime ago, there were some recruiting centres and, specially, at Brahmampur, a place from where Mr. Giri hails, there was a recruiting centre That has been abolished. In spite of the fact that the eastern region, including Orissa, has been totally neglected as far as the recruitment policy is concerned, giving rise to regional imbalance, still this aspect could not be taken into consideration. Therefore, I draw the hon. Minister's attention to it and I urge upon him to see that at least he takes some steps for the restoration of the recruitment centre at Brahmampur.

In this connection, as far as Adivasi people are concerned and who constitute one-third of the total population in Orissa. I suggest that there should be some such recruitment centre in the Adivasi region. Accordingly, I may also suggest that at Phulbani, a recruiting centre should be opened.

With regard to this particular amending Bill, I have nothing to object. But in connection with this I would like to bring certain facts before the House so that something can be done at least in future. In the P.A.C. Report, I find that for the purchase of defence equipment, a huge amount to the tune of lakhs of rupees has been

spent. They have been purchased at huge cost which could have been purchased at a lower price.

There were some particular references to the case of corruption which are going on in the Defence Department. That should be put an end to and, specially where we find some such cases, immediate action should be taken. One Major in the Eastern Zone gave all the facts relating to some corruption charges. After that, he was dismissed from service. This is a very sad commentary. A Major who points out certain corruption cases in the Defence Department should not be dismissed. He should be rewarded. But dismissal was the reward he got.

The P.A.C. also has pointed out about the supply of valuable station wagons which were badly needed for Defence. The order was placed with the Hindustan Motors, a firm of Birlas. In this connection, there was a deliberate delay on the part of the firm of Birlas. So, we find in such a very important Department like Defence Department also which is for the defence of the country, for the sovereignty of the country, we are going to depend on capitalists and the capitalists, as a class, are making a huge profit taking advantage of the defence needs of our country.

What I want to say is this. After 27 years of independence, at least two things are very necessary. In the public sector there should be some such industry that can manufacture all the arms and equipment necessary for defence. Secondly, the military people, the army people, should have a broad approach, a mass approach to the people, to the working class movement and also to the people in general, so that they will not feel that they are away from the people; for that, special training is necessary and in that connection also things should move.

SHRI P. K. DEO: (Kalahandi): Mr. Chairman, Sir, on the 28th March, 1974, the Jammu and Kashmir High Court, by a majority judgment, struck

down the jurisdiction of the Court Martial in that State. They said that it would not be applicable so far as Jammu and Kashmir was concerned. I quite agree with what is stated in the Statement of Objects and Reasons. It says that, in the interest of discipline and morale of the armed forces and also for ensuring continued availability of the members of armed forces for service and duties, it is essential that, as far as possible, criminal charges against the members of armed forces are investigated expeditiously and tried by Court Martial.

In Jammu and Kashmir, there is the Ranbir Penal Code. The Ranbir Penal Code does not apply to the civil offences which could be tried Court Martial. After it has been struck down by the Jammu & Kashmir High Court, the Government of India slept all these months and after a lapse of nearly eleven months or so, they went to the Supreme Court. It was rightly raised by my hon. friend, Mr. Mavalankar, that, when a matter is *sub judice* in the Supreme Court, we should not have a confrontation between the supreme Legislature of this country and the supreme Judiciary. I would like to submit that, as far as practicable, we should try to avoid it. I would like to know whether this piece of legislation has been brought so as to circumvent the Supreme Court which might arrive at some finding. So far as the statement of objects and reasons is concerned so far as the intention is concerned, it is very good. But I would be the last person to see any confrontation between the Supreme Court and this Parliament.

So far as the drafting is concerned. I would like to make some suggestions. The Indian Penal Code is very clear, though it has been sent for amendments. It says:

"Any person liable by any (Indian law) to be tried for an offence committed beyond (India) shall be dealt with according to the provisions of this Code for any act committed beyond (India) in the same manner as

if such act has been committed within (India)."

Then section 4 says:

"The provisions of this Code apply, also to any offence committed by (a) any citizen of India in any place without and beyond India; and (2) any person on any ship or aircraft registered in India wherever it may be."

Further it says that this has to be taken together with the Army Act, sections 125, 126 and 127 as well as the Defence Services Regulation Adjustment and Jurisdiction Rules, para 418. I would draw the attention of the hon. Minister to that. The crux of this section is that a court-martial can be held anywhere inside or outside India or even on a ship or an aircraft anywhere in the world. Even if a crime has been committed in Timbaktu the hand of the law is long enough to catch him and punish him. So, the Government of India should not get perturbed about it.

So far as the Army Act is concerned, though it was passed in 1950, there is an anomaly in so far as its definition is concerned. In Section 3, sub-clause (8) it says that a 'criminal court' means a court of ordinary criminal justice in any part of India other than the State of Jammu and Kashmir. I think that things have changed and Jammu and Kashmir is an integral part of India and should be considered to be so.

We are surprised that the Hockey cup that has been brought by the Indian team depicts Kashmir not as a part of India. Now that the cup has come to our possession, we should see that necessary cartographical change is made in the Hockey cup so that Kashmir is shown as an integral part of India.

In so far as the Army Act is concerned, when it was discussed in 1950. Pandit H. N. Kunzru had expressed his genuine misgivings regarding the civil offences and regarding the calibre of the Judge-Advocate-General who is

supposed to look into these court martials. He stated that they had absolutely no legal background they knew nothing, and they were from the Army cadre. So, I most respectfully suggest that the Minister should see that the court martial is composed of such persons who have got some legal background and there should be a provision for appeal as also for review. Even after this law has been amended, take it for granted that all those who have been punished under the court martial which has now been nullified by Jammu and Kashmir High Court, they may be reinstated in their service. But what about those who have faced the death sentence by the court martial and have been executed? They cannot be brought back to life. Death sentences are confirmed by the Defence Minister himself. I would like to know categorically from the Defence Minister. Will he be able to bring back those dead people again? Lastly, at the end, I would suggest:

(1) There should be a uniform code for all the three services.

(2) A special court for appeal from Court Martial should be there. At present, the accused has no right to appear as a witness on oath a court martial. That provision is repugnant to the Criminal Procedure Code which has been amended lately.

(3) Taking into consideration all these facts, my last submission to him, as he comes from my State of Orissa which was the last State to submit to British suzerainty, is that the theory of martial race is just a myth. Time has proved that there is nothing like any community being a martial race. All of us are a martial race. Taking into consideration the poor representation of Orissa in the services, he must go in for an Orissa Regiment and also have cantonment at Bhubaneswar. I want this assurance from him.

THE DEPUTY MINISTER IN THE MINISTRY OF DEFENCE (SHRI J. B. PATNAIK): I am thankful to the hon. Members for their general support to this Bill. As far as I can gather from the speeches of the hon. Members, they are not against this amendment to the law.

However, certain observations have been made in regard to the ordinance, in regard to the provision of court martial and in regard to the Ministry of Defence in general. As far as the ordinance is concerned, I made it very clear while introducing the Bill that we were not in favour of the ordinance. Therefore, we brought a Bill before the Rajya Sabha during its last session, but, because of other business, this Bill could not be passed by the Rajya Sabha. As the Bill could not be passed by the Rajya Sabha, we had to resort to the promulgation of an ordinance.... (Interruptions).

Regarding this ordinance, certain observations have been made by my friends, Shri Mavalankar and others, that this amending Bill is prejudicial to the case before the Supreme Court. It is not prejudicial to the case before the supreme court. The Government is not in confrontation with the Supreme Court as regards this amending Bill because the competence of Parliament to pass legislation is not affected by the pending appeal before the Supreme Court. Let me complete my say and then the hon. Member may ask questions. Firstly, the competency of Parliament to pass this legislation is not affected by any pending appeal in supreme court. Again the appeal before the Supreme Court is with reference to existing provision according to which court martial in Jammu and Kashmir qualifies only as court martial outside India. This Bill wants to remove the anomaly that exists in that respect. The Bill seeks to place court martial in Jammu and Kashmir on the same level as court-martial held in other parts of the country. Thirdly, the Bill is not retrospective in opera-

tion. That is to say, proclamation of the ordinance will not cover the case pending before the Supreme Court.

As regards the process of court martial, certain observations have been made that court-martial is not democratic, it does not give justice to officers and jawans of armed forces etc. The entire process of court martial is to make out justice as expeditiously as possible. It is not peculiar to our country. It is common to all armed forces of the world. This is there to save the harassment that would involve the armed forces personnel, if they are not tried by court martial but by ordinary courts of criminal justice.

Then, Sir, Mr. Joarder made certain observations regarding increase in defence budget. I agree with him. There has been some increase in defence budget over the years. But the reasons are well known. Firstly, there is this continued threat to our country. Secondly, I am sure, the hon. Member knows, the amount involved in regard to sophistication and modernisation in respect of a modern army. There is constant rise in prices and this is the third aspect which I wish to bring to his attention. The Government does not want to spend a single pie more than that is necessary for the defence of our country.

Then, Mr. Panda made some charge of corruption. I would appeal to hon. Members not to make such wild charges of corruption against our armed forces. It is our duty to see that their morale is maintained. As regard particular cases of corruption which come before the Government, as I have already stated, expeditious action is always taken. There is a procedure for this purpose which is being followed. Many officers found guilty have been punished by the Government. Regarding the case mentioned by Mr. Panda, I have enquired about it. He has not been suspended or dismissed for pointing out some cases of corruption against officers. He was

found to be guilty of certain other charges. For that, he was punished. He went to the Court with a writ and the writ has already been dismissed. The hon. Member does not argue that because he pointed out certain cases of corruption, if he is involved in some major charges in future, he should not be dismissed or suspended from the Armed Forces. I think he does not mean this. He pointed out certain cases of corruption and those cases have been enquired into by the Government and action taken. But when he is himself involved in certain major cases, then, I feel that justice should take its own course.

There has been some criticism made by the hon. Members regarding the policy of recruitment. The Government's policy of recruitment is very clear. It has been repeatedly put before the House. Though it is very relevant to this Bill, still I want to point out that so far as recruitment policy of Government is concerned, recruitment is proportionate to the recruitable male population of different areas of the country including areas which are backward. Recruitment, as a whole, has been poor in certain areas because of various historical reasons. We are now taking steps to see that more and more people from these areas are recruited to the army. The recruiting officers are asked to tour frequently areas where are more adivasis and scheduled castes people and more publicity is given to this policy. We are taking all steps to see that more and more people come from the areas which were neglected in the past.

With these observations, I commend this Bill to the House.

SHRI DINESH JOARDER: What about the provision in the budget for appellate courts for the trial of the court-martialing as it prevails in other countries like the U.K. and so on?

SHRI J. B. PATNAIK: I am prepared to answer him. With regard to court martial, there is provision for appeal. If some body is convicted in a court



martial, he can appeal to the Government. And in such cases the Government after a careful study gives a proper decision.

MR CHAIRMAN. Now, no more question

SHRI J P PATNAIK In case there is a parliamentary committee to review or some court of appeal, then the entire concept of courtmartial falls to the ground.

श्री राम रत्न शर्मा : सभापति जी जहाँ तक पार्लियामेंट के लेजिस्लेशन का सम्बन्ध है, उसको किसी ने चैलेंज नहीं किया। आपकी अपील उच्चतम न्यायालय में वॉडिंग थी। बीच में आपने राज्य-सभा में बिल इन्ट्रोड्यूस किया और फिर आपने आर्डिनेंस जम्म् किया। माननीय सदस्यों ने भी चिन्तन की बात उठाई है कि अध्यादेश के बल पर यह सब कुछ करना कहा तक उचित है। आपका यह एक्ट अगर फिर जम्म् और काश्मीर हाई कोर्ट में गया तो आर्टिकल 370 के अन्तर्गत वह अल्ट्राविरस आप दी कास्टी-ट्र्यून करार दिया जायेगा।

SHRI J. B. PATNAIK Armed Forces come under Defence which is a Central subject and not under the concurrent list. You have not gone through Art 370.

श्री राम रत्न शर्मा : इसमें सैटल और स्टेट लिस्ट का कोई मतलब नहीं है। एक प्रलग ट्रीटी हो गई है। आपने एक हिसाब से उसको नया आदेश मना है। (अध्यादेश) तो जहाँ तक भी चिन्तन का प्रश्न है उसमें इनका फेल्योर है। आपने जो आर्मी एयरफोर्स और नौवी के इनके अधिकारियों का सुपरसेगन किया है, वह आखिर क्यों किया है? इस बारे में आपने उा समय भी जवाब छियाया था और आज भी इसका जवाब देने के लिए तैयार नहीं हैं, इसका क्या अर्थ है? आप इतने आर्मी को टाक पर रखकर उनके जूनियर आफिसर्स को

प्रमोट करते हैं जिसकी वजह से अच्छे और निष्ठावान सैनिक अधिकारियों को बाहर जाना पड़ता है।

धार्मी, एयरफोर्स और नौवी के बारे में आप इतने टभी होने की कोशिश न करे। आप कहते हैं कि इसके बारे में कुछ न कहा जाय। मैं जानना चाहता हू कि इस बारे में क्यों न कहा जाये। हमारी सेना में हमारे आर्डी-बिरादर काम कर रहे हैं। पूरे समाज का रिप्लैकशन सेना पर पड़ता है। जब युद्ध होते हैं तो सेना के साथ साथ पूरा देश लड़ता है। अगर आप देखते हैं कि वहाँ पर अप्रत्याचार और करपशन घुस गया है तो उसको दूर करने की कोशिश करे। अभी आपने जो मेजर वाली बात कही है, मुझे पूरी आशा है कि जब अप्रैट अधिकारियों का करपशन खुलने लगा तो उन्होंने चाँस लगाकर उसको डिस्मिस करवा दिया ताकि केश हरा-भप हो जाये।

मैं श्री जोरदर, श्री पडा तथा श्री सोबी जिन्होंने मेरे इस प्रस्ताव का अनुमोदन किया है, मैं उनका आभारी हू और मैं उनसे यह निवेदन करूंगा कि मेरे पक्ष में मत देकर उसको पास करें।

MR CHAIMAN The question is

"This House disapproves of the Air Force and Army Laws (Amendment) Ordinance, 1975 (Ordinance No 3 of 1975) promulgated by the President on the 25th January, 1975"

The motion was negatived.

MR CHAIRMAN Now, the question is

"That the Bill further to amend the Air Force Act 1950 and the Army Act, 1950, as passed by Raja Sabha, be taken into consideration."

The motion was adopted.

**MR. CHAIRMAN:** The question is:

"That clauses 2 to 4 stand part of the Bill."

*The motion was adopted.*

*Clauses 2 to 4 were added to the Bill. Clause 1, the Enacting Formula and the Title were added to the Bill.*

**SHRI J. B. PATNAIK:** I beg to move:

"That the Bill be passed."

**MR. CHAIRMAN:** Motion moved:

"That the Bill be passed."

श्री रामावतार शास्त्री (पटना): सभापति जी, सेना की भर्ती के सिलसिले में जगह जगह भ्रष्टाचार चलने लगा है। मेरे इलाके में भी दानापुर में छावनी बोर्ड है। वहाँ सेना की भर्ती का केन्द्र भी है। वहाँ पर सेना की भर्ती में जो भ्रष्टाचार और घूसखोरी चलती है, उस के बारे में मैंने 20 मार्च को एक सवाल पूछा था कि जिसका नम्बर है 4233। उसमें मंत्री महोदय ने इस बात से इंकार किया है और कहा है कि उन्हें इस तरह की कोई जानकारी नहीं मिली है कि वहाँ कोई घूसखोरी या भ्रष्टाचार है। मैं मंत्री महोदय को कहना चाहता हूँ कि ठीक से फिर इसका पता लगाइये इस सिलसिले में दो तीन घादमी पकड़े गए हैं जिन पर कोर्ट में मुकदमें चल रहे हैं। जिसमें एक श्री घोबर भी हैं और दूसरे भी कुछ लोग हैं। मैं चाहूँगा कि इस तरह से जवाब न देकर अगर आपके ध्यान में कोई बात लई जाये कि सेना में कहां भ्रष्टाचार और घूसखोरी है तो उसका इस तरह से सरपट जवाब न दे दिया कीजिए कि यह गलत है। और जगहों पर भी ऐसी बातें होती हैं लेकिन मैं वहाँ का रहने वाला हूँ और इसलिए वहाँ के कौटोन्मेंट का जरा-जरा जानता हूँ। जो आपके रिज्यूटिंग आफिसर हैं वह घूसखोरी कर रहे हैं। कुछ भूतपूर्व सेना के लोगों के साथ मिलकर लोगों को भर्ती करवाते हैं और उनसे पैसे लेते हैं। इसमें दो-तीन लोगों पर मुकदमें चल रहे हैं। इसलिए मैं चाहूँगा

कि फिर इसकी जांच करावाइये। अगर आप जांच की मुझे खबर दे सकें तो मैं उन लोगों को आपके सामने लाकर खड़ा कर दूँगा जिन लोगों से पैसे लिए गए हैं।

मैं कभी कभी पटना से ब्राह्मण मेल से आता हूँ। ब्राह्मण मेल में आम तौर से सेना के लोग आते हैं। मैं देखता हूँ कि सेना के साधारण सिपाहियों से उनके अफसरान और की तरह काम लेते हैं। वे उन से घरों में काम लेते हैं और ट्रेन में भी उन के साथ नौकर का सा व्यवहार करते हैं। मंत्री महोदय ने यह ठीक कहा है कि हमारी सेना हमारे देश की रक्षा करती है, और उसने पाकिस्तान तथा चीन के खिलाफ लड़ते हुए बड़े शानदार रिकार्ड कायम किए हैं। लेकिन इस का मतलब यह नहीं है कि सेना के अफसरान उन जवानों से ठीक व्यवहार न करे, उन से नौकर की तरह काम लें और उन्हें अपमानित करें।

सेना के साधारण जवानों की अपनी समस्याएँ और कुछ आर्थिक माँगें हैं। उन को खाने-पीने की तथा कई अन्य कठिनाईयाँ हैं। इन बातों की तरफ सरकार का ध्यान जाना चाहिए। तभी वे ज्यादा चुस्ती और ज्यादा जोश के साथ देश की हिफाजत के लिए देश के दुश्मनों से लड़ सकेंगे।

श्री जोरदर ने इस बात का जिक्र किया है कि जब रेल मजदूर या दूसरे मजदूर हड़ताल करते हैं, या किसान जमीन पर कब्जा करने की लड़ाई लड़ते हैं, या सरकारी कर्मचारी हड़ताल करते हैं, तो सरकार वहाँ फौज को भेज देती है। फौज का यह काम नहीं है, यह देश की हिफाजत का काम नहीं है। देश की हिफाजत सीमा पर होती है, और इसी लिए उन की नियुक्ति हुई है, न कि रेल मजदूरों, किसानों और ग्राम जनता को दबाने के लिए। मैं चाहूँगा कि कानून में यहाँ बंदिश लगाई जाय कि सेना का इस्तेमाल जन-आन्दोलन और वर्ग-संघर्ष को दबाने के लिए न किया जाये।

जहाँ तक इस कानून का सम्बन्ध है यह ठीक है और हम इस का समर्थन करते हैं। लेकिन अपने जवानों को प्रोत्साहित करने के लिए इन बातों पर ध्यान दिया जाना चाहिए।

SHRI S. M. BANERJEE: Mr. Chairman, Sir, I support the Bill.

MR. CHAIRMAN: Now, the question is:

"That the Bill be passed"

*The motion was adopted.*

17.12 hrs.

STATUTORY RESOLUTION RE FIXING OF THE MAXIMUM BORROWING LIMIT OF GUJARAT ELECTRICITY BOARD

MR. CHAIRMAN: Now, we take up the next item. Prof. Siddheshwar Prasad.

THE DEPUTY MINISTER IN THE MINISTRY OF ENERGY (PROF. SIDHESHWAR PRASAD): Sir, I beg to move:

"Whereas in pursuance of sub-section (3) of Section 65 of the Electricity (Supply) Act, 1948 (54 of 1948) the Government of Gujarat has, with the approval of the Gujarat Legislative Assembly, fixed under notification No. G/U/215/ESA,3470/4236/K, dated the 19th December, 1970, the maximum amount as rupees one hundred crores for the purposes of sub-section (1) of the said section 65 with effect from the 19th Decembr, 1970:

And Whereas the Government of Gujarat proposes to raise the aforesaid maximum amount to rupees one hundred and fifty crores;

And Whereas the Gujarat Legislative Assembly has been dissolved;

And Whereas under the Proclamation dated the 9th February, 1974, issued by the President under Article 356 of the Constitution, the powers of the State Legislature are exercisable by Parliament;

Now Therefore, it is hereby resolved that Lok Sabha do accord approval to the proposal of the Government of Gujarat to fix under sub-section 3 of section 65 of the Electricity (Supply) Act, 1948 (54 of 1948), the maximum amount as rupees one hundred and fifty crores which the Gujarat Electricity Board may at any time have on loan under sub-section (1) of the said section 65."

Under sub-section 3 of section 65 of the Electricity (Supply) Act, 1948, the maximum amount which a State Electricity Board can at any time have on loan under sub-section 1 of the said section shall be Rs. 10 crores unless the State Government with the approval of the State Legislative Assembly fixes a higher maximum amount.

To accommodate the increasing borrowing by the Gujarat Electricity Board for financing the new generating schemes and transmission and distribution lines, the limit was enhanced by the Government of Gujarat to Rs. 100 crores vide notification No GU-215/ESA-3470/4236-K dated the 19th December, 1970.

As against the existing maximum borrowing limit of Rs. 100 crores, the Board's total borrowings till the end of 1973-74 would come to Rs. 80,60,27,000. The Gujarat State Electricity Board has further borrowed Rs. 771 crores during the current year. Therefore, the existing borrowing limit of Rs. 100 crores is not sufficient to cover the entire borrowing programme for the current and next financial year. Therefore, as the Gujarat Legislative Assembly has been dissolved and as the powers of the State Legislature are now exercisable by Parliament under proclamation dated the 9th February 1974 issued by the President under article 356