

[Shri Tyagi]

Public Accounts Committee on the Appropriation Accounts (Posts and Telegraphs), 1960-61 and Audit Report (P. & T.), 1962.

12.34 hrs.

CUSTOMS BILL—contd.

Mr. Speaker: We shall now take up further consideration of the following motion moved by Shri B. R. Bhagat on the 20th November, 1962, namely:—

“That the Bill to consolidate and amend the law relating to customs, as reported by the Select Committee, be taken into consideration.”

Shri Bade may continue his speech. He has already taken 14 minutes. He will try and finish his speech within the next six minutes.

Shri Bade (Khargone): I may be given ten minutes.

Mr. Speaker: 20 minutes is the maximum.

Shri Bade: Yesterday more than 25 minutes were given to some hon. Member.

Mr. Speaker: Because there were no other speakers. He may proceed now.

श्री बड़े : अध्यक्ष महोदय, कल मैं डिलेज के बारे में बतला रहा था कि कलक्टर्स आफिस और सेंट्रल बोर्ड आफ रेवेन्यू में एपेलेट प्रोसीडिंग्स के कम्प्लीशन में सीरियस डिलेज होती हैं। उन के बारे में बघवार कस्टम्स रिआर्गनाइजेशन कमेटी ने अपनी रिपोर्ट में यह लिखा है :—

“Serious delays occur in the completion of appellate proceedings, both in the Collector's office and in the Central Board of Revenue. The same is the case with the disposal of revision petitions. As in such

proceedings, which are based on facts already on the record, the party cannot possibly contribute to the delay, the full force of public criticism is naturally directed against the Customs Department, the Central Board of Revenue and Government. We understand that these delays take place mainly because of the heavy incidence of appeals and revision petitions, and that Government have already taken several steps and propose to take more, to remedy the situation.”

इसी प्रकार से कस्टम कमिशनर और एपेलेट एथारिटी के यहां बहुत डिले होती है और बघवार कमेटी ने उसके बारे में जिक्र किया है।

क्लाज 142(1) में यह लिखा हुआ है :—

“142 (1) (a): the proper officer may deduct or may require any other officer of customs to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other officer of customs;”

इसके लिए भी मैंने अपना नोट आफ डिस्टेंट दिया है। मैंने इस पर अपना आब-जैक्शन दिया है।

“147 (3): When any person is expressly or impliedly authorised by the owner, importer or exporter of any goods to be his agent in respect of such goods for all or any of the purposes of this Act, such person shall, without prejudice to the liability of the owner, importer or exporter, be deemed to be the owner, importer or exporter of such goods for such purposes.”

इस के अनुसार जो एजेंट होगा वह उस सोने के ओनर, इम्पोर्टर और एक्सपोर्टर के किसी भी ओफेंस और ड्यूज के लिए कस्टम आफिस द्वारा जिम्मेदार ठहराया जायगा और उससे कस्टम ड्यूज वसूल किया

जायगा । जैसा कि मैंने अपने मिनिट ऑफ डिस्सैंट में भी कहा है कि क्लर्किंग एजेंट किसी नियत समय के लिए भी जिम्मेदार सम्झा जाना चाहिए । इसमें यह नहीं दिया है कि वह ६, ८ या ९ महीने अथवा कितने समय तक के लिए जिम्मेदार ठहारया जायगा । इसके अलावा ओनर की गलती के लिए एजेंट लाएबिल टु पनिशमेंट नहीं होना चाहिए ।

क्लाज १०२(१) सर्च वारेंट्स के बारे में है । उसके बारे में श्री कामथ ने जो नोट आफ डिस्सैंट दिया है उसमें मैं भी सहमत हूँ । १०२(१) में यह दिया हुआ है :—

“When any officer of customs is about to search any person under the provisions of section 100 or section 101, the officer of customs shall, if such person so requires...”

if such persons so requires पर मेरी आपत्ति है, यदि अपराधी इस प्राविजन से अनभिज्ञ है तो जहां ८० परसेंट जनता अशिक्षित है ऐसी सूरत में अपराधी की इच्छा पर नहीं होना चाहिए । इस क्लॉज में दिया हुआ है कि किसी व्यक्ति की तलाशी लेते समय उसकी बगैर देरी के नजदीक के गजटेट आफिसर आफ कस्टम्स या मजिस्ट्रेट के सामने ले जाया जायगा । अब इसमें कस्टम आफिसर को जो सर्च लेने का अधिकार दिया गया है उसमें मेरी आपत्ति है । कस्टम्स आफिसर को सर्च लेते वक्त मजिस्ट्रेट के सामने जाना ही चाहिए अपराधी को लेकर । जो विटनेसेज आई थीं उन्होंने भी इसके बारे में आपत्ति की थी ।

इसी तरह से सैक्शन १०५(१) जो कि पावर टु सर्च प्रीमिसेज के बारे में है लिखा हुआ है :—

“If the Assistant Collector of Customs, or in any area adjoining the land frontier or the coast of India an officer of customs specially empowered by name in this behalf by the Board, has reason to believe

that any goods liable to confiscation, or any documents or things which in his opinion will be useful for or relevant to any proceeding under this Act are secreted in any place, he may authorise any officer of customs . . .”

इसमें कोई भी आफिसर आफ कस्टम्स सर्च ले सकता है । एनी आफिस आफ कस्टम्स को जो सर्च वारंट लेने और सर्च करने का आप अधिकार देते हैं यह कुछ उचित नहीं जंचता है । अब अगर कोई बदला लेना चाहता है तो वह उस आदमी का सर्च ले सकता है । इसके बारे में हमने औबजैक्शन दिया है । यह जरूरी है कि इसमें एथारिटी के पौसिबिल मिसयूज के खिलाफ सेफगार्ड प्रोवाइड हो । मजिस्ट्रेट, जज या किसी जुडिशिएल आफिसर से सर्च वारंट लेने के बाद आफिसर आफ कस्टम्स सर्च ले सके, ऐसा इसमें प्राविजन जोड़ा जाना चाहिए । पावर का मिसयूज इसी तरह से रोका जा सकता है कि हम इसमें यह व्यवस्था कर दें कि कोई भी सर्च बगैर मैजिस्ट्रेट के वारंट के नहीं कंडक्ट की जा सकेगी । लेकिन इसमें यह प्राविजन न रख कर यह लिखा हुआ है कि मजिस्ट्रेट के सामने जाने की जरूरत नहीं है । विदाउट गोइंग टु मजिस्ट्रेट कोई भी नौन गजटेट आफिसर औफ कस्टम्स सर्च ले सकता है । मेरी आपत्ति इस बारे में है और मैं तो चाहता हूँ कि इसमें a wholesome restraint to the effect that no such search shall be made without a magisterial warrant, प्रोवाइड कर दिया जाय ।

इसके बाद में १२०(२) की बाबत कहना चाहता हूँ कि इसमें जो दिया हुआ है कि स्मगल्ड गुड्स दूसरे गुड्स के साथ इस तरह से अगर मिले हों कि वे दूसरे गुड्स से अलग न किये जा सकते हों तो वह तमाम के तमाम गुड्स कौनफिसिकेट हो जायेंगे । इसके बारे में बुलियन मर्चेंट्स असोसियेशन की तरफ से जो लोग आये थे उन्होंने कमेटी के सामने अपनी गवाही में

[श्री बड़े]

इस पर आपत्ति की थी। यदि कोई स्मगलड गोल्ड किसी ऐसे गोल्ड में मिक्स कर दिया जाय जो कि स्मगलड नहीं है लेकिन चूंकि उन दोनों को अलग अलग नहीं किया जा सकता है इसलिए वह पूरा का पूरा गोल्ड जब्त किया जायगा। १२०(२) में दिया हुआ है :—

“Where smuggled goods are mixed with other goods in such manner that the smuggled goods cannot be separated from such other goods, the whole of the goods shall be liable to confiscation.”

सोने के व्यापारियों ने इस बारे में यह आपत्ति उठाई थी कि वर्तमान सैक्शन के कारण यदि कोई गोल्ड प्राप्त किया जाय और उसे वह अपने पास के दूसरे सोने में मिक्स करके गहना बना ले और बाद में मालूम पड़े कि जो सोना उसने लिया था वह स्मगलड है तो उसका पूरा का पूरा औरनामेंट जब्त कर लिया जाएगा। चूंकि इस प्राविजन पर हमने औबजेक्शन दिया इसलिए महज आईवाश की गरज से गवर्नमेंट ने उस में यह डाल दिया है :—

“Only such part of the goods the value of which is equal to the value of the smuggled goods shall be liable to confiscation.” इस तरह का सब-सैक्शन उसमें डाल दिया है। लेकिन इस प्राविजन से मेरा समाधान नहीं होता है।

ए आई आर १९६१ बम्बई पेज ४८ पर सोनावाला केस में लिखा हुआ है :—

“No Government can confiscate any property which is mixed with smuggled gold.”

उस सोनावाला केस में बम्बई हाईकोर्ट ने जो जजमेंट दिया है उसकी नलिफाई करने के लिए यह प्राविजन रक्खा गया है। पहले इसमें इस तरह का प्राविजन नहीं था। सेलेक्ट कमेटी में मैंने और दूसरे बहुत से मेम्बरों ने

इस पर आपत्ति की थी कि इस तरह का प्राविजन नहीं रक्खा जाना चाहिए लेकिन जैसा मैंने कहा सोनावाला केस में बम्बई हाईकोर्ट ने जो जजमेंट दिया है उसको नलिफाई करने के लिए यह प्राविजन रक्खा गया है। चूंकि यह नैचुरल जस्टिस और जुरिसप्रुडेंस के खिलाफ जाता है इसलिए ऐसा प्राविजन नहीं होना चाहिए।

१२१(१) जो कि डिपाजिट्स के बारे में है और जिसमें कहा है कि बगैर ड्यूटी या पैनाल्टी डिपाजिट कराये अपील नहीं कर सकता। मैंने यह औबजेक्शन लिया था कि ऐसा प्राविजन इसमें नहीं होना चाहिए।

इसके साथ में सुप्रीम कोर्ट जजमेंट १९६२ रिपोर्टेड इन ए आई आर १९६२ पेज ३१६ कलक्टर आफ कस्टम्स वरसेज नथेला चेट्टी, इसको मंत्री महोदय ने रेफर किया है। उन्होंने कहा है कि यह बर्डेन ऑफ प्रूफ अल्ट्रा वायर्स नहीं है। लेकिन मेरा कहना है कि यह नैचुरल जस्टिस के खिलाफ है। मेरा कहना है कि माननीय मंत्री ने सुप्रीम कोर्ट जजमेंट के ऊपर ठीक से ध्यान नहीं दिया है और इसलिए उनका इस तरह का प्राविजन इसमें रखना यह नैचुरल जस्टिस और जुरिसप्रुडेंस के विरुद्ध है।

सुप्रीम कोर्ट का जजमेंट मैं यहां ले आया हूं

श्री ब० रा० भक्त : जजमेंट में क्या है ?

अध्यक्ष महोदय : जजमेंट को माननीय सदस्य हाउस में पढ़ने का वक़्त न करे। उसको वह मंत्री महोदय के पास आन कर दें।

श्री बड़े : अब यह सीज़र की तरह से कि जो सीज़र अपराध इन्वेस्टिगेट करे और वही सीज़र जजमेंट दे इसके बारे में

कलकत्ता हाईकोर्ट का सन् ६१ का जो जजमेंट है उसमें उन्होंने कहा है :—

"The rule that 'no man should be a Judge in his own cause' is so well established and so often reiterated by the wisdom of Judges that it is unnecessary to cite authorities. The principle enshrined in the maxim 'Nemo Debet Esse Judex in Casus Propria Sua' is of the highest importance and any infraction of it would render the proceedings wholly unsustainable."

इस प्राविजन के विरुद्ध मेरा कहना है कि ऐपलेट अथारिटी अलग रखना चाहिये और रिवीजन ट्रिब्यूनल अलग रखना चाहिये और कम्सटम्प्स कमिश्नर या कस्टम्प्स आफिसर उस में नहीं होने चाहिये। मेरी विनती है कि यह हाउस हमारे मिनिट आफ डिसेंट को पढ़े। हमारे सामने चेम्बरज आफ मरचेंडिस और ट्रेडज एसोशियेशनन्स के लगभग चालीस पचास मेमोरेण्डम आये, जिन में उन्होंने सर्व वारन्ट, कान्फिस्केशन आफ गोल्ड और वर्डन आफ प्रूफ के बारे में प्राविजन्स के खिलाफ अपने विचार प्रकट किये हैं। मैं प्रार्थना करना चाहता हूँ कि हाउस को इस बिल को पास करने से पहले इस ओर ध्यान देना चाहिये।

Shri Fatehsinhrao Gaekwad (Baroda): Mr. Speaker, Sir I heartily welcome the introduction of the Customs Bill, 1962. It seeks to consolidate the provisions relating to the sea, land and air customs into a single comprehensive measure. Such a measure, I feel, was long overdue, and I wish to congratulate Government for bringing it before Parliament at least now.

The Bill before us has many redeeming features. It seeks to plug many a loophole in the existing laws. Severe punishments for both the law enforcer and the law breaker are introduced by this Bill. But I have my own doubts as to whether this Bill will solve the problem completely. I am afraid, the age old adage that

laws are made to be broken will still stand good. Smuggling, as we all know, is one of the oldest trades in the world and any number of laws, I am afraid, is not going to stop it.

I would like to exclude hon. Members of Parliament before I make the next few remarks. I believe, to smuggle is an inherent quality in the human frame. Broadly speaking, we are all smugglers at heart basically and, some time or other, we have all stooped to a little smuggling.

Mr. Speaker: Is that a lapse or is that the nature?

Shri Fatehsinhrao Gaekwad: Human nature.

Mr. Speaker: It would say that it is a lapse. Basically, a man is quite sound.

Shri B. R. Bhagat: Lapse of human nature.

Shri Fatehsinhrao Gaekwad: Sometimes it may be a small insignificant fountain pen, or may be a couple of lipsticks for your wife, but no one can deny the almost childish pleasure it gives one after smuggling these small insignificant items out of the customs shed.

Our country has both a huge land frontier as also an extensive sea frontier. Therefore, our country is a veritable paradise for smugglers. Although gold and liquor take pride of place in the items brought in illegally into this country, almost all either banned or restricted goods are smuggled, and that too through our official customs barriers. It is impossible for us to guard every inch of our frontiers, land or sea. Therefore, I shall refer only to our official customs barriers.

It is stated, and I am very sorry to say it, especially on the floor of this House, that the word "corruption" is more or less accepted as a synonym for our customs official. I know that there are always two sides to the picture. It is a fact that he is not entirely to blame. The job of a

[Shri Fatehsinhrao Gaekwad] customs official is a very difficult one, a thankless one, especially for an honest man. After all, he too is a human being, and no one can doubt that the job offers tremendous temptations.

There is one other cause which makes his job even more difficult, and that is orders from above. One may be caught attempting to smuggle, as I said, a small insignificant fountain pen worth Rs. 100 and be punished, may be, with imprisonment or with severe fine. But it is an open secret that if you have the right contact in the right place or, as I said, a foster parent somewhere in the right place again, you can even smuggle a full-grown elephant and get away with it! If some one out of jealousy reports this and the customs official is asked if he saw a particular gentleman smuggling a full-grown elephant, he will say that he never saw it, when in fact he has probably actually fed it with a couple of sweets as it passed through the customs shed.

I have one or two small suggestions to make. I am not too sure whether they are enforced at the moment, but I am pretty sure that they are not. I am about to suggest that no customs official, small or big, should be posted at any one place for more than a year. If he remains longer in any one place, he seems to settle down to business. If frequent transfers, sometimes even at short notice, are made, I think a lot of corruption could easily be avoided.

Mr. Speaker: Is there not another aspect also to it? If an official is transferred so soon, he would not have the time to learn the tactics adopted in that locality.

Shri Fatehsinhrao Gaekwad: It is not necessary, Sir, Large-scale smuggling, I personally believe, is tackled mainly through information. I think, the main asset of a customs official would be his grasp on psychology. There are women present here in this House, but, I think, women make the better of smugglers.

Mr. Speaker: Then they would say that they are employed by men.

Shri Fatehsinhrao Gaekwad: Possibly.

Shrimati Yashoda Reddy (Kurnool): We do not want it to go unchallenged.

Mr. Speaker: I have already pleaded their cause.

Shri Fatehsinhrao Gaekwad: What happens when a customs official remains too long at one post is that the frequent passenger gets to know him well and he seems to know the wants of the customs official. I have myself come across a gentleman who at the Geneva Airport bought two watches in my presence. I told him that he was not allowed to take in two watches and he said, "Well, I will see you in Bombay". He landed at the Santa Cruz Airport with two watches. That I know. But when he came out of the customs shed he had only one. He knew a particular customs official and apparently that official had told him what he wanted.

Mr. Speaker: Then he had paid the customs duty.

Shri Fatehsinhrao Gaekwad: No, Sir; obviously not.

Another point which I would like to bring to the notice of the hon. Minister is the effect of our customs and their regulations on the tourists coming into this country. A vast majority of the tourists that I have met and talked to have complained of three things in this country. In order of precedence they are Customs, IAC and prohibition. Customs seem to take the pride of place. The majority opinion was that as soon as they came into the customs shed they were looked upon as smugglers. That was the start. They had to prove that they were not. I submit that as far as an Indian national coming back into the country is concerned I have no objection whatsoever to this, but when we

put up these large posters welcoming tourists providing them with facilities, a little laxity in the rules should be observed. I hope the hon. Minister will look into this and do something in the matter.

Tourists specially are worried when they bring in things like cameras. What is the harm in giving them a receipt or some sort of a certificate which bears the make and the registered number of the cameras which they should be allowed to present on exit?

Shri Hari Vishnu Kamath (Hoshangabad): That has been provided for by the Select Committee. In this Bill that has been provided for.

Shri Fatehsinhrao Gaekwad: I am very happy that this has been included in it. I do not have very much more to say and I do hope that Government will consider what I have said.

I once again welcome this Bill.

Shri Shankaraiya (Mysore): Mr. Speaker, Sir, I support this Bill. The Bill is one which is to consolidate three Acts that are in existence having various separate provisions with so many amendments that neither the Members of Parliament nor the merchants nor the public could readily lay their hands upon for comprehending the provisions or the implications of those Acts. The Select Committee has endowed its best thought upon it and has tried to improve the provisions through various amendments. After hearing the version representations and the difficulties of the various associations and different sections of the trade, the Select Committee has even gone to a very great extent to accommodate their wishes and liberalise some of the stringent provisions in it.

No doubt, my hon. friend, **Shri Bade**, and other hon. friends have brought to criticism some of the pro-

visions with regard to the burden of proof, confiscation, the payment of customs, the smuggling of these things, the question of fixing the price and all that. But my fear is that in spite of all these stringent provisions the Government will not be able to implement the provisions of this Bill fully and neither smuggling nor the evasion of taxes could be completely handled. As is admitted, smuggling has become the greatest trade as there are easy means in it of making money and getting rich. From what I understand it is going on on such a large scale that Government are not able, at present, to detect more than 5 per cent or, at the most, 10 per cent of it. Nearly 90 per cent of it is still going on without being detected. According to the statement of the hon. Finance Minister himself, the amount of gold that is being smuggled every year comes to Rs. 40 crores to Rs. 50 crores—leaving alone the other article, such as diamonds, transistors, fountain pens, watches and so many other articles. If gold itself comes to the extent of Rs. 40 crores to Rs. 50 crores every year and if, according to the customs authorities themselves, detection is not more than 10 per cent, the Government and the country knows to what extent smuggling is going on. So, my fear is that in spite of these stringent provisions the Government will not be able to prevent smuggling unless some other stringent actions are taken apart from the provisions of this Bill. The provisions of this Bill will not by themselves be enough.

With regard to the smuggling of gold, for example, even though the burden of proof is on the person smuggling it and even though confiscation and all the other things are there, the fact is that Government which has been forced, under the circumstances of this emergency, to prohibit forward trading in gold which has brought a salutary effect on the market. This itself has not shaken the smugglers and the gold dealers to a very great extent. Apart from preventing this

[Shri Shankaraiya]

forward trading, they must take further stringent action. In fixing up the rate and in the collection of the duty it is not merely the Finance Ministry or the customs officers who will be responsible.

The co-evil of overinvoicing and underinvoicing is also, to a very great extent, connected with this in fixing the rate of the customs duty. Most of these traders have got the habit of overinvoicing and underinvoicing. Overinvoicing is done in the case of imports and underinvoicing in the case of exports. It also differs according to commodities. When they underinvoice and export more and when they collect money in foreign money outside, they must find some means to bring it into the country the money that has been earned over and above the invoice amount. Smuggling is one of the methods. There is a correlation, a combination between these two things. According to the criticism that has been levelled in the country and on the floor of this House by several hon. Members, it is also known that many of the industrialists and business people are having accounts in foreign banks. The Government is not in a position to lay its hands and find out the culprits. In spite of their being asked to declare their accounts, even in a time of emergency, they have not been doing it. This is one of the ways in which these people get back the amounts of foreign surpluses in foreign banks by means of smuggling.

In this smuggling, it is not the big financier that is caught. It is only the small persons who are the media for smuggling and bringing it, that are caught and punished. The man who finances these things, who is responsible for employing the smugglers will be completely left out. While fixing the rate of import duty, the Finance Ministry must be in touch with the Commerce and Industry Ministry to find out the exact rate at which some

of these goods are permitted to be exported or imported. Unless effectively this under-invoicing and over-invoicing is tightened both by the Ministries of Commerce and Industry and Finance, this question of smuggling will also not be completely dealt with and prevented.

We have to be vigilant in the coast line in the south and also in the east and west. More so on the land border in the north western frontier province, because most of the gold is being smuggled by land. It is also easy by way of land movement. Because, as we know, there have been instances to the knowledge of all, more particularly to the customs authorities, that in the Arab countries where there is a good deal of oil trade, they have got plenty of money and they try to do smuggling in gold by the land quarters. It has got a vast area and it will be difficult for the Customs authorities unless they take special precautions to see that this blockade is complete. Unless they have got vigilance squads and other things, in the normal course of things, it will not be possible even for the Finance Department or for the Customs authorities, with the limited provisions, to prevent smuggling. Particularly in the south, and in east and west coasts, a lot of smuggling is going on. Only the other day, we read in the papers, within one week, the Customs authorities were able to find out one crore rupees worth of gold smuggled, removed from the bottom of the sea.

This is the magnitude of smuggling. If these stringent provisions were relaxed as my friends plead for liberalisation of burden of proof, confiscation of the things or distinction between smuggled gold and other gold, it will be very difficult.

Apart from these suggestions, in the Select Committee itself, I wanted to know from the several representatives who represented these Associations to say whether they would help and co-

operate with the Government to prevent smuggling, which has been admitted by them also to exist to a very great extent, whether by any professional conduct or their associations themselves putting any restriction and help the Government to see who are the honest customers, who are the honest dealers and who have to be punished and all that, because, it is only these people who are in the know of it and who can give the information. They know who is a black-marketer and who is the person who deals with smuggled gold. They were reluctant to give any suggestion. Of course, they gave an assurance that they would help. Till today they have not tried to give out who is the smuggler, who is an honest trader, who deals in smuggled gold and who is not, who is an honest merchant and who is not an honest merchant. It is often said that India is consuming so much of gold for purpose of ornaments, for purposes of marriages and other things. The quantity that is required or that is purchased by the small people will be about 4 tolas or 10 tolas or 20 tolas. When so much of gold is coming in to the extent of Rs. 40 or 50 crores, it is not the small people that purchase it. It is those people who have got black market money, who are not coming out, who want to conceal their money, that try to purchase this gold and try to hoard it. It is the rich people, it is not the small people who buy 2 tolas or 10 tolas that smuggle gold. It may be. Most of the smuggling in gold is done through businessmen who have foreign exchange. It is the rich people who have black money who hoard the gold. The Government must try to take stringent action and see that there is no hoarding of gold and hoarding wherever it is, is brought out by means of stringent steps. They should not hesitate or linger or try to show any mercy towards them. That is why, in respect of some provisions, I do not agree with my friends when they say that those provisions should be relaxed as regards burden of proof or in the case of

search or other precautions that have to be taken. The Select Committee has bestowed great thought and have given the greatest amount of security that could be possible. If any relaxation of these provisions were to be made, smuggling will be allowed to be perpetuated and it will continue.

As regards the appellate tribunals, my hon. friend Shri Bade was pleading that there should be a Judge of a High Court and this tribunal should not consist of any other Customs officers and all that. It has been made clear that apart from the Judge, the Customs officer who is appointed to the tribunal should be divested of executive work. The Customs officer who sits in judgment over appellate cases of smuggling or wrong assessment or any such thing should not be an executive officer. That is a question of executive officers being on the one side and those persons in the Customs department exercising judicial functions should be separate: that has been agreed to. If that is implemented, there will be full justice meted out to the culprits. Anyway, the implementation of these things depend upon the action that the Government is going to take.

One more suggestion that I would like to make is with regard to gold dealers. The Government should take immediate steps to see that they are licensed. The number should be minimised as far as possible: Not that the trade should be hunted; licensing system should be introduced in consultation with the State Governments, because it is a State subject and they have the function of licensing trade. The Central Government should see that a system of licensing is introduced and they should have a watch over this business. When they keep a watch, they will be able to know who is passing on large quantities of gold and full materials will be available to them. Unless licensing is introduced along with prohibition of forward trading, the provisions of the Act will not be complete. I hope the Finance

[Shri Shankaraiya]

Ministry, in consultation with the Ministry of Commerce and Industry will introduce the licensing system with regard to gold and then, the provisions will be fully effective.

Shri Hari Vishnu Kamath (Hoshangabad): Mr Speaker, Sir, the Bill before the House is a belated attempt at consolidation and codification of the law and the rules relating to land, sea and air customs of the country. Even so, even though it is belated, it is welcome.

Government appointed a Customs Reorganisation Committee headed by Shri Badhwar in 1957, and the committee presented their report some time late in 1958. If Government were expeditious with the disposal of their business, they could have brought a Bill before the House at least two years ago. But Government machinery moves slowly, as we all know, and the Bill has emerged finally in 1962, the year of destiny for our country in other ways.

The customs provide the largest chunk of Central revenues, as is well known to my colleagues and to everyone outside the House too. I do not know the exact figure, but I suppose that it is the biggest and largest single item in the Central revenues. Therefore, it behoves the House to look closely into this Bill because it is the first Bill of its kind before the House. And I would have been glad, and so would have been my colleagues in this House, I am sure, if more time had been allowed for the consideration of this Bill which would, as the Finance Minister told the House, help to tighten up the rules and perhaps yield a few crores more, at least tens of crores, if not more than that, to the exchequer.

The provisions of the Bill in so far as they relate to the earlier chapters thereof do incorporate certain improvements upon the existing law and rules, and to that extent, the House will be glad to approve of them and ultimately pass them into law.

But there are certain other provisions to which I have made a reference in my minute of dissent, and to those I shall come a little later. But before I pass on to those with which I am not in wholehearted agreement I would submit to you and to the House that the entire outlook and the attitude to the problem of smuggling has been awakened and rigorously tightened up only a few years ago.

We must examine why and how this climate for smuggling was created. It is perhaps too large a question to go into at this stage when we are considering this Customs Bill, but if that climate for smuggling, congenial and favourable climate for smuggling had not been created in this country, perhaps we would not have had to deal with a problem of such magnitude. But we are faced with it, and we have to adopt certain drastic measures to prevent it.

It is not a new problem in that sense. It is as old as the hills, as the old adage has it. Even Kautilya has referred to this smuggling in his *Artha Shastra*. I do not want to read the entire portion, because I am racing against time, but the Customs Reorganisation Committee's report contains the observations of Kautilya with regard to customs duties and to smuggling, at page 5 of the report in chapter 2. We can, therefore, easily see how clear-minded he was with regard to dealing with this problem of customs toll, as it was called then,—as it was called then not in English but in Sanskrit—and with the problem of smuggling.

Shri Yashpal Singh (Kairana): It may be read in Sanskrit.

Shri Hari Vishnu Kamath: It is unfortunate that this report gives only the translation in English. The Sanskrit words are not there. I would request my hon. friend Shri Yashpal Singh to go into the Library and get hold of the original Kautilya's

Artha Shastra and look into the *sutras* and *slokes* very closely, if he is keenly interested therein.

The problem of smuggling assumed such gigantic and formidable proportions that, as the House is aware, some time ago, I think, three or four years ago, a special officer was deputed on a trip to Europe to track down the smugglers. That question has figured during question time and even during debates in this House, the tragic death of Shri Ajoy Mitra in Vienna. Even the latest answer to the question was that the report submitted by the Austrian Government is not conclusive, that is to say, whether it was a case of murder or of suicide. If it was a case of murder, then it is really a grievous tragedy. From some of the European and some of the British papers which wrote on the subject, it may appear, that is, from the articles that appeared in the British papers, particularly, that he was almost on the track of the smugglers, he was almost within an ace of success, and submitted an *ad interim* report to the Government of India where he had implicated certain high-placed persons in the country. And what happened subsequently is known. He died. And the paper, the weekly *Topic*, to which I referred the other day also, categorically made a charge that certain high-placed persons were involved directly or indirectly in this tragedy. If that is so, it is high time that Government woke up to this problem a little more vigorously and energetically, because as has been truly said, as in many other fields, here also, the small fish get caught, and the big fry goes scot-free.

You may kindly turn your attention to Chapter XI on the search of the baggage of persons entering or leaving India, and see the provisions with regard to this. This was discussed elaborately and in detail by the Select Committee, and the question was raised there also as to how

to prevent smuggling of goods by certain privileged persons.

I find that the Deputy-Minister is the only Minister here at the moment, and he too is discussing with someone else and is not listening to me. This is not the way to treat the House.

Mr. Speaker: He might be getting information in connection with the reply that he has to give to the hon. Member's arguments.

Shri Hari Vishnu Kamath: That will come later on. Let him get the information later on, not side by side.

He might have asked his Parliamentary Secretary or some other Deputy to come and sit here; he has got another Deputy Minister in the Ministry of Finance, and he could have asked her to come and take her seat here. This is not the way to treat the House and to treat this Parliament, that is, to carry on conversation with someone else and not listening to the speech which is being made.

Shri B. R. Bhagat: I am sorry. If my hon. friend wants that I should not get even some information which I can get, I do not mind it.

Shri Hari Vishnu Kamath: I only requested you that you should direct the Minister to collect it later on and not immediately. He must listen to what other points I am going to make. Otherwise, how can he reply to all the points.

Mr. Speaker: He must have been listening.

Shri Hari Vishnu Kamath: With one ear, perhaps. May I request you, therefore, to direct the hon. Minister to collect that information later on.

Mr. Speaker: I promise him that the hon. Minister would give both ears when he speaks. Therefore, both ears must be given.

Shri Hari Vishnu Kamath: God has made us in such a manner that we cannot listen with one ear, but we have got to listen with two ears.

The House may note this provision with regard to search of baggage. It is well known, though it is not well-proved, it is morally true though it is not legally proved, that in many cases, privileged persons like diplomats and their crew, that is, their office assistants and other members of the diplomatic mission, and sometimes, unfortunately, members of the air crew, that is, the crew of the aircraft which ply between India and other foreign countries, the air pilots and people of that kind or category as well as the ship's crew, are adepts at smuggling. The Finance Minister did admit that he was cognizant of this evil, of this growing evil, and Government were taking measures to curb this evil, this crime, because as a matter of fact, it is a crime in law, practised by high-placed persons who are more or less immune, or some of whom are in toe with or in collusion with the customs staff, that is, the staff at the customs office. I am sorry to say that but that is, I think, very true, though it may be difficult to prove it legally in any court of law. Those persons are not searched. Some perhaps are immune to search, some of the rank of diplomats or Ambassadors. But members of the diplomatic mission, below a certain rank should be liable to search, and air pilots and ship's pilots and all those who go in and come out should be thoroughly searched just as the other ordinary passengers are searched. There is a provision here that rules may be made for different classes of persons, and when rules are made, I hope the House will examine them very closely.

In this connection, I will only cite a personal experience. I know that it happened days before independence. But after all, the same human material is there. We have got Indian officers of the same character and

complexion. To a certain extent, what was true then may be true to-day. I will refer to the harassment that is caused to certain passengers. I happened to be at that time in the Indian Civil Service; this was in 1935, more than a quarter of a century ago. I had gone on a tour of Europe including Russia in more or less defiance of the wishes of the British Indian Government at that time. When I came back and landed in Bombay, at the sea customs, the baggage of my companion, who was also my colleague, was not searched. It was passed off. When it came to my turn, he asked me to open all my suitcases and other things. I did not mind it; he had the right under the law to ask me to do so. But what I am drawing attention to is the procedure and the manner in which they did it. I had nothing but books and clothes, no smuggled goods of any kind. He did not want clothes; apparently, he had enough. But as regards the books—ranging from those on Fascism, capitalism, socialism and communism; I was interested in reading and studying them—apparently he thought that I was bringing contraband stuff from Russia, which was perhaps fatal and dangerous to the British Empire. There were some books in non-English languages also. There was a very well-known book on philosophy, Plato's *Republic*. Apparently, he was frightened by the word 'Republic'. In the British Empire, how could one talk about 'Republic'? He seized it. Then he came to *Mussolini's Italy* by Finner. That also was seized. Then Hugh Dalton's *Socialism*, a very innocuous book—also seized. Finally, he came to a little catalogue of vegetarian restaurants in Germany and Austria, place by place. I was a bit of a vegetarian in those days—and more so now—and I had kept that catalogue so as to facilitate my eating during the tour. Unfortunately, it was in German, not in English. The customs officer of the lower rank asked me what that was. He could not understand it. I said: 'You find out for yourself. Why should I tell you?

You can read and find out'. Then he called a superior officer. He also could not make head or tail out of it. He asked me. I told him: 'It is for you to find out'. So they kept that also—the catalogue of vegetarian restaurants, that means, all the books including this catalogue. All the books on socialism, fascism, communism—everything was seized. And I was told that they would be kept for examination.

I went and saw the Collector of Customs on that very day afternoon and told him: 'You should employ at least a little more intelligent people at the Customs who will know what is what'. He expressed his apology. I said: 'Anyway, whatever has been done has been done. The books which are not objectionable may be returned as soon as the examination is over'. About six weeks later—it took them as long as that; that is why I want to refer to it—I got a letter from the Collector of Customs along with all the books minus one, and that one book was a compilation of the writings of Marx, Engels and Lenin entitled *Handbook of Marxism* by Emile Burns. I was amused when I got that letter and the books minus this one. I was interested in this academically. So I wrote to the Collector of Customs saying: 'I am thankful to you for returning the books. I hope you and your subordinates will benefit by reading the book kept back. I can tell you on a point of information that this book was bought not in Russia, nor in France nor in Germany, but in the hub of the British Empire, in London itself'. I had bought the book in London. That was confiscated and I have not got it back even till today. Be that as it may.

Therefore, I would like to state that the guilty, the really big fish, must be caught and punished drastically and severely and poor people should not be harassed, whether by way of search of a baggage of a person or his house. Power being what it is—it inebriates—and human

nature being what it is, in a parliamentary democracy with all our fundamental rights in the Constitution, we must see to it that there are safeguards against possible abuse of authority. Who is the officer who can lay his hands on his heart and say, 'I am immune to all these temptations, abuse of power, of exercise of authority'?

Therefore, in this parliamentary democracy, the task of conscientious legislators is to strike a balance between executive power and the safeguards, to see that exercise of power by the executive does not make any inroads upon the civil rights and liberties, fundamental rights, of individuals. With that end in view, I have approached this Bill before the House and I have ventured to table a few amendments for the consideration of the House.

It has been provided for in this Bill that the search of premises, business premises and perhaps also residential premises, where it is suspected that smuggled goods have been hidden or concealed, could be carried out by any customs officer who is authorised under this Act. You have been a very eminent Judge.

Mr. Speaker: Judge I was but I cannot say whether 'eminent'.

Shri Hari Vishnu Kamath: It is your modesty that precludes you from admitting that. It is for us, to judge; I am just an individual in that world and I am sure the world will agree with me that you have been an eminent,—and may I add?—wise Judge too. You are well aware of the safeguards provided in law against executive excesses. The House would do well to provide for some sort of restraint on possible abuse of authority. Therefore, it is very incumbent upon us, legislators, to see to it that no search is conducted by a customs officer without arming himself with a warrant from a Magistrate who after questioning, after examining and after satisfying himself has issued that warrant to him.

[Shri Hari Vishnu Kamath]

There also, it should be only search of business premises. As has been said, one's house should be one's castle and there should be no illegal, unwarranted entry, no trespass into one's house by anybody without proper and strong authority. How is this to be provided for? How is this to be ensured, seeing to it that the Magistrate after satisfying himself authorises the customs officer in this respect?

We are all at one with Government either on this side or on that side of the House, to see that the crime and evil of smuggling is put down with a stern hand and there may be no quarter given to any smuggler. But may I entreat you and the House and request Government to ensure that while they are curbing and crushing the evil of smuggling, the poor, honest, innocent citizen or trader should not be harassed and persecuted. That is the motive, the background and the bedrock of the amendments that I will move later on.

One more point and I have done. My hon. friend, Shri Shankaraiya, referred to the burden of proof. The Bill provides that where smuggled goods have been seized, the burden of proving to the contrary shall lie upon the person from whom the goods were seized or confiscated. I know the Government is only actuated by the objective of putting down smuggling. Imagine how difficult it will be for me or for you, if, God forbid, we are in that predicament. Suppose I am wearing a gold watch. I do not have one at present, but suppose a friend like Shri Mahida gifts it to me, and I am wearing it. A customs officer comes and says: "You are wearing a gold watch. It is a smuggled thing." Then, he will seize it, and the burden of proof will lie upon me to show that it is not smuggled. You can imagine it, you who have been a Judge, I may reiterate. Suppose I come before you as an accused, and then the prosecution asks me to prove that the watch is not smuggled.

Shri Bade: He is not a High Court judge.

Shri Hari Vishnu Kamath: He was.

Mr. Speaker: In many laws we have provided now.

Shri Hari Vishnu Kamath: Two wrongs do not make a right.

Mr. Speaker: In certain laws it has become necessary to do it. Previously that was really the basic foundation of the law that a man must be presumed to be innocent, and the burden of proof must lie on the prosecution, but we have departed from that for some time in certain laws.

Shri Hari Vishnu Kamath: I know that in a growing, complex, modern State, we have made departures from the fundamental principle of jurisprudence that a person should be presumed to be innocent unless he is proved to be guilty. I know we have been compelled to make a departure from that fundamental position. Here also, if we do make such a departure, we should provide some sort of safeguard as to when, at what stage and in what manner the burden of proof shall be deemed to have been discharged by the person from which the confiscated goods were seized. Therefore, with that end in view also, I have submitted an amendment.

Then I come to the appellate and revisionary machinery. The Badhwar Committee, at page 81 of its report, has made certain concrete suggestions for setting up an independent appellate machinery, in the same way as in the case of the Income-tax Appellate Tribunal, and I and my hon. colleagues on the Committee, Shri Bade, Shri Mahida and some others too, are in wholehearted agreement with the recommendations made by the Badhwar Committee. Unfortunately, yesterday it was my fault perhaps that I misunderstood your directive or the latitude given by you, when I raised the point with regard to amendments. I had requested you to waive the rule

with regard to notice of amendments, and I thought—it was my fault, perhaps I did not follow you clearly when you waived the rule—that 24 hours would mean that if we had given it yesterday morning, it may come to this morning also.

Mr. Speaker: Amendments in the ordinary course which had been given.....

Shri Hari Vishnu Kamath: Up to 3 o'clock yesterday.

Mr. Speaker:..... day before yesterday. ..

Shri Hari Vishnu Kamath: Because of the inverting of the Order Paper.

Mr. Speaker: Therefore I waived the the rule, and said they could be given up to 3 o'clock yesterday, because the sequence in the Order Paper had been changed, and this Bill had been made the first item before the others.

Shri Hari Vishnu Kamath: I am sorry to argue with you, I would be very reluctant, but the Order Paper told us only on Tuesday morning, yesterday morning, that the Customs Bill would be taken up first.

Mr. Speaker: Therefore, the amendments could not have been received or given day before yesterday. Therefore, I waived notice and allowed them to be handed over up to 3 o'clock yesterday.

Shri Hari Vishnu Kamath: We were busy in the House. How can we participate in the debates here and also give amendments.

In the Land Acquisition Bill, for instance, you did permit Members, even the Ministers gave it in the morning and it was circulated to the Members. I am sorry to point this out to you.

Mr. Speaker: That instance might have been different, but in all cases it cannot be done. Now that the

Members, so many, have spoken already....

Shri Hari Vishnu Kamath: The clause by clause consideration will come later on.

Mr. Speaker: Some Members spoke yesterday, some have spoken today. It cannot be circulated till the evening. Now, what is the way out?

Shri Hari Vishnu Kamath: It could have been circulated in one hour. It is a small amendment. Big amendments in the other case were circulated in one hour.

Mr. Speaker: The hon. Member does not allow the Minister even to talk to his Secretary to get the information. He gives amendments now. The hon. Minister does not know what he should say in connection with those amendments that have been handed over to the office. They would be circulated only after some time, even if an attempt is made, and then the Minister will know what the amendments are.

Shri Hari Vishnu Kamath: We do bear a part of the blame, but I am sure, I am confident, you will be fair enough to apportion a portion of the blame to the Minister also, because the Ministers have changed the order of the Bills.

Mr. Speaker: Yesterday he had opportunity to give the amendments up to 3 o'clock. In the morning he had asked me whether I would waive notice. Therefore, he had that opportunity up to the evening. If he had given those amendments, they could have been circulated in the morning. Whatever he gave yesterday even, were circulated.

Shri Hari Vishnu Kamath: We have to participate in the debates here, and the rest of the work we do at home. I am sorry this has happened this time. Anyway, when the clauses come, I hope you will allow me to support some of the amendments.

Mr. Speaker: That I will do.

Shri Hari Vishnu Kamath: I therefore welcome the major part of this Bill, but I cannot welcome it wholeheartedly, the entire provisions. If the amendments are accepted, it will go a long way to making the law on customs more wholesome and more salutary and stronger to deal with this evil of smuggling.

Shri M. Ismail (Manjeri): I want to make a short reference at this stage not to the provisions of the Bill, but to the manner in which the customs inspection is being carried out in certain ports of the country.

You may know that hundreds of thousands of our people are in foreign countries like Malaya, Burma and Ceylon. They are working there mostly as coolies, as clerks and petty shopkeepers. After a number of years they come back to their motherland, to our country. When they come, they bring with them small luggages like articles of clothing, some knick-nacks and a few things like that. But then, when they arrive at the port, the customs examination begins. It does not take one, two or three hours. It takes a whole day, and even goes on to the next day. There are no facilities for these passengers, who are mostly deck passengers. No facilities are afforded to them in the customs shed or in the premises. These people are put to a lot of physical hardships and disabilities during the examination by the customs authorities. Then finally after five or six hours or even 15 hours of waiting, certain luggages are chalk-marked and they are allowed to go.

13.39 hrs.

[MR. DEPUTY-SPEAKER in the Chair]

It is mostly the poor people whom I am talking about. It does not end there. When they reach the gate which is far away from the customs shed they are again caught hold of by cer-

tain officials and then again a re-examination of their goods begins. In this way, poor people who do not know how to manage these things are suffering, not for a short while but for years and years now. Passenger associations and chambers of commerce have made representations to the authorities about this matter. Still no relief is in sight for these poor people. Some years ago the free allowance for such passengers was round about Rs. 5,000. It has gradually been reduced to Rs. 500 now. Many of these poor working men and clerks come home with their lives' earnings in the shape of articles and keep-sakes. Those people are caught hold of and they are assessed to an amount which they could not afford to pay at that moment because of the small amount of money that they are bringing with them out of the savings they have been able to effect over a large number of years and which they are bringing are in the shape of articles. That cash is exhausted by paying duty that is assessed. When they come out of the harbour many of them are penniless or are left with very little cash which will not take them to their homes. Then again when they go home they are left without any means to be in their motherland to which they have been looking forward over a number of years. They have to borrow and eke out some kind of livelihood for a few months and then again they have to go back. This is the position to which the poor people have been reduced and I want that some consideration should be given to these people and in the course of the examination some courtesy and some consideration should be given to these people. They do not bring these articles for trade or for effecting a gain. They bring it for their own use and for the use of their family; mostly this is the case. I know there are cases in which even a new set of clothes which these people have been wearing were assessed to customs duty. These things deserve the consideration of the authorities and some provision must be made in the case of these poor people. I am not speaking of the

smugglers of whom Shri Kamath and others spoke. They have to be put down; it is not only the smugglers or people who co-operate with them but also the officials. The officials also must be above board and must make it a point to bring such people to book. The people as a whole are with the Government in such efforts and I only urge some consideration, human and humane consideration, might be given to the poorest of the poor who eke out their livelihood in the other countries for years and years and who return to this country with very small belongings. With these words, I give my support to the Bill before the House.

Shri B. R. Bhagat: Mr. Deputy-Speaker, I am glad that the hon. Members who participated in this debate have supported this Bill as it has emerged out of the Select Committee. Some of the provisions modified or added by the Select Committee have found favour with the House. It is true that they have raised objections regarding some items, to which I referred in my opening speech. These clauses were thoroughly discussed in the Select Committee and we could not accept the contention of some hon. Members who have chosen to append their minutes of dissent. Before I deal with them, I would like to refer to some of the small points raised by some Members.

For instance, Shri Warior wanted the clearing agents' liability to be for a period of six months only. Clause 28 lays down a time-limit of six months. In case of collusion or fraud, it is five years and I am sure the House will agree that six months is not a sufficient time limit in such cases. He also said that the provision is clause 120 is not equitable. He did not think much of the proviso to this clause which says that where the owner of such goods proves that he had no knowledge or reason to believe that they included any smuggled goods, only such part of the goods the value of which is equal to the value of the smuggled goods shall be liable to confiscation. This gives clearly the needed relief to an innocent person.

Some hon. Members, notably Shri Kamath, have pointed out that there is corruption in the customs department which often leads to harassment and any undue power given to the customs authorities is liable to be abused or is being abused.

Shri Hari Vishnu Kamath:As in every other department or sphere of life.

Shri B. R. Bhagat: Therefore, they felt that the proposed powers will lead to harassment of innocent traders and others. He has given the dramatic instance of his own experience 27 years ago. He tried to show how ignorant these officers could be. As he himself says this state of affairs is not only in this department but in others. Corruption in Government departments and in other spheres of life had been discussed generally in this House more than once and it has been emphasised that we should see this from the real perspective. Instead of deriding the state of affairs in a general way, it would be better if you pinpoint or make it more specific. On behalf of the Government we have been saying that it is all a matter of administrative control. We have to find out the bad officers, the corrupt officers and separate them from the good ones. It is also being recognised in the House by the Members and I think Shri Kamath will also recognise that by and large the officers are good, efficient and honest. It is only some of them who are corrupt or who are dishonest, and some of the smuggling, particularly in the matter that is under consideration results as a result of their collusion with dishonest traders, smugglers and others. This is exactly the problem. So far as the dishonest or corrupt officers are concerned, it should be our endeavour, particularly in the department and also by the House, to put them down with a heavy hand, to fine them and isolate them. There are no two opinions about that. The customs department or any other department that deals with it must be streamlined, and the inefficiencies, or doing of things in a callous way and a casual

[Shri B. R. Bhagat]

way should be put down and should be discouraged. But the point is, when we are dealing with very important or serious matters of public life—and this has been emphasised by many Members—smuggling has assumed a proportion which is to be taken note of seriously, particularly, the smuggling of gold or of certain items like watches, diamonds and other things. We have to take a serious note of them and therefore, whatever powers we propose to give to the officers are those power which we consider are necessary. It is necessary to clothe those authorities with these powers so as to see that they could deal with this problem effectively.

This problem has many manifestations. Some of the hon. Members who have visited the customs department have seen the intricacies and complexities and the advantages, that the smuggler has, over the administration or the officers concerned, in this matter. So, the matter is not only tricky but is very complicated. One thing must be remembered when Members object to the routine, technical method of dealing with smuggling—whether it is the power of seizure or the power to search the premises or the burden of proof. On the one hand, Members want that smuggling should be put down heavily and should be stopped absolutely because it is a dangerous drain on our foreign exchange and other vital resources. On the other hand, while it is good that we must see that each one of the officers does his duty properly and that the law is administered efficiently, if we deny them these powers, I think, in our considered opinion, we will be defeating the very purpose of the law.

Shri Hari Vishnu Kamath: I am sorry to interrupt; but none of us want to deny those powers to the officers nor do we object to those provisions. But we want certain safeguards against the abuse of authority. That is all.

Shri B. R. Bhagat: Clause 136 provides for prosecution of the officers

who knowingly misuse their authority. It has been inserted by the Select Committee. When officers abuse their authority knowingly, deliberately, we have provided a provision for prosecution.

Shri Hari Vishnu Kamath: That will come later on.

Shri B. R. Bhagat: We can do it as a matter of departmental control. It is our duty to do it and we are trying to do as much as is possible.

Shri Hari Vishnu Kamath: After damage is done, you prosecute. We want safeguards on the spot.

Shri B. R. Bhagat: I think it is wrong to suppose that every customs officer will try to harass....

Shri Hari Vishnu Kamath: The Minister himself has admitted that some officers are corrupt. I am trying to clarify it.

Mr. Deputy-Speaker: There should not be running commentary.

Shri Hari Vishnu Kamath: I do not think it is fair, Sir, to say like that, to use the words "running commentary." It is not that. This is much different. You listen to the running commentary on the radio!

Shri B. R. Bhagat: I do not know whether the rules, the parliamentary procedure, which Shri Kamath prescribes, are only meant for others and not for him! Then, the hon. Member, Shri Warior, mentioned that he could not find any provision in the Bill to check under-invoicing. He said that under-invoicing has assumed dangerous proportions and it must be checked particularly in certain items of trade. But if he looks to the provisions of the Bill, particularly clauses 111 and 113, he will find that cases of under-invoicing or over-invoicing have been amply taken care of. For example, clause 111 provides that if any dutiable or prohibited goods do not correspond in any material part,

cular with the entry made by him earlier, the goods are liable to confiscation. Any material difference, either upward or downward, whether under-invoicing or over-invoicing, would be taken care of. Then section 113 provides that if the value of any exported goods is not correctly declared, the goods shall be liable to confiscation. Similarly, clause 114 provides that any person concerned with any such offence shall be liable to a penalty not exceeding five times the value of goods. Then, clause 135 says that such persons are liable to be sentenced by a magistrate to a maximum of two years' imprisonment. So, by various clauses, by way of penalty or imprisonment or trial by magistrate or confiscation, we have tried to see that under-invoicing or over-invoicing is prevented.

Then, the hon. Member said that all punishment should be deterrent. The Bill provides that in ordinary cases of smuggling the maximum imprisonment would be two years. The evidence shows that this is a good deterrent except for internationally organised smuggling gangs, some dangerous gangs which are operating on a big scale. In such cases, we have provided, or the Select Committee have provided, for the raising of this period of imprisonment to five years. The minimum imprisonment is six months in such cases. So, these are sufficiently deterrent punishments.

Then the hon. Member said that the court procedure is very lengthy. He strikes the opposite chord here. He said that there should be provision for speedy and summary trials in these cases. I would draw his attention to clause 138 of the Bill which specifies that except in cases where the maximum term of imprisonment is five years which under the Code of Criminal Procedure are known as warrant cases which have to be gone through in a proper judicial manner, other offences may be tried summarily by a magistrate. So, all these things are being provided for.

Then, Shri Warfor described this Bill as an anti-smuggling Bill and not

as a piece of customs legislation. I think this description is erroneous, because, as I had tried to explain earlier while making the motion for reference to the Select Committee and even yesterday, there are two objects of the Bill. One object is to streamline the customs laws—this has been welcomed by the Select Committee and all hon. Members—and to give facilities to honest traders so that trade may develop and export develops and honest and good trade and industry in the country develops. Facilities have been given in the provisions of the new law and they have been welcomed by hon. Members. While trying to give all facilities to the trade, we have also tried to tighten the anti-smuggling measures, though some of these measures are being objected to by some hon. Members. While agreeing with the objective that smuggling must be prevented, to prevent smuggling we have to tighten the anti-smuggling measures, and in their wisdom, some of the hon. Members think that whatever powers we propose to give to the customs officers will lead not for the prevention of smuggling but to harassment.

Shri Hari Vishnu Kamath: I said: "may" not "will".

Shri B. R. Bhagat: Therefore, it has to be described as a more consolidated law for customs which will take care to give all facilities to the trade, develop it and promote it as far as the customs law can help, and also prevent all smuggling.

Mention was made about clause 105 which empowers the Assistant Collector of Customs and, in border areas, special selected officers to search premises. This has been objected to because it has been said by some hon. Members, notably Shri Kamath, that it is likely to cause harassment to innocent persons. It has been stated in the Bill itself and the notes on clauses that officers not only in the Customs Department—this power we are taking for the first time—but other revenue departments like

[Shri B. R. Bhagat]

income-tax, central excise, State excise and sales tax, have already got the power to search premises, and it cannot be said that, barring an odd instance here or there, the grant of such power has led to harassment of innocent persons. Therefore, this fear is being tried to be maximised out of all proportion. And, may I mention here, again, that the Taxation Enquiry Commission has itself recommended this change in the customs law.

Some hon. Members suggested that if it is necessary to give these powers to the customs officers proper safeguards should be provided. This has already been done. For example, in sub-clause (2) of clause 105 it is said that the provisions of the Code of Criminal Procedure, 1898, relating to searches made by customs officers would apply under this sub-clause, but a record showing the reasons which led to that search has to be forwarded to the Collector of Customs so that it may be ensured at the level of the highest field officer that there is no abuse of this power. Therefore, we have tried to introduce all reasonable safeguards that we can think of.

Reference was made to clause 118. It has been said that if in a packet of ten diamonds only one is smuggled even then under this clause all the ten will be liable to confiscation. The House will be aware that in the Bill which was referred to the Select Committee we made this provision that the entire lot will be confiscated. The Select Committee went into this matter and a critical examination of clause 118 showed that there need to be some relaxation in this clause. The Select Committee has made this change. After a search is made of the premises of a trader or a broker it is possible that in a packet of ten diamonds one may be smuggled and nine may not be smuggled diamonds. These nine diamonds may have been obtained from a different source—seizures in the towns. But the clause as amended does not apply to such

cases of seizures, it applies only to cases of importation. Supposing ten diamonds are imported in a packet, either the entire thing is smuggled or the entire thing is not smuggled. It cannot be that while somebody is bringing a packet five of them are smuggled and five are genuinely imported against proper licences. So we have made this distinction. Supposing in a packet there are ten diamonds out of which one is smuggled and nine are from other sources, we have made this distinction. It is not correct to provide that it should apply to actual importation where all or none would be smuggled.

Shri Warior mentioned that he could not find similar provisions in any other country. This also is not true. I want to invite his attention to Section 277 of the Customs and Excise Act, 1952 of the United Kingdom where a similar provision is there.

Much has been made about clause 123. Certain hon. Members have felt that the clause would lead to a lot of harassment of innocent traders because the burden of proof will be on them. May I remind them that this clause has been on the statute-book since 1955, because even in the existing Act in certain cases the burden of proof has got to be on the smugglers. That has been there for more than seven years, and the traders have continued to flourish in spite of this proviso. This measure was introduced in 1955 on the recommendation of the Taxation Enquiry Commission, and after its enactment the Government have applied it with the utmost circumspection.

I have mentioned in my speech that some of the bullion merchants have recently represented before the Supreme Court that this provision is *ultra vires* of the Constitution as it imposes unreasonable restriction. Some hon. Members said that although they have said that it is *intra vires* of the Constitution, they have criti-

closed it that it infringes natural justice. I ask the hon. Member to quote it from the judgment of the Supreme Court. May I mention for the benefit of hon. Members that they did not say any such thing? On the other hand, the Supreme Court decided that considering the magnitude of the evil of gold smuggling the restriction imposed was in its judgment reasonable. They considered it reasonable.

Shri Bade: The hon. Speaker did not allow me to read the judgment. The point was whether it was *ultra vires* or not. The Supreme Court decided that it was not *ultra vires*.

Mr. Deputy-Speaker: His point was that the Supreme Court while holding it *intra vires* made some criticism.

Shri B. R. Bhagat: They considered such restrictions reasonable in the context of the evil of smuggling. That is the specific finding of the Supreme Court. I may also add for the benefit of hon. Members that the Speaker himself said that not only in this law but in certain other matters also there has been a departure from the concept of natural justice in the interest of society, in the interest of social well being.

It has been said—actually an amendment has been tabled by Shri Kamath—that if the source of this importation is proved the burden of proof should have been discharged. I think this is a very tricky matter, and this puts us in a trap, although it looks very innocent. Actually this suggestion was made to the Supreme Court by the same people who appealed and it did not find favour with the Supreme Court.

Shri Hari Vishnu Kamath: Have you got the Supreme Court's judgment? Would you kindly produce the Supreme Court's judgment where it is said that it did not find favour with them?

Mr. Deputy-Speaker: He is quoting from the judgment.

Shri B. R. Bhagat: If he wants we will produce it. But I think the hon. Member should take my words as I take what he says here.

Shri Hari Vishnu Kamath: He was not quoting from the judgment.

Shri B. R. Bhagat: I said that this point was referred to the Supreme Court by the same people who appealed, and the judgment was quoted by the hon. Member.

Shri Hari Vishnu Kamath: So he was not quoting.

Shri B. R. Bhagat: Let him come to the substance. According to Shri Kamath's amendment trader A, for example, if he receives some smuggled goods he will be able to sell them to another trader B immediately. For example, gold can be sold in a matter of few hours. If he sells it to B, it is smuggled gold. Then, according to Shri Kamath, supposing B says that he has bought it from A—he will naturally say that he has bought it from A—then the burden of proof is discharged although the gold remains smuggled gold and we cannot do anything if the proviso is accepted. So, we will not be able to trace any smuggled gold and we will not be able to prevent smuggling in gold. For these reasons, we are not in a position to accept the suggestion. If we want to put down smuggling in gold or such other matters as are mentioned here....

Shri Hari Vishnu Kamath: You are confiscating the gold all right. Only the accused may not be punished.

Shri B. R. Bhagat: Then the case of stolen goods was cited in this connection. It is stated that an innocent purchaser of stolen goods is not punished. But may I remind them that the stolen property in the hands of an innocent purchaser is, nevertheless, taken away and handed over to the person from whom it is stolen? Similarly, if smuggled gold is found with a person and it is proved that he did not know that it was smug-

[Shri B. R. Bhagat]

gled, the only thing is that the gold would be taken away from him; he would not be penalised. He would be penalised only if he has done it knowingly or deliberately or in collusion with somebody.

Some hon. Members referred to clause 131 and suggested that an appellate tribunal should be appointed. While presenting the report of the Select Committee, I gave a long statement as to why we should not have an appellate tribunal in such cases. They have referred to the recommendations of the Taxation Enquiry Commission. When the Commission made this recommendation, the issue was very carefully considered by the Government and it was decided not to accept it on account of a number of considerations. As the Commission itself has pointed out, if the customs department were to function efficiently, it must not be tied down too scrupulously with technicalities. As I mentioned in my speech yesterday, the smuggling of gold, import of banned or partially-banned articles and under-valuation of exports are major problems which the Customs Department had to contend with. In the case of income-tax and other direct taxes, matters referred to such tribunal are mostly matters of law where judicial mind is exercised because the judicial process is necessary. In customs cases there is hardly any question of law; mostly, they are matters of fact where judicial technicalities should not be allowed to go very far. Further, these are cases where very many incidental matters have to be looked into. Here I would like to say that an analysis of the decisions taken by the Central Board of Revenue will reveal that in appeal and revision by Government revenue has never entered as a consideration at all in deciding these matters and the benefit of doubt has always gone in favour of the assessee. Furthermore, in most indirect revenue cases, unlike in direct revenue cases, questions have mostly been of the appre-

ciation of facts and not of law. For example, in the case of appeals to the Central Board of Revenue of the Government from Collectors, in 1960 out of 421 appeals decided 160 were rejected; that is 38 per cent, whereas 62 per cent were accepted and refund given. In 1961 out of 394 cases 155, that is, 39 per cent were rejected and in the case of 239 cases, that is, 60 per cent, the appeals were accepted and refund given. In 1962 upto June 196 appeals were decided, out of which 50 per cent were rejected and 50 per cent were accepted. In the case of appeals which went in revision to the Government, the percentages are 42, 39 and 32.

So, if you see the working of this process, you will find that ample justice is done, no harassment was caused by charging excess revenue and people have been given the necessary relief and refund. The facts bear out that the process is working satisfactorily and at least there is no harassment to the traders; if at all, they are working in their interests. Therefore, the demand for an independent tribunal for customs is out of place and should not be pressed.

Mr. Deputy-Speaker: The question is:

"That the Bill to consolidate and amend the law relating to customs, as reported by the Select Committee, be taken into consideration."

The motion was adopted.

Clause 2.— (Definitions)

Shri Hari Vishnu Kamath: I beg to move:

Page 2, lines 21 and 22,—

omit "with its grammatical variations and cognate expressions".(13)

Page 3, lines 1 and 2,—

omit "with its grammatical variations and cognate expressions".(14)

I will be very brief. It would appear that the draftsman of this Bill wants to be extremely punctilious with regard to grammar and linguistic nuances. I do not know whether he exercised the same care with regard to the body of the Bill and other Bills, but here he has been extra careful with regard to the linguistic nuances and grammatical nuances. For instance, take the words "import" or "export". In English language and every other language, every word has got its grammatical variations and cognate expressions. But when we define a word, we do not include this phrase "with its grammatical variations and cognate expressions" in every case. Or, take any other definition. We do not always say "together with its grammatical variations and cognate expressions". If we include that, it would only be extra labour. Therefore, I do not see any need for this phrase. It was discussed in the Select Committee and the Minister was almost inclined to agree with me; I hope, I am not disclosing any secret of the Select Committee. My amendments seek to omit these words from the definitions of "export" and "import" to make them simpler. I am for simplification of the law, as the Minister is. He says that he is very much for the simplification of the law. But now he has come under the influence of the draftsman in this case. Even now, if he has a free hand, I am sure, he will accept my amendment and agree to delete the words "with its grammatical variations and cognate expressions". If my amendment is accepted, the definition of "export" will read as follows:

"'export' means taking out of India to a place outside India;"

Why should you insert the phrase "with its grammatical variations and cognate expressions"? It is absolutely unnecessary, superfluous, redundant and meaningless.

Shri Morarji Desai: All these words of the hon. Member are superfluous.

Shri Hari Vishnu Kamath: Because you asked for trouble, you have got it. He has invited trouble.

Shri Morarji Desai: I have not invited it.

Shri Hari Vishnu Kamath: He has invited trouble and now he wants to get out of it. And the only way to get out of it honourably is to accept my amendment.

Shri Morarji Desai: I have great respect for the tenacity of my hon. friend.

Shri Hari Vishnu Kamath: I am glad.

Shri Morarji Desai: He wants me to be objective, but I find that he is the most subjective person. He does not want to be objective at any time; once he has got something in his mind, he is not prepared to give it up. But the moment I do not give up my view, I become less objective. Is this a proper and reasonable attitude to adopt?

Shri Hari Vishnu Kamath: Did you or did you not accept it in the Select Committee?

Shri Morarji Desai: I did not agree.

Shri Hari Vishnu Kamath: You almost agreed. I said you "almost" agreed.

Shri Morarji Desai: Well "almost agreed" is not the same as "agreed". If my hon. friend thinks that I am under the influence of my draftsman and that I am not a free person....

Shri Hari Vishnu Kamath: In this particular matter.

Shri Morarji Desai: ...he is very much mistaken. I am guided by the draftsman, but I have more common sense to accept what the draftsman understands and I do not understand, and even my hon. friend does not understand.

Shri Hari Vishnu Kamath: It is an open question. The draftsman is not infallible.

Shri Morarji Desai: Nor Shri Kamath.

Shri Hari Vishnu Kamath: Nor are you.

Shri Morarji Desai: I am not infallible. Therefore, I accept the advice of the draftsman. Therefore, I oppose the amendment.

Mr. Deputy-Speaker: Does the hon. Member press his amendments?

Shri Hari Vishnu Kamath: Under the convention, it cannot be put to vote before 2.30 P.M. I want it to be put to the vote of the House.

Mr. Deputy-Speaker: If he does not press it, it can be put to vote now.

Shri Morarji Desai: If it is a voice vote, there is no need to wait till 2.30 P.M.

Dr. M. S. Aney (Nagpur): Sir, I have to say something on this amendment. I think, the amendment seems to be very reasonable and the retention of these words, which carry no meaning except what the word 'export' means, will mean nothing. If they mean something else, it is necessary for the hon. Minister to explain to us what the possibility would be if these words are taken away. If for the word 'export' the words 'exporting' or 'exported' come in, which are its grammatical variations the words are not likely to have any meaning other than what the word export has.

The hon. Minister said that he relies upon the wisdom of the draftsman. But when the matter comes up for consideration in the court, nobody would see what the meaning of the draftsman was but what the meaning of the House and the hon. Members of the House was. That is the only matter for consideration to ascertain the meaning. Therefore the hon. Minister must point out that there is a possibility of this word being misinterpreted or misunderstood if these words grammatical or cognate variations are not kept there. If he cannot

say that, I think, as a reasonable man as he always is, he should be prepared to accept the amendment rather than oppose this amendment.

Shri Hari Vishnu Kamath: I will warn you before-hand, Sir, that with the powerful support that I have got from Dr. Aney, I will press it to a division.

Mr. Deputy-Speaker: We will hold it over. We will then go to the other clauses.

There are no amendments to clauses 3 to 100.

The question is:

Shri Hari Vishnu Kamath: But we can speak on the clauses. You cannot rush like that. There is no need to hustle the House.

Mr. Deputy-Speaker: On what clause does he want to speak?

Shri Hari Vishnu Kamath: On clauses 74 and 90.

Mr. Deputy-Speaker: The question is:

"That clauses 3 to 73 stand part of the Bill."

The motion was adopted.

Clauses 3 to 73 were added to the Bill.

Clause 74— (Drawback allowable on re-export of duty-paid goods)

Shri Hari Vishnu Kamath: Clause 74 provides for drawback.

Shri B. R. Bhagat: We had agreed to 98 per cent.

Shri Hari Vishnu Kamath: We had agreed but the hon. Deputy Minister will also recollect that at a subsequent stage at which he was present, that is, in the last meeting of the Select Committee, there was a suggestion made to the effect that this 98 per cent might be and should be raised to 99 per cent, that is almost complete drawback. He is entitled to a hundred per cent drawback but because a little percentage should be

provided for in the case of certain matters and because this practice should not be encouraged, we wanted to provide for less than hundred per cent drawback. In the initial stage the Committee had agreed to increase it to 98 per cent.

Mr. Deputy-Speaker: It was an agreed proposition.

Shri Hari Vishnu Kamath: Yes, Sir. But then a suggestion was made later on, in a subsequent meeting of the Committee, by myself and by Shri Bade also, I think, that to encourage exports it might be increased from 98 per cent to 99 per cent. Of course, the hon. Minister said in that eventuality he would go back to 95 per cent. That is why it was dropped. But he was not opposed to it in a sense to that. As a matter of fact, some hon. Members thought that hundred per cent should be given as a drawback. So, as a compromise, if it could be agreed to by the House—it was not agreed to in the Committee—99 per cent should be given as drawback. It would be a very salutary provision.

Shri Bade (Khargone): May I submit that in the Committee there was a discussion about its being 100 per cent, 98 per cent or 95 per cent? At that time I had quoted some rules and laws of different countries under which 100 per cent drawback was given. Of course, the Government was able to compromise and keep it at 98 per cent; but even now I think that it should be 100 per cent.

Shri B. R. Bhagat: I think, what the hon. Members have recalled of the discussion in the Select Committee strengthens my point that it should remain at 98 per cent. It was almost a gentlemen's agreement. The original provision was 95 per cent; they said, "Make it 100 per cent" and the Select Committee agreed to a compromise figure of 98 per cent. So, I will appeal to hon. Members that they should not break that gentlemen's agreement and should leave it at 98 per cent.

Shri Hari Vishnu Kamath: There are gentlemen in the House also. We are all gentlemen here.

Mr. Deputy-Speaker: The question is:

"That clause 74 stand part of the Bill."

The motion was adopted.

Clause 74 was added to the Bill.

Clauses 75 to 89 were added to the Bill

Clause 90—(Concessions in respect of imported stores for the Navy)

Mr. Deputy-Speaker: Shri Kamath.

Shri Hari Vishnu Kamath: Now that clause 74 is passed, I have nothing to say on clause 90. It would have been consequential.

Mr. Deputy-Speaker: The question is:

"That clause 90 stand part of the Bill."

The motion was adopted.

Clause 90 was added to the Bill.

Clauses 91 to 100 were added to the Bill.

Clause 101—(Power to search suspected persons in certain other cases)

Shri Y. S. Chaudhary (Mahendragarh): Sir, I beg to move:

Page 34,—

after line 13, insert—

"Provided that the Collector of Customs shall not empower an officer under this section who is not a gazetted officer."

इस क्लॉज में, जो कि पावर टु सर्च सस्पेक्टिड पर्सन्स के बारे में है, यह व्यवस्था की गई है कि कलेक्टर किसी भी आदमी को सर्च करने के लिये एम्पावर कर सकता है। अगर किसी आर्डिनरी आदमी, क्लर्क

[श्री यु० सि० चौधरी]

के लेवल के किसी व्यक्ति या किसी कांस्टेबल, को इस काम के लिये नियुक्त किया जाता है, तो उस के द्वारा कोई गैरजिम्मेदाराना हरकत किये जाने का खतरा रहेगा, जिससे शक पैदा होगा और इन्फोर्सेंट लोगों को तकलीफ होगी। मेरे एमंडमेंट का मतलब यह है कि सिर्फ गजेटिड आफिसर्स को ही सर्व करने के लिये भेजा जाये, जिन पर यकीन किया जा सकता है और जो इस काम को ज्यादा अच्छी तरह अंजाम दे सकते हैं।

श्री ब० रा० भगत : माननीय सदस्य ने जो तरमीम रखी है, मैं उस को मंजूर करने से लाचार हूँ। अगर माननीय सदस्य की तरमीम को मान लिया जाय, तो बहुत बड़ी संख्या में गजेटिड आफिसर्स को बहाल करना पड़ेगा। हमारा बार्डर बहुत लम्बा है और इस लिये हम को बहुत सी जगहों पर, जो कि बहुत दूर हैं, जो शहरों से दूर हैं, गजेटिड आफिसर्स को रखना पड़ेगा। इस के लिये हम को वहां भी गजेटिड आफिसर्स को रखना पड़ेगा, जहां उन की जरूरत नहीं है और इस पर बहुत खर्चा पड़ेगा। इस क्लॉज में कलेक्टर को यह अधिकार दिया गया है कि वह सर्व करने के लिये कस्टम्ज के किसी आफिसर को अथाराइज करे। वह आफिसर जिम्मेदार हो, इस के लिये यह प्राविजन रखा गया है कि वह कलेक्टर के द्वारा इयली अथाराइज्ड हो। इस में सिद्धांत का कोई झगड़ा नहीं है कि गजेटिड आफिसर न हो। अगर सब जगहों पर रखने के लिये गजेटिड आफिसर्स मिलें, तो रखने में कोई आपत्ति नहीं है। लेकिन प्रशासन की व्यवहारिक दृष्टि यह है कि हम ऐसे आफिसर्स को हर जगह नहीं रख सकते। इस लिये काम्प्रोमाइज के तौर पर यह इन्तजाम किया गया है।

Mr. Deputy-Speaker: Does he press his amendment or does he withdraw it?

Shri Bade: He presses it.

Mr. Deputy-Speaker: The question is:

Page 34,—

after line 13, insert—

“Provided that the Collector of Customs shall not empower an officer under this section who is not a gazetted officer.”

The motion was negatived.

Mr. Deputy-Speaker: The question is:

“That clause 101 stand part of the Bill.”

The motion was adopted.

Clause 101 was added to the Bill.

Clause 102— (Persons to be searched may require to be taken before gazetted officer or customs or magistrate)

Shri Y. S. Chaudhary: I beg to move:

Page 34, line 16,—

omit “if such person so requires” (2).

Page 34, line 17,—

omit “the nearest gazetted officer of customs or” (3).

Page 34, lines 19 and 20,—

omit “the gazetted officer of customs or” (4).

श्री यु० सि० चौधरी : उपाध्यक्ष महोदय, मैंने पेज ३४, लाइन १६ में से ये शब्द ओमिट करने के लिये एमंडमेंट दिया है :

“if such person so desires”

जैसे इसको रखा गया है उसका मतलब यह होता है कि अगर कोई आदमी चाहेगा तो उसको मैजिस्ट्रेट के सामने पेश

किया जायगा वर्ना नहीं। उपाध्यक्ष महोदय, आप अच्छी तरह से जानते हैं कि हमारे देश में ८०-९० परसेंट आदमी देहातों में रहते हैं और आम तौर से अनपढ़ होते हैं उनको कानून की तमाम पेचीदगियों का पता नहीं होता है। जिस तरह से यह क्लार्क है, इस में उनका कोई दखल नहीं हो सकेगा और सारे के सारे जाल के अन्दर आ जायेंगे अगर इसको उसकी मर्जी पर छोड़ दिया जायेगा कि अगर वह चाहे तो उसको मैजिस्ट्रेट के सामने ले जाया जायेगा अन्यथा नहीं। मेरी एमेंडमेंट का मतलब यह होगा कि उसको मैजिस्ट्रेट के सामने तो ले जाया ही जायगा जो आदमी कानून को लागू करते हैं, वे तो इसकी बारीकियों को अच्छी तरह से समझते हैं और वे इसके लिये जिम्मेदार भी हैं लेकिन जो कामन आदमी है, उसको अगर मैजिस्ट्रेट के सामने ले जाया जाता है तो उसके साथ ज्यादा अच्छी तरह से इन्साफ हो सकता है बजाय इसके कि इस चीज को उसकी इच्छा पर छोड़ दिया जाये। जहां तक इच्छा का सम्बन्ध है, वह बात कभी भी नहीं हो सकेगी।

एक और भी चीज है, जिस पर आपको ध्यान देना चाहिये। जो कस्टमज़ के आदमी हैं, उनके दिमाग में तो यह रहेगी कि किसी तरह से केस को डिपार्टमेंटल केस बनाया जाये और उस में डिपार्टमेंट के दखल को ही कायम रखा जाये और मैजिस्ट्रेट के सामने वह पेश न हो। जिस तरह से पुलिस की टैंडेंसी होती है कि लोगों को मुकदमों की शक्ल में फंसाया जाये, अगर यही टैंडेंसी यहां भी दिखाई गई तो किस तरह से उसको इन्साफ मिल सकता है। इस वास्ते अगर यहां पर कर दिया जाये कि उस को मैजिस्ट्रेट के सामने ले जाया ही जायेगा उसके सामने पेश किया ही जायेगा और ऐसा करने के बाद कार्रवाई चलेगी तो मेरे ब्याल में यह ज्यादा अच्छा होगा।

Shri Bade: Sir, I support this amendment, because this was discussed in

the Select Committee also. There may be certain illiterate people or the common man in the street. They do not know the law. Therefore this should not be left to the option of the officer who takes the search warrant. It should be the duty of the officer to take the man to the magistrate. And if these words "if he so requires" are omitted the provision will stand like this that as soon as the officer wants to search him, he will have to take the man to the magistrate. There is provision in the Criminal Procedure Code, but even then the common man does not know what his rights are. Therefore, this is very essential and I also support this amendment.

Shri Hari Vishnu Kamath: I have got two amendments, Nos. 15 and 16.

I beg to move:

Page 34, line 16,—

omit "if such person or requires". (15).

Page 34, lines 16 and 17,—

for "without unnecessary

delay" substitute "forthwith". (16).

Mr. Deputy-Speaker: No. 15 is the same as amendment No. 2.

Shri Hari Vishnu Kamath: But No. 16, you will agree, is different.

Mr. Deputy-Speaker: Yes.

Shri Hari Vishnu Kamath: In regard to No. 15, while supporting my hon. friends, Mr. Chaudhary and Mr. Bade, I wish only to add that in this vast country where the great majority of citizens are at best semi-literate, it is too much to presume that they will know the law, with all its intricate details, and every provision of the law. It is true that Government seeks to provide here that if a person so requires he may be taken before a magistrate; he will be taken before a magistrate. But I do not know, I myself am not quite conversant with the rapid changes that go on in our laws and Acts from time to

[Shri Hari Vishnu Kamath]

time. There is a saying that you enact in haste and amend at leisure. That is what is happening in our country today. And here it is a small provision, "if he so required". Can you imagine, Sir, that a customs officer, when he arrests somebody, will tell him, "Well, if you want, I can take you"? In the natural course, human conduct is somewhat against this sort of action on the part of the customs officer. He will arrest and take him for searching straightway. And when he goes to a court of law, in a court of law he can always say, "He never wanted to be taken before a magistrate and so I searched him". The poor man will have nothing in writing and will be in a fix and hard put to prove that he wanted to be taken before a magistrate. We must therefore safeguard against abuse of authority on the part of the customs officer. Therefore, this phrase "if he so requires" should be completely deleted, and it should be made obligatory on the part of the customs officer to take him in every case before a magistrate or a gazetted officer of customs.

And then I sought to substitute the word "forthwith" for the words "without unnecessary delay" which is the amendment that has been made by the Select Committee. I suggested in the Committee itself this word "forthwith". But a big dictionary was not available at that time. There was only a small dictionary at hand at that time. The Committee did not produce, the officers present there could not get hold of big dictionary. We got a small or pocket Oxford dictionary, I do not remember which.

Mr. Deputy-Speaker: Is there a bigger one now?

Shri Hari Vishnu Kamath: I have got no dictionary here. But I looked it up in the Library. It said "forthwith" means without a second's delay.

Mr. Deputy-Speaker: Immediate.

Shri Hari Vishnu Kamath: But the dictionary does not say that. The dictionary says "without delay". And another dictionary said "without undue delay" or something like that.

Shri Daji: The word is known to law.

Shri Hari Vishnu Kamath: Yes. In some Acts it is "forthwith". It is used in many enactments. So I seek to substitute the word "forthwith" for the words "without undue delay". "Undue delay" may mean anything.

Mr. Deputy-Speaker: "Without unnecessary delay".

Shri Hari Vishnu Kamath: The officer may say that one day or two days were not unnecessary. Therefore, for how long will the person be detained after he is arrested? Therefore, to safeguard against abuse of authority and to ensure a safeguard against unlawful detention of the person concerned, it is better to use the word "forthwith" rather than the words "without unnecessary delay". I hope the Deputy Minister will not stand on a sort of false prestige and stick to his amendment like a leech and will be reasonable enough to accept this amendment.

Shri Narendra Singh Mahida: I also support that move.

Shri B. R. Bhagat: Sir, I am sorry that it is not possible for me to accept the amendments for the simple reason that they are completely divorced from the facts of the case and it is rather strange that hon. Members should equate the smugglers with illiterate, innocent, common people. It is a known fact of life that all these smugglers are very clever people and they know the law much better than we do. This clause only deals with the power to search. Innocent persons who have nothing to hide or conceal—every day people pass through the customs—are searched, their baggage is searched in part or full. But the smuggler, although he may be illiterate or semi-literate is a

very clever person. To say that this will lead to harassment is a very illusory fear.

And then, if we take out the words "if such person so requires", what will it lead to? It will mean that in all cases, wherever a person is apprehended or asked to declare or is searched, he will have to be taken to a magistrate or to the nearest gazetted officer. Sometimes it may be twenty-five miles, sometimes it may be fifty miles. It may be varying. We know the nature of the posts on our border. So this will in addition lead to delay. At present, if he is to be searched, and if the person does not object, he can be cleared, if he is innocent, immediately and without any delay or loss of time. But if these words "if he so requires" are omitted he would have necessarily to be taken thirty, forty or fifty miles, involving harassment or other inconvenience to him as well as to the administration. So, if a man wants it, he would be taken to the gazetted officer or to the magistrate.

Similarly, as regards this question of substituting the word forthwith for the words "without unnecessary delay", when the hon. Member has no good argument to advance he may say that the other man is unobjective or sticking to false prestige. These are only substitutes for arguments. It only proves that hon. Members have no arguments. This matter was discussed in the Select Committee.

Shri Hari Vishnu Kamath: Have you any against?

Shri B. R. Bhagat: I am putting forth some sound arguments. . . .

Shri Hari Vishnu Kamath: I am listening.

Shri B. R. Bhagat: . . . for the consideration of the hon. Member.

Shri Hari Vishnu Kamath: House.

Shri B. R. Bhagat: This expression "without unnecessary delay" which has been used here is the same as in sec-

tion 60 of the Code of Criminal Procedure. That provides:

"A police officer making an arrest without warrant shall, without unnecessary delay . . . send the person arrested before a magistrate. . . ."

This is on a similar basis. If we substitute forthwith, as the hon. Member said, it has also a connotation in law. It should be 'without unnecessary delay'. If there is the slightest delay, it will be declared illegal. Sometimes a delay of one hour or two hours which may be absolutely essential or a few hours will create a situation in which it may be declared illegal. It would be very difficult to function in that situation. The word 'forthwith' should not be there. The expression 'without unnecessary delay' is all right for the purpose.

Mr. Deputy-Speaker: I shall now put amendments 2, 3 and 4 to the vote of the House.

The amendments were put and negatived.

Mr. Deputy-Speaker: Shri Kamath's amendment No. 15 is barred. The House has rejected it. I shall now put amendment No. 16 to the vote of the House. The question is:

Page 34, lines 16 and 17, for "without unnecessary delay" substitute "forthwith".

Those in favour may kindly say 'Aye'.

Some Hon. Members: 'Aye'.

Mr. Deputy-Speaker: Those against may kindly say 'No'.

Some Hon. Members: No.

Mr. Deputy-Speaker: The 'Noes' have it.

Shri Hari Vishnu Kamath: The 'Ayes' have it.

Mr. Deputy-Speaker: Do you want a Division?

Shri Hari Vishnu Kamath: Yes.

Mr. Deputy-Speaker: Division. The question is: Mr. Kamath's amendment No. 16.

Shri Hari Vishnu Kamath: Please read the amendment.

Mr. Deputy-Speaker: I am reading it. The question is:

Page 34, lines 16 and 17, for "without unnecessary delay" substitute "forthwith".

The Lok Sabha divided:

Mr. Deputy-Speaker: Any corrections?

Shri Nareendra Singh Mahida: No. 468 for 'Ayes'.

Shri Kapur Singh: No. 452 for 'Ayes'.

Shri Priya Gupta: No. 460 for 'Ayes'.

Shri Koya: No. 396 for 'Ayes'.

Shri A. S. Alva: No. 312 for 'Noes'.

Dr. P. N. Khan: No. 337 for 'Noes'.

Dr. P. Mandal: No. 307 for 'Noes'.

Shri Subbaraman: No. 263 for 'Noes'.

Shri V. K. Ramaswamy: No. 262 for 'Noes'.

Shri Badshah Gupta: No. 227 for 'Noes'.

AYES

Division No. 1]

[14.47 hrs.]

Aney, Dr. M. S.
Bade, Shri
Banerjee, Shri S. M.
Barua, Shri Hem
Berwa, Shri
Bhawani, Shri Lakshmu
Biren Dutta, Shri
Chaudhary, Shri Y. S.
Daji, Shri
Gauri Shankar, Shri
Gupta, Shri Indrajit, Shri

Gupta, Shri K. R.
Gupta, Shri Priya
Himmatsinghji, Shri
Ismail, Shri M.
Jha, Shri Yogendra
Kachhavaia, Shri
Kamath, Shri Hari Vishnu
Kapur Singh, Shri
Koya, Shri
Mahida, Shri Nareendra Singh
Mukherjee, Shri H. N.

Nambiar, Shri
Pattnayak, Shri K.
Ranga, Shri N. G.
Reddy, Shri Narasimha
Shashank Manjari, Shrimati
Singh, Shri J. B.
Singh, Shri Y. D.
Soy, Shri H. C.
Utiya, Shri
Yadav, Shri Ram Sewak

NOES

Akkamma Devi, Shrimati
Alva, Shri A. S.
Anjanappa, Shri
Arunachalam, Shri
Babunath Singh, Shri
Balmiki, Shri
Barkataki, Shrimati Renuka
Barupal, Shri P. L.
Basappa, Shri
Baswant, Shri
Bhagat, Shri B. R.
Bhargava, Shri M. B.
Bhatkar, Shri
Bist, Shri J. B. S.
Brajeshwar Prasad, Shri
Brij Raj Singh, Shri
Chanda, Shrimati Jyotana
Chavan, Shri D. R.
Chuni Lal, Shri
Dafle, Shri
Das, Shri B. K.
Das, Shri N. T.
Das, Shri S. B.
Dasappa, Shri

Dass, Shri C.
Desai, Shri Morarji
Deshmukh, Dr. P. S.
Deshmukh, Shri B. D.
Deshmukh, Shri Shivaji Rao S.
Deshpande, Shri
Dube, Shri Mulchand
Dubey, Shri R. G.
Dwivedi, Shri M. L.
Elayaperumal, Shri
Firodia, Shri
Ganapati Ram, Shri
Gupta, Shri Badshah
Gupta, Shri Shiv Charan
Hansda, Shri Subodh
Jadhav, Shri Tulshidas
Jain, Shri A. P.
Jamir, Shri S. C.
Jamunadevi, Shrimati
Jedhe, Shri
Jyotishi, Shri J. P.
Kabir, Shri Humayun
Kadadi, Shri
Kanungo, Shri

Khan, Dr. P. N.
Kureel, Shri B. N.
Lakhan Das, Shri
Lakshmikanthamma, Shrimati
Lalit Sen, Shri
Laskar, Shri N. R.
Laxmi Bai, Shrimati
Mahadeo Prasad, Shri
Malliah, Shri U. S.
Mallick, Shri
Manaen, Shri
Mandal, Dr. Pashupati
Maniyangadan, Shri
Masuriya Din, Shri
Mathur, Shri Harish Chandra
Mehrotra, Shri Braj Bihari
Minimata, Shrimati
Mishra, Shri Bibhuti
Mohanty, Shri G.
Mohsin, Shri
More, Shri K. L.
Naik, Shri Maheswar
Niranjan Lal, Shri
Pandey, Shri R. S.

NOES—Contd.

Panna Lal, Shri
 Patel, Shri P. R.
 Patil, Shri J. S.
 Patil, Shri M. B.
 Patil, Shri S. B.
 Patil, Shri T. A.
 Patnaik, Shri B. C.
 Pillai, Shri Nataraja
 Pratap Singh, Shri
 Raju, Shri D. B.
 Ram Subhag Singh, Dr.
 Ramaswamy, Shri V. K.
 Renanjai Singh, Shri
 Rane, Shri
 Rao, Shri Ramapathi

Reddiar, Shri
 Roy, Shri Bishwanath
 Sadhu Ram, Shri
 Saha, Dr. S. K.
 Sahu, Shri Rameshwar
 Saigal, Shri A. S.
 Sen, Shri A. K.
 Sen, Shri P. G.
 Shankaraiya, Shri
 Sharma, Shri D. C.
 Shashi Ranjan, Shri
 Shastri, Shri Ramanand
 Shree Narayan Das, Shri
 Sidheshwar Prasad, Shri
 Singh, Shri D. N.

Singha, Shri G. K.
 Srinivasan, Dr. P.
 Subbaraman, Shri
 Tiwary, Shri K. N.
 Tiwary, Shri R. S.
 Tula Ram, Shri
 Walvi, Shri
 Varma, Shri Ravindra
 Venkatasubbaiah, Shri
 Vyas, Shri Radhelal
 Wadiwa, Shri
 Yadav, Shri Ram Harkh
 Yadava, Shri B. P.
 Yusuf, Shri Mohammad

Mr. Deputy-Speaker: The result of the division is as follows:

Ayes 32; Noes 113.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 102 stand part of the Bill."

The motion was adopted.

Clause 102 was added to the Bill.

Clause 2— (Definitions)

Shri Hari Vishnu Kamath: There are my amendments on clause No. 2.

I move:

Page 2, lines 21 and 22,—

omit "with its grammatical variations and cognate expressions". (13).

Page 3, lines 1 and 2—

omit "with its grammatical variations and cognate expressions". (14).

Mr. Deputy-Speaker: The question

Page 2, lines 21 and 22,—

omit "with its grammatical variations and cognate expressions". (13).

Page 3, lines 1 and 2—

omit "with its grammatical variations and cognate expressions". (14).

The Lok Sabha divided:

Dr. M. S. Aney: My vote has not been recorded. I want to vote for 'Ayes'.

Shri G. S. Musafir (Amritsar): I want to vote for 'Noes'. My division No. is 197.

Shri Mulchand Dube (Farrukhabad): My division No. is 149. I want to vote for 'Noes'.

Shri B. R. Bhagat: I want to vote for 'Noes'. My vote has not been recorded. My division No. is 105.

AYES

Division No. 2]

Aney, Dr. M. S.
Bade, Shri
Banerjee, Shri S. M.
Barua, Shri Hem
Berwa, Shri
Biren Dutta, Shri
Brij Raj Singh, Shri
Chaudhary, Shri Y. S.
Daji, Shri
Guari Shankar, Shri
Gupta, Shri Indrajit
Gupta, Shri Kashi Ram
Gupta, Shri Priya

Himmatsinhji, Shri
Ismail, Shri M.
Jha, Shri Yogendra
Kachhavaia, Shri
Kamath, Shri Hari Vishnu
Kapur Singh, Shri
Karjee, Shri
Keishing, Shri Rishang
Koya, Shri
Mahida, Shri Narendra Singh
Mukherjee, Shri H. N.
Nambiar, Shri
Omkar Singh, Shri

NOES

Akkamma Devi, Shrimati
Alva, Shri A. S.
Anjanappa, Shri
Arunachalam, Shri
Azad, Shri Bhagwat Jha
Balmiki, Shri
Barkataki, Shrimati Renuka
Barupal, Shri P. L.
Basappa, Shri
Basumatari, Shri
Baswant, Shri
Bhagat, Shri B. R.
Bhargava, Shri M. V.
Bhatkar, Shri
Bhawani, Shri Lakshmu
Bist, Shri J. B.S.
Brajeshwar Prasad, Shri
Brij Raj Singh Kotah, Shri
Chanda, Shrimati Jyotsna
Chavan, Shri D. R.
Chuni Lal, Shri
Dafle, Shri
Das, Shri B. K.
Das, Shri N. T.
Das, Shri S. B.
Dasappa, Shri
Dass, Shri C.
Desai, Shri Morarji
Deshmukh, Shri B. D.
Deshmukh, Shri Shivaji Rao S.
Deshpande, Shri
Dube, Shri Mulchand
Dubey, Shri R. G.
Dwivedi, Shri M. L.
Elayaperumal, Shri
Firodia, Shri
Gackwad, Shri Fatehsinhrao
Ganapati Ram, Shri
Gupta, Shri Badshah
Hansda, Shri Subodh
Harvani, Shri Ansar
Jadhav, Shri Tulshidas
Jain, Shri A. P.
Jamir, Shri S. C.
Jamunadevi, Shrimati

Jedhe, Shri
Jyotishi, Shri J. P.
Kabir, Shri Humayun
Kadadi, Shri
Khan, Dr. P. N.
Kindar Lal, Shri
Kureel, Shri B. N.
Lakhan Das, Shri
Lakshmikanthamma, Shrimati
Lalit Sen, Shri
Laskar, Shri N. R.
Laxmi Bai, Shrimati
Mahadeo Prasad, Shri
Mahadeva Prasad, Dr.
Mahtab, Shri
Malaichami, Shri
Malaviya, Shri K. D.
Malliah, Shri U. S.
Mallick, Shri
Manaen, Shri
Mandal, Dr. P.
Mandal, Shri Yamuna Prasad
Maniyangadan, Shri
Masuriya Din, Shri
Mathur, Shri Harish Chandra
Mehrotra, Shri B. B.
Minimata, Shrimati
Mishra, Shri Bibhuti
Mohanty, Shri G.
Mohsin, Shri
More, Shri K. L.
Musafir, Shri G. S.
Naik, Shri D. J.
Naik, Shri Maheswar
Nayak, Shri Mohan
Niranjan Lal, Shri
Oza, Shri
Pandey, Shri R.S.
Panna Lal, Shri
Patel, Shri Man Singh
Patel, Shri P. R.
Patil, Shri J. S.
Patil, Shri M. B.
Patil, Shri S. B.
Patil, Shri T. A.

[14.55 hrs.]

Patnaik, Shri K.
Raghavan, Shri A. V.
Ranga, Shri N. G.
Reddy, Shri Narasimha
Singh, Shri J. B.
Singh, Shri Y. D.
Soy, Shri H. C.
Utiya, Shri
Venkaiah, Shri Kolla
Vishram Prasad, Shri
Yadav, Shri Ram Sewak

Patnaik, Shri B. C.
Pillai, Shri Nataraja
Pratap Singh, Shri
Rai, Shrimati Sahodrabai
Raja, Shri C. R.
Raju, Shri D. B.
Rama Subhag Singh, Dr.
Ramaswamy, Shri V. K.
Rane, Shri
Rao, Shri Ramapathi
Reddiar, Shri
Roy, Shri Bishwanath
Sadhu Ram, Shri
Saha, Dr. S. K.
Saha, Shri Rameshwar
Saigal, Shri A. S.
Scindia, Shrimati Vijaya Rajee
Sen, Shri P. G.
Shankaraiya, Shri
Sharma, Shri D. C.
Shashu Ranjan, Shri
Shastri, Shri Ramanand
Sheo Narein, Shri
Shree Narayan Das, Shri
Siddheshwar Prasad, Shri
Singh, Dr. B. N.
Singh, Shri D. N.
Singha, Shri G. K.
Sinhasan Singh, Shri
Srinivasan, Dr. P.
Subbaraman, Shri
Subramanyam, Shri T.
Sumat Prasad, Shri
Tiworthy, Shri D. N.
Tiworthy, Shri R. S.
Tula Ram, Shri
Varma, Shri Ravindra
Venkatasubbaiah, Shri P.
Verma, Shri K. K.
Vyas, Shri Radhelal
Wadiwa, Shri
Yadav, Shri Ram Harkh
Yadava, Shri B. P.
Yusuf, Shri Mohammad

Mr. Deputy-Speaker: The result of the division is as follows:

Ayes: 37; Noes: 134.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Mr. Deputy-Speaker: Now, I come to clause 103. There is an amendment to this clause.

Shri Y. S. Chaudhary: That is barred.

Mr. Deputy-Speaker: There are no amendments to clauses 103 and 104 now. So, I shall put them together to vote. The question is:

"That clauses 103 and 104 stand part of the Bill".

The motion was adopted.

Clauses 103 and 104 were added to the Bill..

Clause 105— (Power to search premises)

Shri Hari Vishnu Kamath: The House will see that this clause provides for the search of premises where the customs officer suspects that the smuggled goods have been concealed;

of course, if he has reason to believe, on reasonable grounds, that those goods are concealed in the premises, whether business or residential, he can conduct the search himself or have it conducted by some other customs officer.

I believe that under other enactments, no search can be conducted without a valid search warrant issued by a magistrate who issues it, and who does so after satisfying himself that the evidence is sufficient for conducting the search. Therefore, I would request the Government to consider this matter.

I am sorry that because of the inversion of priorities of the Bills, I could not give my amendment yesterday; I gave it this morning only, but the Speaker has ruled that it is too late. But the Government business was rearranged. In the notice to us, the defence of India Bill was first at the top and the Customs Bill was at the bottom. Then, the Customs Bill came on the top, and the Defence of India Bill got a lower priority. Therefore, we could not attend to these Bills expeditiously. It is unfair to the House that business should be rearranged; priority should not be rearranged in this manner in the future. I hope that you, Sir, will kindly direct the Minister of Parliamentary Affairs to be more watchful and more respectful to the House and to the Members. We cannot go on preparing for two or three Bills at one time; because we have got no secretarial assistance, and we have to work single-handed, therefore, we could not go on preparing for two or three Bills at one time. I hope that this will be conveyed to the Minister of Parliamentary Affairs by his deputy Shri Rane who is here now.

[Shri Hari Vishnu Kamath]

I do not know if my hon. friend Shri Bade has got an amendment with regard to this, and I wish that if he has one he moves it. But even if it is not there, the hon. Minister may even now at this late hour exercise his wisdom and intelligence and see to it that some salutary safeguards are inserted in this provision against the abuse of authority by the customs officer.

Shri Narendra Singh Mahida: I too request the hon. Minister to consider this matter even now at this late stage. We have said in our minute of dissent that this infringes the right of a citizen. We want the judiciary to take all the proceedings in its hands, and we want to be saved from the executive; if they get unnecessary and wrong powers, we should be saved by a magistrate. That is why we have said in our minute of dissent that before the house of any person is searched, a warrant by a magistrate should be issued for that purpose.

I would once again request the Deputy Finance Minister to reconsider our request.

Shri Bade: I have also signed that minute of dissent. My request is that Government should reconsider this clause, because according to the provision here the search will be not only of the goods but of documents and other things. Whatever things there are, and whatever documents there may be including the account books etc. of the trader may be searched anywhere and at any place. The place also is not mentioned there. It is not also clear whether the search will be made only in the place of the accused or in the place of any third person.

Therefore, my submission is that before conducting the search of any particular house or residence, a warrant from a magistrate should be

taken just as it is taken in all other cases under the Criminal Procedure Code. It is for this purpose that I have given my minute of dissent.

I would request Government to reconsider this provision.

Shri B. R. Bhagat: This matter has been considered more than once and in my reply today also, I referred to it. In the Explanation, it has been mentioned in great detail why such power is necessary. The main reason is that matters connected with search of premises etc. are more for executive decision than a judicial one.

Mr. Deputy-Speaker: The question is:

"That clause 105 stand part of the Bill".

The motion was adopted.

Clause 105 was added to the Bill.

Clauses 106 to 110 were added to the Bill.

Mr. Deputy-Speaker: Then we come to clause 111.

Shri Y. S. Chaudhary (Mahendragarh): I am not moving my amendment.

Mr. Deputy-Speaker: The question is:

"That clauses 111 and 112 stand part of the Bill".

The motion was adopted.

Clauses 111 and 112 were added to the Bill.

Clause 113.— (Confiscation of goods attempted to be improperly exported etc.)

Clause 114.— (Penalty for attempt to export goods improperly etc.)

श्री काशीराम गुप्त (अलवर) :
उपाध्यक्ष महोदय, दुर्भाग्य की बात है कि मुझे

Clauses 115 to 117 were added to
the Bill.

[Mr. Deputy-Speaker]

Clause 118 (*Confiscation of packages and their contents*).

Shri Y. S. Chaudhary: I beg to move:

Page 43,—after line 35, insert—

"Provided that other goods shall be confiscated only if the owner thereof knowing that any goods are smuggled goods, places the goods with them but not otherwise.

Explanation.—The package in this section means the bundle in which the extra hand goods have been packed before being smuggled".

श्री बड़े : उपाध्यक्ष महोदय, चूंकि श्री गुप्त ने मेरा जिक्र किया इस लिये मुझे बोलने की आवश्यकता महसूस हुई। श्री गुप्त ने कहा कि बड़े साहब के यहां बहुत अफीम होती है तो भी उन्होंने उसकी बाबत कुछ नहीं कहा। मेरा कहना यह है कि हमारे यहां एक्साइज एक्ट है। एक्साइज एक्ट के अन्तर्गत अफीम का एक्सपोर्ट नहीं हो सकता है। अफीम का जो एक्सपोर्ट होता है उसके वास्ते अलग प्राविजन है। उस के वास्ते एक्साइज एक्ट सेंटर का अलग है। यह शायद हमारे माननीय सदस्य को मालूम नहीं है कि यह केवल कस्टम बिल है यानी कस्टम्स की ड्यूटी ली जाती है। एक्सपोर्ट और इम्पोर्ट जब बढ़ता है या कम होता है तो उस के वास्ते टैरिफ या कास्टम ड्यूटी ली जाती है। अफीम में एक्सपोर्ट होता नहीं है। अफीम में अगर एक्सपोर्ट होता होगा तो उस के वास्ते भी इसमें कस्टम ड्यूटी ली जायेगी। ऐनी प्राहिबिटेड गुड्स भी इस में हैं और प्राहिबिटेड गुड्स में अफीम भी आती है। अफीम के केसेज बहुत पकड़े जाते हैं और अफीम के वास्ते इसमें विचार करने की जरूरत नहीं है। उस में कस्टम नहीं लिया जाता है। अब जिसके वास्ते सेंट्रल गवर्नमेंट से परमिशन है कि चीन को अफीम का एक्सपोर्ट या अकरोंका को हो] उस के वास्ते

कस्टम लिया जाता है और इस वास्ते इस में हम ने उस पर विचार नहीं किया।

श्री ब० रा० मगत : उपाध्यक्ष महोदय, मुझे के इस जवाब में यही कहना है कि अफीम पर भी रुकावट है। उस में जो चोरी होती है और अफीम की चोरी छिपे ले जाते हैं उस के लिये हम ने कानून बनाया हुआ है और जैसा कि हमारे श्री बड़े ने कहा है उस कानून के अन्दर इस के लिये काफी रुकावट है और पूरी निगरानी है। इस में स्टेट सरकारें भी हैं और केन्द्रीय सरकार भी है।

श्री यू० सिंह चौधरी (महेन्द्रगढ़) : हमारे उपमंत्री महोदय ने पहले भाषण देते समय बतलाया था कि अगर एक बंडल पकड़ा जाता है जिसमें कि डायमंड्स या गोल्ड आदि चीजें हों और अगर उस में एक चीज ऐसी हो जो कि स्मगलड की हुई है और बाकी चीजें स्मगलड नहीं करी हुई हों, अगर ऐसा बंडल पकड़ा जाता है तो हमारे पास ऐसा कोई हार्ड और फास्ट रूल नहीं है और हम किसी तरीके से यह पता नहीं कर सकते हैं कि वह सारी की सारी चीज तस्कर की हैं या यह कि सारी चीजें तस्कर की नहीं हैं इस लिये इस के अन्दर उन्होंने ऐसा कर रखा है कि अगर एक भी चीज उस बंडल के अन्दर ऐसी मिल जाती है जो कि स्मगलड है तो उस तमाम सारी की सारी चीज को पकड़ लिया जायेगा और तमाम चीज पर काबू कर लिया जायेगा। इस सिलसिले में मेरा कहना यह है कि जहां उन्होंने एक तरफ यह बात कही वहां इस बात का दूसरा पहलू भी है कि जिस तरह से आप यह कहते हैं कि हमारे पास इस बात का कोई इलाज नहीं है कि हम इस तरह की चीजों को अगल अलग कर के बांट सकें कि अमुक स्मगलड हैं और अमुक स्मगलड नहीं हैं और इस बारे में शक बना रहने से सही सही फैसला या निर्णय कहना मुश्किल होता है, तो दूसरी तरफ बात यह है कि अगर एक आदमी बेगुनाह

है और उस के पास केवल एक ही चीज ऐसी है जो कि उस को तस्कर व्यापार के हाग मिलती है और बाकी १५०-२०० चीजें स्मगलड नहीं हैं और यह साबित हो जाता है और आपको इस बात का पता लग जाता है दरसल इस तरीके से स्मगलिंग से व चीजें नहीं आई हैं तो उन को आप जोड़ते हैं और केवल एक वही स्मगलड चीज लेकर आप उन बाकी तमाम चीजों पर कब्जा नहीं करते या बाकी चीजों के ऊपर यह तस्कर का लेबिल नहीं लगाते हैं तो इस तरह शायद ज्यादा इन्साफ रहेगा ।

इसी लिये क्लोज ११८ के लिये हमने यह अमेंडमेंट दिया है :—

Page 48,—

after line 35, insert—

"Provided that other goods shall be confiscated only if the owner thereof knowing that any goods are smuggled goods, places the goods with with them but not otherwise."

इस गुप्त उसी हालत में जप्त किये जायेंगे जब कि उनका ओनर यह जानते हों कि कुछ गुप्त स्मगलड हैं, उन के साथ उनको रखता है, अन्यथा नहीं । जैसा कि क्रिमिनल ला में भी प्रोवाइडेड है कि प्रायर नोलेज होना जुमं साबित होने के लिये जरूरी है । सब जगह यह बात लिखी हुई है कि अगर आदमी को किसी बात का पहले से पता है तो वह फिर सेंट परसेंट जिम्मेदार है । लेकिन अगर उसको नोलेज नहीं है, वह इन्नोसेंट है और उसको इस बात का ज्ञान नहीं है तो उसको उसके लिये जिम्मेदार ठहराना इन्साफ का तकाजा नहीं होगा । अगर उसको इस बात का पता है कि यह सब चीजें तस्कर से सम्बन्धित हैं तब तो ठीक बात है और वह खतावार और मुजरिम साबित होता है लेकिन यदि उसका तस्कर व्यापार से कोई ताल्लुक और सम्बन्ध नहीं है तो उन को उससे अलग रखा जाय और ऐसा करके हम इन्साफ ही करेंगे ।

Shri Narendra Singh Mahida (Anand): Regarding this, I want to bring to the notice of the Deputy Minister the disparity between the treatment of diamond and gold. He wants to confiscate the whole package of diamonds while in the case of gold—clause -120—he says that only such part of the goods the value of which is equal to the value of the smuggled goods shall be liable to confiscation. In the case of gold, the whole of it is not confiscated, but only a part or its value will be taken, while in the case of diamonds, the whole of it will be confiscated. I want the hon. Deputy Minister to pay attention to this and even now I would suggest that he should define the word "package".

Shri B. R. Bhagat: There is no disparity between clause 118 and clause 120. They refer to two separate matters. Gold can change form, and it can get mixed, and it cannot be extricated. It can be made into one lump, smuggled and non-smuggled. So, to provide that there is no harassment to the genuine bullion dealers, in such cases where the smuggled portion cannot be detected, provision has been made that such part of the goods of a value equal to the value of the smuggled goods, shall be liable to confiscation. Such problems do not arise in diamond. They are imported in numbers, ten, twenty-whatever it be. As I explained earlier, either the whole lot is smuggled or not; it will not be that while importing diamonds five would be smuggled and five would be against valid licence. So, that portion we have kept. Otherwise, in the towns where smuggled diamond is mixed with genuine diamonds, we have provided they can be separated.

As for the amendment of the hon. Member, if we accept his amendment which defines a package, it would mean that if some contraband gold is put in a small cloth bag and that bag is kept along with clothes etc., in a suitcase, according to his definition, the cloth bag and not the other clothes in the suitcase would be liable

[Shri B. R. Bhagat]

to confiscation. Since the other contents make the task of detection of the gold more difficult, and that suitcase is a way to conceal the goods and facilitate smuggling, so, we cannot draw a distinction. This definition will create more difficulties.

Shri Narendra Singh Mahida: He says while the package will be confiscated, diamonds which are smuggled will be confiscated and the others would be returned. Under which clause will they be returned?

Shri B. R. Bhagat: That is in towns. Clause 118 provides for that. That is the relaxation which has been made by the Select Committee.

Mr. Deputy-Speaker: I put Amendment No. 7 to the vote of the House.

The amendment was put and negatived.

Mr. Deputy-Speaker: The question is:

"That Clause 118 stand part of the Bill".

The motion was adopted.

Clause 118 was added to the Bill.

Mr. Deputy-Speaker: Clauses 119 to 122. There are no amendments.

The question is:

"Clauses 119 to 122 stand part of the Bill."

The motion was adopted.

Clauses 119 to 122 were added to the Bill.

Clause 123—(Burden of proof in certain cases).

Shri Y. S. Chaudhary: I beg to move:

Page 44,

after line 29, insert—

"Explanation.—If the person concerned indicates the source from which he had received or purchas-

ed the goods, the onus of proof shall be deemed to have been discharged."

उपाध्यक्ष महोदय, ओनस का सवाल बड़ा इम्पोर्टेंट है। हर एक जूरिस्पूडेंस में और सब कानूनों में ओनस हमेशा प्रासीक्यूशन के ऊपर रहता है। जिस आदमी ने गुनाह किया है, अगर उसको कहा जायेगा कि वह यह साबित करे कि उसने गुनाह नहीं किया है, तो यह बड़ा इनजस्टिस होगा। कानूनों की जो अलग अलग ब्रांचिज हैं, उनमें कहीं भी यह व्यवस्था नहीं है कि प्रासीक्यूशन के अलावा दूसरी पार्टी साबित करे कि उसने गुनाह नहीं किया है। अगर इस मामले में भी ओनस को क्रिमिनल और सिविल केसिज की तरह से प्रासीक्यूशन पर यानी कस्टमज़ अधिकारियों पर ही रक्खा जाये, तो ज्यादा बेहतर होगा। मेरी अमेंडमेंट का उद्देश्य इस प्राविजन को बिल्कुल हटाना नहीं है, बल्कि उसमें यह एक्स्प्लेनेशन दी गई है कि फर्ज कीजिए, कि ए यह साबित कर दे कि उसने सारा का सारा सामान बी से खरीदा है और वह बात पूरी तरह से, कानूनी तरीके से, साबित हो जाये, तो समझा लेना चाहिए कि बर्डन आफ प्रूफ डिस्चार्ज हो गया।

Shri Hari Vishnu Kamath: I endorse the remarks made by my hon. friend Shri Chaudhury, but I may add that the instance or example quoted by the hon. Deputy Minister in the course of the debate was a wholly infructuous attempt to disprove our contention. He cited a case where a gold watch or a smuggled article had been found in the possession of Mr. A, and A proved that it was acquired or purchased from B, and B had acquired it from somebody else. Our point is, the point of the amendment, is, so long as A proves that it acquired it from somebody else, the burden of proof cast on him by this provision shall be deemed to have been discharged and shifted on to the prosecution or the officer who seizes that particular article.

We do not dispute this power under the law to confiscate those goods. That is where the Deputy Minister went wrong. It can be seized, but if the person prosecuted proves that he got it from another, let them arrest the other person if they are competent enough.

Suppose you have a gold watch, and God forbid it should happen to you or anybody, but it may happen, and the customs officers are now over-zealous, though their zeal should be in a better cause; suppose they say your watch is a smuggled watch.

Mr. Deputy-Speaker: I have never suffered like that.

Shri Hari Vishnu Kamath: Nor have I, but it may happen to somebody else. Once the law is there, it is no respecter of persons. Suppose you are arrested for having a gold watch or a gold fountain pen or some other article, how can you prove it is not smuggled. I am sure you will be able to prove in a court of law that somebody gave it to you. Or, you may have lost the receipt even, if you had purchased it five or ten years ago from a shop. I do not think we keep receipts unless we are business men and are keeping *bahi khathas*. We do not preserve these receipts also. When we have no document to show the purchase, we may also be prosecuted. We do not mind the confiscation, it is bad enough, let them be enriched by the little wealth we have, it will go to the war effort, but prosecution is adding insult to injury to a person who has purchased it and is quite innocent. So, the burden of the proof should be deemed to have been discharged if he satisfies that he purchased it or got it as a gift or in any other manner from a particular source.

That is the explanation I want to add. We do not want to oppose the provision, but the explanation is salutary and a wholesome check on this provision of the Bill which is

liable to be abused. We should have a proper safeguard.

I hope the Minister will be sensible enough to accept this amendment.

Shri Narendra Singh Mahida: This clause is very objectionable, and I appeal to the House to appreciate that it infringes our fundamental rights, and goes against the fundamental principle of jurisprudence that a person should be considered innocent unless he is proved guilty. I therefore again request the hon. Deputy Minister to look into this and not take away our rights.

We had already suggested and our suggestion has been taken note of too, that instead of two years, he may make it five or even ten years. We are not against the enhancement of the punishment, but my objection to this clause, and I appeal to the House to consider it very carefully, that this takes away rights from the innocent citizen. The moment we are arrested, we are like thieves to any customs officer. They will take hold of us and ask us to prove our innocence. That is very difficult I do not think anybody in this country can agree to this sort of thing.

I wholeheartedly oppose this, and I request the Members of all parties to oppose this denial of rights to the citizen by the executive. I therefore request them to give fresh consideration to this which we have been opposing so far.

Shri B. R. Bhagat: Sir, I am sorry I fail to understand the objections of the hon. Members who spoke.

Shri Hari Vishnu Kamath: Sir, Dr. Aney stood up twice to say a few words on this.

Mr. Deputy-Speaker: Dr. Aney.

Dr. M. S. Aney (Nagpur): I want to make a few observations on this law. Clause 123 reads that where any

[Dr. M. S. Aney]

goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be on the person from whose possession the goods were seized. What is required is that the officer who makes the complaint must have a reasonable belief that they are smuggled goods. I believe that the provisions should be so worded that the magistrate must be satisfied that the petitioner reasonably believes that the goods are smuggled. When the magistrate is satisfied that that belief is reasonable, the accused should be required to prove. There is no provision here that the judiciary, the magistrate should be satisfied. The admission of the petitioner should be made dependent upon the satisfaction of the magistrate. It should be basis of his jurisdiction to take the case on file. In the absence of that the provision as it is, is likely to be abused very much.

Shri Hari Vishnu Kamath: May we request the hon. Law Minister to throw some light on this?

Mr. Deputy-Speaker: He cannot have a second speech now.

Shri Hari Vishnu Kamath: No, no, Sir. The hon. Law Minister seems to be anxious to throw some light on this question.

Shri B. R. Bhagat: Sir, as I said earlier, this provision is there since

1955 and this was introduced at the recommendation of the Taxation Enquiry Commission. There has not been any case in which the fears expressed by the hon. Members have proven true. It is rather strange to say that a customs officer will go and say that this watch is a smuggled watch and therefore somebody will be prosecuted like that. This has never happened and it can never happen. Hon. Members also forget clause 136 in which it says that the officer concerned will be prosecuted if there is not a reasonable belief. All that safeguard has been provided. I again request earnestly the hon. Members that in their anxiety to allay some imaginary or illusory fear they should not provide a loophole by which we will not be able to plug smuggling; it will be just like the foolish mother throwing out the baby along with the bath water.

Mr. Deputy-Speaker: I will put the amendment to the vote of the House. The question is:

Page 44,

after line 29, insert

"Explanation.—If the person concerned indicates the source from which he had received or purchased the goods, the onus of proof shall be deemed to have been discharged."

The Lok Sabha divided.

Division No. 3]

[15.29 hrs.

AYES

Aney, Dr. M. S.
Bade, Shri
Banerjee, Shri S. M.
Berwa, Shri
Brij Raj Singh, Shri
Chaudhary, Shri Y. S.
Gauri Shankar, Shri
Gulshan, Shri
Gupta Shri Kashi Ram

Ismail, Shri M.
Jha, Shri Yogendra
Kamath, Shri Hari Vishnu
Kapur Singh, Shri
Keishing, Shri Rishang
Mahida, Shri Narendrz Singh
Marandi, Shri
Omkar Singh, Shri
Patnaik, Shri K

Pillai, Shri Nataraja
Ranga, Shri N. G.
Reddy, Shri Narasimha
Shashank Manjari, Shrimati
Shastri, Shri Prakash Vir
Singh, Shri Y. D.
Swamy, Shri Sivamurthi
Yashpal Singh

NOES

Akkamma Devi, Shrimati
Arunachalam, Shri
Barkataki, Shrimati Renuka
Basappa, Shri
Basumatari, Shri
Baswant, Shri
Bhagat, Shri B.R.
Bhakt Darshan, Shri
Bhargava, Shri M. B.
Bhat, Shri J. B. S.
Brahm Prakash, Shri
Brajeshwar Prasad, Shri
Chanda, Shrimati Jyotsna
Chuni Lal, Shri
Dafle, Shri
Das, Shri B. K.
Dasappa, Shri
Desai, Shri Morarji
Deshmukh, Shri B. D.
Deshmukh, Shri Shivaji Rao S.
Deshpande, Shri
Dube, Shri Mulchand
Dubey, Shri R. G.
Elayaperumal, Shri
Ganapati Ram, Shri
Gupta, Shri Badshah
Harvani, Shri Anwar
Jadhav, Shri Tulshidas
Jain, Shri A. J.
Khatke, Shri Haridas
Kumbhar, Shri
Kumar, Shri

Kindar Lal, Shri
Kripa Shankar, Shri
Krishna, Shri M. R.
Lalit Sen, Shri
Mahadeo Prasad, Shri
Mahadeva Prasad, Dr.
Mahtab, Shri
Mallick, Shri
Mandal, Dr.
Maniyangadan, Shri
Mathur, Shri Harish Chandra
Mehrotra, Shri B. B.
Minimata, Shrimati
Misra, Shri Shyam Dhar
Mohanty, Shri G.
More, Shri K. L.
Musafir, Shri G. S.
Muthiah, Shri
Nayak, Shri Mohan.
Niranjan Lal, Shri
Panna Lal, Shri
Parashar, Shri
Patel, Shri Man Singh
Patel, Shri Rajeshwar
Patil, Shri J. S.
Patil, Shri M. B.
Potnath, Shri B. C.
Pratap Singh, Shri
Raj, Shrimati Bahadurabai
Ram, Shri T.
Ram Subhay Singh, Dr.
Ramaswamy, Shri V. K.

Rane, Shri
Rattan Lal, Shri
Reddiar, Shri
Roy, Shri Bishwanath
Sahu, Shri Rameshwar
Saigal, Shri A. S.
Scindia, Shrimati Vijaya Raje
Sen, Shri A. K.
Sen, Shri P. G.
Shankaraiya, Shri
Sharma, Shri D. C.
Shastri, Shri Ramanand
Sheo Narain, Shri
Shree Narayan Das, Shri
Shukla, Shri Vidya Charan
Siddananappa, Shri
Siddiah Shri
Singh, Dr. B. N.
Singh, Shri K. K.
Singha, Shri G. K.
Sinhasan Singh, Shri
Sonavane, Shri
Subbaraman, Shri
Subramanyam, Shri T.
Sumat Prasad, Shri
Tiwary, Shri D.N.
Tiwary, Shri R. S.
Tula Ram, Shri
Valvi, Shri
Verma, Shafi K. K.
Yadav, Shri Ram Sewak
Yadava, Shri B. P.
Yusuf, Shri Mohammad

Ayes 28; Noes 97.

The amendment was negatived.

Mr. Deputy-Speaker: The other amendment, No. 17, of Shri Kamath is barred. I will put clause 123 to the vote of the House. The question is:

"That clause 123 stand part of the Bill".

The motion was adopted.

Clause 123 was added to the Bill.

Clauses 124 to 130 were added to the Bill.

Mr. Deputy Speaker: We will now take up clause 131.

श्री य० सी० चौधरी : उपाध्यक्ष महोदय, एकट में प्रोवाइड किया गया है कि जो अपील, रिविजन या रैफ़ेंस है, वह उन्हीं आथोरिटीज

को जाएगी जो उसी महकमे की है, यानी जो कस्टम्ज की हैं। इसमें १२ से लेकर २८ तक की लोइनों को हम सबस्टीट्यूट करवाना चाहते हैं। हमने चाहा है कि कम से कम एक मेम्बर जो हो, वह हाईकोर्ट का रिटायर्ड जज हो या कोई ऐसा व्यक्ति हो जोकि ज्यूडिशरी का मेम्बर रहा हो। अगर ऐसा कर दिया जाएगा तो उसको ज्यादा अच्छी तरह से इंसाफ मिल सकता है।

उपाध्यक्ष महोदय, हर इनक्वायरी के अन्दर और हर किसी महकमे के अन्दर जिसका पब्लिक के साथ ज्यादा सम्बन्ध रहता है, यह देखा गया है और यह सारी दुनिया के कानून में प्रेक्टिस भी है कि जो आदमी कानून के महकमे से सम्बन्ध रखता है, जो आदमी ज्यूडिशरी से ताल्लुक रखता है,

[श्री यु० सि० चौधरी]

उसी के पास इस तरह की रिबिजंज, अपील या रेफरेंस आती हैं। अगर किसी गिल्टी आदमी को पकड़ा जाता है और उसको गिल्टी साबित किया जाता है, तो उसकी अपील को उसी महकमे के बड़े अफसर के पास अगर भेजा जाता है तो उसके साथ इंसाफ नहीं हो सकता है। वह आदमी प्रेजुडिस हो जाएगा और जो बात महकमे के निचले अफसर ने कही है, उसी बात को वह डिटो कर देगा। इसलिये अगर १२ से लेकर २८ तक की लाइनों की जगह पर यह लाइनें सन्सिटिवूट कर दी जायें तो ज्यादा इंसाफ हो सकता है।

"131. (1) The Central Government shall constitute a tribunal which shall consist of at least one Judicial Member who should be a serving or a retired High Court Judge and one member who had had experience of customs Administrations and one representative of the Associations of the import and export trade. The Central Government shall ordinarily appoint a Judicial Member of the Appellate Tribunal to be the President thereof."

इसी में दूसरा भाग और भी है जिसका इन्हीं बातों से सम्बन्ध है। जब रिबिजंज या रिफरेंस ऊपर जायेगा तो वह आफिसर्स के पास नहीं जायेगा जो यहां पर पहले से थे। ट्रिब्यूनल जब अप्वाइंट हो जायेगा तो रिबिजंज या रिफरेंस उसी ट्रिब्यूनल के पास जाना चाहिए और जो ट्रिब्यूनल ही उसी को इन बातों का फैसला करना चाहिये बजाय दूसरे आदमियों के।

Shri Bade: Sir, my point is that the Government have appointed the Customs Reorganisation Committee and that committee has recommended at page 81 of the report that there should be a tribunal at the revision stage. I do not know what was the purpose in appointing the Reorganisation Committee when the Govern-

ment is not accepting the proposals that that committee has made, the proposals which do not happen to be in Government's favour. The Government want all the power to vest in their own hand. Should not there be an independent judiciary? At page 81 of the report, it has been said as follows:

"We find that the Taxation Enquiry Commission examined this matter and came to the conclusion that, in the interest of the appellants, themselves, it would be unwise to disturb the appellate machinery provided at present."

I want to say that the Government have accepted a proposal of the Committee and have appointed a separate appellate collector, but at the revision stage, they have kept all the powers in their hands. The committee further says:

"But, the stage of revision by the Government of India of appellate orders, they recommended the setting up of a tribunal consisting of at least one Judicial member who should be either a serving or retired High Court Judge and one member who has had experience of Customs administration. We agree with the Commission's views except to the extent that we consider that the association of a suitable representative of the import-export trade as an additional, or third member of the tribunal would be an improvement and would help to secure more informed, and therefore, more objective decisions."

This is what the committee has said. So, both the Taxation Enquiry Commission and the Customs Reorganisation Committee have agreed that an independent tribunal should be there. Both the reports are there before the Government, but the Government are obstinate and they do not want to budge an inch; they do not want to accept the recommendations given by these two bodies. I again appeal to

the Government to consider this matter. To go against the recommendations of two Commissions is a rather serious matter, and the Parliament should take serious note of this. I request the Government to accept the amendment moved by my hon. friend, Shri Y. S. Chaudhary.

Shri Hari Vishnu Kamath: Mr. Deputy-Speaker, I only wish to state that I support the amendment and I venture to assert that our very competent Minister of Law,—he does not agree with the provisions of this Bill—agrees with the spirit of this amendment. I venture to assert that. I hope he will throw some light on this matter, namely, whether the appellate tribunal should be an independent body or not an independent body. I suppose he supports the spirit of the amendment that we have moved.

Shri Narendra Singh Mahida: Though our suggestions have not been accepted by the Minister in this House, I would like to appeal to him to consider at least the recommendations of the previous Commissions and our dissenting notes and our speeches on the floor of the House. He should at least concede to this very reasonable request which will only uphold the judiciary and retain its very high position. It seems that the executive is keen to have all the powers to themselves. My hon. friend Shri Kamath has appealed to the Law Minister and I am sure the Law Minister is himself an eminent person and he will probably agree with us that such absolute powers should not be given to the executive. I again request the Finance Minister to reconsider the suggestion of ours and accept it.

Shri Hari Vishnu Kamath: Don't you agree that the Law Minister's silence is tacit consent?

Shri Bhagat: This has been thoroughly replied to by me while replying to the general debate. In the Select Committee also we considered it and as a sort of compromise

the Select Committee has provided that there should be independent appellate collectors who will not have anything to do with the executive. (Interruptions).

Shri Bade: Thank you.

Shri S. M. Banerjee: Let the Prime Minister also hear us on this!

Shri Hari Vishnu Kamath: I am sure that the Prime Minister will agree to the spirit of this amendment, with his sense of independence, sense of wisdom and fairness.

Shri Morarji Desai: How does that arise at this stage?

Mr. Deputy-Speaker: It is a matter entirely for the Finance Minister. Now, I shall put amendment No. 9 first. Then, I do not think he will insist upon amendment No. 10.

The question is:

Page 47, for lines 12 to 28, substitute—

"131. (1) The Central Government shall constitute a tribunal which shall consist of at least one Judicial Member who should be a serving or a retired High Court Judge and one member who had had experience of customs Administration and one representative of the Associations of the import and export trade. The Central Government shall ordinarily appoint a Judicial Member of the Appellate Tribunal to be the President thereof.

(2) The Tribunal may of its own motion or on any application annul or modify any order passed under section 128 or section 130."

The Lok Sabha divided:

Mr. Deputy-Speaker: Any corrections?

Shrimati Gayatri Devi (Jaipur): I vote for Ayes.

Shri Sadhu Ram (Phillaur): I vote for Noes.

Shrimati Savitri Nigam (Banda): I vote for Noes.

Shri Parashar: My vote may be added to Noes.

DIVISION NO. 4]

[15.41 hrs.

AYES.

Bade, Shri
Banerjee, Shri S.M.
Berwa, Shri
Brij Raj Singh Shri
Buta Singh Shri
Chaudhary, Shri Y.S.
Gayatri Devi, Shrimati
Daji, Shri

Ismail, Shri M.
Kamath, Shri Hari Vishnu
Kapur Singh Shri
Karjee, Shri
Keishang, Shri Rishang
Mahida, Shri Narendra Singh
Marandi, Shri
Omkar Singh Shri

Pattnayak, Shri K.
Reddy, Shri Narasimha
Shashank Manjari, Shrimati
Singh, Shri Y.D.
Soy, Shri H.C.
Swamy, Shri Sivamurthi
Utiya, Shri
Yadav, Shri Ram Sewak
Yashpal Singh, Shri

NOES

Akkamma Devi, Shrimati
Alva, Shri Joachim
Aney, Dr. M.S.
Arunachalam, Shri
Barkataki, Shrimati Renuka
Basumatari, Shri
Bhagat, Shri B.R.
Bhagavati, Shri
Bhanja Deo, Shri L.N.
Bhargava, Shri M.B.
Bhawani, Shri Lakhmu
Brahm Prakash, Shri
Brajeshwar Prasad, Shri
Brij Raj Singh, Shri
Chanda, Shrimati Jyotsna
Chuni Lal, Shri
Dafle, Shri
Das, Shri B.K.
Dasappa, Shri
Desai, Shri Morarji
Deshmukh, Shri B.D.
Deshpande, Shri
Dube, Shri Mulchand
Dubey, Shri R.G.
Dwivedi, Shri M.L.
Elayaperumal, Shri
Firodia, Shri
Ganapati Ram, Shri
Gopal Datt Shri
Guha, Shri A.C.
Gupta, Shri Badshah
Gupta, Shri Ram Ratan
Iqbal Singh, Shri
Jain, Shri A.P.

Jamunadevi, Shrimati
Kabir, Shri Humayun
Kadadi, Shri
Karuthiruman, Shri
Kindar Lal, Shri
Kureel, Shri B.N.
Lakhan Das, Shri
Lalit Sen, Shri
Mahadeo Prasad, Shri
Mahadeva Prasad, Dr.
Malaviya, Shri K.D.
Mallick, Shri
Maniyangadan, Shri
Masuriya Din, Shri
Mehdi, Shri S.A.
Mehrotra, Shri B.B.
Minimata, Shrimati
Mohanty, Shri G.
More, Shri K.L.
Mukerjee, Shrimati Sharda
Musafir, Shri G.S.
Muthiah, Shri
Naik, Shri Maheswar
Nayak, Shri Mohan
Nehru, Shri Jawaharlal
Nigam, Shrimati Savitri
Niranjan Lal, Shri
Paliwal, Shri
Panna Lal, Shri
Pant, Shri K.C.
Parashar, Shri
Patil, Shri J.S.
Patil, Shri M.B.
Patil, Shri S.B.

Patnaik, Shri B.C.
Paratap Singh, Shri
Rai, Shrimati Sahodrabai
Ram, Shri T.
Ram Subhag Singh, Dr.
Ramaswamy, Shri S.V.
Ramaswamy, Shri V.K.
Rane, Shri
Reddariat, Shri
Sadhu Ram, Shri
Sahu, Shri Rameshwar
Scindia, Shrimati Vijaya Raie
Sen, Shri P.G.
Shankaraiya, Shri
Sharma, Shri D.C.
Shastri, Shri Ramanand
Sheo Narain, Shri
Shree Narayan Das, Shri
Siddiah, Shri
Singh, Shri R.P.
Singha, Shri G.K.
Sinhasan Singh, Shri
Sonavane, Shri
Subbaraman, Shri
Subramanyam, Shri T.
Sumat Prasad, Shri
Surya Prasad, Shri
Tiwary, Shri R.S.
Varma, Shri Ravindra
Vyas, Shri Radhelal
Wasnik, Shri Balkrishna
Yadava, Shri B.P.
Yusuf, Shri Mohammad

Mr. Deputy-Speaker: The result of the division is as follows:

Ayes—25; Noes—101.

The motion was negatived.

Mr. Deputy-Speaker: I shall put amendment No. 10. The question is:

Page 47, line 29,—

for "The Central Government substitute—

"The Appellate Tribunal so appointed by the Central Government".

The motion was negatived.

Mr. Deputy-Speaker: I shall now put clause 131 to the vote of the House. The question is:

"That clause 131 stand part of the Bill."

The motion was adopted.

Clause 131 was added to the Bill.

Clauses 132 to 158 were added to the Bill.

Mr. Deputy-Speaker: There is one amendment to clause 159.

श्री सु. वि. श्रीवरी (गुहेन्द्रगढ़) :

उपायान्त मन्त्रालय, मेरा संशोधन इस प्रकार

Page 48,—

after line 8, insert—

"(2) All rules and notifications for regulations made under this Act shall be collected and arranged and published at interval of two years and shall be sold to public." (12).

अक्सर ऐसा होता है कि इस बारे में क्या रूल्स और रेग्यूलेशन्स हैं और क्या कानून है इसका लोगों को पता नहीं होता। अगर मेरा संशोधन स्वीकार कर लिया गया तो उनको पता लगता रहेगा कि आप क्या लागू करना चाहते हैं। यह जरूरी है। इससे मुहकमे के काम का बोझ भी ज्यादा नहीं बढ़ेगा और यह कोई ऐसी बात नहीं है कि जिसके लिए यह कहा जा सके कि मुहकमा अपनी जिम्मेवारी से बाहर जाकर यह काम कर रहा है। मेरा संशोधन यह है कि दो साल के अन्दर जो बातें आपके सामने आयें और उनके बारे में आप जो नोटिफिकेशन आदि

निकालें और जो रूल्स आदि लागू करें उनको छाप कर आप पब्लिक को बांटें ताकि लोगों को उसका ज्ञान हो सके और कोई यह न कह सके कि हमको जो चीज आपने लागू की उसका ज्ञान नहीं था।

15.43 hrs.

[**MR. SPEAKER** in the Chair]

Shri B. R. Bhagat: Sir, this is a novel provision which does not obtain in any Act. There is some difficulty in doing it. Apart from laying it before the House and publishing it in the newspapers or gazette, if we specify a time limit of two years within which we should put it in a book form and sell it, that will create difficulty. Sometimes we may not be able to print it because the work is heavy in our printing presses and we may exceed the time limit. Therefore, it may create many difficulties, and I would appeal to the hon. Member to allow the present provision to remain as it is.

Mr. Speaker: Should I put it to the vote of the House?

Shri Y. S. Chaudhary: No, Sir. I withdraw it.

Mr. Speaker: Has he the leave of the House to withdraw his amendment?

The amendment was, by leave, withdrawn.

Mr. Speaker: Then we go to clauses 160 and 161.

Shri Hari Vishnu Kamath: Mr. Speaker, Sir, we are now in the fag end of the Bill as well as the discussion on this Bill, and I would like to speak very briefly on this clause 161, the very last clause of the Bill. The House will see that in clause 159 it has been provided that every rule made under this Act and every notification issued under particular sections shall be laid before the Parliament for such modification etc., that the Parliament may deem necessary—the usual provision is there. We have adopted it in several enactments that

[Shri Hari Vishnu Kamath]

have been passed by this House. Of course, I agree that clause 161 is not on all fours, is not wholly at par, with clause 159. Even so, I am sure, my hon. colleagues here will be happy if a similar provision is inserted here, a provision similar to what we have inserted in clause 159 just to say that every rule and notification shall be laid before Parliament, as it is a wholesome and salutary provision. I was a bit late in giving notice of this amendment, only this morning and so it was slightly ruled out. But what harm is there, I ask, what does the Government lose, by agreeing to the provision that every order made under this clause shall come before Parliament. In a democratic set-up Parliament is the supreme authority. In our democracy it is the supreme symbol. So, this body must be vested with the power to examine every rule and order and notification, as far as it is practicable and feasible. It is not something impossible. There is nothing which stands in the way of Government placing before Parliament such rules or orders. Parliament will wholeheartedly and readily approve them. In order to encourage and promote the spirit of the institution of parliamentary democracy in our country, we should foster this habit and practice of Government laying such rules, orders and notifications before Parliament.

Shri B. R. Bhagat: It is not possible for us to agree to this.

Shri Hari Vishnu Kamath: What is it?

Mr. Speaker: The reply is not audible to the hon. Member.

Shri B. R. Bhagat: We do not agree with the hon. Member. It is not possible to do so.

Shri Hari Vishnu Kamath: No reason is given to me. There is no argu-

ment or reason. Is this the way to treat Parliament?

वित्त मंत्री (श्री मोरारजी देसाई) :

वाह वाह ।

Shri Hari Vishnu Kamath: What is this "Oh! Oh!"? Is this the House or what?

Mr. Speaker: Order, order.

Shri Hari Vishnu Kamath: He cannot simply say "Oh! Oh!". This is not his private residence; this is the Parliament of the nation. What is this exclamation for?

Mr. Speaker: Order, order. He cannot continue without listening to me.

Shri Hari Vishnu Kamath: I would appeal to you, Sir, because you are the symbol of Parliament.....

Mr. Speaker: The hon. Member does not give me time to explain.

Shri Hari Vishnu Kamath: May I make my appeal to you in all humility?

Mr. Speaker: I thought he has made it. He might make it again.

Shri Hari Vishnu Kamath: I submit to you in all earnestness that when a Member, on this side or that side, whichever side it may be, to whichever party or group he belongs, makes out a case according to his own satisfaction and according to his own judgment moves his amendment and says whatever he has got to say, it is not enough for the ruling party, even if it has got a brute majority, to say or do whatever they like. Is it not necessary for the Treasury Benches to treat the opposition with more respect here if at all democracy is to prosper in this country? If Government say "we do not accept the suggestion", let them give reasons and arguments. But the Minister says "Oh!" and we take serious objection to it. We are doing serious business

and so I appeal to you that you should try to restrain the Minister. We always keep our services at your disposal but, at the same time, the Treasury Benches should be have better. That is all I have to appeal to you in this regard.

Mr. Speaker: The hon. Member has raised the point that when in clause 159 it has been laid down that all rules, regulations and orders should be laid on the Table of the House, what was the difficulty for the Government laying down any orders that it might make under clause 161. That was his objection. My difficulty is that the hon. Member does not restrain himself even when I have heard him so patiently. When he gives us such high principles of democracy, he should also abide by them. Only one can speak at one time.

Shri Hari Vishnu Kamath: I am sorry, Sir.

Mr. Speaker: Really some further explanation must be given as to why Government finds it impossible to accept this. His plea is that even orders passed to remove those difficulties under clause 161 might be placed on the Table of the House. If there is some special difficulty or any handicap, that might be explained in the House so that the House might appreciate that such an order which is made to remove the difficulty cannot be placed on the Table of the House.

Shri Kapur Singh (Ludhiana): But what was that "Oh, oh!"? That must be explained.

Mr. Speaker: Sometimes exclamations come out without the person being conscious of it.

Shri Morarji Desai: May I say, Sir, that I did not say "Oh, oh" at all? I simply said, "Vah". I was simply appreciating the hon. Member..... (Interruptions).

Mr. Speaker: Order, order.

Shri Morarji Desai: He does not even hear.

Shri B. R. Bhagat: Sir, I did not mean any disrespect to the hon. Member when I said that it was not possible for us to agree to this. In actual fact in many Acts such a provision exists, but the practice is that it is not laid before Parliament. That is the usual practice. That is what I meant when I said that it was not possible for me to agree to it.

Shri Ranga (Chittoor): Did we get any explanation now?

Mr. Speaker: He says that this practice exists in many other Acts also and it is not possible to place all those orders that are passed to remove difficulties before Parliament.

Shri Hari Vishnu Kamath: May I remind you and the House that in the last session when two Bills came up for discussion I myself and, I think, another hon. colleague of mine, moved an amendment to this very effect, namely, that it should be laid before Parliament? You insisted that they should be adopted and ultimately the Government accepted that.

Mr. Speaker: I put it to the hon. Minister that he should explain and give some reason. I said that. The reason that has come is before the House now and hon. Members should not expect that I can give any further direction. I have said that this, namely, that we do not agree or that we do not accept, should not be sufficient and that something must be said to explain that. Now, I have to put....

Shri Ranga: Sir, before you put it to the House, may I make an appeal to the hon. Minister himself who, fortunately for us, happens to be here? It may be true that in the case of so many other similar pieces of legislation this provision has not been there, namely, that these rules should be placed on the Table of the House, but that it is not the reason why they should not be prepared to make a departure in this case. In fact, as you are aware and as the House is aware, not only during this Parliament but

[Shri Ranga]

during the earlier Parliaments too, an effort has been made on the part of Government themselves to agree to the suggestion made from these Benches that such rules should be placed on the Table of the House. Again and again the Government were making an effort to accept this kind of a suggestion or this kind of a procedure. I do not know why my hon. friend, the Finance Minister, who is a senior member of the Cabinet, simply keeps mum and does not want to make a departure at all. He is also being fortified by the hon. Minister.

Shri Hari Vishnu Kamath: Silently.

Mr. Speaker: I would draw the attention of hon. Members to clause 159 wherein it is said:

"Every rule made under this Act and every notification issued under sections".

etc. If every rule made under this Act is to be placed on the Table of the House, any rule that is made under clause 161 will be covered.

Shri Hari Vishnu Kamath: It is 'order' here.

Mr. Speaker: I am coming to that.

So far as an order is concerned, I do not know what the Government might feel in actual experience. Certainly, the hon. Minister can tell us about some further difficulties that he might experience. But my apprehension is that probably it might be in the mind of the hon. Minister that to remove any difficulty in the day-to-day routine some order might have to be passed which might not have so much of consequence or which might not be so important that it might affect the working of the other rules and other things. They might be ordinary simple things to remove those difficulties and it might not be worth while placing them on the Table here or bringing them to the notice of the House. I do not know.

That was only my guess. I cannot say.

The Minister of Law (Shri A. K. Sen): May I explain this? As the hon. Deputy Minister of Finance has said and as you have noticed in many other legislations, this is a familiar provision which we introduce when a new legislation covers a field already covered by a very old law since the new legislation might cause various difficulties in a transition. Because many things may have been partly done under the old Act and partly to be done under the new Act. Many contingencies may arise which we cannot foresee now. That is why this sort of adaptation of power is being given to the Government to resolve difficulties in the course of actual working of the Act. Many individual cases might occur which it may not even be fair to the individual that it should be put on the Table of the House. If any order certainly is challenged or if any order is regarded as unfair, I have no doubt hon. Members will take up their case.

Shri Hari Vishnu Kamath: How can we find out?

Shri A. K. Sen: Normally, it does not occur. Removal of difficulty for the working of an Act which assumes an importance to be brought on the floor of the House occurs only in rare cases. In ordinary cases, many individuals themselves will object that they are just brought on the floor of the House of the entire Parliament just for the purpose of being laid before the House.

The Minister of Finance (Shri Morarji Desai): May I say something in explanation? Shri Ranga said that I was deliberately keeping mum. I am keeping deliberately silent in order not to reply to Mr. Kamath, who made some uncharitable allegations, saying that we are not mindful of Parliament, and that we are not doing this. He knows, I have more respect for Parliament than even he has.

Shri Hari Vishnu Kamath: Show it.

Shri Morarji Desai: I have shown it amply. In the Select Committee, what I accommodated, no other person would have accommodated. He also has agreed. Yet, he comes here and because something is not accepted, immediately, he begins to say something. That is a very unfair proposition to my mind. But, I do not mind it. Therefore I remained silent. There is nothing else about it.

Sir, what you said was perfectly correct. But, there is another thing along with it. When these things have to be corrected, sometimes, one may not always notice that it is a correction. Then, if it is not put before the House, immediately it creates a difficult situation. I will be charged with breach of something. Then, it may be considered illegal. All sorts of things might happen. Therefore, it is very difficult to bring all these orders before the House. There is no other reason. There is no question of hesitating. When we have accepted everything to be put before the House, all rules and notifications, why should we have any hesitation in doing this? It only creates difficulties for us. That is why we are not accepting it.

Shri Hari Vishnu Kamath: The hon. Minister has been unfair to me and to us here. I never said that he does not respect Parliament because they did not accept an amendment proposed by us. All our arguments, they summarily dismiss. If they do not agree, we cannot complain. They may not agree. But, they must give reasons why they are not accepting.

Mr. Speaker: The question is:

"That clauses 160 and 161 stand part of the Bill."

The motion was adopted.

Clauses 160 and 161 were added to the Bill.

The Schedule was added to the Bill.

Mr. Speaker: The question is:

"That Clause 1, the Enacting Formula and the Title stand part of the Bill."

The motion was adopted.

Clause 1, the Enacting Formula and the Title were added to the Bill.

Shri B. R. Bhagat: I move:

"That the Bill, as reported by the Select Committee, be passed."

Mr. Speaker: The question is:

"That the Bill, as reported by the Select Committee, be passed."

The motion was adopted.

16 hrs.

DEFENCE OF INDIA BILL

The Minister of Law (Shri A. K. Sen): On behalf of the Home Minister, Shri Lal Bahadur Shastri, I beg to move*:

"That the Bill to provide for special measures to ensure the public safety and interest, the defence of India and civil defence and for the trial of certain offences and for matters connected therewith, be taken into consideration."

The principles of the Bill have already been endorsed unanimously, if I may say so with respect, by the adoption of the resolution which was moved by the Prime Minister on the 8th of November, 1962, and by the ratification by this House of the Proclamation of Emergency by the President.

The House will recall that before the House could assemble, the country was faced with a grave crisis when the Chinese launched a large-scale

*Moved with the recommendation of the President.