

be done and a particular allotment of a particular Secretary has to be made to other Departments, we shall see that more work is entrusted to the Secretaries working in that Department rather than additional persons being engaged for the same amount of work. We are trying to find out various ways and means by which we hope to have further economies in our administrative expenses and I think the House will have no grievance against us. With these words, I take my seat.

THE DEPUTY CHAIRMAN: The question is

"That the Bill to authorise payment and appropriation of certain further sums from and out of the Consolidated Fund of India for the services of the financial year 1962-63, as passed by the Lok Sabha, be taken into consideration."

The motion was adopted.

THE DEPUTY CHAIRMAN: We shall now take up the clause by clause consideration of the Bill.

Clauses 2 and 3 and the Schedule were added to the Bill.

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

SHRIMATI TARKESHWARI SINHA: Madam, I move:

"That the Bill be returned."

The question was put and the motion was adopted.

STATEMENT RE DURATION OF THE CURRENT SESSION AND HOURS OF SITTING

THE MINISTER OF PARLIAMENTARY AFFAIRS (SHRI SATYA NARAYAN SINHA): Madam, I had a meeting with Leaders and representatives of

various groups in the Opposition as also some other Members of Parliament, and discussed with them the question of duration of the present Session of Parliament. As majority of the representatives of various parties were of the view that the present Session of Parliament might continue up to the 11th of December as originally scheduled, the Government have accepted their suggestion.

It was the unanimous opinion of those present at the meeting that the Question Hour might be dispensed with and that the House might meet at 12 o'clock every day for its normal sittings. This involves suspension of Rule 29 of the Rules of Procedure and Conduct of Business of the Rajya Sabha. I hope, Madam, you and the House would agree to this arrangement which may be put into practice from Monday next.

THE CUSTOMS BILL, 1962

THE DEPUTY MINISTER IN THE MINISTRY OF FINANCE (SHRI B. R. BHAGAT): Madam, I beg to move:

"That the Bill to consolidate and amend the law relating to customs, as passed by the Lok Sabha, be taken into consideration."

This Bill, Madam, had been earlier referred to a Select Committee by the Lok Sabha and a number of important changes are incorporated in the Bill as a result of the deliberations of the Select Committee. I may now give a broad analysis of the general background and pattern of the provisions of this Bill.

The Sea Customs Act, 1878, which lays down the basic law relating to customs was enacted more than 80 years ago. Though it has been amended from time to time to meet the changing needs on specific points, no general and comprehensive revision of the Act has been undertaken. The

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provisions that were considered adequate for the purpose in the latter part of the last century have, with time, grown obsolete and hardly suit the needs of the modern times. The Government have tried to interpret as liberally as possible the provisions of the existing Act, but even then certain difficulties have remained. The trade also has been pressing for various changes and facilities. Another important factor which we have to take serious note of now is the evil of smuggling—particularly gold smuggling—as a consequence of our strictly controlled economy. While drafting this Bill, we have tried to achieve the twin objective of facilitating in every possible way the smooth flow of genuine trade, while at the same time, ensuring effective measures against smuggling and evasion of duty.

While revising the Sea Customs Act, opportunity has also been taken to consolidate the provisions relating to sea customs, land customs and air customs, into one comprehensive measure.

While almost all the provisions of the Sea Customs Act are applicable to imports by air, the position in regard to land customs has so far been different. Goods imported or exported by land are at present not liable to duty unless the Central Government issues certain notifications.

Again, the facility of bonding goods in a ware-house which enables and importer to postpone the payment of duty till the goods are actually cleared from the warehouse is at present not available in respect of goods imported by land. Nor are imported goods which are re-exported by land, entitled to any drawback of the import duty. With the incorporation of Land Customs into this comprehensive measure, customs duties will automatically apply and warehousing and drawback facilities will be extended to goods imported or re-exported by land also. A few other changes will also automatically follow.

The new law has also been considerably simplified. All obsolete provisions in the existing Act have been omitted. Provisions which, under the Constitution, fall in the State field, have also been omitted. Procedural provisions which lay down the details of day-to-day administrative procedure have also been deleted as they tend to make the administration rigid. Particular mention may also be made of the simplification of the penal provisions. Section 167 of the existing Act has as many as 87 penal clauses. In the revised provisions this number has been drastically reduced and a rational re-grouping evolved. This re-grouping and simplification should remove the confusion and multiplicity of existing penal clauses.

Another matter of interest is that certain provisions of the existing Act confer important and wide powers on customs authorities without laying down any guiding principles. In keeping with the modern approach to legislation, it is now proposed to regulate these powers by laying down guiding principles, within the framework of which alone, the executive authorities will have the power to frame rules or issue notifications. Further, under the existing Act it is not necessary to place the Rules or Notifications before the Parliament. It is now being provided that all Rules and important Notifications which have been specified in the new law, will be placed before both Houses of Parliament. I am sure that the House will welcome these changes.

Apart from the various general measures of improvement which I have just broadly mentioned, the Bill seeks to give a number of facilities to the trade and embodies a number of anti-smuggling measures. I shall touch briefly on some of the important changes which the Bill incorporates under these two broad categories.

I shall now come to the first category, namely, the facilities given to trade. The first major proposal of

benefit to the importers concerns the valuation of goods. Section 30 of the existing Act defines the assessable or real value of the goods for customs purposes. The trade has represented from time to time, against the provisions of section 30(a) of the existing Act on the ground that it is not equitable to determine value for customs purposes by including duty and other post importation charges in the price. The General Agreement on Tariffs and Trade or GATT as it is referred to, to which India is a signatory, provides that value for customs purposes should be based on the competitive import price. It is, therefore, proposed to do away with the determination of assessable value on the basis of wholesale market price in India. The assessable value will now be the price at which the goods are ordinarily sold in international trade between an importer and an exporter who have no interest in the business of each other.

Considerable difficulty has been experienced in the valuation of goods imported by parties enjoying a special relationship with the exporter, such as branches and subsidiaries of foreign firms and sole representatives, because in such cases, the invoices may not always reflect the real price of the goods for assessment purposes. GATT provides that value in such cases should be based on the nearest ascertainable equivalent of the competitive price. This guiding principle is being incorporated in the proposed definition of "value" in clause 14(b) and power is being taken to make rules for the determination of the nearest ascertainable equivalent of competitive price in such cases.

Then there is another matter. Considerable difficulty used to be felt in interpreting and applying section 21 of the existing Act which deals with the assessment of composite goods, particularly when the goods were imported as sets of articles liable to different rates of duty or were accompanied by accessories, or components or spare parts and maintenance and repairing implements. These are

considerable in our present import trade. Adequate provision has now been made to deal with all such cases on a rational basis in the Bill.

The position under the existing Act is that remission is permissible in respect of warehoused goods only provided they are lost or destroyed by unavoidable accident or are abandoned by the owner. This concession is now being extended to goods which are cleared direct for home consumption.

Then again, the difficulties that are caused to the importers when the clearance of their goods gets delayed have also been sought to be reduced by specific provisions in the Bill. The existing facility of allowing clearance after the importer has executed a bond with acceptable surety can be availed of only by some importers. As an added facility to the trade, it has now been provided that when goods cannot be cleared within a reasonable time, the goods may be permitted to be kept in a warehouse, so that the importer does not have to pay demurrage charges, and does not run the risk of losing a part of the goods through pilferage etc. by long storage.

The Bill includes an upward revision in the rate of drawback when goods are re-exported. Section 42 of the existing Act provides that where imported goods are re-exported to any place outside India, 7/8ths of the duty shall be repaid as drawback. The deduction apart from a kind of fee for the administrative work involved was also meant to encourage exports from warehouses in preference to exports of duty goods which have to be properly identified at the time of export. Considering the changed conditions and to facilitate re-export, the percentage of this deduction is being reduced. It will now be only two per cent. deduction as against the 12½ per cent. under the existing Act.

As a further fillip to export promotion, a number of existing procedural conditions for grant of drawback are

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being simplified. For instance, under the existing Act, claim for drawback has to be established at the time of export. Another condition requires that after the vessel has left, the claim for drawback should again be made within a period of six months. Still another condition specifies that the exporter should make and subscribe a declaration about the actual export of the goods within the aforesaid period. These conditions have been found to be irksome and are being done away with in the Bill.

As regards coastal cargo also, certain important provisions have been made in the Bill to do away with the existing cumbrous formalities and replace them by a simple procedure. Under the Bill now the consignor of coastal goods will merely have to submit a bill of coastal goods to the Customs officer who, after passing it, will hand over the same to the master of the vessel, and at the ports of destination, on the basis of this very bill, the Customs officer will allow clearance of the goods thus cutting out a great deal of unnecessary paper work all round. This new procedure would ensure expeditious clearance of coastal goods.

Then I come to the second category of provisions included in the Bill which refer to the tightening of anti-smuggling measures. I will now make a brief mention of some of them.

The first major proposal is in regard to the search of premises in which smuggled goods are suspected to be secreted. Section 172 of the existing Act provides that any Magistrate may, on an application by an Assistant Collector of Customs stating his belief that dutiable goods are secreted in any place, issue a warrant for search. This dual responsibility is not conducive to a happy state of affairs inasmuch as the belief has essentially to be of the Assistant Collector of Customs and the warrant has to be issued by the Magistrate. Difficulty is also experienced when warrants have

to be obtained at odd hours of the night or on holidays. Under the Bill, the Assistant Collectors of Customs are being authorised to search premises.

It may be mentioned that the revenue laws regarding Income Tax, Central Excise, Sales Tax and State Excise already confer on the executive officers of those Departments the power to search suspected premises. The proposal made here is, therefore, in conformity with other similar laws. In other countries also, such as the United Kingdom and Australia, the powers to search premises are vested in departmental officers.

The vesting of these powers in the Assistant Collectors of Customs only would not meet the situation on such portions of the land frontiers or the coast of India which are particularly susceptible to smuggling and where it is not practicable to obtain an Assistant Collector's authorisation in proper time. To meet this difficulty the Central Board of Revenue is being empowered to specially select by name certain Customs officers who will be properly deployed in such areas and who will have the power to search premises without any authorisation from the Assistant Collector. The proposal is on the lines of the system obtaining in the United Kingdom and Australia, where certain selected Customs officers are issued Writs of Assistance which empower the officers named therein to search any suspected premises.

The next major proposal is regarding the liability for confiscation of exempted goods in case of misuse. At present, subject to certain limitations and conditions, baggage is exempt from payment of duty and import trade control restrictions. Often, passengers coming to India are made use of by certain vested interests to bring goods for trading purposes. As the law stands at present, the Customs Department is not in a position to take any penal action against such goods when they pass into trade. What is true of baggage is also true of gifts.

received by post and of goods exempted from duty and the import trade control restrictions on the ground that they are for the use of a specified class of persons. To prevent misuse of goods which have been shown such concessional treatment at the time of their import into India, the goods for which the conditions on which exemption was initially granted are not observed, will now become liable to confiscation under the Bill.

By another provision liability to personal penalties of persons who abet smuggling, is being stepped up. Under section 167(8) of the existing Act, any person concerned in the offence of importing or exporting goods contrary to a prohibition or restriction, is liable to a personal penalty. As worded this section does not apply to persons who may have aided or abetted the act of importation or who may have been helpful in the disposal of the smuggled goods after the act of importation. Often, the carrier is merely an agent employed for the actual act of importation and the principal offender is the financier or the organiser of the smuggling gang. It is essential to bring such persons within the mischief of the penal clause in order to inflict personal penalties on such ring-leaders. The penal clause has been amended accordingly.

Anti-smuggling measures are also being tightened in regard to vessels, aircrafts and vehicles which are used for smuggling. Section 168 of the existing Act provides that any conveyance used in the removal of any goods liable to confiscation, shall also be liable to confiscation. As this section stands at present, conveyances in which any contraband is brought into India are not liable to confiscation, as they cannot be said to have been used in the removal of such contraband. This lacuna is proposed to be removed. It is proposed to provide that any conveyance which has been used in

the smuggling of goods or in the carriage of smuggled goods shall be liable to confiscation, but certain safeguards are being provided. The first one is that if the owner of the conveyance had taken all such precautions as may be specified in the rules framed by the Central Government, the conveyance shall not be liable to confiscation. The idea is that the Customs authorities will take action against such conveyances only where the main persons concerned with these conveyances refuse to take the precautions necessary for combating smuggling. The second safeguard which is being provided is that the owner of a conveyance used for carriage of goods or passengers for hire, shall be given an option to pay in lieu of confiscation of the conveyance a fine not exceeding the market price of the goods which have been smuggled in such conveyance.

SHRI AKBAR ALI KHAN (Andhra Pradesh): If a man owns a taxi and if the taxi driver has done this then I am sure the car will not be confiscated. That will have to be cleared.

SHRI B. R. BHAGAT: I think so but that will have to be proved. If the taxi driver has also connived at it . . .

SHRI AKBAR ALI KHAN: The taxi driver should be punished, not the owner.

SHRI B. R. BHAGAT: If that is proved. I think the safeguard should include that.

I will now refer to two major changes regarding prosecutions. Clause 135 provides for the prosecution of smugglers and their accomplices. The maximum punishment provided in the clause as originally drafted was the same as provided in the Sea Customs Act, i.e., imprisonment up to two years. In order to stop organised smuggling, deterrent punishments are called for. In the Bill as passed by the Lok Sabha, it is

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now provided that in the case of gold, diamonds, watches and such other goods as may be notified by the Central Government if the market price of the smuggled goods exceeds rupees one lakh, the maximum imprisonment should extend to five years and that in the absence of special and adequate reasons to the contrary, the accused shall be sentenced to a minimum imprisonment of six months. I may add that as a result of this enhancement of maximum punishment, such offences will become non-bailable which would give discretion to the Magistrates to grant bail or not, depending upon the merits of each case. The other major proposal regarding prosecution

4 P.M. is to tide over legal difficulties that have been encountered in using as evidence documents which may be seized during the course of searches, etc. Since smuggling involves a deal between a person in India and a person abroad, documents written by the latter are often seized but in accordance with the ordinary procedure, it is well-nigh impossible to prove the contents of such documents or that the document has been written by the particular person abroad. To meet these difficulties, it has been provided that where any documents are seized from the control or custody of a person and such document is tendered by the prosecution in evidence against such person, the court shall, unless the contrary is proved, presume the truth of the contents of such document and that the document has been signed by the person by whom it is purported to be signed.

SHRI P. N. SAPRU (Uttar Pradesh): Which is the section?

SHRI B. R. BHAGAT: You mean the section in the Bill? I will let the hon. Member know. Just now I do not remember the section exactly.

This provision which is on the lines of a similar provision in the Foreign Exchange Regulations Act will be

helpful in the prosecution of smugglers and their accomplices.

Certain important changes have been made regarding appellate procedure also. The Bill as originally introduced in the Lok Sabha specified the appellate authorities on almost the same lines as the Sea Customs Act. There was considerable discussion on this matter. The Bill now provides that appeals against the orders of officers lower in rank than the Collector of Customs will be heard by an Appellate Collector of Customs. It is also being provided that no enhancement of fine or penalty can be made except at the level of the Central Board of Revenue or the Central Government. These are effective and important safeguards for the trade.

I am sorry Madam, that I took a longer time in discussing the details but in view of the intricacies of the provisions, I thought it worth while to explain at least some of the major ones.

For the benefit of the hon. Member, I may say that the clause referred to is clause 139.

The question was proposed.

SHRI ROHIT M. DAVE (Gujarat): Madam, the Bill which has just now been moved for our consideration, has got some history. It was a Bill which was introduced in the Lok Sabha some time back. Then it was referred to a Select Committee there. The Select Committee had a number of sittings, examined a number of witnesses and we have got before us a very instructive document which is the evidence which was collected by the Select Committee. Also, certain very important and, to my mind, very salutary changes have been made in the Bill and it is a fine form of the Bill which is now before us. There were certain very important considerations which were taken up by the Select Committee and in drawing up certain amendments to the original Bill which led to the improvement of the Bill, the

Select Committee was actuated by considerations of jurisprudence, by considerations of the fundamental rights that have been guaranteed to us under our Constitution and also by certain administrative matters connected with the subject-matter of which the Select Committee was seized. Looking to all these things, I felt a little disappointed that it was purely a Select Committee of the Lok Sabha and that the Members of this House had not the privilege to sit on that Committee and contribute to the important deliberations of that Committee and to help in improving the Bill which is now before us. I do not know if the Bill before us could be described purely as a Money Bill; perhaps the Speaker has been pleased to do so. But there are certain other aspects of the Bill with which this House would also have liked to deal, and this House was competent to deal with them also. Of course, as I have said, I am only expressing my disappointment at the fact that we were not associated with the Committee. I know that more than that, we cannot go.

Coming to the Bill proper, as I have said, the Select Committee has made improvements in the Bill and it was good that the Bill went before a Select Committee. Because of certain considerations which were of far-reaching importance and which could not perhaps be discussed in a larger House, a small Select Committee was necessary to apply its mind. The Bill that is before us has to balance conflicting considerations. On the one hand, there is the consideration of natural justice, there is the consideration of the fundamental rights and there is that important principle of jurisprudence that a man is innocent unless he has been proved to be guilty. On the other hand, we have got the shameful experience of a large amount of smuggling going on in the country. Everyone knows about it, everyone talks about it, newspapers openly write about it but we feel a sort of helplessness against this large racket that is going on in this country.

Something had to be done about this smuggling activity and therefore the Government and Parliament had to devise measures which might not be quite in keeping with the principle of natural justice or which might not be quite in keeping with the principle of jurisprudence, namely that a person is innocent unless he has been found guilty, and a sort of balancing had to be done. The Select Committee was mainly concerned with this aspect of balancing the two opposite principles, namely, the principle of natural justice and, as the hon. Minister put it in the other House, the question of social well-being, social morality and the punishment of those who are violating the laws of the land. And it is from this angle that I would like to offer a few remarks regarding the Bill which has come out of the Select Committee.

The Select Committee applied its mind mainly to those chapters of the Bill which deal with the confiscation of goods, which deal with searches, seizure and arrest, which deal with appeals and revision and which deal with the punishment of persons who are guilty of a certain offence. This is the scheme of the Bill, and from what the spokesman of the Government said at the Select Committee, it seems that the Government has applied its mind in detail to what could or could not be done in order to deal as adequately as possible with the smuggling activities in the country. And generally, I am in sympathy with the Government's attitude on this point. Government has taken great pains, firstly to distinguish between goods which are smuggled, and persons who are found in actual possession of the smuggled goods and those who are found to make an actual attempt to smuggle the goods in the country. I quite agree that, as far as smuggled goods are concerned, whoever be in possession of these goods, whether the smuggler himself or his accomplice or his agent or some *bona fide* purchaser who purchases these goods or otherwise legally came in possession of

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these goods *bona fide* without the knowledge that these goods were smuggled, whatever be the nature of the possession of these goods at the time when they are detected, because they are smuggled goods, they have to be confiscated, and to that extent all the provisions that deal with confiscation of the smuggled goods are, to my mind, quite in order. Even if an innocent party has to suffer, the remedy for that party lies with the person who sold the goods to that party rather than with the Government, and those goods should be confiscated. As far as punishment to the person is concerned, the person has to be punished only if he has contravened any of the laws of the land or is attempting to contravene it, or is in possession of those goods fully knowing that they have come into the country in a manner which contravenes the law of the land, and to that extent a distinction has been made in the Bill whereby, while the goods are confiscated wherever they are found, only those persons are sought to be punished who have willingly and knowingly taken possession of goods which are smuggled goods, and no one else. But when it comes to the question of the burden of proof, a difficulty arises. To my mind, here the Government has taken a rather stricter view of the situation than what one would like to take in such matters. It is true that smugglers are very crafty people, ingenious people who have got all sorts of devices to smuggle the goods in the country and to destroy any evidence, which might be there, in a very short time. I am aware of the way in which this evidence could be destroyed. I am also aware of the fact that even in matters of the administration of direct taxes, the Central Board of Revenue have come across certain difficulties and certain devices which are so ingenious that it becomes very difficult for the administration to deal with them. For instance, when it is a matter of turning black money into white, instances

are there in which book entries are made whereby it has been shown that the assessee borrowed that money from A. When the account books of A are examined, then it is found that he borrowed it from B. And when the account books of B are examined, there it is found that he borrowed it from C. On and on it goes like that, and it becomes extremely difficult for the income-tax officers to find out whether these entries are genuine or not, and so at some stage the rule of the thumb has to be applied. I know of such ingenious devices, and therefore I can appreciate the stand of the Government that it is much better that the burden of proof is thrown on the person who is confronted with a particular charge than the Government itself undertaking the responsibility of this burden of proof. While appreciating this stand, while feeling as strongly as anyone else against those who are indulging in these anti-social activities, which is a blot on the fair name of our country, I still feel that, with proper consideration, perhaps it would have been possible to find out some way whereby the important principle of jurisprudence, namely, that the burden of proof is on a person who makes a particular deposition and not on one who has to contradict that deposition—that important principle of jurisprudence—ought to have been kept. Otherwise, it becomes very difficult for a person to prove that the charge against him is unfounded. As it has been pointed out, if someone had got a gold watch on him, it would be very difficult to prove that he did not know that that gold watch was a smuggled watch and that therefore he was in *bona fide* possession thereof. I know that in this case also Government has tried to make a distinction between goods which are being imported at the time the seizure takes place, and the goods which have already been imported and now are in possession of someone else. It is with reference to the imported goods which are detected in the customs area itself that stringent punishments are provided for, and

therefore it is that the burden of proof has been thrown squarely on the person who is confronted with the charge that they are smuggled goods. With reference to packages, for instance, it has been provided for that if part of a package is smuggled goods, then the entire package should be deemed to be smuggled goods and should be confiscated as such. If on the other hand the goods are already in the country and, if, while they are in the country, a part of the package is proved to be smuggled goods, and if the person who is in possession of these goods had not the knowledge that they were smuggled goods, or was not in any way a party to the smuggling of these goods, then only that part of the package which has been proved to be smuggled goods, has to be confiscated and not the entire package. To that extent some relief is sought to be given. But to my mind, with greater attention paid to this subject, and with more detailed consideration of what could or could not be done, it should have been possible to adhere more strictly to the principles of natural justice. I have not got any specific idea on this for the simple reason that it requires an amount of consideration which could have been possible, as I have said, only in a Select Committee, and if this House had the privilege of associating in that Committee, perhaps they could have made their meed of contribution also to the solution of some of these difficult problems with which the Select Committee was confronted. Apart from these general remarks regarding this Bill I find that on the whole, the Select Committee has tried to reconcile the conflicting considerations to the best of its ability, and the Bill which has emerged finally is a Bill which should command the support in this House, and therefore I have no hesitation in commending this Bill, which has been moved by the hon. the Deputy Minister, for the acceptance of the House.

Madam, I thank you.

SHRI P. N. SAPRU: Madam Deputy Chairman, I would like to give my general support to the Bill which has been moved so ably by Mr. Bhagat. I would like to say that I associate myself completely and wholeheartedly with the view which was expressed by Mr. Dave, that this House should have been associated with the Select Committee which considered this Bill. This Bill has not been certified to be a Financial Bill by the Speaker. It was not, therefore, a Money Bill. This House has a definite standing in the Constitution. It represents the States as contrasted with the people of the Union. It has talent and as you know, Madam Deputy Chairman, ability and it could contribute something of value to the consideration of a measure of this character by a Select Committee. It is, therefore, a matter of the deepest regret that it did not occur to the Government to associate this House or to have this House associated with the Select Committee which considered this Bill.

Let me point out that the Bill consolidates and amends the law relating to customs which has been in operation for the last fifty years with some amendments in between. Now we have one consolidated measure which will deal with sea customs, which will enable us to deal with the problems raised by land customs and with the problems raised by air customs. The effort at having a consolidated measure of this character is to be welcomed. But I have not been able to understand why there was so much delay in bringing forward this measure.

The Badhwar Committee was appointed, I believe, in 1957. It reported in 1958 and the Bill was not introduced in the other place before the 15th of June, 1962. There was a delay of four years in the introduction of a measure of this character. This delay deserves or needs to be explained by the Deputy Minister. We would like to know the reasons for it.

Madam, we had sensational cases. I do not wish to refer to them. Perhaps

I shall be committing contempt of court if I were to refer to them.

SHRI AKBAR ALI KHAN: There is no contempt of court here. You can say anything.

SHRI P. N. SAPRU: We have had sensational cases where the allegation is that diplomats and their entourage had been concerned in the smuggling of gold watches and things of that type.

Madam, this evil of smuggling has reached high proportions and it was time that a stop was put to it. Now, legislation is all right. But I do not think that by legislation, however drastic, however well-conceived it might be, we can cure all evils from which society suffers. What we need in addition to legislation is a vigilant public opinion. That vigilant public opinion should assert itself, should discover measures, which would enable the corrupt man to feel that society looks upon him as a pest of society; it does not look upon him as one of its main pillars. Unfortunately, the big man gets away with smuggling gold or smuggling jewellery or smuggling money pretty easily. He can engage able counsel to defend himself in the highest court of the land, and they discover methods whereby they enable him by their professional skill to get over the difficulties that he has created for himself, but the poor man is at a disadvantage.

Often the customs official is also a much-maligned person. I know that some of them perhaps are corrupt; I do not deny that. But I have had some experience of customs officials and I think that they have a rather sound judgment in assessing the quality of a person by his face. I will give an instance and my friend Mr. Akbar Ali Khan will be able to bear me out because he was also a witness to the case.

SHRI AKBAR ALI KHAN: But none of us were involved.

SHRI P. N. SAPRU: We were coming back from the Soviet Union. At

the Delhi Airport Mr. Akbar Ali Khan, Mrs. Maya Devi Chetty and I along with another person, whom I do not know, were there. Now, the Customs officials asked Mrs. Chetty if there was anything to declare. He accepted her declaration. He accepted Mr. Akbar Ali Khan's declaration and he accepted my declaration. They did not ask us to show our luggage or our baggage, and it was taken for granted that we had submitted a correct return. The fourth gentleman who was standing next to me—I do not know his name—they treated him rather differently. They began to look into his luggage. I felt rather hurt by the humiliation to which he was being put because I thought that he being in respectable company, was a respectable person. But to my surprise, I discovered—rather we discovered—that he was carrying with him two bottles of whisky which he had not declared.

THE MINISTER OF STATE IN THE MINISTRY OF EXTERNAL AFFAIRS (SHRIMATI LAKSHMI MENON): Vodka.

SHRI P. N. SAPRU: Therefore, those bottles were taken into possession of . . .

SHRI B. R. BHAGAT: It is a small case.

SHRI P. N. SAPRU: . . . by the customs officer and I felt the customs officer was a good physiognomist.

I will give you, Madam Deputy Chairman, another example. This happened in 1946. I was coming back from Malaya and at the Calcutta airport the customs officer asked me if I could tell him what the value of goods which required customs duties to be levied was. I gave him a certain figure, but I said: "This is an approximate figure. I do not have any receipt with me. I have just misplaced it." He very courteously told me that he would like to have a look into my baggage. I felt very insulted and very annoyed, and I reported the matter to the Collector of Customs. The Collector of Customs

happened to be an old friend of mine and he sent for me immediately. By the time I was talking to the Collector, the man came and said that the figure which I had given was much higher than the actual value of the article and I was to pay according to him a duty on goods of about \$20 or \$30 less in value. So my Collector friend rather smilingly said: "He has not done badly. You gave him a certain figure. You have to pay less than what you would have had to pay if your figure had been accepted". And then he said: "Look, Sapru, these men are in a very difficult position. They do not know who is who, and they have therefore to carry out certain orders and one must not get annoyed if they do their duty properly." I said: "You are perfectly right", and I went to the man, shook hands with him, apologized to him for the rough way in which he was treated, and he thanked me for the courtesy that I had shown to him.

I am mentioning these incidents only to indicate that these men have a heavy duty to perform, and it is necessary that they should have the support of the public in the work that they are doing. We think that it is a matter of no consequence if we pay the customs duty or not. But if we do not pay our customs duty, someone else has to pay for that. The tax-payer is taxed more if the smuggler resorts to evasion. Therefore, I think it is a right and wise step to tighten the law relating to evasion and smuggling of goods. I have, therefore, no quarrel with that.

Then I would like to draw your attention to certain features of the Bill and make a few observations on them. First of all I would invite the attention of the House to the provision that appeals up to a certain value shall be heard by Appellate Collectors—I think they are called Appellate Collectors of Customs. I would like these Appellate Collectors to be appointed not by the Finance Department but to be appointed by

some other Department, say the Legislative Department of the Government of India. These appellate Collectors should have some judicial experience, they should be able to bring to bear upon their work a judicial approach. So far as goods of higher value are concerned, they will go before the Central Board of Revenue. Now, I notice that Mr. Bhagat in the speech which he delivered in the other House, was somewhat critical of the judicial process. He thought that the judicial process was a process which denied social justice or something to that effect. He was apprehensive that if cases are allowed to be tried by men of judicial training, then they would require impossible conditions to be fulfilled before they recorded a conviction. I think that Mr. Bhagat is somewhat mistaken in this notion. An administrative tribunal or a quasi-judicial tribunal is not bound to follow all the rules laid down in the Code of Criminal Procedure or in the Indian Evidence Act. What it must follow are certain principles of natural justice, and a person who is acquainted with the law—he may be even to some extent an executive officer—knows what those principles of natural justice are, and therefore he can do his work better than others. I would therefore have preferred an express provision laying down certain minimum qualifications which shall be expected of these Appellate Collectors of Customs, and I would have liked them to be not under the control of the Finance Department but of, say, the Legislative Department of the Government of India.

May I also point out that the judicial process is unavoidable even under the Bill as it is, because the revising authority will be the Central Government. Under article 226—fortunately article 226 has not been abolished though article 32 disappears—the High Court has authority to issue writs or directions or orders to any tribunal or any authority including Government. Therefore, the Central Government will not be immune from

[Shri P. N. Sapru.]

the purview of the jurisdiction of the High Court. The Supreme Court in a judgment, which I greatly regret, has ruled that only the Punjab High Court has got this power because the Central Government has its domicile in New Delhi. That, I think, is a wrong view of the law, speaking with all respect to the Supreme Court, and I think there is a Bill pending before the other House on this point. I had in another capacity to consider this question of what the word "jurisdiction" meant and I had recorded views which were different from those of the Supreme Court. I think the view of the Supreme Court is, with all respect to that great institution, erroneous but the point remains that by vesting the power of revision in the Central Government you do not get over the difficulty that is created for you by article 226 of the Constitution. The judicial process will be there. Therefore it is all the more necessary that the power exercisable in the initial instance should be vested in a person acquainted with the fundamentals of judicial procedure. The number of cases which would go to the High Court, might conceivably be larger under the changed law than it is at the present moment.

Criticism has been levelled against the Bill on the ground that it authorises the Collector of Customs or the Assistant Collector of Customs to search a man without a search warrant signed by a magistrate. Now, I do not attach any importance to that criticism. I think that a Collector of Customs or an Assistant Collector of Customs is a person responsible enough to conduct searches provided they are conducted in the manner contemplated by the Code of Criminal Procedure. The point is that there must be no delay in effecting the search because if there is delay the smuggled article may disappear. And for that reason there is no departure from judicial principle in vesting the power of search in the Collector or the Assistant Collector of Customs. Of course, you cannot vest it in any

officer. He must be a responsible officer and I agree with the framers of the Bill in regard to this matter.

Then I would like to say that I welcome clause 13 where it has been laid down:—

"If any imported goods are pilfered after the unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a warehouse, the importer shall not be liable to pay the duty leviable on such goods except where such goods are restored to the importer after pilferage."

For this pilferage the importer was not responsible and therefore it is not right to make him bear the loss.

I may say that in regard to the question of who the revising authority might be, the Government has not acted in accordance with the recommendations of the Taxation Enquiry Committee. Undoubtedly, as I said, gold smuggling, importing of banned or partially banned articles are very heinous offences. I do not distinguish between a smuggler of gold and a burglar; I do not distinguish between a person who evades legitimate customs duty and a thief. They are both pests of society and they should be dealt with severely. But why should it be assumed that a tribunal constituted on a proper basis would look at questions from a purely academic point of view? I am not suggesting that the ordinary courts should try him. I am suggesting that the tribunal should be a quasi-administrative or a quasi-judicial body and for that purpose it is necessary that the power of appointment so far as these tribunals are concerned, reside in a Ministry other than the Finance Department of the Government of India. Now, I may say that this was the view taken by the Bhadwar Committee also and though it is true that very few, if any, questions of law will arise in these cases, even ascertainment of facts requires

a trained mind, a mind trained in the art of sifting evidence properly.

Then I will come to clause 136 which provides for penalties for offences by officers who deliberately mislead the authorities. Well, it is necessary to repose confidence in them; their initiative should not be killed.

I would like to say a word about clause 135 which fixes a minimum punishment of six months. Now, generally speaking, speaking as a student of jurisprudence, I am opposed to the fixing of a minimum sentence in a statute. The sentence is, as we lawyers often say, a matter of law. The court has to exercise its mind on the question of sentence itself without being dictated to by some other external authority. But here I know that care has been taken—and therefore I have no objection to the clause as it is—to see that it is open to the magistrate or the judge trying the accused before him to sentence him to a period of less than six months provided he records his reasons for doing so in writing. That is all right; his discretion has not been entirely taken away and therefore there is nothing inconsistent with judicial principles so far as this clause is concerned. I am glad that the offence will now become—that will be the more correct expression—a non-bailable one.

The Bill has got as many as 161 clauses and it was circulated to us only this morning. I received a copy of it as passed by the other House at about 10 o'clock this morning. Now, we took up this measure at 2.30 and I think that we are entitled to say that considering the fact that we are now going to sit till the 31st December . . .

SHRI AKBAR ALI KHAN: No; 11th of December.

SHRI P. N. SAPRU . . . 11th of December, there was an undue haste in pushing through this measure.

One would have liked to have more opportunity of studying the various clauses of this Bill carefully. It is a voluminous measure. It has got as many as 161 clauses. One would like to compare it with the law as it was before and one would like to compare it with the law as it is in other countries. In the time at one's disposal all this is not possible. Therefore, one has to speak on a measure of this character with inadequate preparation. I have no doubt that the Select Committee has given thought to this measure. Three of the Members of the Select Committee have appended Minutes of Dissent, which I have read. With one recommendation which the dissenters have made, I have already indicated my agreement. With the others I have not been able to agree. But I must say that it is not right to push through legislation at such speed. Members, particularly when they have not been associated with a measure in a Select Committee, Members of this House, should be given more opportunity to study it in all its bearings. Here we are dealing with a measure which restricts to some extent the liberty of the subject. We have to strike a balance between the liberty of the subject and our concepts of social justice, our concepts of social requirements. All this requires a certain amount of mental effort and that mental effort we cannot put forth in a few hours. If I get a Bill at ten o'clock, then I cannot be expected to say that I have gone through the Bill carefully or that I have read the proceedings of the Select Committee carefully.

THE DEPUTY CHAIRMAN: Even so you have taken more than half an hour, Mr. Sapru, without studying the Bill.

SHRI P. N. SAPRU: I happen to have taken half an hour and I do not think that I would be justified in talking more. I would, therefore, wind up by saying that the Bill has my generous support. Thank you very much.

श्री विमलकुमार मन्नालालजी चौरड़िया : (मध्य प्रदेश) : उपसभापति महोदय, सरकार ने जो बिल प्रस्तुत किया है और जो कदम उठाया है नया बिल ला करके, यह अच्छा किया है, बहुत पुराने कानून हो चुके थे, अलग अलग कानून थे उनकी व्यवस्था करके, उनका एकीकरण करके। किन्तु यह मेरी समझ में नहीं आया कि जब इसके बारे में प्रवर समिति बनाई गई, उस समय राज्य सभा के सदस्यों का इसमें सहयोग किन कारणों से नहीं लिया जा सका। यह नई परम्परा है या पुरानी, कुछ परम्परायें चलती आ रही है, और जो बिल प्रस्तुत करने वाले महोदय हैं वे चाहें तो राज्य सभा के सदस्यों का सहयोग लें या न लें, मुझे कुछ पता नहीं। किन्तु इसके बारे में मैं प्रार्थना करूंगा कि दोनों सदनों के सदस्यों का सहयोग ले करके बिल को और अच्छा बनाया जा सकता था। वैसे मुझे कोई विशेष शिकायत नहीं है। वहां की प्रवर समिति ने भी कुछ कम काम नहीं किया, उन्होंने भी अपने यहां काफी काम किया है काफी अच्छे सुझाव इसमें दे करके बिल को पहले की अपेक्षा काफी अच्छा बना दिया है।

मुझे दूसरी शिकायत यह है कि जैसा सप्रू साहब ने भी कहा कि यह बिल हमको आज सवेरे मिला। जब भोजन करके हम यहां आने की तैयारी कर रहे थे उसी समय डाक मिली और उतनी जल्दी देख करके आना, स्टडी करके आना, कुछ कठिन ही नहीं, असंभव लगता है। सप्रू साहब जो पुराने कानून के जानने वाले हैं उनको सब बातें नहीं देखनी पड़ती हैं, किन्तु हम सरीखों को शुरू से आखिर तक देखना पड़ता है।

एक माननीय सदस्य : वे जल्दी समझ सकते हैं।

श्री विमलकुमार मन्नालालजी चौरड़िया : यह ठीक है कि अनुभव और ज्ञान के लिहाज

से जल्दी समझ सकते हैं, परन्तु उनको पढ़ने में समय ज्यादा लगता है। हम उम्र के लिहाज से जल्दी पढ़ सकते हैं, परन्तु हमें समझने में अधिक समय लग सकता है। इस हिसाब से भी यह शिकायत है कि अगर इतने महत्वपूर्ण बिल . . .

श्री बी० आर० भगत : इस तरह जवानों और बूढ़ों का बैलेंस बराबर है।

श्री विमलकुमार मन्नालालजी चौरड़िया : यह मेरी समझ में नहीं आया कि हमारे मंत्री जी अपनी गलती को सुधारना अच्छा समझते हैं या नहीं। हम किसी तरह से ऐडजस्ट करके और जितना भी कर सके अपनी बात कहने को तैयार हैं। मगर आप अपनी गलती आगे न दोहरायें, इसलिये यह प्रार्थना है कि भविष्य में कृपा करके ऐसी गलती न हो जिससे इधर आते ही डिस्कशन शुरू कर दिया जाय। यह जरा उचित प्रतीत नहीं होता।

जहां तक इस विधेयक का सवाल है, इस विधेयक को देखने पर ऐसा लगता है कि हमारे जो शासनकर्ता लोग हैं उनकी दृष्टि में तस्कर व्यापार करने वाले इतने अधिक हो गये और इतने खूंखार हो गये कि उनको पकड़ने के लिये हमको अधिक से अधिक शक्ति चाहिये। इसके जितने भी क्लोजेज देखिये उनसे ऐसा ही लगेगा कि इस दिशा में हम सख्ती बरत रहे हैं। दूसरी तरफ जब वह रिपोर्ट देखिये, बाम्बे कस्टम हाउस क्लियरिंग एजेंट्स एसोसिएशन की, भारत चैम्बर आफ कामर्स, कलकत्ता की और बेजवाड़ा ज्वेलरी एंड बुलियन मर्चेंट्स एसोसिएशन की, तो ऐसा लगेगा कि सरकार अपने हाथों में अधिक से अधिक अधिकार लेती जा रही है और उनके साथ बड़ा अत्याचार कर रही है। हमें तो दोनों की दृष्टि पर विचार करके देखना पड़ता है कि वास्तविक स्थिति क्या है। हमारी निगाह में तस्कर व्यापारी भी बहुत तेज हैं, बहुत खूंखार हैं और इतने खतरनाक हैं कि वे सरकार और

कस्टम के अधिकारियों के तत्पर प्रस्ताव
 पर भी उनको खेता देकर चसकर
 काम करते रहते हैं। दूसरी तरफ सरकारी
 कर्मचारी भी ऐसे खूब हैं कि कस्टम की
 सुविधा को भी आती होगी वह नामिनल आती
 होगी, मगर वे अपना घर भरने में कभी भी
 पीछे नहीं हटते। दोनों तरफ की बातें हैं और
 हमको दोनों तरफ की बातों पर विचार
 करना है। इसके कई प्रमाण मिल सकते
 हैं। ये जो तस्कर के व्यापारी हैं उनके कई
 कैसेज की रिपोर्ट अखबारों में हुई। अभी
 थोड़े दिन हुए, एक सिन्धी कन्या की रिपोर्ट
 हुई थी। वह बड़ा लम्बा चौड़ा केस था।
 नाम में भूल गया। शायद अडवानी थीं।
 इस तरह के एक नहीं, कई उदाहरण हैं।

एक माननीय सदस्य : नाम आप भूले
 तो नहीं।

श्री विमलकुमार मन्नालालजी चौरडिया :
 नाम इस लिये याद रह गया कि मेरे एक मित्र
 भी अडवानी हैं। तो वह केस भी चला था।

श्री बी० आर० भगत : चल रहा है।

श्री विमलकुमार मन्नालालजी चौरडिया :
 चल रहा है, इसलिये उसपर कमेंट करना
 ठीक नहीं है। मगर जो केस का फैक्ट है उसको
 देख करके ऐसा लगता है कि कैसे खतरनाक
 काम भी तस्कर के व्यापारी कर सकते हैं।
 कई कर्मचारियों पर भी उसके आरोप
 आते हैं और ऐसा लगता है कि जब वे
 विदेश जाते हैं तो पता नहीं क्या क्या कर
 सकते हैं। वैसे सप्रू साहब आदरणीय भी
 हैं और एम० पी० भी हैं और उनके चेहरे
 से ऐसा नहीं लगता कि वे ऐसा काम कर
 सकते हैं कि वे कहीं जायें तो चीजों को ले
 करके अपनी जेबों में भर लें और स्मगलिंग
 करें। उसके लिए तो यह प्रश्न पैदा
 होता नहीं। मगर यह भी सही है कि किसी
 के चेहरे पर यह भी नहीं लिखा है कि वह
 ईमानदार है या बेईमान। तो इसलिये बड़ी
 कठिनाई पड़ जाती है मगर यह बात निर्विवाद

है कि तस्कर के व्यापारी बहुत तेज हैं और
 जिसनी भी प्रशासक कस्टम अधिकारियों की
 हमारे सप्रू साहब कर या अकेबर अली साहब
 साहब कर में उससे पूर्ण रूप से सहमत होते
 हैं। हमारे कस्टम के अधिकारी गड़बड़
 करने में ज्यादा तेज हैं। वह आदमियों के
 मामले में उतने तेज नहीं हैं।

श्री बी० आर० भगत : व्यापारी कहां से
 आ गया ?

THE DEPUTY CHAIRMAN: You
 may continue tomorrow. The secre-
 tary will read messages.

MESSAGES FROM THE LOK SABHA

I. THE PONDICHERRY (ADMINISTRATION) BILL, 1962

II. THE INDIAN TARIFF (AMENDMENT) BILL, 1962

SECRETARY: Madam, I have to re-
 port to the House the following mes-
 sages received from the Lok Sabha,
 signed by the Secretary of the Lok
 Sabha:—

I

"In accordance with the provi-
 sions of Rule 96 of the Rules of
 Procedure and Conduct of Business
 in Lok Sabha, I am directed to en-
 close herewith a copy of the Pondi-
 cherry (Administration) Bill, 1962,
 as passed by Lok Sabha at its sitting
 held on the 22nd November, 1962."

II

"In accordance with the provi-
 sions of Rule 96 of the Rules of
 Procedure and Conduct of Business
 in Lok Sabha, I am directed to en-
 close herewith a copy of the
 Indian Tariff (Amendment) Bill,
 1962, as passed by Lok Sabha at its
 sitting held on the 22nd November,
 1962."