

14.52 hrs.

MR. CHAIRMAN: Now, we will take up Item No. 14. Shri P. Chidambaram.

THE MINISTER OF FINANCE (SHRI P. CHIDAMBARAM): I beg to move :

"That the Bill to amend the Prevention of Money-Laundering Act, 2002, be taken into consideration."

Sir, the Money-Laundering Act was passed by this House in the year 2002, and number of steps have to be taken to implement it. Sir, two kinds of steps were required. One was to appoint an authority who will gather intelligence and information, and the other was an authority to investigate and prosecute. This Act was made to implement the political declaration adopted by the Special Session of the UN General Assembly in 1999. Section 1 (3) of the Act stipulates that the Act will come into force on such date as the Central Government may by notification appoint. While we were examining the question of notifying the Act, I found that there was certain lacunae in the Act. I regret to say that not enough homework had been done in the definitions, and in the division of responsibility and authority. So, in consultation with the Ministry of Law, we came to the conclusion that these lacunae had to be removed. Broadly, the reasons for the amendment are the following.

Under the existing provisions in Section 45 of the Act, every offence is cognizable. If an offence is cognizable, then any police officer in India can arrest an offender without warrant. At the same time, under Section 19 of the Act, only a Director or a Deputy Director or an Assistant Director or any other officer authorised, may arrest an offender. Clearly, there was a conflict between these two provisions. Under Section 45(1)(b) of the Act, the Special Court shall not take cognizance of any offence punishable under Section 4 except upon a complaint made in writing by the Director or any other officer authorised by the Central Government. So, what would happen to an arrest made by any police officer in the case of a cognizable offence? Which is the court that will try the offence? Clearly, there were inconsistencies in these provisions.

They have now been removed. We have now enabled only the Director or an officer authorised by him to investigate offences. Of course, we would, by rule, set up a threshold; and, below that threshold, we would allow State police officers also to take action.

The second anomaly that we found was that the expression "investigation officer" and the word "investigation" occur in a number of sections but they were not defined in the Act. Consequently, one has to go to the definition in the Criminal Procedure Code and that Code provides only "investigation by a police officer or by an officer authorised by a magistrate". So, clearly, there was a lacuna in not enabling the Director or the Assistant Director under this Act to investigate offences. That has been cured now.

The third difficulty that I found was that the Act contemplates an Appellate Tribunal under Section 25 but there might not be enough cases for a full-time Appellate Tribunal. An Appellate Tribunal means a lot of money. There are other Appellate Tribunals in similar Acts. So, we could authorise those Appellate Tribunals to function as Appellate Tribunal under this Act. After all, it is the same retired High Court Judge or a serving High Court Judge who is going to be there. So, part of the time, he would devote to dealing with appeals arising under some other Acts; and, part of the time, he would deal with appeals arising under this Act. At least in the initial years, we do not think, there would be enough work for a full-time Appellate Tribunal.

What we are doing is, we are inserting a new Section, 2 (n) (a) defining the term, 'investigation'; making an amendment to Sections 28, 29 and 30, dealing with tribunals; amending Sections 44 and 45 of the Act to make the offence non-cognisable so that only the Director could take action; and also making consequential changes in Section 73. I request hon. Members to kindly approve of these amendments so that the Act could be amended quickly and we could bring it into force.

MR. CHAIRMAN : Motion moved:

"That the Bill to amend the Prevention of Money-laundering Act, 2002, be taken into consideration."

SHRI RUPCHAND PAL (HOOGHLY): Sir, I support the Bill and I appreciate the new Government and the new Minister of Finance.

While going through several provisions of the Bill, the hon. Minister faced certain hurdles in the process of

implementation and he has come up with amendments in at least three important areas. The first is regarding the definition of 'investigation'. It was not there and so it created some confusion and a conflicting situation was created. The next is regarding the appellate tribunal. Taking into account the huge expenditure involved in setting up and running an appellate tribunal, it has been proposed that other tribunals might be authorised to look into cases, which might be few in number. That is quite right. The other amendment is regarding the inconsistency and the reference to Cr.P.C., which rendered that the Director or the Assistant Director could not take up cognisable offences. So, these anomalies have been addressed in this Bill. It has also been provided for part-time services to be derived from other appellate tribunals.

As has been stated by the hon. Minister, it was as a result of the United Nations General Assembly's Political Declaration, 1999 that the Government had brought out the original Bill. The Bill had come to the Standing Committee. I was a Member of the Committee and I had been compelled to submit a note of dissent.

15.00 hrs.

Because it seems to me that the original Bill has been very much in consistence with the political declaration. But in the Standing Committee, in the course of the deliberations, it was diluted. So, I think, there is no objection if I read only a portion of the amendment which mentions certain things which are now being looked as a cognisable offence. I quote:

"The Schedule as given in the original Bill should be kept intact and no changes or modifications should be made in the Schedule. "

But, unfortunately, the Standing Committee, in its wisdom, did not take this into account. I included all transactions, including the electronic transactions because these days electronic transaction is also an important thing. The deletion of the provisions of the Prevention of Corruption Act, 1988 would virtually allow a large chunk of the people involved in money laundering out of the purview of the Bill. So, that was my contention. But this was not taken into account in the recommendations made. I am not going into that. But still what has come today in the form of an amendment, I welcome the move that it is, to some extent, removing the infirmities in the Bill. But still, I think, this particular Bill is not going to address the dimension of the issue of generation of black money, unearthing black money and unaccounted money. The Government has taken so many steps in the form of amnesty schemes etc.

Even while I was speaking on the Finance Bill currently, I mentioned that the hon. Minister of Finance had taken some steps. His original proposal was to levy some tax for withdrawal of certain amount of cash. Now, he has raised that. His plea was correct and I do not dispute it. When he was replying to the debate, he had made certain illustrations about huge amount, crores and crores of rupees being transacted in cash. He wanted to trace the sources of this black money and he wanted to zero in on the operators. It is a good idea. But what I added there that this is just a peanut because according to an estimate, 40 per cent of our GDP is unaccounted and according to a study only three per cent of the Indian population is involved in these operations, be it *hawala*, in the form of remittances.

In one recent American study of 2004, it was mentioned that after the liberalisation process, what is noticed is that there are 77 countries in the world and out of that, India and Pakistan are two such countries where the generation of black money, unaccounted money, drug money, terrorists-fed money and all these things are growing, and growing in volumes, and newer and newer areas of operations are coming. We know how drug money and terrorist money is used. So, 40 per cent of our GDP is unaccounted. Once I stated that falsification of accounts by Indian business houses is one of the areas and we wanted to address the issue. Say, for example, in one case we found in the JPC that to find out discrepancy is not our job. It is the job of the Chartered Accountants involved. I can name GTB case. When we examined the Institute of Chartered Accountants, they said what can be done and all those things.

Now, this new Government has tried to address the issue to plug the loophole and to institute a confidence and all these things. There is the second account book and the first account book. लोग दो-दो खाते खोल लेते हैं । एक खाते में कुछ और डीटेल होती है और दूसरे खाते में कुछ और डीटेल होती है । एक खाता इनकम टैक्स के लिए होता है और दूसरा खाता किसी दूसरे काम के लिए रखते हैं । You know all these things....(*Interruptions*)

SHRI P. CHIDAMBARAM: How do you know all these things.? ...(*Interruptions*)

SHRI RUPCHAND PAL : I know all these things because you told us something some time.

We know all these things. I raised this issue that falsification of accounts is a cognisable offence, but to their wisdom - the supporters mostly belong to that section - they just did not agree with me and said "No, how can it be that falsification of accounts is a cognisable offence?" I said "if you go to that level, you will find out." I had

repeatedly been saying two or three things.

I am giving you only one example because he had been the Finance Minister at that time also when Amnesty Scheme VDIS was introduced in 1997. During the course of examination, I asked "What is the amount declared?" They told that it was Rs. 33,000 crore or something like that. I also asked how much tax was deposited. They also told that more than Rs. 9,000 crore were deposited as tax. I asked "How many people did not pay even a single paisa as income tax even after enjoying the whole scheme?" They said that it could not be divulged because that was one of the provisions of the VDIS. In such a way, one after another, whenever I wanted to go deep into the source of black money, generation of black money, parallel economy and how it is destroying the whole structure, I could not get the answer. The well-intentioned schemes are being destroyed by the parallel economy. The idea is that India is a very prone area for operations of drug money, *hawala* money and terrorist money. Particularly in the border areas, there have been cases where it was detected that international terrorist groups and drug operators have been using certain parts of India and certain sections of Indian people as conduits and taking advantage of the lacunae in the system and lacunae in the laws.

So, I had been insisting that money-laundering is a very grave cognizable offence and there should be some deterrence. If one is caught for the offence of money-laundering and using that money for sensitive purposes, what is the punishment? You may say that the judicial system is such that it all depends on how Judiciary is acting. We know how Judiciary is sometimes going beyond its jurisdiction. We have a very recent case in mind where what should have been taken into consideration by the Legislature only was being taken as an area of consideration by some other organ of the Indian State. That is a different question. What I want to emphasise is that while I welcome the measures, the amendments that have been proposed here, I would say that the generation of black money, unearthing black money, unaccounted money, parallel economy, drug money and terrorist money is a matter of global concern.

THE MINISTER OF WATER RESOURCES (SHRI PRIYA RANJAN DASMUNSI): Temple money also.

SHRI RUPCHAND PAL : If you allow me, I can speak for half an hour on temple money and how they have set up very many agencies which were operating. I can name some of the Swayamsewak Sangh people who are involved in all these things, but that can just be taken into consideration in a different debate because the hon. Minister is insisting that he is very much interested in concluding the debate today itself. I have no objection.

While supporting this Bill, I would insist on three things. One, there have been two Standing Committee Reports. One is of a Select Committee of Rajya Sabha. It was presented on 24th July, 2000. They had made certain very important recommendations. I have been mentioning the recommendations where I had submitted the Note of Dissent. It was a Report presented during Twelfth Lok Sabha. It was submitted on 4th March, 1999. Because of the time constraint, I am not going into all the details, but there have been very many important recommendations, particularly if you look at some of the points made by me in the form of Note of Dissent.

I would particularly like to know about the cognizable offence, and the deterrent part. A number of people are being caught. Why should a Member of Parliament -- if he is caught in a money-laundering case -- not be appropriately dealt with? It was there in Pakistan, and in some other countries. What is the deterrent, if someone higher-up in the society like a Legislator or an Executive or even a Bureaucrat was involved in terrorist money, drug money, etc.?

MR. CHAIRMAN: Please conclude your speech.

SHRI RUPCHAND PAL : Yes, Sir, I am concluding. I would like to be satisfied on the deterrent part; the cognisable offence part; falsification of accounts as one of the offences; etc. while the hon. Finance Minister gives his reply.

What is happening to those people who enjoyed the amnesty schemes, but did not even pay a single paisa after enjoying the amnesty schemes? There is a provision of non-disclosure, but it cannot be that the Parliament can be denied of such an information.

Once again I support the amendments. I welcome the fact that the hon. Finance Minister has applied his mind. I am saying this because they have all along been -- these people, who are abstaining or enjoying life -- keeping themselves away from these responsibilities. They had not applied their mind. I fully appreciate the position taken that these are the three corrections being made. I once again welcome, and support the Bill.

SHRI S.K. KHARVENTHAN (PALANI): Sir, I rise to support the further amendment of the Prevention of Money-laundering Act, 2002.

According to Section 3 of the main Act, money-laundering means :

"Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is

में इसमें कहना चाहूंगा कि आपने यह प्रावधान किया है कि दोषी व्यक्तियों को और उनकी कम्पनियों को जेल और जुर्माना हो सकता है। आप किसी व्यक्ति को तो जेल भेज सकते हैं, लेकिन कम्पनी पर कैसे अंकुश लगाएंगे? इसके लिए आपको कोई प्रावधान करना पड़ेगा। दूसरी जो बहुत महत्वपूर्ण बात इस बिल में है, जो ध्यान देने योग्य बात है कि **अधिसूचना** (व्यवधान)

सभापति महोदय : आज प्राइवेट मैम्बर्स बिजनेस है, इसलिए समय का ख्याल रखिये। 3.30 बजे से प्राइवेट मैम्बर्स बिजनेस शुरू होगा।

श्री शैलेन्द्र कुमार : इसका राजनैतिक दुरुपयोग नहीं होना चाहिए, इस ओर भी हमें विशेष ध्यान देना पड़ेगा, चाहे आपको जांच की एक विशेष एजेंसी बनानी पड़े, उससे इसे आप दुरुस्त कर सकते हैं। दूसरी बात यह है कि तस्करी, नशीले या अन्य पदार्थों से अवैध ढंग से जो धन वसूलने की बात है या फर्जी तरीके से रोजगारों में मुनाफा दिखाकर अवैध धन को वैध बना लेते हैं, उस ओर भी हमें विशेष रूप से देखना पड़ेगा। खासकर जो अलगाववादी, फिरकापरस्त या तमाम ऐसी ताकतें हैं, जो अवैध धन लगाकर उग्रवाद को बढ़ावा देती हैं, उस ओर भी हमें विशेष ध्यान देना पड़ेगा।

इस वर्ष आपने छापों में सबसे बड़ा जो काम किया है, उसमें जयपुर सहित देश की 249 जगह आपने सी.बी.आई. द्वारा छापा और आयकर विभाग द्वारा छापा डाला गया, जिसमें 126 सरकारी अधिकारी दोषी पाये गये और 194 लोगों के खिलाफ आपने 86 मामले दर्ज किये हैं, लेकिन उनका भी अभी कोई विशेष नतीजा सामने नहीं आया है, जबकि छापे के दौरान एक करोड़ रुपये नकद और 10 करोड़ रुपये की चल, अचल सम्पत्ति जब्त की गई है। आपने बताया कि 2003 में 21 करोड़ रुपये नकद और 37 करोड़ रुपये के जेवरों, ये एक हजार के उम्र छापों में आपने कुल 85 करोड़ रुपये बरामद किये हैं तो चाहे आयकर विभाग हो या सी.बी.आई. हो, ऐसा लगता है कि यह केवल पेड़ की फुनगी को तोड़ने वाली बात है, पेड़ में जो तमाम बीमारियां हैं, उन पर हम विशेष ध्यान नहीं दे पा रहे हैं। **अधिसूचना** (व्यवधान) बस, मैं खत्म कर रहा हूँ।

पूर्व सतर्कता आयुक्त श्री एन. विठ्ठल साहब ने कहा कि हमारा लोकतंत्र भ्रष्टाचार पर आधारित है, यह बहुत शर्मनाक बात है। इस पर भी हमें ध्यान देना चाहिए और खासकर जो बड़े-बड़े धनपति लोग हैं, वे तो टैक्स बचाने के लिए वकीलों से सलाह कर सकते हैं, लेकिन मध्यम वर्ग की सोच अलग है। वे कहते हैं कि हम अगर किसी तरीके से मेहनत मशकत करके धन कमा रहे हैं तो उस पर भी टैक्स लगता है। इस प्रकार से हमें मध्यम वर्ग को बचाना है। खासकर जो तमाम लोग, ऐसा काला धन इकट्ठा कर रहे हैं, उन पर रोक लगानी है।

दूसरी बात, दिल्ली के सदर बाजार में 80 प्रतिशत व्यापार बिना बिल के होता है। आपने वेट लगाया है, उससे यह कंट्रोल होगा और जो ईमानदार व्यापारी हैं, उनको इससे फायदा होगा।

सभापति महोदय, मैं इन्हीं शब्दों के साथ, आपने मुझे बोलने का मौका दिया, आपको बहुत-बहुत धन्यवाद।

MR. CHAIRMAN : Shri Suravaram Sudhakar Reddy. You will take only two minutes.

SHRI SURAVARAM SUDHAKAR REDDY (NALGONDA): Thank you, Sir.

We are all naturally concerned about money-laundering and I rise to support the Bill. However, I am afraid, in spite of the explanation of the hon. Finance Minister, omitting of clause (a) of Sub-section (1) of Section 45 of the Prevention of Money-laundering Act, 2002 may soften the Act further. It may be taken advantage of by some people. There is a necessity for more effective machinery. We do not know how many people could be punished under this Act till now. Large amounts of black money continue to exist.

On certain cases relating to *havala*, very stringent action was taken in the past and important people were arrested. However, recently it was found that crores and crores of rupees are still being transferred in the name of *havala*. So, there is a necessity for more powerful machinery and a will on the part of the Government to unearth the black money in order to stop the source of black money. If this cannot be done, there will be no use of having a powerful Act. I hope these new amendments will certainly help the Government to utilise the existing machinery in a more proper manner. I appeal to the hon. Finance Minister to rethink whether omitting Section 45(1)(a) will help.

SHRI P. CHIDAMBARAM: Which clause you said we have omitted?

SHRI SURAVARAM SUDHAKAR REDDY : Clause (a) of Sub-section (1) of Section 45 of the Prevention of Money-laundering Act, 2002. That is mentioned in para 2(c) of the Statement of Objects and Reasons.

SHRI P. CHIDAMBARAM: Okay, I will explain that.

SHRI SURAVARAM SUDHAKAR REDDY : Thank you.

SHRI P. CHIDAMBARAM : Sir, first to answer Mr. Sudhakar Reddy, Section 45(1)(a) is being omitted because, if the offence is cognizable, then any police officer in this country can arrest without a warrant. Section 19 says, only the Director or Assistant Director should investigate the offence. There is a conflict. Therefore, we are making it non-cognizable. But, investigation will be by the Director. We will authorise, up to a threshold, State police officers also to investigate offences. That is why Section 45(1) (a) is being omitted.

As far as the point made by Shri Kharventhan is concerned - he asked me not to appoint a retired judge - I am

afraid, you will not get serving judges to serve on this tribunal. Serving judges will be quite happy to serve in the High Court which enjoys, of course, much greater authority and prestige. You will only get judges who have retired from the High Court, or retired from the Supreme Court, to serve on these tribunals. Anyway, we are not going to appoint a new judge. We are going to take an existing tribunal and make that the Appellate Tribunal here.

Shri Rupchand Pal, for whom I have great respect, asked as to what about the deterrence. We are not amending Section 3 or Section 4. Section 3 and Section 4 are intact. Section 3, you will recall, defines the offence of money-laundering, and Section 4 provides for punishment for money-laundering. They are not being diluted.

He wanted to know why I have not included falsification of accounts in the Schedule. I think the answer is reasonably simple. Let me try to explain. This Act deals with an offence called money-laundering which is defined as 'proceeds of a crime'. The crimes are listed in the Schedule. If out of that crime money is made – for example, out of murder there is money involved, out of arms smuggling there is money involved, out of prostitution there is money involved – and that money is laundered through the system, that is what is hit by this Act. Falsification of accounts is not in any way taken away. That is Section 477A of the Indian Penal Code. While committing the offence of money-laundering if anyone commits an offence of falsification of accounts, he will be prosecuted both under this Act for money-laundering and under the IPC for falsification of accounts.

It is not as though falsification of accounts is not going to be prosecuted. I think, I have answered that.

Regarding VDIS, I am looking into the matter. There are a certain number of, what we call, 'stop filers'. We assume that the man who was declared under VDIS would file income-tax returns from the subsequent years. I am aware that some did not file the income-tax returns in the subsequent years. What should have happened is that the Government which succeeded the United Front Government should have gone into the matter. We were not there. Now, we have come back after six years. We will go into the matter to find out how many people have stopped filing and why they have stopped filing. I am looking into the matter. Although it is not connected with this Bill, I will look into the matter. I request that the Bill be passed.

DR. CHINTA MOHAN (TIRUPATI): How many people are involved in this?

SHRI P. CHIDAMBARAM: I am not answering that now. It is a separate issue. I will answer that. It has nothing to do with this Bill.

MR. CHAIRMAN : The question is:

"That the Bill to amend the Prevention of Money-laundering Act, 2002, be taken into consideration."

The motion was adopted.

MR. CHAIRMAN: The House will now take up clause-by-clause consideration of the Bill.

The question is:

"That clauses 2 to 8 stand part of the Bill."

The motion was adopted.

Clauses 2 to 8 were added to the Bill

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

SHRI P. CHIDAMBARAM: Sir, I beg to move:

"That the Bill be passed."

MR. CHAIRMAN: The question is:

"That the Bill be passed."

The motion was adopted.

