

14th February 1944

# LEGISLATIVE ASSEMBLY DEBATES

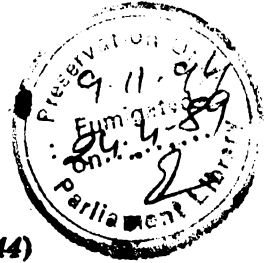
## Official Report

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Volume I, 1944

*(7th February to 28th February, 1944)*

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# TWENTIETH SESSION

OF THE

# FIFTH LEGISLATIVE ASSEMBLY,

1944



# LEGISLATIVE ASSEMBLY

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*President :*

The Honourable Sir ABDUR RAHIM, K.C.S.I.

*Deputy President :*

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*Panel of Chairmen :*

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*Assistants of the Secretary :*

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*Marshal :*

Captain Haji Sardar NUR AHAMAD KHAN, M.C., I.O.M., I.A.

*Committee on Petitions :*

Mr. AKHIL CHANDRA DATTA, M.L.A. (*Chairman*).

Syed GHULAM BHIK NAIRANG, M.L.A.

Mr. GOVIND V. DESHMUKH, M.L.A.

Sardar SANT SINGH, M.L.A.

Mr. N. M. JOSHI, M.L.A.

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# LEGISLATIVE ASSEMBLY.

Monday, 14th February, 1944.

The Assembly met in the Assembly Chamber of the Council House at Eleven of the Clock, Mr. President (The Honourable Sir Abdur Rahim) in the Chair.

## STARRED QUESTIONS AND ANSWERS.

### (a) ORAL ANSWERS.

†88\*—105\*.

ABOLITION OF THE LOWER GAZETTED SERVICE ON INDIAN RAILWAYS.

‡106. \*Mr. Lalchand Navalrai: Will the Honourable Member for Railways be pleased to state:

(a) what progress has been made to arrive at a decision in connection with the abolition of the Lower Gazetted Service on Indian Railways, since his reply to starred question No. 3, asked on the 8th November, 1943; and

(b) when the final decision is likely to be taken?

**The Honourable Sir Edward Benthall** (a) and (b). I shall be referring to the matter in my Budget speech.

## METHODS OF RECRUITMENT THROUGH SUBORDINATE SERVICES COMMISSION ON NORTH WESTERN RAILWAY.

‡107. \*Mr. Lalchand Navalrai: Will the Honourable Member for Railways be pleased to state:

(a) what categories of Railway appointments are filled through the agency of the North Western Railway Subordinate Services Commission;

(b) which of these posts are filled as a result of the competitive examination held by the Commission, and which of them on selection by the Commission;

(c) if no appointments are made through the agency of the North Western Railway Subordinate Service Commission by competitive examination, why; and

(d) whether the Honourable Member is aware that all appointments even in the lowest subordinate service in the Posts and Telegraphs Department are made by competitive examination; if so, whether the Honourable Member proposes to adopt a similar policy on the North Western Railway, specially when a Subordinate Services Commission has been appointed for recruitment on this Railway; if not, why not?

**The Honourable Sir Edward Benthall:** (a) All subordinate appointments on the Railway.

(b) A large number of posts, particularly those not requiring technical qualifications are filled up as a result of an examination-cum-selection.

(c) Does not arise.

(d) Yes; I am satisfied that the method now adopted by the North Western Railway Subordinate Services Commission is satisfactory and suited to the requirements.

## TRANSFER OF TWO SIGNAL ENGINEERS FROM EAST INDIAN RAILWAY TO NORTH WESTERN RAILWAY.

‡108. \*Mr. Lalchand Navalrai: (a) Will the Honourable Member for Railways be pleased to state whether it is a fact that in December, 1942, the cadre of officers in the Railway Signal Engineering Department for the various State-managed Railways was separated with the approval of the Secretary of State for India? Is it also a fact that the officers in these branches were required to look for promotion on the particular State Railway they were employed?

(b) Is it a fact that two Signal Engineers were transferred from the East Indian Railway to the North Western Railway after the issue of the orders

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†For these questions and answers, see pages 226—34 of these debates.

‡Answer to this question laid on the table the questioner being absent.

referred to in part (a) above, to officiate as Deputy Signal Engineers? If so, why?

(c) If the reason for the transfer of the East Indian Railway officers was their seniority, will the Honourable Member be pleased to state what was the significance of separation of cadres on the different railways, and whether the General Manager, North Western Railway, protested? If so, will the Honourable Member please lay a copy of the same on the table of the House?

(d) What was the effect of these importations on the staff on ranks lower than the Deputy Chief Engineer, Signals, on the North Western Railway?

(e) Do Government propose to return the East Indian Railway officers, referred to in part (b) above, to their parent Railway? If not, is it proposed to follow the policy of general seniority of officers in these posts on various State-managed Railways?

**The Honourable Sir Edward Benthall:** (a) The orders of December 1942, to which the Honourable Member refers, involve the separation of the cadres in all Departments of State-managed Railways but Government retain discretionary power to transfer officers from one Railway to another in the public interest.

(b) An officer from the East Indian Railway was selected as Deputy Chief Engineer, Signals, on the North Western Railway when the previous Deputy Chief Engineer, Signals, retired. As this officer was on military service, another officer was selected in his place also from the East Indian Railway to officiate as Deputy Chief Engineer, Signals, N. W. Railway.

(c) Does not arise.

(d) None.

(e) I would refer the Honourable Member to the reply to part (b). Only one officer was actually transferred to the North Western Railway and it is not intended at present to re-transfer him. The answer to the second part is in the negative. I would refer the Honourable Member to the reply I have just given to part (a). The transfer of the officers in question was in the interests of the public service.

#### UNSTARRED QUESTION AND ANSWER.

##### EMPLOYEES DISCHARGED ON NORTH WESTERN RAILWAY.

**44. Mr. Lalchand Navalrai:** (a) With reference to the reply to my unstarred question No. 13, asked on the 12th November, 1943, calling for figures of employees discharged on the North Western Railway, is the Honourable the Railway Member aware that the information requested for is readily available, as it is required to be kept by all Divisions of the North Western Railway, *vide* instructions contained in Appendix (H) of the Agent's Circular 1 of 1936?

(b) Will the Honourable Member be now pleased to state the number of employees discharged from service as a disciplinary measure in each Division of the North Western Railway, separately, during the financial years 1940-41, 1941-42, 1942-43 and for the nine months ending 31st December, 1943?

**The Honourable Sir Edward Benthall:** (a) and (b). Government is aware that the information is available but its compilation and analysis are not easy and cannot be undertaken under present circumstances.

#### TRANSFERRED STARRED QUESTIONS AND ANSWERS.†

##### MEETINGS OF THE INDIAN SOLDIERS' BOARD.

**88. \*Mr. Govind V. Deshmukh:** Will the Honourable the Defence Member please state the number of meetings held, if any, of the Indian Soldiers' Board and the subjects discussed at those meetings from the year the Board was constituted to the end of 1943 with dates thereof?

**Mr. C. M. G. Ogilvie:** 111 meetings have been held and a very large number of subjects have been discussed. Government regret that in view of the time and labour involved they cannot undertake to furnish a list of all these subjects.

†The meeting of the Assembly that was to be held on the 11th February, 1944, having been cancelled, the answers to starred questions for that day were, in pursuance of convention, laid on the table of the House today.—*Ed. of D.*

The functions of the Indian Soldiers' Board are defined in a Government of India Resolution of the 7th February, 1919. They are *inter alia* to secure Government employment for ex-servicemen, to provide for educational concessions for children of soldiers, to arrange for the after-care of the wounded and incapacitated servicemen, and to safeguard the general interests of servicemen and their families.

Printed copies of the annual report on the working of the Indian Soldiers' Board up to the year 1940-41 are available in the Library of the House. Subsequent reports have not been printed in view of the need for economy in paper, but summaries will be placed in the Library in due course.

WOMEN'S ORGANISATION OF THE NATIONAL WAR FRONT.

89. \*Mr. Govind V. Deshmukh: Will the Honourable Member for Information and Broadcasting please state:

(a) the exact nature of the work carried on by the Women's Organisation of the National War Front and its Lady Organiser, Begum Shah Nawaz, besides making contacts and speeches;

(b) the names of the helpers of the Lady Organiser, their qualifications and the province they belong to; and

(c) if this Women's Organisation has been of any use in securing any number of women for the Women's Auxiliary Corps (I) after the last session of the Assembly?

The Honourable Sir Sultan Ahmed: (a) Begam Shah Nawaz's work as Lady Organiser, National War Front, was to propagate the National War Front movement among women in India and the most effective means employed by her were contacts and speeches.

(b) The Lady Organiser was not given any staff by Government except a Stenographer, but the Provincial Organisers of the National War Front gave all necessary help during her tours.

(c) The Women's organisation of the National War Front ceased to exist before the last session of the House; hence the question does not arise.

PURCHASING GOLD FOR SALE IN INDIA.

90. \*Mr. Govind V. Deshmukh: Will the Honourable the Finance Member please state:

(a) if the Government of India are purchasing gold to sell it in India; if so, from what countries, through which agencies and on what terms; and

(b) whether Government make any profit; if so, how it is utilised?

The Honourable Sir Jeremy Raisman: (a) No.

(b) Does not arise.

LIMIT ON STERLING SECURITIES TO BE HELD BY RESERVE BANK OF INDIA.

91. \*Mr. Govind V. Deshmukh: Will the Honourable the Finance Member please state if Government have considered the effect of putting now a maximum limit on the volume of sterling securities to be held by the Reserve Bank of India as a measure against inflation? What is the conclusion to which they have come?

The Honourable Sir Jeremy Raisman: To fix a maximum limit as suggested would imply that although the war continues and the need for the maximum war effort on the part of all Allied Nations is greater than ever, India's effort in goods and services to the extent that it is a financial liability of His Majesty's Government under the existing settlement, should cease at an arbitrarily chosen point. This would involve serious damage to the cause of the Allied Nations and delay the victorious conclusion of the war. Alternatively, it would involve the assumption by India of the financial liability for all the goods and services which she continues to contribute to the war effort.

The Government have, however, in consultation with His Majesty's Government been considering to what extent the demands made on India's economy could be mitigated or met from alternative sources of supply. For the rest they must, like other belligerent nations, endeavour to neutralize, by such action as lies within their power, the inflationary tendencies which result from a high rate of war expenditure in the country. This course they are

pursuing, and I shall deal with the subject at greater length in my Budget Speech.

#### WAR FUND COLLECTIONS.

**92. \*Mr. G. Rangiah Naidu:** Will the Honourable the Finance Member please state:

(a) what the amount of War Fund collections is in the country province-wise in 1940, 1941, 1942 and 1943;

(b) how much of the amount collected has been spent in India, and how much outside India; and

(c) what agencies are employed by Collectors in provinces to collect war funds?

**The Honourable Sir Jeremy Raisman:** (a) and (b). As the Honourable Member is aware, Provinces have their own separate War funds, information with regard to which is not readily available here. The accounts of His Excellency the Viceroy's War Purposes Fund also are kept on a "purpose" as distinct from an "area" basis and it is not possible, therefore, to give the information in the form asked for. I lay a statement on the table showing the subscriptions to His Excellency the Viceroy's War Purposes Fund during the four years 1940 to 1943, and the amounts utilised from the Fund both inside and outside India. Apart from the grants made by His Excellency in consultation with the Appeal Committee, payments have in all cases been made in accordance with the wishes of the donors.

(c) The Government of India have no information.

*Statement showing the receipts and payments in His Excellency the Viceroy's War Purposes Fund during the years 1940, 1941, 1942 and 1943.*

	1940.	1941.	1942.	(In lakhs.) 1943
I. Receipts during the year . . . . .	2,26	3,05	1,97	1,69
II. Expenditure during the year :				
(a) India . . . . .	40	1,48	83	1,80
(b) Overseas . . . . .	1,34	1,57	55	19
TOTAL . . . . .	1,74	3,05	1,38	1,99

#### COLLECTION OF MONEY ON WAR BONDS.

**93. \*Mr. G. Rangiah Naidu:** Will the Honourable the Finance Member please state:

(a) the methods that are adopted by Government to collect money from the people against war bonds;

(b) whether orders were issued either by the Central Government or Provincial Governments to Collectors of Districts to collect money on war bonds from public, especially from the agriculturists, fixing certain rate per acre on their holdings and also per candy of produce of foodgrains and commercial crops; and

(c) if it is a fact that School Masters and Sub-Registrars are also compulsorily asked to collect money on war bonds, fixing certain quota for each of them?

**The Honourable Sir Jeremy Raisman:** (a) The methods adopted by Government to collect subscriptions are the common and well known ones, viz. a loan programme designed to meet varying needs, persuasive publicity, and the offer of facilities for the tendering of subscriptions as far as possible at all places convenient to subscribers. A scheme is about to be introduced which is calculated to encourage and assist small investors in making their investments. A centrally paid staff will move about in the countryside, collect subscriptions, purchase savings certificates therewith and deliver the certificates to the investors in their own villages.

(b) and (c). It is absolutely imperative to stimulate savings to the maximum extent possible in order to check the degree of inflation which would otherwise result from the vast outlay in this country demanded by the effective prosecution of the war.



As conditions vary so much throughout India no rigidly uniform procedure has been laid down by the Centre for securing this end. Provincial Governments have been left to choose out of their own experience the manner of conducting their savings campaigns which they consider most likely to produce good results.

#### STATEMENT ON WAR SITUATION.

**94. \*Mr. Lalchand Navalrai:** Does the War Secretary propose to make a full statement on the present war situation at the different theatres of War in India and Italy? How many Indian, British and American troops of all ranks are stationed in India for the defence of India?

**Mr. C. M. Trivedi:** Sir, I lay a statement on the table of the House on the present war situation. As regards the latter part of the Honourable Member's question for security reasons I am unable to disclose the size of the forces stationed in India for the defence of India.

#### *Statement.*

The columns of the daily press bear striking witness to the steady progress of the war in general on all fronts. But the hardest battles are still to come in the West as well as in the East. Allied dominance over the U-boat and the great sea routes in the West not only continues but has been increased by the Royal Navy's success in putting the "Tirpitz" out of action and by the sinking of the "Scharnhorst" while the use of the Azores as an Allied base has greatly strengthened our grip on the central Atlantic.

On land, Russia's magnificent Armies continue their unrelenting offensive action, switching their concentrations of force from one part of their colossal front to another with almost bewildering rapidity. In the North their forces are on the borders of Estonia. In the centre they have crossed the old Polish Frontier and in the South-West they are again developing a series of drives which must ultimately force the enemy right back into Rumania.

On the Mediterranean front the land, sea and air forces of the Allies, forces which have scarcely ceased from a continuous offensive since the attack at Alamein nearly eighteen months ago, are now striking hard against the strong and desperate defence of the German Armies guarding the road to Rome. In the offensive on the Italian mainland, troops of the 5th Indian Division have played a notable part, particularly in breaking through successive German defence lines aghast the Eighth Army's advance Northwards. It is sometimes said that this struggle in Italy is progressing slowly, but it is well to remember that it is being carried on in mountainous country, highly helpful to defence and in the most bitter weather. Moreover, the importance of the Allied offensive in Italy is amply evidenced by the number of first-class German Divisions committed to the battle of Italy and by Hitler's own bitter announcement a short time ago that the difficulties of his troops on the Russian front were largely due to the tax the Italian campaign was placing on his resources.

In the air the weight of the strategic air concentration by the United Nations against Germany itself continues to grow in strength and frequency and is bringing systematic destruction to the German home front. The effects of this must be cumulative and, as the ring closes, the weight of air attack becomes greater and greater. Significant of this development is the appointment of Lieut-General Spaatz in command of all American strategic bombing forces in the European theatre, pointing to development of even greater air attack on Germany, both from the United Kingdom and the Mediterranean. New centres in the Nazi citadel are coming within range of heavy bomb loads as our forces advance in Italy from the South. As a result many vital installations which were hastily transferred Eastwards by the Germans as the Allied Air offensive developed will become open to attack. The bomb loads now being dropped by night by the Royal Air Force are almost incredible. In three days recently a heavier weight of bombs was dropped on Berlin than the Germans themselves dropped on London during the whole Battle of Britain.

While the war in the West is making steady progress and working up to the full climax which the opening of yet another front on the European Continent will mean, preparatory moves for more offensive action against the Japanese are going on. In the South West Pacific, General MacArthur's forces have asserted their supremacy at sea and in the air and are now engaged in strengthening their grip on New Britain and other islands which the Japanese, seized. Their advance has been slow because of the intervening stretches of ocean and the difficult nature of the terrain, but no doubt they will speed up their progress in the not so distant future. In the Central Pacific, United States Forces have penetrated the Marshal Islands group.

Nearer home, the establishment of the South East Asia Command under Admiral Lord Louis Mountbatten is the precursor of big developments when the time comes. There has been a limited advance made by the 14th Army in the Arakan, in the Chindwin Valley, and by American trained Chinese troops in the Hukaung Valley. Recently our land forces on the Burma front have been engaged in active offensive patrolling and persistent pressure on the enemy's forward positions. Our troops have shown their ability to strike hard at the Japanese whose casualties have been substantially greater than our own. At the moment,

however, the Japanese are making a counter-effort on the Arakan front to try and relieve the pressure being put on them.

The Allied Air Forces based on India and Ceylon and China have been maintaining and increasing their blows against the enemy in the whole of Burma and beyond. The effort of our air power is broadly speaking directed towards two main tasks, namely, to strike at the enemy in his air bases and the field of battle and to strike at his lines of communications and supply bases, thus further hampering the already difficult task of maintaining his forces in the field. To the weight of this regular air attack can be attributed what has been, compared with other theatres of war, the remarkable degree of immunity from concentrated air attack India's own soil has had despite the proximity of our enemy.

From our own point of view, India is now actively concerned in preparing for the day when major offensive operations will be launched by sea, land and air against our Japanese enemy. To that end immense work, not only in the training of our sea, land and air forces, but also in the development of our ports and transportation facilities, of our depots and large scale maintenance plants, is proceeding apace against the day when the full military power of the United Nations will be deployed for the ultimate, inevitable and complete defeat of Japan.

#### JAPANESE AIR ATTACKS ON INDIAN TOWNS.

95. \*Mr. Lalchand Navalrai: Will the Honourable the Defence Member be pleased to state how many air attacks Japan made on Calcutta, Chittagong, Assam and neighbouring places since this Assembly met last, and with what casualties and damage?

Mr. C. M. G. Ogilvie: There have been ten air raids in all on places in British India and one on an Indian State between the 20th November, 1943, and 5th February, 1944. The total civilian casualties in British India were 884 and the material damage in all cases was slight.

#### SCARCITY OF SMALL COINS.

96. \*Mr. Kailash Bihari Lall: Will the Honourable the Finance Member be pleased to state:

(a) if Government are aware of the hardship that the people still have to undergo on account of the scarcity of small coins;

(b) if Government are aware that much of the hardship is due to the fact of some unscrupulous people resorting to hoarding for illegal gains;

(c) if the answer to (b) be in the affirmative, what steps have been taken to prosecute such persons;

(d) how many such prosecutions have been instituted in Bihar; and

(e) if Government propose to issue instructions to District Magistrates to use stricter measures to check the malpractice with regard to small coins?

The Honourable Sir Jeremy Raisman: (a) Government are aware that although there has been substantial improvement in the small coin situation generally, inconvenience and possibly some hardship are still being experienced in certain areas.

(b) The shortage of small coin is to a large extent the result of hoarding though, so far as Government have been able to ascertain, hoarding with intent to sell at a profit has not been such an important factor as general hoarding on a small scale in order to avoid personal inconvenience and hoarding of small coin by the lower classes in preference to notes. The latter type of hoarding among cultivators in the United Provinces and Bihar largely explains the slow response in these provinces to the measures hitherto taken to restore the situation.

(c) The importance of instituting prosecutions whenever possible has been impressed on Provincial Governments on more than one occasion and the Government of India are satisfied that this is well appreciated throughout the country.

(d) Government have no information.

(e) It is for Provincial Governments to issue instructions to District Magistrates and this has already been done.

#### CENSORING OF THE STATEMENT OF MRS. SAROJINI NAIDU.

97. \*Mr. Kailash Bihari Lall: Will the Honourable Member for Information and Broadcasting be pleased to say if it is a fact that the statement of Mrs. Sarojini Naidu, clarifying the Congress position with regard to violence and

Mahatma Gandhi's attitude, was censored and not passed by the authorities without assigning any reason? If so, why?

**The Honourable Sir Reginald Maxwell:** It is true that the Chief Press Adviser with the full authority of the Government of India advised against the publication of the proceedings of Mrs. Naidu's Press conference, which went considerably beyond the objects stated by the Honourable Member. It is not the practice for the Chief Press Adviser to assign reasons for the advice nor can his advice correctly be described as censorship. The reason for advising against publication in this case was that, in the opinion of the Government of India, the statement taken as a whole was such as to encourage support for the policy and activities of unlawful associations, namely the Congress Working Committee and the All India Congress Committee.

#### INDEPENDENCE DAY ARRESTS IN DELHI.

**98. \*Mr. Kailash Bihari Lal:** Will the Honourable the Home Member be pleased to say:

(a) how many persons have been arrested in Delhi in connection with the celebration of Independence Day for substantive offence, and how many as a precautionary measure;

(b) how long Government propose to detain those persons who have been arrested as a precautionary measure; and

(c) if it is a fact that those who are detained as a precautionary measure are kept in Police Station Hajat and have not even the facilities provided in Jails?

**The Honourable Sir Reginald Maxwell:** (a) 36 persons were arrested on substantive charges and two as a precautionary measure. These two have already been released.

(b) and (c). Do not arise.

#### RECENT STATEMENT OF MRS. SAROJINI NAIDU.

**99. \*Sardar Mangal Singh:** Will the Honourable the Home Member please state:

(a) whether his attention has been drawn to a press statement by Mrs. Sarojini Naidu published in the *Tribune*, dated the 27th January, 1944;

(b) whether it is a fact that Mrs. Naidu sent a communication to the Home Department of the Government of India from Aga Khan's Palace at the time of Gandhiji's fast; and

(c) whether that communication was brought to the notice of the Members of the Executive Council, or whether any other action was taken thereon?

**The Honourable Sir Reginald Maxwell:** (a) and (b). Yes.

(c) I have nothing to add to my reply to Mr. Gupta's question No. 46 on February 8th. The proceedings of the Executive Council are confidential.

#### INDEPENDENCE DAY ARRESTS, ETC., IN INDIA.

**100. \*Sardar Mangal Singh:** Will the Honourable the Home Member please state:

(a) the total number of arrests made throughout India in connection with the Independence Day celebrations;

(b) at how many places Congress processions and gatherings were dispersed by the police; and

(c) whether it is a fact that at some places the police removed the Congress flags from the houses?

**The Honourable Sir Reginald Maxwell:** I have no information nor is it possible to collect these details without an expenditure of labour which would not be justified in war-time.

#### LIMIT ON STERLING SECURITIES TO BE HELD BY RESERVE BANK OF INDIA.

**101. \*Sardar Mangal Singh:** Will the Honourable the Finance Member please state:

(a) whether Government intend to bring forward an amending Bill to fix the upper limit of Sterling holdings by the Reserve Bank of India during this session of the Legislative Assembly; and

(b) if the answer to (a) be in the negative, whether Government are satisfied with the present position or whether they contemplate to take some action in some other form to check inflation?

**The Honourable Sir Jeremy Raisman:** (a) No.

(b) Government are fully alive to the necessity of taking whatever measures are practicable to check inflation.

**EXTRA FACILITIES TO DETENU SARDAR SARDUL SINGH CAVEESHAR.**

**102. \*Sardar Sant Singh:** Will the Honourable the Home Member be pleased to state:

(a) whether Sardar Sardul Singh Caveeshar was given any extra facilities during his detention from March to September, 1942, in the Lahore Fort over and above those allowed under the rules for security prisoners in the Punjab; if so, what those facilities were;

(b) whether he is aware of the fact that in his representations to the Lahore High Court, the Honourable the Home Member, Government of India, and other officials, Sardar Sardul Singh Caveeshar stated that no extra facilities were allowed to him beyond those allowed under the Punjab Security Prisoners Rules;

(c) whether it is a fact that Sardar Sardul Singh Caveeshar was punished during the period of his detention by the Deputy Inspector General (Criminal Investigation Department); if so, the reasons therefor; and whether he could do so under the Security Prisoners Rules;

(d) under whose order Sardar Sardul Singh Caveeshar, Lala Shanker Lal of Delhi, Mr. Dwijin Bose, Mr. Arvind Bose, nephew of Mr. Sarat Chandra Bose, were subjected to interrogation and tortured in the Lahore Fort for seven months during the year 1942; and

(e) whether it is a fact that several Government of India detenus, specially sent to the Punjab, made serious complaints in writing about the illegal and inhuman treatment meted out to them by the Punjab Criminal Investigation Department in the Lahore Fort to His Excellency the Governor in Council, His Excellency the Viceroy of India, the members of the Executive Council and the Honourable Minister of Provincial Governments and Home Member, Government of India, but they were withheld by the Punjab Criminal Investigation Department; if so, under whose orders this was done, and the reasons therefor?

**The Honourable Sir Reginald Maxwell:** (a) Yes; he was allowed the use of an electric fan and home food which are not sanctioned in the Punjab Security Prisoners' Rules.

(b) Yes; but Sardar Sardul Singh Caveeshar admitted that he was given the facilities referred to above, which he thought were admissible to him under the rules. These facilities were later withdrawn.

(c) No.

(d) Sardar Sardul Singh Caveeshar, Lala Shankar Lal of Delhi and Mr. Dwijen Bose were kept in the Lahore Fort for interrogation under the orders of the Punjab Government at the instance of the Government of India. They were not maltreated. Mr. Arvind Bose has never been detained in the Lahore Fort.

(e) Sardar Sardul Singh Caveeshar and Mr. Dwijen Bose submitted representations about their alleged maltreatment in the Lahore Fort, but as the allegations were baseless no action was taken by the Punjab Government.

● **REPRESENTATION BY SARDAR SARDUL SINGH CAVEESHAR AGAINST ILL-TREATMENT METED OUT TO HIM.**

**103. \*Sardar Sant Singh:** Will the Honourable the Home Member be pleased to state:

(a) whether he is aware of the fact that in his representation to the Lahore High Court under section 491, Indian Penal Code, in June, 1943, Sardar Sardul Singh Caveeshar made serious allegations against certain Criminal Investigation Department Officers of the Punjab Government about the illegal and criminal treatment meted out to him during his detention in the Lahore Fort in August, 1942;

(b) whether he is aware of the fact that the Lahore High Court recommended that the petitioner could file civil and criminal suits against the Criminal Investigation Department, Punjab, to get redress;

(c) whether it is a fact that Sardar Sardul Singh Caveeshar was not allowed to see his legal adviser so that he might give instructions to him to file civil and criminal suits against the Criminal Investigation Department, Punjab, for the inhuman and illegal treatment meted out to him during his detention in the Lahore Fort; if so, why; and

(d) whether it is a fact that the Punjab Criminal Investigation Department did not furnish a copy of the detention orders to Sardar Sardul Singh Caveeshar which he required for the purpose of making appeal to the Lahore High Court and to the Federal Court, India, if so, why?

**The Honourable Sir Reginald Maxwell:** (a) Yes.

(b) No.

(c) Yes; interviews with legal advisers were not permissible under the rules in force at that time.

(d) A copy of the detention order was not supplied to Sardul Singh Caveeshar but he was informed that he could see it if he wished to.

#### ILL-TREATMENT METED OUT TO GOVERNMENT OF INDIA DETENUS DETAINED IN PROVINCES.

**104. \*Sardar Sant Singh:** (a) Will the Honourable the Home Member be pleased to state the responsibility of the Government of India towards detenus detained under their orders, and sent to provinces for detention? How do the Government of India discharge those responsibilities? How do the Government of India see that their detenus are not ill-treated by the officers of the Provincial Government?

(b) Do Government know that under rulings from Indian High Courts, specially of the Lahore High Court, it is criminal to subject a person to interrogation for such a long period?

(c) If it was not under the orders of the Government of India, what action do they propose to take against those who treated their detenus in this manner in the Punjab?

(d) Do the Government of India propose to allow their detenus in the Punjab to write to them about their treatment by the C. I. D. in the Lahore Fort, and to instruct the Punjab Government not to interfere with these representations as was done in the case of Sardar Sardul Singh Caveeshar, Mr. Shanker Lal and Mr. Dwijjin Bose?

**The Honourable Sir Reginald Maxwell:** (a) Central Government security prisoners detained in Provinces are subject to the Provincial Government's Orders governing the conditions of detention of Provincial security prisoners. These, as I have told the House before, are in general conformity with certain principles laid down by the Government of India, and I am satisfied that the acceptance of these principles combined with the fact that no responsible Government would tolerate the ill-treatment of prisoners committed to its charge, is a sufficient guarantee that Central Government prisoners are not in fact ill-treated.

(b) No.

(c) I entirely repudiate the suggestion that Sardul Singh Caveeshar or any other security prisoner was maltreated.

(d) Central Government security prisoners detained in the Punjab are entitled to address petitions to the Central Government on any subject, provided that they are not improper. The Government of India have already asked the Punjab Government to forward all petitions that may be received from Central Government security prisoners.

#### ILL-TREATMENT METED OUT TO GOVERNMENT OF INDIA DETENUS DETAINED IN THE PUNJAB.

**105. \*Sardar Sant Singh:** (a) Will the Honourable the Home Member please state if it is a fact that not only Sardar Sardul Singh Caveeshar but some other

Government of India detenus, specially sent to the Punjab, have made similar complaints about the illegal and criminal treatment by the C. I. D. in Lahore Fort?

(b) Is it a fact that Lala Shanker Lal of Delhi and Mr. Dwijjin Bose of Calcutta made complaints about such treatment to the Governor General in Council and the Home Member? If such complaints have not yet been received by the members of the Government of India, does the Honourable Member propose to enquire about the same from the Provincial Government concerned?

(c) Who were the Non-Punjabi Government of India's detenus sent to the Lahore Fort, and why, and what was the purpose for which this place was chosen?

(d) Do Government propose to allow the members of this House to visit the Lahore Fort, and to see for themselves in what conditions the Government of India's detenus who were sent to that place are kept?

(e) Do Government propose to allow the members of this House to see such detenus in the Lahore Fort, and to enquire from them about their treatment in the Lahore Fort?

**The Honourable Sir Reginald Maxwell:** (a) Apart from Sardul Singh Caveeshar, Mr. Dwijen Bose made representations.

(b) No representation was received from L. Shankar Lal of Delhi. It has already been stated that a representation was made by Mr. Dwijen Bose of Calcutta. No action was taken on his representation by the Punjab Government, as his allegations were baseless.

(c) It is not clear to what period the Honourable Member's question relates. If he will be more specific, I will secure the information required by him in due course.

(d) and (e). It would not be in the public interest to allow this at present. The Honourable Member may rest assured that conditions of detention in the Lahore Fort, and the treatment of prisoners detained there, are satisfactory.

#### MOTION FOR ADJOURNMENT.

**Mr. President** (The Honourable Sir Abdur Rahim): I have received notice of a motion of adjournment from Mr. Frank Anthony, but he is not in his place.

#### DECLARATION DIRECTING CERTAIN BUDGET HEADS OF EXPENDITURE OPEN TO DISCUSSION BY THE LEGISLATIVE ASSEMBLY.

**Mr. President** (The Honourable Sir Abdur Rahim): I have to inform Honourable Members that His Excellency the Governor General has passed an order under sub-section (3) of section 67-A of the Government of India Act as set out in the Ninth Schedule of the Government of India Act, 1935, directing that the heads of expenditure specified in that sub-section, other than those specified in clause (v) thereof, will be open to discussion by the Legislative Assembly when the Budget for the year 1944-45 is under consideration.

#### APPOINTMENT OF THE HONOURABLE SIR EDWARD BENTHALL TO PERFORM FUNCTIONS OF THE FINANCE MEMBER AT RAILWAY BUDGET GENERAL DISCUSSION.

**Mr. President** (The Honourable Sir Abdur Rahim): I have also to inform Honourable Members that His Excellency the Governor General has, under rule 2 of the Indian Legislative Rules, been pleased to appoint the Honourable Sir Edward Benthall to perform the functions assigned to the Finance Member under rule 46 of the said Rules on the occasion of the general discussion appointed for Monday, the 21st February, 1944, of the statement of the estimated annual expenditure and revenue of the Governor General in Council in respect of Railways.

## ELECTION OF MEMBERS TO THE STANDING COMMITTEE FOR THE INFORMATION AND BROADCASTING DEPARTMENT.

**The Honourable Sir Sultan Ahmed** (Member for Information and Broadcasting): Sir, I beg to move:

"That this Assembly do proceed to elect, in such manner as the Honourable the President may direct, five non-official Members to serve on the Standing Committee to advise on subjects in the Department of Information and Broadcasting."

**Mr. President** (The Honourable Sir Abdur Rahim): Motion moved:

"That this Assembly do proceed to elect, in such manner as the Honourable the President may direct, five non-official Members to serve on the Standing Committee to advise on subjects in the Department of Information and Broadcasting."

**Maulvi Muhammad Abdul Ghani** (Tirhut Division: Muhammadan): Sir, will the Honourable Member kindly enlighten the House as to the terms and functions of this body?

**The Honourable Sir Sultan Ahmed**: The motion itself shows that the function of this Committee will be to advise on subjects in the Department of Information and Broadcasting. There were three meetings of this Committee last year and every time the members have taken great interest in the working of the Department and given us most valuable advice.

**Sir Muhammad Yamin Khan** (Agra Division: Muhammadan Rural): Sir, when any delegation is sent outside India will it be one of the functions of this Committee to have the matter placed before them for advice?

**The Honourable Sir Sultan Ahmed**: No, Sir.

**Mr. Lalchand Navalrai** (Sind: Non-Muhammadan Rural): Sir, may I know why this Committee is only advisory when other Standing Committees are not advisory but possess full powers?

**The Honourable Sir Sultan Ahmed**: All the other committees are also advisory, as far as I know.

**Mr. N. M. Joshi** (Nominated Non-Official): Does the Honourable Member publish an annual report on the working of this Department? I have not seen any such report, and if he publishes such a report will he be pleased to circulate it to Members of the Assembly?

**The Honourable Sir Sultan Ahmed**: Most certainly, Sir.

**Mr. President** (The Honourable Sir Abdur Rahim): The question is:

"That this Assembly do proceed to elect, in such manner as the Honourable the President may direct, five non-official Members to serve on the Standing Committee to advise on subjects in the Department of Information and Broadcasting."

The motion was adopted.

## ELECTION OF MEMBERS TO THE STANDING COMMITTEE ON EMIGRATION.

**The Honourable Dr. N. B. Khare** (Member for Indians Overseas): Sir, I beg to move:

"That this Assembly do proceed to elect, in such manner as the Honourable the President may direct, eight non-official Members to serve on the Standing Committee on Emigration during 1944-45."

**Mr. President** (The Honourable Sir Abdur Rahim): The question is:

"That this assembly do proceed to elect, in such manner as the Honourable the President may direct, eight non-official Members to serve on the Standing Committee on Emigration during 1944-45."

The motion was adopted.

**Mr. President** (The Honourable Sir Abdur Rahim): I have to inform Honourable Members that for the purpose of election of Members for the Standing Committee for the Department of Information and Broadcasting and the Standing Committee on Emigration the Notice Office will be open to receive nominations up to 12 o'clock on Wednesday, the 16th February, 1944, and that the elections, if necessary, will be held on Friday, the 18th February, 1944. The election, which will be conducted in accordance with the principle of proportional representation by means of the single transferable vote, will be held in the Assistant Secretary's room in the Council House, New Delhi, between the hours of 10-30 A.M. and 1 P.M.

## THE INSURANCE (AMENDMENT) BILL.

**The Honourable Sir M. Azizul Huque** (Commerce Member): Sir, I beg to move for leave to introduce a Bill further to amend the Insurance Act, 1938.

**Mr. President** (The Honourable Sir Abdur Rahim): The question is: "That leave be granted to introduce a Bill further to amend the Insurance Act, 1938." The motion was adopted.

**The Honourable Sir M. Azizul Huque**: Sir, I introduce the Bill.

## THE TRANSFER OF PROPERTY (AMENDMENT) BILL.

**The Honourable Sir Asoka Roy** (Law Member): Sir, I beg to move for leave to introduce a Bill further to amend the Transfer of Property Act, 1882.

**Mr. President** (The Honourable Sir Abdur Rahim): The question is: "That leave be granted to introduce a Bill further to amend the Transfer of Property Act, 1882."

The motion was adopted.

**The Honourable Sir Asoka Roy**: Sir, I introduce the Bill.

## THE CENTRAL EXCISE BILL.

**The Honourable Sir Jeremy Raisman** (Finance Member): Sir, I move:

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

I do not think I need detain the House long on the form in which this Bill has emerged from the Select Committee. A few amendments have been made, the nature of which has been explained in the report of the Committee. Most of those amendments arise from the fact that the duty on salt, although it is in the nature of a central excise, is also in some respect *sui generis*. It is in order not to prejudice the somewhat different and constitutional status of the duty on salt that the wording of several clauses of the Bill has been somewhat changed. The measure is essentially a measure of consolidation and simplification. This comparatively small Bill, as will be seen from the list of enactments repealed, will replace no less than 17 enactments some of which date back for 60 years or more. It is surely desirable that the law relating to these duties should be simple and uniform so that it should be capable of being understood by the general public and of being efficiently administered by the Department. The measure is, therefore, desirable administrative as well as legislative reform. I do not think that there is anything more that I can usefully add at this stage. Sir, I move.

**Mr. President** (The Honourable Sir Abdur Rahim): Motion moved:

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

I notice that the Honourable Member, Mr. Krishnamachari, has given notice of many amendments. Mr. Krishnamachari.

**Mr. H. A. Sathar H. Essak Sait** (West Coast and Nilgiris: Muhammadan): Sir, I just want to speak for a few minutes on the motion itself.

**Mr. President** (The Honourable Sir Abdur Rahim): Let him move his first amendment.

**Mr. T. T. Krishnamachari** (Tanjore *cum* Trichinopoly: Non-Muhammadan Rural): Mr. President. I move:

"That the Bill be recommitted to the Select Committee."

Sir, in making this motion it is not my intention that it should be a dilatory one. Actually when the motion was first brought before this House and it was put to this House as a consolidating measure, I felt that much of the work that would have to be done by way of publicity to an important measure like this would be done by Government and the Select Committee would have been apprised of the views of the various interests that have been affected by this measure, and perhaps the Select Committee might even choose to ask people to give evidence or submit their views. But what has happened, as I see from the Report of the Select Committee, is that those provisions of this so-called consolidating measure which relate to defects in the constitutional position of this measure have been considered carefully and nothing else has been done.



Sir, my justification in moving this amendment is this: The Honourable the Mover of this motion mentioned that it seeks to replace no less than 17 enactments. The first of these Acts dates as far back as 1862 or 1864, more than 50 years back, and that relates to salt. Nobody really objects to a consolidation measure if consolidation is possible and if a consolidation measure is brought into being it must be that the least stringent provisions contained in the various Acts must become the greatest common factors and today we find, Sir, that the most stringent provisions of all these Acts have been pooled together and it has been brought before us as a measure which has been passed through the Select Committee.

Sir, it has not been mentioned on the floor of this House that there is any urgency for this measure. By reason of the House asking the Select Committee to reconsider the measure the revenue position of the Government is not going to be affected. It has not been said that this consolidation measure is going to help future excise measures that are going to be placed before this House, and therefore, Sir, I feel I am right in bringing forward this amendment. I shall presently show the need for greater consideration of this measure.

Sir, the Honourable the Mover, I think, did admit that several Acts which this measure seeks to consolidate . . . . .

**Mr. President** (The Honourable Sir Abdur Rahim): Before the Honourable Member goes any further with his speech, I should like to point out that this is a dilatory motion and cannot be moved unless he can make out two things: first, that this recommitment to the Select Committee is rendered necessary by the manner in which the Select Committee had handled the Bill; or, secondly, that unforeseen circumstances have emerged after the Select Committee Report, requiring recommitment. Unless the Honourable Member can make that out the amendment is not in order.

**Mr. T. T. Krishnamachari**: Thank you very much. I shall attempt to make out that the Select Committee has not given to it its full consideration.

**Mr. President** (The Honourable Sir Abdur Rahim): What is your objection to the manner in which the Select Committee has handled the Bill?

**Mr. T. T. Krishnamachari**: If it is the intention of the Chair that I should prove that the Select Committee has done something which is objectionable . . . . .

**Mr. President** (The Honourable Sir Abdur Rahim): At any rate, I want to know your objection to the way in which they have handled the Bill or whether any unforeseen circumstances have emerged after the Select Committee Report.

**Mr. T. T. Krishnamachari**: I shall mention it. I should like the Honourable the Mover of this motion to tell us how long the Select Committee took to consider this Bill.

**Mr. President** (The Honourable Sir Abdur Rahim): That does not matter.

**Mr. T. T. Krishnamachari**: And I should like the Honourable the Mover to tell us if the full implications of the Bill were explained to the non-official Members.

**Mr. President** (The Honourable Sir Abdur Rahim): I am not prepared to hold that the Bill has not been properly considered by the Select Committee. I am satisfied that this is a dilatory motion. It has not been made out that this course is rendered necessary by the manner in which the Select Committee has handled the Bill or that unforeseen circumstances have emerged after the Select Committee Report, calling for reconsideration by the Select Committee. I therefore rule that the amendment is out of order. Discussion of the motion will go on now.

**Mr. H. A. Sathar H. Essak Sait**: Sir, I want to put only one question.

**Mr. T. T. Krishnamachari**: May I speak on the main motion now or shall I have an opportunity later.

**Mr. President** (The Honourable Sir Abdur Rahim): Perhaps the Honourable Member had better go on with his speech.

**Mr. T. T. Krishnamachari**: Sir, I now oppose the motion before this House. In doing so I would like to make it clear to the House that the motion comprises a Bill which is sought to be taken into consideration with the Report of the

[Mr. T. T. Krishnamachari.]

Select Committee thereon, which covers several crores of revenue to Government and which has been sprung up upon us in a haphazard manner. There is really nothing common between the several Acts covered by the Bill except the fact that they are in nine out of ten cases called 'excise measures' and they are revenue producing measures. The commodities which these Acts seek to control and from out of which the Government of India expects a revenue have nothing in common actually, and so in the process of manufacture of the various commodities various aspects exist which cannot be pooled together in one measure. And I think, Sir, that this aspect has not been sufficiently emphasised by the Government at any stage of this Bill.

Sir, there is another factor which is very important. It is this: As I said, the first Bill dates back to 1882—about 50 years back. The position of this country at that time was totally different than what it is today. People had to be frightened into obeying the law. Punitive measures had to be resorted to which are totally unsuited to the conditions that prevail today. The Government is much stronger than it was at that time, and naturally the subsequent excise Acts that have seen the light of day do not contain the same stringent provisions of the Salt Act, the origin of which dates back to 1882. I do feel that in a consolidation measure Government should lighten the restrictions and the infringements on the liberties of the producer and of the ordinary citizen, and that it should be brought into line with the later excise measures brought before this House. The price paid for uniformity should not be that people should be subject to more harassment than they have been in the past. It may be that if I am a producer of salt I agree to the regulations that are now subsisting, but it does not mean that merely because salt, tobacco and vegetable products, sugar, matches and several other articles should be brought into line for the sake of administrative convenience, those people engaged in the trade and production of various other commodities should also be hampered by the severe restrictions that are now imposed on salt producers, on people who market salt and who carry salt about.

I think there is a case for the Government postponing consideration of this Bill, because the present Bill is extremely inopportune to consider any measure infringing on the liberties of the citizen. Today we are ruled by Ordinances. The economic activities of every person in this country happen to be governed by those Ordinances. Price control has come into being and very necessarily too: and to-day the people subject themselves to harassing restrictions for the sake of getting over the circumstances that exist in this country. It does not mean that those conditions should also be put into an Act which is to stay for all time to come. The danger of bringing forward a consolidation Act at the time when the Defence of India Rules hold sway is that the public are not likely to realise the various troubles that they are likely to be put to if this Bill becomes an Act.

Sir, there is another factor also. This so-called consolidation measure is going to make it very easy for the Government in regard to future Excise Bills. All they have to do is to bring in one clause with reference to just a particular commodity in the schedule, and very often people who merely accept what a Government does without much protest will not be alive to the consequent restrictions that may be imposed on production, manufacture and transmission of these commodities as a result of the excise duty being imposed thereon. From the point of view of educating the public in regard to their own rights, I think a measure of this type is not a good thing.

Sir, I feel in opposing this motion that if the Select Committee had been apprised of all these circumstances they would have taken more time about it. In fact, I think just at the time when the Bill was put in Select Committee and when the Select Committee sat to discuss this Bill, it was the duty of this Government to have addressed the interests concerned. I would ask the Honourable the Finance Member if the various Chambers of Commerce were told about it and whether the various associations that represent these interests were addressed. Were they asked for objections or amendments? I think it

was the duty of the Government to have undertaken that task. I think they have failed in the very elementary duty cast upon them. I, therefore, feel that the motion has to be opposed as there is no particular urgency for it.

**Mr. President** (The Honourable Sir Abdur Rahim): The Honourable Member has already said that.

**Mr. T. T. Krishnamachari**: Yes, Sir. But I am summing up. The Government have not shown that the people have been fully informed of the implications of this consolidation motion and in fact it seriously infringes on the liberties of those people who are engaged in all trades excepting salt, and I, therefore, oppose the motion.

**Mr. H. A. Sathar H. Essak Sait**: I have only one question, and that rather very pertinent. It will make the matter clear to the House and probably facilitate the further passage of this Bill. Would the Honourable the Finance Member state whether he has introduced any new principle which was not in existence before, and whether on the two points mentioned by Mr. Krishnamachari he can assure the House that he has not done anything or taken any powers which did not exist before? If that assurance is given to the House I think it would facilitate the passage of this Bill.

**Dr. P. N. Banerjee** (Calcutta Suburbs: Non-Muhammadian Urban): The Honourable the Finance Member told us the other day, and he has told us again today, that this is a mere consolidating measure. But it appears to me that it is much more than that, and as for his plea that it is a measure which simplifies the procedure, I have only to observe that so far as the Government is concerned, it may be a simplifying measure, but so far as the general public of India is concerned, it is a measure for imposition of great restrictions and harassment.

Sir, we all know that the salt duty was imposed in this country at the very commencement of British Rule in India, and the measures which were necessary to secure the revenue from salt to the Government do not necessarily apply to the taxation measures which have been subsequently introduced.

There is one peculiar thing in this Bill. It is the setting up of administrative courts and the ousting of the jurisdiction of the ordinary Law Courts. In this Bill it is provided that the Excise Officer will have very large powers. He will have the power of arrest. He will have the power of punishing any offender and no appeal will lie to any of the ordinary law courts. But an appeal will lie in the first instance to another officer of the Board of Revenue and ultimately the Board of Revenue will have the power of revision. This is very unsatisfactory. When it is decided that all the taxation measures with regard to excises should be put in one enactment, it should be provided that the provisions should be subject to the ordinary law and procedure and no administrative courts should be set up. My Honourable friend knows that for income-tax purposes a separate arrangement is made, but even there provision exists for appeal to an independent tribunal. In respect of these excise duties, however, no such appeal to an independent tribunal has been proposed.

Besides, we find that there is no urgency for bringing forward such a measure. It may be simple from the point of view of the Government, but it is extremely harassing and difficult from the point of view of the taxpayer and the general public of this country.

Therefore, I would suggest to the Honourable Member that this matter should be given fuller consideration. This is not exactly the proper time when such a measure of a far-reaching character should be placed before the House. We were under a misapprehension, and if it were only a consolidating measure I would not have opposed it in the least. But I find now that the implications of this Bill are very far-reaching and, therefore, I would ask the Government to stay their hand for a while and to take up the measure after full and deliberate consideration.

At the present moment, if the measure is pushed through, there is likely to be a great deal of opposition, as will be evident from the number of amendments of which notice has been given by a friend of ours, and other Members also feel very diffident to support this measure. But as the motion for recommittal to

[Dr. P. N. Banerjee.]

the Select Committee has been ruled out by the Chair, I think the Government should postpone consideration of this Bill and take it up after the matter has been thoroughly discussed by the public and the Members of this Assembly.

**The Honourable Sir Jeremy Raisman:** Sir, there is one thing which I should like to emphasise before the House and that is this. This Bill was published three months ago, it has been before the country for the whole of that time, it affects, in so far as it affects anybody at all, a large number of people who are fully aware of the effect of legislation upon them, all the Chambers of Commerce have been aware that this Bill was brought forward in the last Session and not a single line of correspondence has been received from any Chamber of Commerce or from any interest which may be affected by this Bill . . . .

**Dr. P. N. Banerjee:** Very unusual.

**The Honourable Sir Jeremy Raisman:** My Honourable friend Mr. Krishnamachari has sought to raise a large number of vague apprehensions. I may say that I usually listen with great interest to Mr. Krishnamachari's speeches and I have noticed that he is usually endowed with a gift of limpid eloquence and quite a fluent flow. I was extremely concerned to find out exactly what was at the back of his mind, and I must say that although he spoke and was on his feet for some considerable time, I am entirely in the dark as to what was biting him. This measure is, as its name implies, a consolidation measure. It is a consolidating and amending measure because certain slight amendments are almost inevitable whenever you try to reproduce the gist of as many as 17 enactments. In reply to my Honourable friend, Mr. Essak Sait, I can honestly say that I am only aware of one new item which has been introduced into this Bill, and I will draw attention to it now. I would have drawn attention to it at a later stage. When the Bill was introduced, we gave very full notes on clauses in order to enable this House and the country to see exactly from what sources each provision of this measure was drawn. Now, the new item to which I referred has been included in the rule-making powers—item (vii) of sub-clause (2) of clause 37—that sub-clause enables us to make rules—

"requiring a manufacturer or the licensee of a warehouse to provide accommodation within the precincts of his factory or warehouse for officers employed to supervise the carrying out of regulations made under this Act and prescribe the scale of such accommodation."

That, I may say, is a power which I believe exists in relation to customs and it certainly exists in the United Kingdom, and it is something which is essential for the administration of excises. The position which may arise is this: that you have to have an excise officer on the premises in relation to a bonded warehouse or in relation to the manufacture of any excisable article. If no arrangements can be enforced by the Government for the presence of that officer on those premises, if no provision can be made for him, then the administration of that excise may be rendered exceedingly difficult, if not nugatory; and that is the necessity for a rule-making power of this kind. I leave it to the House to judge whether there is anything revolutionary in that. It is a provision which, as far as I am aware, exists already, certainly as I say in the United Kingdom, and I know from my own personal experience that we do make arrangements of this kind in regard to both customs and excise duties . . . .

**Mr. N. M. Joshi** (Nominated Non-Official): Living accommodation or office accommodation?

**The Honourable Sir Jeremy Raisman:** It may be both—office and private accommodation. If the factory is in some unusual place where even living accommodation cannot be obtained, it may be necessary to provide living accommodation. Of course I would expect that in such cases we would be able to provide living accommodation ourselves, but we should also need some room or something in which the official can carry out the duties imposed upon him.

**Mr. N. M. Joshi:** Who will pay?

**The Honourable Sir Jeremy Raisman:** I am not sure whether we do not ourselves pay rent when the question arises. We pay rent if it takes up any appreciable part of the accommodation.

That is the position in regard to this measure. The sources from which the provisions have been drawn have been exhibited to this House fully in the Notes on Clauses which were appended to the Bill as introduced. There is no new principle involved. The powers which are included in the Bill are powers which have to be exercised, which are already possessed by officers carrying out these and similar duties. Mr. Krishnamachari says that circumstances have changed, as far as I understand, and considers that the existing law should have been modified to meet the present situation. If I had attempted to do that, then I should indeed have been liable to the criticism which he himself hinted at, although he has not made it explicit. It was precisely because at this stage all that we sought was consolidation that we did not interfere with the provisions of the law even though some of them are somewhat ancient. I cannot understand the argument that the present moment is inopportune or how the existence of the Defence of India Rules bears on the question. I have always understood that one of the first requisites of taxation is that it should be simple and direct and that the working of it should be understood by the people, and I do not see how the maintenance of 17 separate enactments as compared with a single Act of 3 or 4 pages achieves that object. I should have thought that precisely for the reasons mentioned by my Honourable friend the present was a peculiarly suitable time to bring the taxation legislation into a convenient and simple form. I am afraid that Mr. Krishnamachari rather exposed something of his thoughts when he complained that this measure would make it easier for the Government to introduce a new excise; whereas at present they had to introduce a complete self-contained Bill they would henceforth, if they wished to introduce a new excise, have only to insert another item in the schedule to the Bill. If my Honourable friend's object is to make everything as difficult as possible both procedurally and legislatively whenever Government have to bring taxation proposals before the House, then there is no doubt that there is much force in that objection. But I should have thought—and here again I would revert to the principle I mentioned just now, that taxation should be simple and direct and its operation easily understood—I should have thought that anything which improved the present situation in this respect would have been advantageous to the country and would have been supported by this House.

As I say, I am very much at a loss to understand how this criticism and these voluminous amendments have been brought up at the last moment without any indication whatever that anybody in the country had anything to say to us in regard to this Bill which has been before them all these weeks. I still feel that there is no reason whatever why this House should not proceed with the consideration of this measure to-day. I am myself convinced—and I should say that a great deal of my personal experience has lain in the fields of revenue administration—I am myself convinced that the House by passing this measure will be doing an important and exceedingly useful duty to the country.

**Mr. President** (The Honourable Sir Abdur Rahim): The question is. . .

**Mr. Govind V. Deshmukh** (Nagpur Division: Non-Muhammadan): I want to speak.

**Mr. President** (The Honourable Sir Abdur Rahim): The Honourable Member cannot speak now. The Mover of the motion has replied.

The question is:

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

The motion was adopted

**Mr. President** (The Honourable Sir Abdur Rahim): The House will now consider the Bill clause by clause. Clause 2.

**Mr. T. T. Krishnamachari:** Sir, I move:

"That in part (c) of clause 2 of the Bill, before the word 'process' the word 'industrial' be inserted."

[Mr. T. T. Krishnamachari.]

With your permission, I should like to make an explanation of my position, because this particular amendment itself might sound a very trifling one and it would look as if I have no other object in moving it than to retard the progress of this Bill. I admit that facility of expression on a subject like this is a little lacking as far as I am concerned. I have had no experience of holding the finance portfolio either in Delhi or in any provincial field. My argument was perhaps a little halting because I was not quite sure what the attitude of the Government was going to be in the matter of amending the provisions of the Bill. In regard to this particular amendment, let me make it very clear that there is nothing at the back of my mind excepting to suggest to Government that they have borrowed this particular clause from the Tobacco Excise Bill and not the whole of it either. The Select Committee have added three words "an unmanufactured product" in part (c) where they say:

"'curing' includes wilting, drying, fermenting and any process for rendering an unmanufactured product fit for marketing or manufacture."

The words "an unmanufactured product" are new. Since this particular clause which is in the Tobacco Excise Bill is to be made applicable to the whole gamut of commodities that are coming within the scope of this measure, I think a little amplification is needed. They have themselves taken liberty in the Select Committee to make an amplification, and I think that the process referred to in part (c) of clause 2 should be limited to industrial process, and that is why I have brought in this amendment.

**Mr. President** (The Honourable Sir Abdur Rahim): Amendment moved:

"That in part (c) of clause 2 of the Bill, before the word 'process' the word 'industrial' be inserted."

**Mr. H. Greenfield** (Government of India: Nominated Official): I oppose this amendment, and in doing so, I should like to explain that the object of substituting the words "an unmanufactured product" for the word "tobacco", which was in the original Bill, is simply to avoid particularisation of an individual commodity in a Bill which is to have general application. As regards the suggestion that the definition should be restricted to industrial processes, I must explain that in regard to tobacco, to discriminate in this way would be to discriminate against a particular section of tobacco consumers, and would also reduce our revenue from tobacco to a mere fraction of its present total. It would also discourage further expansion of the production of flue-cured tobacco which is at present a very promising feature of India's industrial development.

**Sir Cowasjee Jehangir** (Bombay City: Non-Muhammadan Urban): Does the amendment make a radical change?

**The Honourable Sir Jeremy Raisman**: Yes, the proposed amendment does.

**Mr. President** (The Honourable Sir Abdur Rahim): The question is:

"That in part (c) of clause 2 of the Bill, before the word 'process' the word 'industrial' be inserted."

The motion was negatived.

**Mr. T. T. Krishnamachari**: Sir, I move:

"That in part (f) of clause 2 of the Bill, before the word 'process' the word 'industrial' be inserted."

**Mr. President** (The Honourable Sir Abdur Rahim): The same principle?

**Mr. T. T. Krishnamachari**: Not quite. The original clause reads as follows:

"'Manufacture' includes any process incidental or ancillary to the completion of a manufactured product."

This clause is rather new. The word 'manufacture' appears in a number of other tax measures as well, which this Bill seeks to consolidate. It appears in all references made to the manufacture of salt, to the manufacture of sugar, matches. Actually in regard to every measure excepting tobacco, the Government cannot exercise any control over any process excepting an industrial process. Actually an excise duty only visualises taxing a commodity after it passes through an industrial process, the only difference being in the case of tobacco. I think, unless this word 'process' is limited, it will go right to the root of all processes involved in the manufacture of sugar and even of production of sugarcane. So, this amendment is not on all fours with my previous amendment.

It is different because this definition of manufacture appears in varying forms right through the several Acts which this Bill seeks to consolidate. Therefore, I move.

**Mr. President** (The Honourable Sir Abdur Rahim): Amendment moved:

"That in part (f) of clause 2 of the Bill, before the word 'process' the word 'industrial' be inserted."

**Mr. H. Greenfield**: Sir, I oppose the amendment. I should perhaps explain first in regard to the Honourable Member's apprehension regarding cane, that this definition must be read in conjunction with the First Schedule, which limits the excise on sugar to that sugar which is "produced in a factory ordinarily using power in the course of production of sugar".

On general grounds, I oppose the amendment because the insertion of this word would lead to fragmentation of factories and thereby greatly handicap the administration and lead also to leakage of revenue and would incidentally discourage the development of organised industry. Sir, I oppose the amendment.

**Mr. President** (The Honourable Sir Abdur Rahim): The question is:

"That in part (f) of clause 2 of the Bill, before the word 'process' the word 'industrial' be inserted."

The motion was negatived.

**Mr. T. T. Krishnamachari**: Sir, I move:

"That in part (j) (i) of clause 2 of the Bill, for the word 'defined' the word 'declared' be substituted."

In moving this amendment, I want to know what exactly is in the mind of the Government. The sentence has been added by the Select Committee to this particular clause—"as defined from time to time by the Collector of Central Excise". I do not know what the process of definition is going to be, how the definition is going to be made, how it is going to be published. Usually, I think the language used in respect of such pronouncements by the revenue authorities is—"declared that such and such a place is intended to be used for the manufacture of salt". I feel that altogether the word 'declared' is safer than the word 'defined'. I move.

**Mr. President** (The Honourable Sir Abdur Rahim): Amendment moved:

"That in part (j) (i) of clause 2 of the Bill, for the word 'defined' the word 'declared' be substituted."

**Dr. P. N. Banerjea**: I wish to ask whether 'defined' qualifies 'salt factory' or qualifies only 'a place'. If it qualifies 'a place', then it does not seem to be a very appropriate word. A place as defined from time to time by the Collector of Central Excise would not be happy phraseology. If, on the other hand, it qualifies 'salt factory', the power of definition should not be given to the Collector of Central Excise.

**Mr. H. Greenfield**: I oppose this amendment. The dictionary meaning of the word 'define' means 'to fix the limit' and the intention here is that the limits of such place shall be defined from time to time by the Collector. I oppose the amendment.

**Mr. President** (The Honourable Sir Abdur Rahim): The question is:

"That in part (j) (i) of clause 2 of the Bill, for the word 'defined' the word 'declared' be substituted."

The motion was negatived.

Clause 2 was added to the Bill.

**Mr. H. Greenfield**: Sir, I move:

"That in clause 3 of the Bill, after the words 'and a duty on salt' the words 'manufactured in, or imported by land into, any part of British India' be inserted."

These words appear in section 7 of the Indian Salt Act of 1882 but were omitted from the Bill as being inconsistent with the form in which

12 Noon. clause 3 was drafted and it was intended that a countervailing customs duty on salt imported by land into British India would be imposed by means of notifications issued under the authority of clause 5 and of section 5 of the Tariff Act. Clause 3 having been recast in Select Committee in such a manner as to exhibit the duty on salt as differing somewhat from other central duties of excise, the insertion of these words can now be effected without any such inconsistency and it is considered desirable on grounds of general convenience that they should be restored.

**Mr. President** (The Honourable Sir Abdur Rahim): The question is:

"That in clause 3 of the Bill, after the words 'and a duty on salt' the words 'manufactured in, or imported by land into, any part of British India' be inserted."

The motion was adopted.

**Mr. T. T. Krishnamachari**: Sir, I move:

"That in clause 3 of the Bill, after the words 'duty on salt' the words 'except such salt as may be exempted by any provision of this Act or by notification by the Central Government' be inserted."

There is a long history behind this amendment. I think it is now a practice consequent on an agreement between certain high contracting parties some time back that the salt produced by people living near the sea coast for their own consumption on the sea coast be exempted from duty. I believe that this exemption is already in operation. It is only fair that, when the Bill is consolidating a number of excise laws, a right recognised by high authorities as belonging to the people should find a place in the enactment. I am not suggesting anything new; I am merely inserting into the Bill a recital of a fact which has already been in existence. Sir, I move.

**Mr. President** (The Honourable Sir Abdur Rahim): Amendment moved:

"That in clause 3 of the Bill, after the words 'duty on salt' the words 'except such salt as may be exempted by any provision of this Act or by notification by the Central Government' be inserted."

**Dr. P. N. Banerjee**: Sir, I rise to support this amendment. It is in the recollection of many of us that in 1931 an agreement was reached between the Government and certain parties in the country that salt manufactured on the sea coast by individuals on a small scale for the purpose of consumption within local limits would not be taxed and that such salt would be exempt from the operation of the provisions of the Salt Act. So far as I know, this agreement has been given effect to from 1931 to the present day. If that be so, it is desirable now to put this agreement on a legal footing. As we are going to have a comprehensive legislation on the whole subject of excise duties, it would be unsatisfactory to leave it to the discretion of the Executive authorities. The matter is a very serious one from the point of view of the poor people who live on the coastal areas. If these poor people are in the future deprived by the Executive authorities of the right which they have been so far exercising, it would be a source of great harassment and it would be wrong. Therefore, it is desirable that this matter should be regularised on the present occasion.

**Mr. H. Greenfield**: Sir, I oppose the amendment. In regard to the particular case of salt referred to by the last speaker, this matter will be fully discussed when we come to Item 17 on the list of amendments. I need only say here in passing that existing exemptions would be in no way disturbed by the passing of this Bill.

On the general question, I would point out that power to exempt particular goods from duty is conferred by clause 12 and it is clear that any goods so exempted would, by that very fact, be excluded from the operation of clause 3.

Sir, I oppose the amendment.

**Mr. President** (The Honourable Sir Abdur Rahim): The question is:

"That in clause 3 of the Bill, after the words 'duty on salt' the words 'except such salt as may be exempted by any provision of this Act or by notification by the Central Government' be inserted."

The motion was negatived.

Clause 3, as amended, was added to the Bill.

**Mr. T. T. Krishnamachari**: Sir, I move:

"That in clause 4 of the Bill, the words 'or is capable of being sold' be omitted."

Sir, the clause is not very clear. Any determination of value for purposes of public duty must take into account an article of the right kind and quality sold. The excise duty comes into being only when an article is sold. The words 'is capable of being sold' will lead to a number of interpretations. So, I think it is safer in the interests of the public that these words be omitted.

Sir, I move.

**Mr. President** (The Honourable Sir Abdur Rahim): Amendment moved:

"That in clause 4 of the Bill, the words 'or is capable of being sold' be omitted."



**Mr. H. Greenfield:** Sir, I oppose the amendment. The words objected to are reproduced from the Sea Customs Act, which has stood the test of more than 60 years. I submit that it is obvious that these words are required because there might be no actual sales at the time of the removal of the goods.

Sir, I oppose the amendment.

**Mr. President** (The Honourable Sir Abdur Rahim): The question is:

"That in clause 4 of the Bill, the words 'or is capable of being sold' be omitted."

The motion was negatived.

Clause 4 was added to the Bill.

**Mr. T. T. Krishnamachari:** Sir, I move:

"That in clause 5 of the Bill, after the word 'goods' the words 'other than salt' be inserted."

This clause gives the Government power to impose customs duty on goods that are brought through land. So far as salt is concerned, I do not think the Government, which has the monopoly of salt generally, should place any handicap on the ordinary citizens bringing a small quantity of salt manufactured in the States. I think it is safer in the interests of the public and in view of the fact that this is a consolidating measure that the exclusion of salt be made specific.

Sir, I move:

**Mr. President** (The Honourable Sir Abdur Rahim): Amendment moved:

"That in clause 5 of the Bill, after the word 'goods' the words 'other than salt' be inserted."

**Mr. H. Greenfield:** Sir, Government are prepared to accept this amendment as an improvement, though not exactly for the reasons advanced by the Honourable Member.

**Mr. President** (The Honourable Sir Abdur Rahim): The question is:

"That in clause 5 of the Bill, after the word 'goods' the words 'other than salt' be inserted."

The motion was adopted.

**Mr. T. T. Krishnamachari:** Sir, I move:

"That to clause 5 of the Bill the following proviso be added:

'Provided that if any such goods are subject to an excise duty imposed by the Indian State a rebate equivalent to such duty but not more than the duty imposed under this schedule shall be given'."

Sir, it is very encouraging to me to know that I can improve on a Government Bill. But speaking personally I am accustomed to hostile attitude of Government to all non-official interference with its measures elsewhere, and so I am not daunted by the attitude of the Government. This particular amendment probably raises a point of fairly serious consequence, and at any rate, I should like to have information on this matter. It is this. If it happens that a State has imposed a duty on goods which are brought to British India, what is the attitude of the Government of India regarding these goods? In drafting this amendment, care has been taken that Government should not be asked to give any rebate which shall exceed the amount that they would collect by way of duty. If a duty is levied on a particular excisable article in a State, it only stands to reason that people should not be asked to pay British duty over and above what they paid to the State for the purpose of ordinary movement of commercial goods. I, therefore, feel that this is a fairly important amendment which ought to find a place in the Bill, that Government should give a rebate to the extent of the duty paid on the goods in any Indian State. The relationship between the State and the British Government happens to be a matter in which I cannot go, but I do think that a certain amount of co-operation between Indian States and the Government now exists or ought to exist and that is my provocation for moving this amendment. Sir, I move.

**Mr. President** (The Honourable Sir Abdur Rahim): Amendment moved:

"That to clause 5 of the Bill the following proviso be added:

'Provided that if any such goods are subject to an excise duty imposed by the Indian State a rebate equivalent to such duty but not more than the duty imposed under this schedule shall be given'."

**The Honourable Sir Jeremy Raisman:** Sir, whilst I am in sympathy with the object which the Honourable Member seeks to achieve, I must object that

[Sir Jeremy Raisman.]

a provision of this kind would not effect that purpose. It is technically imperfect. The fact of the matter is that that object can only be achieved by agreement with the State concerned. It is not feasible for us to give a rebate of duty which has been paid in the State. Nor is it possible for this Legislature to enact that duty paid in a State shall be refunded in certain circumstances. The only thing which is possible is that the Government of India should arrive at an arrangement with these States to facilitate the free flow of goods and at the same time to secure the revenue interest both of British India and of the State concerned, and that is what we regularly endeavour to do, and hitherto I may say, with a general measure of success in this type of situation. I would ask the Honourable Member to withdraw his amendment for the reason I have given.

**Mr. T. T. Krishnamachari:** Sir, in view of the very graceful gesture shown by the Government to the previous amendment. I should like to withdraw this amendment.

The amendment was, by leave of the Assembly, withdrawn.

Clause 5, as amended, was added to the Bill.

**Mr. T. T. Krishnamachari:** Sir, I move:

"That sub-clause (a) of clause 6 of the Bill be omitted."

Sir, this sub-clause is new. I cannot find anything nearly approximating the sub-clause in any of the various measures which this Bill seeks to consolidate. The only provision near enough to the object of clause 6 is found in clause 6 of the Tobacco Excise Act, wherein there is no specification of any limitation on production or manufacture or any process of production or manufacture of excisable goods similar to what is found in sub-clause (a) of clause 6. If, as I am induced to believe that this is a new provision very necessary perhaps from the point of view of Government, I should like to ask the Honourable the Finance Member, if he has considered the possibility of this provision affecting all industrial activities in the Provinces. There is no limitation to the field of the interference by the Government of India if any particular article becomes an excisable article; the Government of India can seek to control the whole field of activities from the time the article is produced to the time it is marketed. I think this is rather a sweeping provision and this House cannot allow it to pass without ascertaining the views of the Government and also without being assured that the whole position has been fully investigated and its consequences by way of limitations which it seeks to impose on industry in provincial field are ascertained. Sir, I move.

**Mr. President** (The Honourable Sir Abdur Rahim): Amendment moved:

"That sub-clause (a) of clause 6 of the Bill be omitted."

**The Honourable Sir Jeremy Raisman:** Sir, I oppose this amendment. The Honourable Member seems to have conducted infructuous researches, but I would refer him . . .

**Mr. T. T. Krishnamachari:** I started doing that when I came to this House.

**The Honourable Sir Jeremy Raisman:** The Honourable Member left it to a rather late stage. I suggest he might have begun his studies when the Bill with the Notes on Clauses was first given to this House. If he would refer to the notes on those clauses which I have already mentioned, he will find that the provisions of clause 6 are drawn from no less than six already existing enactments and that the principle that manufacture of excisable goods should take place under licence is already embodied in those Acts and is a principle which is generally accepted in the excise practice of all countries. It is clearly impossible to administer an Excise Act satisfactorily if anybody can start production of a commodity anywhere without even informing the Government of where he proposes to begin production or giving us any opportunity to control the location of that production. He might choose to do it in some geographical situation where it would be administratively impossible to exercise that degree of supervision and control which is necessary in order to ensure the adequate collection of duty. It is clearly impossible for the Government to be placed in a position like that. This principle underlies the provisions of many

taxing Statutes not merely of excise. For instance, in the case of customs, you can always limit by control the people who can do certain processes, you can limit the place where people can do them and so on because unless you can localise these operations, unless they are subject to your approval, it will be impossible for you to deal with the administrative problems that may arise.

**Mr. T. T. Krishnamachari:** May I ask the Honourable the Finance Member if he visualises the fact that subsequent to all these measures to which he has referred, there has been a Government of India Act limiting the provincial and the central field?

**The Honourable Sir Jeremy Raisman:** Yes, Sir. I am aware of that. But it is not subsequent to all these measures; in the case of tobacco the Excise Act was passed in this House considerably after the Act of 1935. In any case I see the point that the Honourable Member is driving at, namely, that apart from the fiscal aspect the control of the supply and distribution of commodities is a matter for the Provincial Governments. But it is equally a principle of law that such control as may be necessary and proper in order to enable you to collect the central tax is undoubtedly within your jurisdiction. It would be useless for the constitution to confer on the Central Government the power to impose certain duties if that did not connote the power of making such ancillary provisions as are necessary in order to enable the duty imposed to be collected; and it is in that sphere that a license of this kind arises. Now there are certain commodities—I think matches, for instance, is one of them, and there are others—where the revenue interest of Government is actually larger than the financial interest of the producer. In other words, the amount of money involved for the Government may be actually larger, and sometimes several times larger, than the amount of money involved for the producer himself. The State therefore has an important interest in the process, and unless the State is brought in at the earliest stage and has a say in who shall produce and where they shall produce excisable goods, it is not possible satisfactorily to administer an excise system. This is a power that exists elsewhere and exists in this country. Sir, I oppose the amendment.

**Mr. President** (The Honourable Sir Abdur Rahim): The question is:

"That sub-clause (a) of clause 6 of the Bill be omitted."

The motion was negatived.

Clause 6 was added to the Bill.

**Mr. T. T. Krishnamachari:** Sir, I move:

"That clause 7 of the Bill be omitted."

The forms and conditions of licenses are usually covered by rules and I do not understand the necessity of bringing them into the body of the Act. In any case it visualises the possibility of monopolies being granted with a statutory backing, whereas acts of Government can be questioned if they emanate from powers given to them by rules. The statutory power given to Government covering a wide field is not justifiable. There is of course such a rigid provision in the Bombay Salt Act but so far as the Tobacco Act is concerned I think the conditions of granting a license are much less stringent and much less specific than what is contained in clause 7. Sir, I move.

**Mr. President** (The Honourable Sir Abdur Rahim): Amendment moved:

"That clause 7 of the Bill be omitted."

**Mr. H. Greenfield:** Sir, if there are to be licenses it is clear that it must be possible to prescribe their forms and conditions, which may not be the same in every excise but may differ from one to another. Sir, I oppose the amendment.

**Mr. President** (The Honourable Sir Abdur Rahim): The question is:

"That clause 7 of the Bill be omitted."

The motion was negatived.

**Mr. T. T. Krishnamachari:** Sir, I move:

"That in clause 7 of the Bill, for the word 'shall' the word 'may' be substituted."

I do not know what the importance of this particular section is. In any case I think the operation of this section need not be mandatory and that is why I propose this amendment. Sir, I move.

**Mr. President** (The Honourable Sir Abdur Rahim): Amendment moved:

"That in clause 7 of the Bill, for the word 'shall' the word 'may' be substituted."

**Mr. H. Greenfield**: Sir, I oppose this amendment for the simple reason that the change would authorise licensing officers to disregard the rules and orders of the Government of India.

**Mr. President** (The Honourable Sir Abdur Rahim): The question is:

"That in clause 7 of the Bill, for the word 'shall' the word 'may' be substituted."

The motion was negatived.

Clause 7 was added to the Bill.

**Mr. T. T. Krishnamachari**: Sir, I move:

"That in clause 8 of the Bill, after the word 'person' the words 'other than a manufacturer' be inserted."

This clause seeks to impose a restriction on the possession of excisable goods; it does not really say what quantity a manufacturer can have. It might be that the manufacturer has collected a lot of stuff and I do not see why he should be statutorily debarred from freedom to collect goods and keep them in stock so long as it is assured that before the goods are released for consumption and before sale the excise duty can be collected. This is a provision which should not be left to the good will of the officers concerned. Sir, I move.

**Mr. President** (The Honourable Sir Abdur Rahim): Amendment moved:

"That in clause 8 of the Bill, after the word 'person' the words 'other than a manufacturer' be inserted."

**Mr. H. Greenfield**: Sir, I oppose this amendment. Its object is already provided for by the words "except as provided by rules made under this Act". Obviously such rules must, and in fact will, provide for the possession of excisable goods by the manufacturers of such goods. I would also point out that at present the operation of this section is limited, by the Second Schedule, to tobacco. Sir, I oppose the amendment.

**Mr. Hoosenbhoj A. Laljee** (Bombay Central Division: Muhammadan Rural): Sir, I support the amendment. It would really infringe the right of the manufacturer to have his business conducted in the best manner he likes. It may be that for the purpose of the excise duty Government may try to have control over the goods; but it should not be the duty of the Excise Department to direct how the goods are to be manufactured and disposed of and how long they are to be kept. It has often happened that whenever merchants or manufacturers have foreseen certain contingencies they have kept a certain quantity as reserve for the future. And if the excise officers were to stop them from looking forward—as some manufacturers did when the war broke out—only because they think that not more than a certain quantity should be kept, it will be quite unfair and will interfere with the legitimate business of the manufacturers.

**The Honourable Sir Jeremy Raisman**: Sir, I should like to point out that the apprehensions of my Honourable friend who has just spoken are not very well founded. The restriction on possession of excisable goods will not apply to all excisable goods; it will only apply to such of them as this House decides to put in the Second Schedule. Now, hitherto this House has only legislated to put this restriction on possession in the case of tobacco which is a peculiar case. If at any future date the Government should desire to apply these restrictions to any other commodity, it will have to come before this House and justify that, and will have to ask that by a legislative enactment such new commodity be included in the Second Schedule. Sir, for that reason I consider the amendment unnecessary.

**Mr. President** (The Honourable Sir Abdur Rahim): The question is:

"That in clause 8 of the Bill, after the word 'person' the words 'other than a manufacturer' be inserted."

The motion was negatived.

Clause 8 was added to the Bill.

**Mr. T. T. Krishnamachari**: Sir, I move:

"That in clause 9 of the Bill, the words 'with imprisonment for a term which may extend to six months, or' be omitted."

I think, Sir, that in 1944 the Government should be so vindictive as to ask for punishment and imprisonment for persons who break excise laws which would not ordinarily come within the purview of the Penal Code seems to be out of place. I think in seeking to consolidate several Acts in the country, they should not insist upon imprisonment as a punishment. There is enough punishment provided by the imposition of a fine. Sir, I move.

**Mr. President** (The Honourable Sir Abdur Rahim): Amendment moved:

"That in clause 9 of the Bill, the words 'with imprisonment for a term which may extend to six months, or' be omitted."

**Dr. P. N. Banerjee**: Sir, I support this amendment. This clause provides that punishment may be a fine to the extent of Rs. 2,000 and also imprisonment for six months. It is well-known that when a too severe penalty is provided it fails to meet the ends of justice and in the hands of persons who may not exercise this power with care and caution this may lead to a great deal of hardship. A fine of Rs. 2,000 is quite a sufficient punishment; and in addition to that imprisonment for six months would be too severe. In that view of the thing I hope the Honourable the Finance Member will accept this amendment.

**Sir Cowasjee Jehangir**: May I ask whether this fine and imprisonment is applicable in the original Acts to all the sections mentioned in this clause, or has he inserted any new offence in this clause which was not included in any of the other Acts which he is now consolidating? In other words, is he making this fine and imprisonment applicable to some offences which were not on the Statute before this consolidation Bill came into existence.

**The Honourable Sir Jeremy Raisman**: In opposing this amendment I would answer first the question of Sir Cowasjee Jehangir. If he will refer to the notes on clauses which were furnished with the original Bill he will find that the provisions of this clause are present not only in the main Salt Acts which are being consolidated but also in all the Excise Duty Acts. And for a very simple reason. It would be quite futile to impose a mere fine, and certainly a fine limited to Rs. 2,000, in respect of offences of this character. I am sure the House will realize that people, who can evade the duty involved by complying with the provisions which are required under this Act, could make not two thousand rupees, not twenty thousand rupees, not two lakhs of rupees, but possibly two crores and it would be quite useless to attempt to deal with this matter merely by a fine. That is why the enactments concerned already contained a provision for imprisonment for a term which may extend to six months. In effect, therefore, the Mover of this amendment is seeking to make an important and substantial change in the law and that would certainly not be merely consolidation.

Sir, I oppose.

**Mr. President** (The Honourable Sir Abdur Rahim): The question is:

"That in clause 9 of the Bill, the words 'with imprisonment for a term which may extend to six months, or' be omitted."

The motion was negatived.

Clause 9 was added to the Bill.

**Mr. T. T. Krishnamachari**: Sir, I move:

"That in clause 10 of the Bill, the words 'and the animals, vehicles, vessels or other conveyances used in carrying the goods', be omitted."

Sir, I find that I am in a very happy position of being able to draw the attention of the Honourable the Finance Member to the extremely informative annexure to the Bill, namely, Notes on Clauses, and to point out that whoever is responsible for drafting these notes as part of the Bill is wilfully and deliberately misleading the Members of this House from the real facts of the situation. Sir, it is sought in the notes to the clauses of this Bill that clause 10 finds a counterpart in the Indian Salt Act of 1882, section 9; in Matches (Excise Duty) Act, 1934, section 15; in the Sugar (Excise Duty) Act, 1934, section 9; and in the Tobacco (Excise Duty) Act, 1943, section 11.

I am afraid in those Acts that I have mentioned the words "the animals, vehicles, vessels or other conveyances used in carrying the goods" do not find a place. Therefore I ask the Honourable the Finance Member whether it is not a fact that the Salt Act confines the powers of the Court, in regard to what

[Mr. T. T. Krishnamachari.]

it may order to be forfeited, to receptacles, etc. In the case of Matches it confines to splints, etc., in the case of sugar, only to sugar; in the case of tobacco to tobacco and the containers of the manufactured tobacco products, packages, etc. Wherein does this clause fit in? The Honourable Member might find a counterpart for something else, but it is not a common feature of these Acts which this consolidated Bill seeks to bring under one Statute. I, therefore, say that these words must be omitted.

The second fact is this: In the actual operation what happens? If there is smuggling or if there has been a transmission of excisable goods from one place to the other infringing the law no doubt, where do the animals, vehicles, vessels or other conveyances come in? Does the Government expect that the owners of these vehicles—unless it be that the ownership of the vehicles synchronizes with the ownership of the excisable goods which are carried—who merely are common carriers, are likely to know whether there has been an evasion of excise laws in respect of the goods that they carry? I think the provisions of this particular section are unduly harsh in respect of people who unwittingly may do many things and to throw the onus on them to prove that they have unwittingly done so is not called for. I therefore think that the Government cannot but accept my amendment if they are acting in fairness to the people of this country and to the Members of this House. I therefore move.

**Mr. President** (The Honourable Sir Abdur Rahim): Amendment moved:

"That in clause 10 of the Bill, the words 'and the animals, vehicles, vessels or other conveyances used in carrying the goods', be omitted."

**Dr. P. N. Banerjee**: I support this amendment. It would be going too far to demand that all animals and carriages and other conveyances which are used for transporting goods from one part to another be confiscated. Sir, the goods which are contraband may themselves be confiscated or forfeited to His Majesty but to provide that an innocent carrier carrying these goods should have his animals and his carriage forfeited is, I think, going too far. As has been pointed out by my Honourable friend, Mr. Krishnamachari, this provision does not exist in all the Excise Acts. If such a provision exists in some of the Excise Acts, it should not be made general now. It would be extending the scope of this Bill, which is only a consolidating Bill, to put in all the restricting measures contained in all the Excise Acts. In the interests of justice we demand that the carriers should not be included within the provisions of this section.

**Mr. Govind V. Deshmukh**: As I understand, the object of any punishment or forfeiture that is prescribed in the Act is to deter a person from committing a breach of the Act. In this Act, as provided by the former section, we have already made provision for the punishment as well as for fine. The manufacturer himself is put in jail. It means that the manufacturing concern itself is stopped. Now, that by itself would be a very strong deterrent for any person to commit a breach of any provision. Now, why should there be any provision as regards the forfeiture of such articles as animals, vessels, etc., as have been mentioned in the amendment? I can understand the forfeiture of such implements as are used in the manufacture of the things which are made punishable, but not of such articles which are in themselves harmless. I hope, Sir, that in the circumstances, the amendment would be accepted.

**Mr. Lalchand Navalrai** (Sind: Non-Muhammadan Rural): With regard to this clause we find that there are three punishments provided. The man who is found guilty by the Magistrate will have imprisonment up to six months or fine also. In addition this clause provides there will be forfeiture of the goods and other materials. If the goods themselves are forfeited it is understandable. There is also sense in forfeiting the receptacle belonging to the person in which these goods are carried, but why forfeit the conveyance or the vessel which carries the goods? Then this clause does not say whether these conveyances or vessels should belong to the accused persons. It may be that they are secured on hire, so confiscate them when there is no evidence that the hirer had any knowledge of the contraband goods, or, when it is

assumed that he is guilty merely by giving it on hire. To confiscate such a vehicle or animal is, I think, beyond any common sense. The accused himself may be punished in any manner or in various manners, but not any other person who has simply given the vehicle on hire. Even in the present clause it is not provided that forfeiture would be on proof that the animal or the vehicle belongs to the guilty man. Therefore, the amendment is very reasonable and it should be accepted.

**Maulana Zafar Ali Khan** (East Central Punjab: Muhammadan): Sir, I support the amendment. Contraband goods might be forfeited but to forfeit the animals carrying those contraband goods does not seem to be very reasonable. Supposing a peasant has got a couple of bullocks and he uses those bullocks for tilling. Unfortunately one fine day he carries certain contraband goods in a vehicle to which these bullocks are yoked and he is arrested and prosecuted. Now if the goods are forfeited, so far so good. No harm happens. But to forfeit the bullocks means that he will be deprived of the means of his livelihood, which is against the economic interests of the country as a whole. So, with these few words, I would like the Honourable the Finance Member to consider it and accept the amendment.

**The Honourable Sir Jeremy Raisman**: I would like to point out that the kind of offences that may be committed in respect of excisable goods are of two kinds. They may be offences in regard to the processes that take place in the manufacture of the goods, and in regard to those what may happen is that you may find illegal manufacture in a place which is not notified or not licensed as a factory or warehouse, and in regard to those I understand my friend, Mr. Deshmukh, to agree that it is reasonable to confiscate the implements and the machinery used in the manufacture of the goods. That of course is common excise practice. The other type of offence which may occur is in regard to the movement of the goods: in other words, it is of the nature of smuggling: the goods are moved away at the wrong time or without notice being given or in such manner that duty will not be paid on them. I would ask the House to consider the type of thing which happens then. The excise officers become aware that goods are being removed, say in a cart or in a motor car or in a boat. . . .

**Dr. P. N. Banerjee**: Belonging to a third person!

**The Honourable Sir Jeremy Raisman**: This is what frequently happens. They make a raid and they capture a vehicle. As often as not, all the persons concerned in the smuggling disappear across country—you may or may not catch them. What you are left with is the vehicle and some goods. Now, if you are to be debarred from dealing with what you have in your hands, I suggest that you are not in a very good position to deal with that kind of offence. The cases which my Honourable friends are worried about are those where there may be a poor carter who did not know anything whatever about the goods—somebody came to him and paid him something and told him, "You take this from here to there". That of course does happen, but I would point out that this relates to the powers of the court trying the offence: the court takes into account the degree of complicity or otherwise of a carrier. That is usually one of the important features of the case, because if the carrier is himself involved, he will be liable for arrest and penalties, possibly greater than that concerned merely with the vehicles. A very common type of case involves the use of motor cars; in fact motor cars are the most effective instruments for carrying out smuggling because they can move so rapidly and the excise authorities have got to be able to move with equal speed in order to catch them. It has happened frequently in my experience when a large sum has been involved, the motor car has been abandoned—you had nobody there but the motor car and the goods; and Honourable members, specially from South India, will remember cases of that kind which happen in regard to certain territories. It is absolutely essential that the courts should be at liberty to order forfeiture in proper cases. . . .

**Mr. T. T. Krishnamachari**: May I ask the Honourable Member if he will kindly state whether this is a new provision or it is a provision.

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copied from some other Excise Act other than the Acts I have mentioned in my speech moving the amendment?

**The Honourable Sir Jeremy Raisman:** The provisions of this clause 10 are drawn from the sections indicated in the Notes on Clauses.

**Mr. T. T. Krishnamachari:** I do not find this clause anywhere in any of those sections.

**The Honourable Sir Jeremy Raisman:** My Honourable friend's researches are curiously infructuous, as I said before. First of all, I quote from the Sea Customs Act, the provisions of which have been applied to . . .

**Mr. T. T. Krishnamachari:** That does not find a place in the Notes—the Sea Customs Act.

**The Honourable Sir Jeremy Raisman:** No; although it is not mentioned in the note, this is an additional provision of the law applicable . . .

**Mr. T. T. Krishnamachari:** Does the Honourable Member then withdraw his remark that my researches were infructuous?

**The Honourable Sir Jeremy Raisman:** I won't—yet; it is a very soft impeachment, and it often happens to me to pursue infructuous researches; but under section 12 of the Indian Act—

“All salt or saltpetre in respect of which any offence mentioned in section 9 has been committed, together with the vessels, packages or coverings in which such salt or saltpetre is contained, and the animals and conveyances used in carrying it, shall be liable to confiscation.”

Did my Honourable friend fail to discover section 12?

**Mr. T. T. Krishnamachari:** If the Honourable Member wants me only to read his Notes, it is merely a matter of section 9 and nothing else: the notes merely give section 9. The imperfection started with the Honourable Member's department.

**The Honourable Sir Jeremy Raisman:** There has been a misprint. Section 71 of the Madras Salt Act is given. The position under the Excise Acts is this, and I think it is not seriously contested that a provision of this kind in regard to salt has always been a feature of the law on the subject. . . .

**Dr. P. N. Banerjee:** So you are extending!

**The Honourable Sir Jeremy Raisman:** The position in regard to the Excise Acts is that they are not in themselves complete self-contained enactments but they import the provisions of the Sea Customs Act, and the provision of the Sea Customs Act on this subject is that every vessel, cart or other means of conveyance and every horse or other animal used in the removal of any goods liable to confiscation under this Act shall in like manner be liable to confiscation. The principle is that if you discover that an offence has been committed by the use of any vehicle or means of transport, then that vehicle or means of transport is liable to confiscation. I think that this is a perfectly well understood principle, that it has been in existence that it is essential for dealing with the cases in certain circumstances, and that the courts which try these offences regularly go into the justification for ordering such confiscation and that the hardships anticipated by various Honourable members do not occur because this is not a matter which is within the power of the excise officers alone. He has to convince the court that the confiscation which he suggests is justified in the circumstances of the case. For these reasons, I oppose the amendment.

**Sir Muhammad Yamin Khan (Agra Division: Muhammadan Rural):** Sir, the explanation of the Honourable the Fiance Member is all right on paper, but in practice there must be some kind of guidance for the court to come to the conclusion whether to confiscate the goods or not. The words used are . . .

**The Honourable Sir Jeremy Raisman:** “May”—not “shall”.

**Sir Muhammad Yamin Khan:** The Court may—quite right; but on what grounds? Supposing the case which the Honourable Member himself was stressing takes place—a man borrows a cart and bullocks from his neighbour and he says “I am going to use it for a purpose”. This man lends his cart



and bullocks thinking that they will be used for a legitimate purpose; but they are dishonestly used; the sufferer is the person who really owns the bullocks and the cart, and not the man who used them actually for transport.

**The Honourable Sir Jeremy Raisman:** If the owner of the vehicle is not the offender, he has his remedy against the offender.

**Sir Muhammad Yamin Khan:** Quite right; you ask that the man must be punished first, and then he can seek his remedy in court; and it is very hard in these cases. Why not provide in the section itself that remedy, so that he may not have to go to the court? You can say that if anybody is found deliberately using, in order to deceive the authorities and with his connivance or his knowledge, his bullocks or cart for this illegitimate purpose, then they may be liable for confiscation. Then, of course, nobody can complain and I

shall wholeheartedly support if the man deliberately uses his conveyance for the purpose of cheating the public department, but why punish an innocent man and then ask him to go and find out a remedy. This is not proper. When we are framing the Bill we must take into consideration that no hardship may be caused to people who have really got no intention to cheat or deceive the public department. One explanation may be added to this section to the effect that if the Court finds that it has been deliberately used by the owner of the conveyance for the purpose; then it will satisfy us. I quite agree with the Honourable Member when he says that motor cars may be used in this respect, but as has been mentioned by my Honourable friend, Maulana Zafar Ali Khan, the poor agriculturist who innocently, absolutely without knowing anything, may lend his conveyance—his cart may be confiscated, then he has to come to the Court and find a remedy. The poor fellow has got no money to file a suit, and bad blood starts between himself and his neighbours, and all these complicated things will arise. I do not think it is a sound policy and some kind of explanation that the Court may punish when it comes to know that this act has been done deliberately and with his connivance for the purpose of cheating the public department is necessary. I cannot bring in an amendment now at this stage, but it is for Government to bring up such a one either here or in the other House.

**Sir Cowasjee Jehangir:** The main issue is whether any of the Acts that are being consolidated falls within the mischief of this clause 10, or, in other words, whether this punishment is prescribed for offences in all the Acts that are being consolidated? I understood the Honourable the Finance Member to answer that question in the affirmative, absolutely and completely in the affirmative. If he answers that question in the affirmative, then we are going into the merits of a provision contained in these Acts. If we went into the merits of the provisions of all the Acts that were being consolidated, then we would be revising all those Acts and not consolidating them. I presume that we are not doing that. Those Acts can be amended either by a private Bill or by Government bringing in amending Bills. We are not doing that. Therefore, if the question that I have asked is answered in the affirmative, then we cannot go into the merits of provisions that already exist. So far as I could understand the arguments, they were on merits. Nobody has tried to show successfully except Mr. Krishnamachari who pointed out that the Notes were not complete—nobody has tried to show that this clause 10 does not apply to any Act that is being consolidated. (Interruption.) If it can be shown that the clause did not apply to any one of these Acts, —then Honourable Members may have a serious complaint that in consolidating these Acts you have made a radical change. If that complaint does not exist, then we are going into the merits of the question which we have no right to do.

**Mr. T. T. Krishnamachari:** That is my point. The complaint exists.

**The Honourable Sir Jeremy Raisman:** If I may answer the question, with your permission, Sir, of Sir Cowasjee Jehangir, I will draw the attention of the House to clause 12 of this Bill, a corresponding provision to which exists in all our Excise Acts. Those Excise Acts were small and imperfect and in order to

[Sir Jeremy Raisman.]

supplement them there was power to import the provisions of the Sea Customs Act. Clause 12 says:

"The Central Government may, by notification in the official Gazette, declare that any of the provisions of the Sea Customs Act, 1878, relating to the levy and exemption from customs duties, drawback of duty, warehousing, offences and penalties, confiscation, and procedure relating to offences and appeals shall, with such modifications and alterations as it may consider necessary or desirable to adapt them to the circumstances, be applicable in regard to like matters in respect of the duties imposed by section 3."

Those notifications exist and they import the provision of the Sea Customs Act which I have read out a little while ago, to existing excises. Therefore, the legal position is that at the present moment these vessels, etc., are liable to confiscation.

**Sir Cowasjee Jehangir:** In every one of the Acts you are consolidating, because corresponding section 12 appears in all the Acts?

**Mr. T. T. Krishnamachari:** Then this is superfluous and nothing will happen if it is eliminated.

**The Honourable Sir Jeremy Raisman:** It consolidates the position in regard to all the commodities dealt with by this Act.

**Mr. President** (The Honourable Sir Abdur Rahim): The question is:

"That in clause 10 of the Bill, the words 'and the animals, vehicles, vessels or other conveyances used in carrying the goods', be omitted."

The motion was negatived.

Clause 10 was added to the Bill.

Clause 11 was added to the Bill.

**Mr. T. T. Krishnamachari:** Sir, I move:

"That to clause 12 of the Bill, the following proviso be added:

'Provided that to the extent necessary to put goods manufactured in India and subject to duty under clause 3 in a position not inferior to that of similar goods imported into India, the Central Government shall apply the provisions of the Sea Customs Act of 1878.'

It has been stated that clause 12 forms part of every Excise Act—I am not disputing the statement—and therefore this particular amendment of mine might be considered superfluous. But I think when consolidating several Excise Acts a certain clarification is also necessary which defines while it does not detract from the powers that have been conceded to Government. In this particular instance we would like to be assured that, in operation, section 12 will not make the position of manufacturers of goods in this country inferior to those who might import goods from abroad, and I have got a right to ask the Government to explain their view point. My own feeling is that a provision of this sort would safeguard the situation. Sir, I move.

**Mr. President** (The Honourable Sir Abdur Rahim): Amendment moved:

"That to clause 12 of the Bill, the following proviso be added:

'Provided that to the extent necessary to put goods manufactured in India and subject to duty under clause 3 in a position not inferior to that of similar goods imported into India, the Central Government shall apply the provisions of the Sea Customs Act of 1878.'

**The Honourable Sir Jeremy Raisman:** Sir, this in an important point of tariff policy which my Honourable friend has raised. I entirely agree with him that any duty which is levied on goods produced in the country must be levied on goods imported from abroad but this is merely a machinery section and it is not by this means that so important an object as that could be ensured. It is the duty of this House and of the Government to see to it from time to time that when excise duties are imposed, the position of the indigenous producer *vis-a-vis* manufacturers abroad is not prejudiced in any way and, as far as I remember, both the Government and the House have always been vigilant on this point. I do not think my Honourable friend could cite any instance in which the Government have failed to pursue the policy which he seeks to achieve by this amendment. I suggest that this amendment is not necessary and that it would be inappropriate in this place and that the major question of policy is one which must be dealt with by other means.

**Mr. Hoosenbhoy A. Lalljee:** I rise to support the amendment that has been moved for the very reasons that the Honourable the Finance Member has advanced. It is now a policy, laid down and settled, that we do put an import

duty on the goods on which excise duty has been put. If that is the policy of the House and if that has been a settled fact all through so many years, I do not see why it should not be put here once and for all. If we put it down in the statute it would be helpful and it would be consistent with our policy. If this amendment is incorporated here, it will avoid further agitation every time and the people will rest content that every time excise duties are levied, corresponding customs duties will be levied on imported goods. If this provision is put down in this Bill, we shall avoid controversy as far as possible and I do hope that the Honourable the Finance Member will concede the request of this House and I think even the Treasury Benches will agree that what has been a settled policy may be incorporated in this section.

**Mr. President** (The Honourable Sir Abdur Rahim): The question is:

"That to clause 12 of the Bill, the following proviso be added:

'Provided that to the extent necessary to put goods manufactured in India and subject to duty under clause 3 in a position not inferior to that of similar goods imported into India, the Central Government shall apply the provisions of the Sea Customs Act of 1878.'

The motion was negatived.

Clause 12 was added to the Bill.

The Assembly then adjourned for Lunch till Half Past Two of the Clock.

The Assembly re-assembled after Lunch at Half Past Two of the Clock, Sir Henry Richardson (one of the Panel of Chairmen) in the Chair.

**Mr. T. T. Krishnamachari**: Sir, I shall be very grateful if you will permit me to move my amendment after excluding a sentence from it. I will first read the amendment as it stands on the paper. It runs thus:

"That after clause 12 of the Bill, the following be inserted:

'12A. Notwithstanding anything to the contrary in this Act, salt collected or manufactured for domestic consumption by any person to the extent necessary for the needs of his own family or for sale in the neighbourhood not exceeding a radius of three miles shall be exempt.'

I ask for your permission to exclude the words:

"or for sale in the neighbourhood not exceeding a radius of three miles."

**Mr. Chairman** (Sir Henry Richardson): I have no objection to the deletion of these words.

**Mr. T. T. Krishnamachari**: Then, I move:

"That after clause 12 of the Bill, the following be inserted:

'12A. Notwithstanding anything to the contrary in this Act, salt collected or manufactured for domestic consumption by any person to the extent necessary for the needs of his own family shall be exempt.'

The provocation for this amendment is, I think, understood by all Members of the House. It merely puts on the Statute-book part of an agreement made by the then Head of the Indian Government with a very respected person of this country some 13 years back and which the Government has been, I am glad to say, observing. It might be that there was a certain sanctity at the time when the agreement was made with Mahatma Gandhi by Lord Irwin, the Viceroy at the time. But 13 years is quite a long period and the picture in our minds is perhaps even blurred and today we only understand it as part of an obligation of the Government, an obligation which carries with it a sanctity such as any Statute does. Therefore, the present opportunity, when an attempt is made to consolidate the several Excise Acts of the Government, should be used to put it in black and white and make this agreement between a well-known and respected person of this country and a similarly placed person belonging to Great Britain a part of the Statute of this country. It may even be that in actual practice something more than what is visualised by my amendment is permitted by the Government. I understand that head-loads are permitted. As head-loads could not be consumed by a family, it happens that other families also consume it with or without paying something in lieu of it. But I think it would be safe not to commit the House or the Government to anything beyond what is neces-

[Mr. T. T. Krishnamachari.]

sary for the needs of a family. If anything more is allowed, it is allowed as a matter of mere administrative grace and nothing else.

It is not necessary for me to recall now all the discussions that have taken place in this House and elsewhere with regard to this matter. That is past history. But I think the Honourable the Finance Member will certainly support me that it is an accepted fact and a fact which is now being observed by authorities and it is a privilege which is being enjoyed by the people and I think there is absolutely no possibility of this privilege being withdrawn at any time. If such a contingency occurs, naturally the Legislature would only be too willing to support the Government should their approval to the withdrawal of this concession be shown to be very necessary in the interests of equity and for the better administration of the Excise laws of this country. As matters stand today, when even the period of limitation has passed, this practice having been in observance for 13 years, it is but right that opportunity should be taken to put it on the Statute-book.

**Mr. Chairman** (Sir Henry Richardson): Amendment moved:

"That after clause 12 of the Bill, the following be inserted:

'12A. Notwithstanding anything to the contrary in this Act, salt collected or manufactured for domestic consumption by any person to the extent necessary for the needs of his own family shall be exempt'."

**Dr. P. N. Banerjee:** Sir, a short time ago my Honourable friend Mr. Greenfield, told us that the agreement which has been given effect to and is being given effect to at the present moment will not be affected by the legislation which is now being undertaken. If that be so, what is the objection of Government to place this agreement on the Statute-book? Why should we depend on the sweet-will of the Executive authority in regard to such an important matter. We all know that this is a very important matter. Apart from the political aspect of the question, this matter affects the poor people of the country, the poorest of the poor, if I may say so put it. The poor people in the coastal areas make their own salt for purposes of their home consumption and to tax this salt would be a cruelty towards these poor people. The Government having accepted the principle of exemption of such salt from the purview of the Salt Tax Act, it is desirable that this principle should be placed on the Statute-book. There cannot possibly be any objection to this step being taken. All that has been said by my Honourable friend, Mr. Greenfield, supports my contention that this should find legislative sanction.

**Mr. Muhammad Nauman** (Patna and Chota Nagpur *cum* Orissa: Muhammadan): Sir, I rise to support the amendment which has been moved by my friend Mr. Krishnamachari. I do not think there is much to be said in favour of it because the Government representative, Mr. Greenfield, has himself accepted the position that he does not mean any disturbance of the situation which exists at the moment and he does not want to interfere with the rights and privileges which do exist at the present moment. As such, there can be absolutely no reason why he should not be willing to place it on the Statute-book so that the exemption may continue. With these few words I support the amendment.

**The Honourable Sir Jeremy Raisman:** Sir, without wishing in any way to comment on the procedure whereby this amendment has undergone an important change at the last moment, I must point out in justification of myself that what I was prepared for was the amendment as originally put in by my Honourable friend, and to that amendment there were undoubtedly serious objections, which I think he must have realised, which would have made it impossible for the Government to accept it. I am now faced at a very short notice with an amendment of a very different character and which is very much more restricted in scope. I should like to have a little time to consider it. I should be glad to meet the desire of Honourable Members if there is no technical difficulty. It certainly is the case that at the present time Government

do not seek to charge a duty on salt collected or manufactured for domestic consumption by any person and that is done in pursuance of the agreement to which Honourable Members have referred. There is no intention whatsoever on the part of Government to make any change in that or to depart from it. But, I would like, Sir, in view of the fact that this has been sprung upon me at rather short notice, if it were possible I should be glad if we can proceed with the other amendments and come back to this at a later stage.

**Mr. T. T. Krishnamachari:** I am quite prepared to agree if the Chair would permit it.

**Mr. Chairman** (Sir Henry Richardson): There is no objection to this amendment being taken at the end, after all the amendments are disposed of.

**Mr. T. T. Krishnamachari:** Sir, I move:

"That in sub-clause (1) of clause 13 of the Bill, after the word 'officer' the words 'not below the rank of an Inspector' be inserted."

Sir, clause 13(1) reads:

"Any Central Excise officer duly empowered by the Central Government in this behalf may arrest any person whom he has reason to believe to be liable to punishment under this Act."

Sir, since there is no justification of an emergency as is visualised in the operation of the Defence of India Act or the Defence of India Rules, I think the Government can be more explicit in regard to conferring of powers on officers to arrest people. I do feel particularly in view of the weighty pronouncements in regard to the need for precision as to who is empowered to act in the name of Government and who is not, I think there ought to be no difficulty in the Honourable the Finance Member accepting my amendment and specifying that the officer who shall have power to arrest shall not be one below the rank of an Inspector. If the Honourable Member feels that he ought to get one step below that of an Inspector, I should not be personally averse to it. I think it is very necessary to state explicitly who is the officer who is going to have power and the mere matter of delegation of power by the authorities to one set of authorities, then to another and so on, until ultimately it goes to the peon, such a delegation is not visualised by the clause nor wanted by the Government. Sir, I move.

**Mr. Chairman** (Sir Henry Richardson): Amendment moved:

"That in sub-clause (1) of clause 13 of the Bill, after the word 'officer' the words 'not below the rank of an Inspector' be inserted."

**Mr. Hoeseinbhoj A. Lalljee:** Sir, I rise to support the amendment that my Honourable friend has moved. Sir, this is a very important matter inasmuch as I do believe that many a time if there is any bitterness prevailing between the public and the executive government, it is due to the fact that the powers which the Government are given by the legislatures are delegated to anybody and everybody. I say to anybody and everybody because of the fact that these powers are given even to the ordinary man with very low pay. We know very well that many of the subordinate services in our country are paid very low and the reasons are two-fold. One is that we are unable to pay large sums and the other is because there is no employment and any service is welcome. Naturally, we know that when underfed and low paid and when in subordinate position, they cannot resist the human temptation of being led away by small things or big things, for personal gain. It is not only true in this country but in many countries that when powers are given to the ordinary class of person placed in the circumstance of subordinate service, they are liable to go wrong. Commercial people have certainly observed this weakness on the part of subordinate services in their daily transactions. Those who have 200, 300 or 400 employees and much bigger concerns have invariably found that low paid people go wrong many a time. It cannot be an exception in the Government service. I may tell you, Sir, that if many of the powers which are delegated under the Acts passed in the legislature were more carefully delegated, if the powers were delegated to responsible people, then all the bitterness and ill-feeling and open revolt would not have been experienced in this

[Mr. Hooseinbhoj A. Lalljee.]

country by Government. In the present instance, any manufacturer, industrialist or any well-known person will be at the mercy of an excise officer for being arrested in the country. If some irresponsible man were to arrest an industrialist or a commercial magnate, then his business would almost be ruined. Instances are not wanting where due to carelessness of these subordinate officers, heavy losses have been incurred by commercial people. This has been the experience of many of my Indian friends. I know very well that so far as the European community is concerned in this country, no subordinate officer, far less any other officer dare do any acts which they often do and many times are tempted to do with regard to the Indian public. I am ashamed to own this, but it is a fact. In industries like sugar, salt or matches, sure enough, restrictions are imposed against them. So far as salt is concerned, there are not many manufacturers who are producing 20,000 tons a year. They do not produce more than 2,000 to 3,000 tons a year. It is not at all fair that all these people should be handled by an ordinary subordinate. It would be argued and rightly too that the Central Government who have to collect all these revenues from these people who pay heavy excise duties would not like to disturb them. It is not in the interest of Government to disturb them. I quite concede that. But will the Treasury Benches agree with me that their officers getting small salary invariably do not realise these things? We have seen that even in the Income-tax Department these things happen so far as the subordinates are concerned. So far as the police is concerned, my experience has been much bitter, very very bitter. Far be it from me to say anything against the subordinate services. I have always been an elected Member and many people belonging to the subordinate services have been my voters. But the facts are there, they are ill-paid, ill-fed and the responsibilities are very great.

Then we have also found that when such important questions of heavy incomes are there, when Government stand to gain or actually earn lakhs and crores of rupees out of such excise revenue, they ought not to grudge some expense but should appoint important officers if they want to put a stop to smuggling and evasion of tax. In proportion to their income they can justifiably appoint and must appoint responsible and well paid officers. It is not the same as the position of the local administration with regard to the police where the funds are meagre and the service is large. But so far as the Central Excise and Income-tax Departments are concerned the proportionate cost is very little, the risk of all kind is great. I again tell Government that when undesirable actions take place they do create bad feeling and heavy losses; and it is more unfortunate when the higher officials here, as a matter of policy, always support the subordinates whenever they do anything. It is well-known to those who move with the public that when a sub-inspector makes a report the men at the top will seldom change it. There is of course a clause which says that when there is a vexatious seizure or search the officer can be dealt with. But we seldom find that any prosecution launched against any officer has ever succeeded in this vast country, except perhaps one or two in the whole year. That is the fact, and often when you give this power to any officer to arrest it is invariably abused. Of course, in the case of a rich man like Sir Cowasjee Jehangir it may not be much; only his health will suffer by being taken to a chowki. But if I am arrested what happens; we are small people doing small business and immediately it comes out in the papers there is a rush on our business and there is a loss of capital and loss of business. These are the actual results not to speak of personal bitterness and so on. I, therefore, implore Government to appoint responsible and well paid officers and not give such sweeping powers to all classes of people, I mean in services of Government.

Then you find that powers are given as to the disposal of these arrested people, as if they were cattle. There also you find that the officer can arrest any one and take him to an officer of the Central Excise Department, who may be 80 or 40 miles away, either in a bullock cart or in handcuffs through the streets from the salt or sugar factory, and that gentleman whenever he likes

can, if he chooses, place him before a magistrate. A police officer when he makes an arrest has to place him before a magistrate within 24 hours; but here an industrialist when arrested has to be taken to a Central Excise officer and he can send him to a magistrate whenever he likes; and only thereafter the routine laid down in the Criminal Procedure Code comes in. But before that he can do whatever he likes. The other day some Honourable Members spoke about the magistracy in this country. Here stands before you a Member of this House whom a magistrate has very lightly treated. My only consolation is that he was not an Indian magistrate and did not know the people of Bombay. A certain person of no means at the instance of some litigants and at their costs made certain vile allegations against me and an omnibus warrant of search without notice was issued. I know some people who were behind this malicious move. The proceedings had to go on and when I went up to the High Court there was subsequently an acquittal. Of course, in the case of title-holders the case may be different but otherwise it often happens that in the hands of some ill-paid people the powers are misused and the result is bitterness and ill-feeling. I support the amendment and appeal to Government to consider it in the light of the considerations I have put forward.

**Dr. P. N. Banerjee:** Sir, this amendment is very modest and reasonable. It demands that instead of the power of arrest being given to any Central Excise officer as provided in this Bill, it should be given to an officer not below the rank of Inspector. It is well known that in this country the lower the rank of the officer the greater is the possibility of harassment and oppression. My Honourable friend has just pointed out the likelihood of the people being harassed by these petty officers, and it is only right that we should urge that a person who has some sense of responsibility and is expected to possess a reasonable frame of mind should be invested with this power. This is some little safeguard against petty tyranny and oppression of the people.

**Syed Ghulam Bhik Nairang** (East Punjab: Muhammadan): Mr. Chairman. I support the amendment moved by my Honourable friend, Mr. Krishnamachari.

The reasons which have been given by him and the speakers who  
 3 P.M. have preceded me are such that looking at the very important nature of the work done by the officers employed to carry on the Department of Central Excises and looking at the same time at the emoluments which are offered to them, the public naturally considers that these Inspectors and Deputy Superintendents and Superintendents in this Department, whose designations are high-sounding enough but whose emoluments are so poor that they cannot, under the present circumstances at any rate, keep up their position, can be easily approached and can be easily made to do anything, and that makes their position really untenable. I may say that I speak subject to correction because I have not got any detailed information on the point. The Inspectors who are employed in the Central Excise Department get a start of Rs. 70 and the maximum which they can reach by increments is Rs. 140, according to my information. Then, if they are lucky enough, to be promoted to the rank of Deputy Superintendent, they start with Rs. 160 and if later on some of them are appointed Superintendents they start with Rs. 200. Now, a Superintendent is a Gazetted Officer and, of course, he has to keep up his position and to mix with other Gazetted Officers. But he is getting only Rs. 200 per mensem. He may get some travelling allowance at certain rates when he goes out on tour but that does not count for much. The position, therefore, in a nutshell is that low-paid officers are entrusted with very important duties and invested with extensive powers and yet you expect them to be honest and not to get addicted to corruption. You expect the public to trust their integrity and their honesty. You put them in a position in which the words of a Persian Poet become applicable to them.

The poet says:

*"Darmian-i-qare darya takhta bandam kardai  
 Baaz be goi ke daman tar makun hoshiar bash."*

"You have tied me to a plank in the midst of the river and yet you tell me 'don't let your clothes get wet; be careful'."

[Syed Ghulam Bhik Nairang.]

You give such extensive powers to these people; you entrust them with such important duties and yet you pay them so little.

Then the complaints suggested by my Honourable friend, Mr. Hooseinbhoy Lalljee, and also endorsed to a certain extent by Dr. Banerjea, are, of course, made by the public. But I would tell these Honourable Members that they ought to look to the other side of the shield as well. You say they are people of small status and they should not be given such wide powers and they should not be given powers of arresting and detaining in custody till the names are disclosed, and all that. It is all very well, but you should at the same time press on this Government the need for putting their position above suspicion by paying them sufficiently well.

**Mr. Hooseinbhoy A. Lalljee:** I said so.

**Syed Ghulam Bhik Nairang:** I talked to a certain Inspector in the Central Excise Department. I said, "Well, you are working at this Match Factory. How much does this factory pay to Government in excise duty"? This factory was in Calcutta. He told me it was between 3 and 4 lakhs every month the payment of which he was supervising. I asked him what he was being paid as his salary, and he told me that he was getting Rs. 75 per mensem. I asked him whether he was working alone in that factory, and he replied that there were some supervisors also working under him—two or three—and the total amount paid to them all was not more than 200 rupees per month. I think a question arises as to whether when Government earns so much money per month by paying only Rs. 200 per month to the servants, is it equitable and fair to give them this starvation allowance and to make so much money out of their work? I think this is a question which is very relevant when we ask the Government to confer these powers only on reliable and high-placed Government officers, so that they may not abuse them, so that they may not oppress the public. That is all right, but one way of putting them above the temptation of being corrupt is to pay them well. These are only some of the reasons for which I support the amendment and I hope that my observations will receive the attention of the department concerned.

**The Honourable Sir Jeremy Raisman:** Sir, I think that Honourable Members have brought forward points which do require the consideration of Government. But I do not feel that the matter can suitably be dealt with by a simple amendment of this character. Let me indicate the nature of the difficulties.

We are here dealing with duties on different types of commodities. This is a consolidating measure and we are trying to bring together in this measure the provisions necessary to regulate the whole field. Now, in the case of commodities like salt or even tobacco, you may have offences committed in scattered places all over the country by persons of, shall we say, low economic status. It is hardly practical politics to have a force of Inspectors or Sub-Inspectors which would be adequate to deal with all offences and have power to arrest the offenders in cases of that kind. Now, on the other hand, you have, for instance, excise on the manufacture of tyres, even excise on the manufacture of sugar, matches. It is quite clear that it is not suitable that an ordinary excise peon should have the power to arrest an industrial magnate or the owner of an important factory. What is necessary really is a graduation of the powers distributed according to the nature of the commodity and the conditions in which the tax has to be collected. That object would not be secured in this way or without serious detriment to the practical administration. That object could not be secured by a simple provision that nobody below a particular given rank shall arrest. In some cases a Sub-Inspector might be too high a rank and in other cases he might be too low. What I suggest is this. The distribution of these powers of arrest will have to be given by rule and I undertake on behalf of the Government that the difficulties which have been put before me in the course of the Honourable Member's speeches shall be fully taken into account in framing the rules empowering different classes of officers under this clause in



relation to different commodities. I think that the difficulty cannot be met in a uniform way and I think that the powers to arrest should vary according to the commodity on which the tax is levied and the circumstances in which the collection of that revenue is to be safeguarded. I trust that that will give satisfaction to the House. I regret that it would not be possible for me to accept the amendment as it stands for the reasons I have given.

**Sir Cowasjee Jehangir:** Mr. Chairman, the first question I would like to ask is whether this provision of arrest is in every Act that is being consolidated? I presume there must be some provision in all Acts. Is this the exact wording in all Acts?

**The Honourable Sir Jeremy Raisman:** Each of the Excise Acts contains a section enabling us to import by notification the provisions for arrest under the Sea Customs Act. Where necessary notifications have been issued.

**Sir Cowasjee Jehangir:** Therefore in different Acts there were different provisions and you have consolidated them and put them into the present wording.

Now, the Honourable the Finance Member talked about making rules. May I know what powers he has got of making rules under this section? Has he powers?

**The Honourable Sir Jeremy Raisman:** There is a rule-making power under clause 37.

**Sir Cowasjee Jehangir:** Does that include powers to make rules in regard to arrest?

**The Honourable Sir Jeremy Raisman:** Yes.

**Sir Cowasjee Jehangir:** I particularly asked this question.

**The Honourable Sir Jeremy Raisman:** The power is given in 37 (2) (i) viz.:—  
“provide for the assessment and collection of duties of excise, the authorities by whom functions under this Act are to be discharged.”

**Sir Cowasjee Jehangir:** So it would be covered. I asked because I would be against giving rule-making powers more than the Acts contain at present. We have had bitter experience of giving Government rule-making powers. If those powers exist I see no further objection in appointing suitable officers for suitable offences. But on merits, what Honourable Members have complained of is correct. Their facts are true. I presume after years of experience of excise duties, Government have been using their discretion already with regard to this point and if they had not been we should have heard about it long ago. Since this debate has taken place and the Honourable the Finance Member has now undertaken to regularise those discretions that they have been exercising, I do not think there is anything further to be said.

**Mr. Chairman** (Sir Henry Richardson): The question is:

“That in sub-clause (1) of clause 13 of the Bill, after the word ‘officer’ the words ‘not below the rank of an Inspector’ be inserted.”

The motion was negatived.

**Mr. T. T. Krishnamachari:** Sir, I move:

“That in sub-clause (2) of clause 13 of the Bill, after the word ‘demand’ the words ‘in writing stating the accusation or suspicion’ be inserted.”

Instead of arresting any person who is merely accused or reasonably suspected of committing an offence under this Act or any rules made thereunder, the charge should be put down in writing and the cause of the suspicion also stated. It should not be merely a whimsical exercise of discretion on the part of the officer duly empowered by the Central Government to ask a man to give his name and residence and take action because he thinks that the name and residence given to him happen to be false, or arrest him as the case may be. All these transactions are visualised under sub-clause (2) of section 13. It is only right that when a person is challenged he has a right to ask for the challenge to be put down in writing to safeguard his personal liberties, especially in a country where such liberties are at a considerable discount.

**Mr. Chairman** (Sir Henry Richardson): Amendment moved:

“That in sub-clause (2) of clause 13 of the Bill, after the word ‘demand’ the words ‘in writing stating the accusation or suspicion’ be inserted.”

**The Honourable Sir Jeremy Raisman:** I do not think this is a reasonable amendment. Everybody is familiar with the position whereby an individual

[Sir Jeremy Raisman.]

having been caught in certain circumstances is asked to give his name and address and if he fails to do so is arrested. I do not see why it is necessary to have to repair to some office and obtain writing materials and serve on him the question "Will you give your name and address?" Surely the commonsense procedure is to ask him for his name and address.

**Mr. T. T. Krishnamachari:** It is what follows that matters.

**The Honourable Sir Jeremy Raisman:** In that case why should he not give his name and address? He is asked verbally and he can give it verbally. If he is asked in writing he should give it in writing.

Sir, I oppose the amendment.

**Sardar Sant Singh** (West Punjab: Sikh): I am surprised to hear the Honourable the Finance Member put this question, viz., why should an honest man refuse to give his name when he is asked to? Well, I think the best thing would be to give him an example as to how the names are asked for and why. I once visited Benares and I found a couple of persons behind me. They came and greeted me. I asked them who they were. They said: "You see, we want to know your name." "But, why?" said I. "Who are you? I have never met you before." They said: "We are police officers. We want to know your name and where you intend to put up." Well, I did not understand what business they had to ask me for my name and for my place of abode in Benares. This is the working of the policeman. Unless it is to help the policeman to get the names of persons visiting places of pilgrimage I do not see why such a provision should exist at all.

I quite appreciate that in the Criminal Procedure Code there are provisions to this effect. The position is this. That this power given to a police officer or a quasi-police officer as the excise officers are, presupposes that there should be a reasonable apprehension or suspicion, as it is put down in the body of the clause itself. If that is so, why should there be any hesitation in telling the man that this is the apprehension or suspicion against him, so that if he is given a chance to satisfy the officer that there need be no apprehension on that account, he should be given the liberty to tell the officer there and then: it will avoid the trouble to the Government, it will avoid trouble to the excise officers themselves. There is no reason why the giving of the name should follow as a matter of course. We do not insist that the accusation or suspicion should be proved to him or that he should be convinced of that: only this much precaution that if he is compelled to give in writing the reasons for the reasonable suspicion or grounds for accusation, he will think twice before he asks an honest gentleman out on lawful act in any town or place. We are living in an age when the Defence of India Rules have taken away all the liberties of the subject, and we must have extraordinary precautions against unusual harassment of honest law-abiding citizens of the country. That is the reason for which, I think, this amendment has been moved and I support this amendment.

**Mr. Ohairman** (Sir Henry Richardson): The question is:

"That in sub-clause (2) of clause 13 of the Bill, after the word 'demand' the words 'in writing stating the accusation or suspicion' be inserted."

The motion was negatived.

Clause 13 was added to the Bill.

**Mr. T. T. Krishnamachari:** Mr. Chairman, I move:

"That in sub-clause (1) of clause 14 of the Bill, for the words 'he considers' the words 'may be' be substituted."

The clause seeks to give power to summon persons to give evidence and produce documents in inquiries under this Act and sub-clause (1) reads:

"Any Central Excise officer duly empowered by the Central Government in this behalf shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document, etc., etc."

I should think that this grant of unfettered discretion to the officer, without his having to prove to somebody that what he does is correct, should not find

a place in the Statute-book. Moreover since we have heard *ad nauseam* in this House this morning that "this is part of something else and that is part of something else", I would like to point out to the Honourable Member that this particular provision has been taken from the Madras Salt Act of 1889 and the Bombay Salt Act of 1890 and I would like him to be reminded of those days when he was himself a revenue official in a province, that salt and abkari went together; all the provisions of the Salt Act were also copied into the Abkari Act, and the two departments were one and the same and they had to deal with rather difficult people in those days in 1889 and 1890. After all 1889 and 1890 is not 1944; and even under the pretence of a consolidating measure there is no need to improvise and include restrictions contemplated in those good old days when India was considered to be official's paradise, until that paradise is restored to them by reason of this war coming into being, I think my demand is extremely modest; it may be that it is a verbal alteration but I think it is a very necessary alteration so as to tell the officers what exactly they can do and what they cannot. I, therefore, move.

**Mr. Chairman** (Sir Henry Richardson): Amendment moved:

"That in sub-clause (1) of clause 14 of the Bill, for the words 'he considers' the words 'may be' be substituted."

**The Honourable Sir Jeremy Raisman**: Sir, I must say that my Honourable friend made a considerable speech, but I am still somewhat in the dark as to the exact purpose or effect of this amendment. It seems to me that what he desires is that some objective standard of necessity should be substituted for the judgment of the officer who is empowered in this behalf: I do not see that even if you put the words "may be" instead of "he considers" it would make any practical difference to the situation . . .

**Mr. T. T. Krishnamachari**: If you do not think there is any difference, accept the amendment.

**The Honourable Sir Jeremy Raisman**: No; the drafting of this has been done with due consideration and it is not for me, standing here at this moment, to give judicial interpretations. But I cannot see that there is any necessity for this substitution and I oppose the amendment.

**Mr. Chairman** (Sir Henry Richardson): The question is:

"That in sub-clause (1) of clause 14 of the Bill, for the words 'he considers' the words 'may be' be substituted."

The motion was negatived.

**Mr. T. T. Krishnamachari**: Sir, I move:

"That in sub-clause (2) of clause 14 of the Bill, the words 'as such officer may direct' be omitted."

Sub-clause (2) of this clause reads as follows:

"All persons so summoned shall be bound to attend, either in person or by an authorised agent, as such officer may direct. . . ."

I do not know what the officer may direct or what he may not. Is it that the officer should direct that the person must attend in person or by an authorised agent? Is the discretion as to how he should appear to be a matter for the officer's own discretion and his convenience? After all it may be that his presence may be necessary at every stage: but in a matter of a Bill like this, through which it is attempted to exercise what the Honourable the Finance Member very picturesquely calls internal commodity controls, the scope of a provincial Salt Act does not cover all exciseable commodities. Besides I was rather surprised to hear that the Honourable the Finance Member has submitted himself to the jurisdiction or the authority of some unknown person outside the House, who has carefully gone through this, without the Finance Member being taken into confidence. I do feel that the Honourable the Finance Member owes it to the House to take full responsibility and all the discretion that is legitimately his in regard to changing sentences, changing the commas or full stops; and I am afraid I have been unable to appreciate the plea that it has been done by people who knew better than himself; at any rate in so far as the House is concerned, he knows best, and we know better; that is why we suggest amendments. Speaking on the amendment

[Mr. T. T. Krishnamachari.]

itself, I think this phrase is either superfluous or mischievous; I leave it to the Honourable the Finance Member to say what it is. If he says it is innocuous, then it is superfluous; if he says it is very necessary, it is mischievous. I, therefore, move that these words be omitted.

**Mr. Chairman** (Sir Henry Richardson): Amendment moved:

"That in sub-clause (2) of clause 14 of the Bill, the words 'as such officer may direct' be omitted."

**The Honourable Sir Jeremy Raisman**: The answer is that the words are very necessary and are not mischievous. I, therefore, oppose the amendment.

**Dr. P. N. Banerjee**: In what way are they not mischievous? Will you point out?

**Mr. Chairman** (Sir Henry Richardson): The question is:

"That in sub-clause (2) of clause 14 of the Bill, the words 'as such officer may direct' be omitted."

The motion was negatived.

**Mr. T. T. Krishnamachari**: I move:

"That in sub-clause (2) of clause 14 of the Bill, all the words beginning with the words 'and all persons' and ending with the words 'make statements' be omitted."

The words which I want to omit are these, "and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements". There is one lacuna there. The regulations must also specify exactly whether they should state the truth on the Bible, or the Koran or the Bhagavad Gita? But why is this at all necessary? The Honourable the Finance Member knows that the proceedings of officers who have got powers to summon persons and examine them have got the sanctity of a judicial tribunal, and why should anybody state the truth and only the truth and nothing but the truth? Take, for instance, this. Supposing a person is accused of a particular offence and his wife has to give evidence. If she is to bear witness against her husband, what exactly is the limit of truth that the Honourable the Finance Member wants? I am afraid he will be rather in deep waters if he tries to put in a plea for allowing these words to remain in the Bill. I think my Honourable friend has been badly let down by the drafting department, whose words of advice and whose discretion seem to be so sacrosanct in his eyes. I, therefore, move.

**Mr. Chairman** (Sir Henry Richardson): Amendment moved:

"That in sub-clause (2) of clause 14 of the Bill, all the words beginning with the words 'and all persons' and ending with the words 'make statements' be omitted."

**The Honourable Sir Jeremy Raisman**: I am not a lawyer.

**Mr. T. T. Krishnamachari**: Nor am I.

**The Honourable Sir Jeremy Raisman**: I am afraid then the arguments upon this subject will not be on a very high level. But the clue to these words is to be found, I believe, in section 179 of the Indian Penal Code which starts off with the words, "Whoever being legally bound to state the truth on any subject to any public servant refuses to answer . . ." will be subject to certain penalties, and these words are necessary in order to import the provisions of the Indian Penal Code. For this reason I oppose the amendment.

**Mr. Chairman** (Sir Henry Richardson): The question is:

"That in sub-clause (2) of clause 14 of the Bill, all the words beginning with the words 'and all persons' and ending with the words 'make statements' be omitted."

The motion was negatived.

Clause 14 was added to the Bill.

**Mr. T. T. Krishnamachari**: I move:

"That clause 15 of the Bill be omitted."

I am aware that this particular clause is being taken from the Indian Salt Act, 1882. I dare say there are some provisions, not including that omnibus clause 12 which gives such sweeping powers to the Government under the Sea Customs Act—there are provisions making it compulsory for officers of Provincial Governments to help the Central Government and its departments. 1882 were those days when provincial autonomy was not thought of, but conditions have

changed now. I cannot understand why, notwithstanding the validity the particular clause might have because it found a place in the Indian Salt Act, it should find a place here. I think it throws a large amount of onus on provinces. If I happened to be in charge of provinces I should hesitate to accept such large responsibility. I, therefore, move that the clause be omitted.

**Mr. Chairman** (Sir Henry Richardson): Amendment moved:

"That clause 15 of the Bill be omitted."

**Mr. H. Greenfield:** I oppose this amendment for the simple reason that if it were accepted, we should have to employ a much larger staff than we do at present.

**Mr. Hooseinbhoj A. Laljee:** I support the amendment. The only reason that my Honourable friend has given is that we would require a much larger staff. I do wish that you employ a large staff. We get a lot of money. But why should Government want to interfere with Provincial Autonomy? Only yesterday we had such a big lecture from the Honourable the Home Member in the matter of the most important and crucial matter with regard to food and starvation in this country,—that he could never think of interfering with Provincial Autonomy. For the collection of this excise duty not only the police but also the village officers are utilised. I do not know what right you have got to call upon the village officer to whom you give Rs. 2. I do hope that Government will not try to interfere with Provincial Autonomy when they do not want to interfere with it in respect to other matters.

**The Honourable Sir Jeremy Raisman:** I have no intention of interfering with Provincial Autonomy, but it is a regularly understood feature of Provincial Autonomy that in the administration of central subjects assistance may be given by provincial officers.

**Mr. Chairman** (Sir Henry Richardson): The question is:

"That clause 15 of the Bill be omitted."

The motion was negatived.

Clause 15 was added to the Bill.

**Mr. T. T. Krishnamachari:** I move:

"That in clause 16 of the Bill, after the word 'thereon' the words 'to their knowledge' be inserted."

Clause 16 reads:

"Every owner or occupier of land, and the agent of any such owner or occupier, in charge of the management of that land, if contraband excisable goods are manufactured thereon, shall....."

What I propose is to add to the word "thereon" the words "to their knowledge". It may be that the Honourable the Finance Member may say that the point is covered by the words, "shall in the absence of reasonable excuse.....". I think there are many cases in which such a contingency might happen when the owner may not be responsible. It may be I may have a house or a plot of land 200 miles away from my residence and I might be unaware of what is being done on it. Why should it be that I should have to prove reasonable excuse? I think a safeguard like the one I have suggested, namely, if it is manufactured on the land with the knowledge of the owner, would cover the position instead of the vague safeguard given by the subsequent sentence. Sir, I move.

**Mr. Chairman** (Sir Henry Richardson): Amendment moved:

"That in clause 16 of the Bill, after the word 'thereon' the words 'to their knowledge' be inserted."

**The Honourable Sir Jeremy Raisman:** The Honourable Member's researches into this clause have been somewhat infructuous also. I do not see how this can begin to operate until the fact comes to his knowledge. The obligation is only laid on him from the time and immediately after the fact comes to his knowledge. If the fact never came to his knowledge, then the clause will have no effect whatsoever. The amendment is, therefore, unnecessary.

**Mr. Chairman** (Sir Henry Richardson): The question is:

"That in clause 16 of the Bill, after the word 'thereon' the words 'to their knowledge' be inserted."

The motion was negatived.

Clause 16 was added to the Bill.

**Mr. T. T. Krishnamachari:** Sir, I move:

"That in clause 17 of the Bill, the words 'with imprisonment for a term which may extend to six months, or' be omitted."

This is on much the same lines as the previous amendment which was not accepted by the House. There is one difference here. The clause does not seek to punish the offender. The clause seeks to punish a person who connives at an offence. I am not able to appreciate that what has been mentioned in the previous clause excuses or completely eliminates from the picture the owner of a land who may or may not know what is happening on his land. At any rate, it is one thing to get hold of a man and cross-examine him for an offence alleged to be committed by him. It is another thing to say that he was conniving at an offence and such a contingency is not impossible when a man is not properly represented or when the local officials do not like him. In a matter like this, if a man allows his land to be used inadvertently for wrongful purposes, fine is ample punishment and no imprisonment is called for. Sir, I move.

**Mr. Chairman** (Sir Henry Richardson): Amendment moved:

"That in clause 17 of the Bill, the words 'with imprisonment for a term which may extend to six months, or' be omitted."

**The Honourable Sir Jeremy Raisman:** I oppose this amendment. It seems to me that a man who keeps premises for the stocking of smuggled goods, or in other words, connives or assists, should be liable to penalties of the same nature as the smuggler himself and I do not see how we can admit a kind of hierarchy of penalties of this kind.

**Mr. Chairman** (Sir Henry Richardson): The question is:

"That in clause 17 of the Bill, the words 'with imprisonment for a term which may extend to six months, or' be omitted."

The motion was negatived.

Clause 17 was added to the Bill.

Clauses 18 and 19 were added to the Bill.

**Mr. T. T. Krishnamachari:** Sir, I move:

"That in clause 20 of the Bill, the word 'either' be omitted and for the word 'or' the word 'and' be substituted."

The clause as it is at present reads:

"The officer-in-charge of a police station to whom any person is forwarded under section 13 shall either admit him to bail to appear before the Magistrate having jurisdiction, or in default of bail forward him in custody to such Magistrate."

The word 'either' makes it obligatory on the part of the officer to admit him to bail and in default of his doing so, the word 'or' follows as a consequence. I think the word 'or' has to be eliminated and in default, the person should be sent in custody to a Magistrate. I think, Sir, there is nothing amusing, so far as I can see, about it; and so far as I am concerned, I think the omission of these two words would definitely improve the clause, notwithstanding the amusement it has caused to the Honourable the Leader of the House.

**Mr. Chairman** (Sir Henry Richardson): Amendment moved:

"That in clause 20 of the Bill, the word 'either' be omitted and for the word 'or' the word 'and' be substituted."

**The Honourable Sir Jeremy Raisman:** At first I thought that the amendment made nonsense of the clause but I do not think it does that. The words used in the Bill are the words regularly used in provisions of this kind and I see no reason why we should adopt a new model here. If the intention of the Honourable Member is to make any change of substance in the wording, then I am afraid I cannot agree and on the wording itself, it seems to me that we should adhere to the model which has hitherto been employed.

[At this stage, Mr. President (The Honourable Sir Abdur Rahim) resumed the Chair.]

**Mr. President** (The Honourable Sir Abdur Rahim): The question is:

"That in clause 20 of the Bill, the word 'either' be omitted and for the word 'or' the word 'and' be substituted."

The motion was negatived.

Clause 20 was added to the Bill.

**Mr. T. T. Krishnamachari:** In view of the fate of the previous amendment, I am not moving Amendment No. 27. I shall move No. 28.

Sir, I move:

"That in sub-clause (2) (b) of clause 21 of the Bill, all the words beginning with the words 'on his executing' and ending with the words 'having jurisdiction' be omitted."

The clause referred to reads as follows:

"If it appears to the Central Excise officer that there is not sufficient evidence or reasonable ground of suspicion against the accused person, he shall release the accused person on his executing a bond, with or without sureties as the Central Excise officer may direct, to appear, if and when so required before the Magistrate having jurisdiction, and shall make a full report of all the particulars of the case to his official superior."

I want the words beginning with 'on his executing a bond' and ending with 'having jurisdiction' be omitted.

If the Central Excise officer thinks that there is not sufficient evidence or reasonable ground of suspicion against the accused, the whole proceedings ought to be dropped. Why should the accused be asked to execute a bond and why should he be directed to appear before a magistrate on a particular day. It may be that there is a corresponding provision in the Madras Salt Act of 1889 and the Bombay Salt Act of 1890. These are the only two Acts in which a similar provision appears. In spite of the fact that my amendment has considerably amused the Honourable the Leader of the House who thinks that non-lawyers should not trespass into his field, I feel that the clause as it stands makes no sense whatever. It may have made sense in 1889 or 1890 but it makes no sense today. If there is not sufficient evidence against any person or reasonable ground of suspicion, the man should be released forthwith. The officer shall then make a full report of the case to his official superior, who can proceed against the accused *de novo* if he feels that the subordinate officer has not used his discretion properly. The words, as they stand in the clause, are superfluous and meaningless and constitute a harassment of persons against whom there are no grounds of suspicion. Sir, I move.

**Mr. President** (The Honourable Sir Abdur Rahim): Amendment moved:

"That in sub-clause (2) (b) of clause 21 of the Bill, all the words beginning with the words 'on his executing' and ending with the words 'having jurisdiction' be omitted."

**Dr. P. N. Banerjea:** Sir, the demand that has been made by my Honourable friend, Mr. Krishnamachari, is a very reasonable one. The provision of the Bill, if carefully read by the Members of the House, will make it clear that the words which my Honourable friend wants to delete are not only unnecessary but are mischievous. The words are: "If it appears to the Central Excise officer that there is not sufficient evidence or reasonable ground of suspicion against the accused person", then all the proceedings will be dropped. Why should it be necessary to make the person execute a bond or offer security? This is unreasonable. If there is no case against him, the proceedings should be dropped altogether. This is the normal course of events and this is the normal procedure of the Judiciary in every country. But here we find that even if there is nothing against him, he will be asked to execute a bond or to offer a security. This is going too far and the Legislature should not accept this provision of the Bill because it is unnecessary and unreasonable. It will cause great harassment to the persons involved, and it may be a source of great oppression to them. Therefore, I urge that the Government will see their way to accept this amendment. They have not accepted any of our amendments so far.

**Members on Treasury Benches:** We have.

**Dr. P. N. Banerjea:** You have accepted only one amendment. In any case, I request this House to insist on this amendment being accepted.

**Syed Ghulam Bhik Nairang:** Sir, I rise to support the amendment moved by Mr. Krishnamachari and would request Government to consider the position created by the clause as it stands at present. "If it appears to the Central Excise officer that there is not sufficient evidence or reasonable ground of suspicion against the accused person", then surely everybody would expect the natural result, namely, that the man who is accused would be let go at once. Why tie him down with a surety bond and to make him appear later on before somebody else? Really, it is carrying matters too far. If there is not sufficient

[Syed Ghulam Bhik Nairang.]

evidence and if there is not even reasonable ground of suspicion, then what is there? Is it meant to be said that even a bare suspicion is sufficient to make anybody execute a bond with or without surety to appear before so and so? I think the provision is so unreasonable that Government would, I hope, reconsider their position and expunge the words which Mr. Krishnamachari seeks to expunge.

**The Honourable Sir Jeremy Raisman:** Sir, as regards the model to this kind of provision, it appears to be section 169 of the Criminal Procedure Code where, in the parallel case, an investigation is made by a subordinate Police officer and if it appears to him that there is not sufficient evidence or reasonable ground for suspicion, he also releases the man on executing a bond. But I would suggest to my Honourable friend that actually this is not bad law. If you look at it from a practical point of view, I would say that this is definitely a provision which is in favour of the accused person. If you lay upon your officers the obligation either to arrest or to let the man go scot-free and not be able to get him again, then the officer, who, after all, has got to make a report of the result of his investigation, will always naturally try to protect himself. He will never take the view that if he let that man go, he could always get him again, and meanwhile report to his superior officer. He will feel that he himself is on trial, so to speak, in each case and he will be much more reluctant to let him go. This gives you a sort of intermediate position. It enables the Excise officer to release a man even though there may be some doubtful features about the case. Still, on his executing a bond, he decides to release him. If he keeps him under arrest, he has to forward him in custody to the Magistrate. If his only alternative is to let him go completely and be finished with the matter, he will tend to lean in the direction of bringing him to the Magistrate and I think it would do more harm than good from that point of view. I, therefore, oppose it.

**Mr. Hoosainbhoy A. Lalljee:** Sir, I rise to support the amendment especially after the remarks that have fallen from my Honourable friend, the Finance Member. It is now clear to me that so far as this Act and the working of it are concerned, there is only one intention and that is how to save excise duty income from smuggling. But so far as the personal liberty and business is concerned, that is not at all the concern of the Government. They want to get hold of anybody by anybody to use the powers, be he a sepoy or a peon, so far as salt and tobacco are concerned. Whether he is an industrialist or a poor cultivator, he must be allowed to be taken into custody. Furthermore, even if an officer finds that there is no reasonable ground for suspicion against him, the man ought not to be allowed to go and an apology should not be tendered to him because of the fact that a sepoy or a peon in the Salt Department or in the Tobacco Department got hold of him. Even if the Excise officer finds that against the man whom the sepoy or a peon has arrested there is no reasonable ground of suspicion, the man should execute a bond. This is a question which really shows that we are still living in those days when every person in India was being suspected. What is the meaning of this? How can you protect the liberty of a cultivator or a poor manufacturer or a great industrialist when a peon drawing Rs. 12 a month can prosecute and even arrest any of these persons at his sweet-will and can produce them before an officer? If the officer does not find a reasonable ground for suspicion, he does not even apologise or take the peon to task but gets this gentleman to execute a bond. Why all these? See the mentality existing among high officers. If a subordinate peon gets hold of a man and takes him before a superior officer, the latter cannot let him off, because the one above him would find fault with him. So the peon or the sepoy's words are law and above him is only the Central Government or the Provincial Government. This thing is going on in many respects throughout the country. That is our complaint. This creates great bitterness in the minds of people and that is why often

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intelligent and now often the masses disregard your laws, your rules and regulations. I, therefore, urge that when your subordinate people get hold of an innocent man and you find there are no reasonable grounds of suspicion against him, then not only should he be let off, but also an apology should be offered him.

**Mr. President** (The Honourable Sir Abdur Rahim): The question is:

"That in sub-clause (2) (b) of clause 21 of the Bill, all the words beginning with the words 'on his executing' and ending with the words 'having jurisdiction' be omitted."

The Assembly divided:

**AYES—19.**

Abdul Ghani, Maulvi Muhammad.  
Azhar Ali, Mr. Muhammad.  
Bajoria, Babu Baijnath.  
**Banerjee, Dr. P. N.**  
Chattoopathyaya, Mr. Amarendra Nath.  
Deshmukh, Mr. Govind V.  
Essak Sait, Mr. H. A. Sathar H.  
Kailash Bihari Lall, Mr.  
Krishnamachari, Mr. T. T.  
Lalljee, Mr. Hoosainbhoj A.

Liaquat Ali Khan, Nawabzada Muham-  
mad.  
Nairang, Syed Ghulam Bhik.  
Nauman, Mr. Muhammad.  
Parma Nand, Bhai.  
Piare Lall Kureel, Mr.  
Sant Singh, Sardar.  
Siddique Ali Khan, Nawab.  
Yusuf Abdoola Haroon, Seth.  
Zafar Ali Khan, Maulana.

**NOES—40.**

Ahmad Nawaz Khan, Major Nawab Sir.  
Ambedkar, The Honourable Dr. B. R.  
Azizul Huque, The Honourable Sir M.  
Benthall, The Honourable Sir Edward.  
Bewoor, Sir Gurnath.  
Bhagchand Soni, Rai Bahadur Seth.  
Caroe, Mr. O. K.  
Chatterji, Mr. S. C.  
Daga, Seth Sunder Lall.  
Dalal, Dr. Sir Ratanji Dinshaw.  
Dalpat Singh, Sardar Bahadur Captain.  
Greenfield, Mr. H.  
Gwillt, Mr. E. L. C.  
Habibur-Rahman, Khan Bahadur Sheikh.  
Haidar, Khan Bahadur Shamsuddin.  
Imam, Mr. Saiyid Haider.  
Inskip, Mr. A. C.  
Ismaiel Alikhan, Kunwer Hajee.  
James, Sir F. E.  
Jawahar Singh, Sardar Bahadur Sardar  
Sir.  
Khare, The Honourable Dr. N. B.

Krishnamoorthy, Mr. E. S. A.  
Kushal Pal Singh, Raja Bahadur.  
Lawson, Mr. C. P.  
Maxwell, The Honourable Sir Reginald.  
Miller, Mr. C. C.  
Muazzam Sahib Bahadur, Mr. Muhammad.  
Mudaliar, The Honourable Dewan Baha-  
dur Sir A. Ramaswami.  
Raisman, The Honourable Sir Jeremy.  
Richardson, Sir Henry.  
Roy, The Honourable Sir Asoka.  
Shahban, Khan Bahadur Mian Ghulam  
Kadir Muhammad.  
Spence, Sir George.  
Srivastava, The Honourable Sir Jwala  
Prasad.  
Stokes, Mr. H. G.  
Sukthankar, Mr. Y. N.  
Sultan Ahmed, The Honourable Sir.  
Thakur Singh, Capt.  
Tyson, Mr. J. D.  
Zahid Husain, Mr.

The motion was negatived.

Clause 21 was added to the Bill.

**Mr. T. T. Krishnamachari:** Sir, I move:

"That in clause 22 of the Bill, for the words 'five hundred' the words 'two thousand' be substituted."

This relates to the penalty to be imposed on an officer for vexatious search, seizure, etc. The clause has been copied from the Indian Salt Act, but this Bill does not apply to salt alone. Wherever penalties have been specified which are to be imposed on citizens in other clauses the amount is two thousand rupees, but when an officer harasses the people the amount of the penalty is to be only five hundred rupees. It may be that the value of the rupee has gone down since the Salt Act became law in 1882 but in the present case if an officer needlessly harasses people a penalty of two thousand rupees is in my opinion justifiable.

Sir, I move.

**Mr. President** (The Honourable Sir Abdur Rahim): Amendment moved:

"That in clause 22 of the Bill, for the words 'five hundred' the words 'two thousand' be substituted."

**Dr. P. N. Banerjee:** Sir, in the previous clauses of this Bill we found that the penalty for a person who is guilty of an offence is two thousand rupees and also imprisonment for six months. But in the case of Government officers

[Dr. P. N. Banerjee.]

the penalty for malicious prosecution or giving false information is very much smaller. The reverse should be the case, and if the penalty in the case of an ordinary person is two thousand rupees the penalty for a Government officer should be five thousand, because he is paid by the public and is a servant of the State and he should always do the right thing. If he oppresses the people the guilt is much greater than that of a private person. But here a smaller penalty is prescribed for him, which is wholly wrong. In order to protect the people against oppression and in the interests of the integrity and honesty of their own officers Government should accept this amendment.

**The Honourable Sir Jeremy Raisman:** Sir, the effect will be that for the first time this provision will apply not merely to officers dealing with salt but to the whole range of Central Excise officers, so that it has been extended in that respect. And of course the House is aware that if an officer were found guilty of any of these offences his whole career would probably be ruined; he stands to lose his job and everything else. However, I am not personally in favour of protecting people who are guilty of offences of this kind, and if the House feels that the maximum penalty should be two thousand rupees I would not resist that. It would, of course, be a matter for the court to decide on the circumstances of the case as to what the fine should be, and this is only a question of the maximum. I am prepared to accept the amendment.

**Mr. President** (The Honourable Sir Abdur Rahim): The question is:

"That in clause 22 of the Bill, for the words 'five hundred' the words 'two thousand' be substituted."

The motion was adopted.

**Mr. T. T. Krishnamachari:** Sir, I move:

"That to clause 22 of the Bill the following be added at the end:

'Any person wilfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall be punishable with fine which may extend to two thousand rupees or with imprisonment for a term which may extend to two years or with both.'

As I said before, this clause has been taken from the Indian Salt Act but the punishment provided for in the relative section 25 of that Act has been omitted here. This Act prescribes heavy penalties merely because of the fact that salt has been included along with other commodities that are consumed internally in this country and that is why the provisions are so stringent. At the same time this Bill if passed into law it will be an informers' paradise. No provision has been made for punishing an informer on whom the whole structure of preventive activities of Government will depend. I daresay the experience of the Honourable Member who is helping the Finance Member to pilot this Bill has been that all that he has done has been due to the good offices rendered to him by informers. I suggest that the House should resist this non-inclusion of this part of section 25 of the Salt Act regarding punishment of informers in clause 22 of this Bill, so that informers will know exactly what they will get ultimately if they give wrong information. Sir, I move.

**Mr. President** (The Honourable Sir Abdur Rahim): Amendment moved:

"That to clause 22 of the Bill the following be added at the end:

'Any person wilfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall be punishable with fine which may extend to two thousand rupees or with imprisonment for a term which may extend to two years or with both.'

**Mr. Govind V. Deshmukh:** Sir, my Honourable friend has proposed this provision from the Salt Act to be included in this Bill. It is only fair that if you include some provisions of that Act here the other provisions should be included as well. They were thought necessary for that Act and there is no reason why this provision referred to by the Mover of the amendment should not be included in this consolidating Bill. Apart from that there is another ground for including it. The informer sets the whole law in motion and we do not know why he has been so much favoured by Government. As a matter of fact, he is the culprit who deserves the worst possible punishment. He sets

the whole machinery in motion and there is nothing to be found in this Act which will in any way prevent his activities. The informer, as everybody knows, is also a blackmailer; he starts blackmailing everybody and if he is not in any way satisfied or if he has got any particular grudge against any person he gives false information and sets the law in motion. Such a person should be very severely dealt with. I hope that Government will come down upon such informers with heavy hand. Otherwise it is very difficult to understand why when they are punishing even innocent men and are prepared to forfeit animals, vehicles, vessels and such other articles of innocent people they propose to let the informer escape scot-free. Sir, I support the amendment.

**The Honourable Sir Jeremy Raisman:** The only reason why this provision was omitted is that it is almost entirely covered by section 182 of the Indian Penal Code. However, there are slight differences between the two and particularly the penalty which my Honourable friend has proposed here is more severe than that which is in the Indian Penal Code. For this reason, I have no objection to accepting this amendment.

**Mr. President** (The Honourable Sir Abdur Rahim): The question is:

"That to clause 22 of the Bill the following be added at the end:

'Any person wilfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall be punishable with fine which may extend to two thousand rupees or with imprisonment for a term which may extend to two years or with both.'

The motion was adopted.

Clause 22, as amended, was added to the Bill.

Clause 23 was added to the Bill.

**Mr. T. T. Krishnamachari:** Sir, I move:

"That clause 24 of the Bill be omitted."

In moving this I realize that clauses 24 to 30 is one whole, and, in fact, one should move for the omission of the whole chapter. I am also aware—if you permit my referring to a clause ahead—that clause 30 gives the Government certain powers which the Honourable the Finance Member might say obviates the room for the abuse of the powers conferred by clause 24 that I am likely to suggest. In any event, Sir, the evil that rests on this chapter—controlling transport by sea—is due to the fact of coupling salt with other commodities. Clause 24 by itself says: that it is an offence to carry any excisable goods by sea in any vessel other than a vessel of three hundred tons and upwards, and it is a provision that now exists in the Salt Act. But I will ask the House to visualize the commodities that it seeks to control and whether there is a possibility of other commodities which come under the purview of this Bill being carried in vessels of less than three hundred tons. The Honourable the Finance Member might rise and say that the next provision, clause 25, provides the exceptions, *i.e.*, permits could be obtained for transport of goods in vessels of less than three hundred tons.

I do not know whether the Honourable the Finance Member or his able assistant have knowledge of the method of carrying goods in the West Coast of South India. A large portion of the traffic from Bombay downwards is in country craft, all of them are less than three hundred tons. And unless it be that the Government operating under the powers invested in them under clause 30 declare that such and such goods that come within this Act can be carried in any class of vessels, what will happen is that this country craft which ply from Bombay up to Colachel in Travancore cannot carry sugar, cannot carry matches, cannot carry vegetable product and the like, even kerosene, all of which they were normally carrying before the war, without a permit from some officer. This will mean a great restriction on the transport of these articles. What happens is, a man who ordinarily goes into the bazaar and purchases things and just dumps it in a country craft, will have to go and search for an officer who is in-charge of tobacco excise and somebody else perhaps in-charge of excise on vegetable products, and so on, and get permits. Why? After all sugar, vegetable product and matches are commodities the excise duty on which is collected at the source where it is

[Mr. T. T. Krishnamachari.]

manufactured, and so why should traders and consumers be hampered by such restrictions on transport of goods. Had the Government bestowed some thought on the Bill—and I maintain they have not—they may have drafted clause 30 in a different manner. They would have said that such and such goods as are covered by the schedule under this Act which are notified to be goods coming within the scope of this chapter, will require a licence for being carried in vessels of under three hundred tons and so on. If you had made it a positive clause giving freedom to the consumer to carry what he likes, except in so far as restrictions positively imposed by you, I can understand it. But it is no use chuckling to yourself 'this is not right, that is not right, that is in the Penal Code and something else is in the Criminal Procedure Code'. Here is a positive instance of bad drafting. If the Honourable Member and his aides had carefully gone through the whole Bill, they would have found that this is an unnecessary restriction. Why should you say you should not do this or you should not do that. Merely say don't do this or that in respect of a particular commodity and the only commodity in which you are concerned in respect of carriage by sea happens to be salt at the moment, unless you are going to include some other commodities later by means of the addition of a single clause, to the schedule by which you can say it comes under the operation of Chapter IV. My grouse against the Government is that here is an alternative method of approach which could have been considered if you had re-read the whole thing and if you had visualized the trouble the people would be put to by your drafting these provisions in the negative form. If you had made it positive you would have removed all possibility of people being put into unnecessary trouble. In fact the whole case stands or falls by the acceptance or rejection of clause 24 and I do feel that it is only right and proper on my part to tell the Government here and now that if they had only drafted clause 30 in a different manner there would have been no need for me to move this amendment. By all means have Chapter IV; by all means have the provision as stringent as possible so long as it applies to salt only and to no other commodity. But this House should visualize the plight of a man carrying from Bombay two tons of vegetable product, one bag of sugar, four gross of matches and a couple of packets of tobacco on which the excise tax has been paid and then going to an officer and saying 'may I carry these things in my country craft'. And here I maintain that those who are responsible for the drafting of this consolidation Bill are people who are completely unalive to the actualities of the situation, and they are merely motivated by the feeling that because they have power, they will draft a Bill as they like. And that is why I have attempted this rather difficult and perhaps in the eyes of some a vexatious task of saying what the Act really is and what it ought to have been. Sir, I move.

**Mr. President** (The Honourable Sir Abdur Rahim): Amendment moved:  
"That clause 24 of the Bill be omitted."

**Mr. Govind V. Deshmukh**: I support my friend's amendment. I gather from what he has said that the very act of carrying the things he has specified in these small vessels has been made punishable. The section does not take into consideration what the motive or the intention of the person is who is carrying these articles in those vessels. It is a very defective section and it seems also, in view of what my friend, Mr. Krishnamachari, has said, that that vessel may also come under the description of things as stated here, so that if he takes different articles for his own use that very act would constitute an offence under this section. I think this is very extraordinary.

**Mr. H. Greenfield** Sir, this section and those which follow are an exact transcript of the Transport of Salt Act, 1879.

That they are necessary has been admitted in regard to salt. They are also clearly necessary in regard to other goods the transport of which by land or inland water ways requires to be regulated. It is only in respect of such goods

that these sections will be made applicable, and a notification has already been drafted excluding other goods from the provisions of this chapter.

Sir, I oppose this amendment.

**Sir Cowasjee Jehangir:** So far as I can understand these clauses from 24 onwards in Chapter 4 applied originally only to salt, and now you are making them applicable to all other goods. Well, that is a radical change in the Bill. If this is a consolidation Bill and you are applying all these sections to all commodities, I repeat that it is a radical change. Therefore, Mr. Krishnamachari's arguments are relevant. Read that Clause 24 as it stands. I do not know how it has been modified by any regulation that may be issued. I read it as it is printed. As it is printed, if I carry six boxes of matches in my luggage, I am liable or the Master of the Ship is liable. Matches being excisable goods I fall within the mischief of this section.

**The Honourable Sir Sultan Ahmed (Leader of the House):** Section 25 gives the exceptions in sub-section (c).

**Sir Cowasjee Jehangir:** (After reading the section.) Yes, it makes an exception of the goods I mention. But still the vexatious elements remain. A man cannot export vegetable ghee in small quantities in a country craft unless he gets a permit, unless the regulations you mention make an exception, of which we are not aware.

May I point out, Mr. President, that Government make a very radical alteration of this sort, which I must admit we would not have been aware of but for Mr. Krishnamachari's study, and perhaps I may mention on looking over the names of those in the Select Committee, I miss an Honourable Member from his Party. I do not know whether that was by accident or deliberately done.

**The Honourable Sir Jeremy Raisman:** Mr. Kailash Bihari Lall.

**Sir Cowasjee Jehangir:** At any rate, Mr. Krishnamachari seems to have taken considerable trouble over this Bill and he does bring out a point worthy of consideration. If we are to pass these clauses as they are, we ought to be made aware just now of the exceptions that Government propose to make and what regulations they have drafted and what they will bring into existence so that we can understand this clause in an intelligent manner. At present as it reads it does look rather vexatious. I would point out, therefore, that if such radical alterations had to be made, we might have had the complete picture placed before us to obviate such a discussion as is taking place just now.

**The Honourable Sir Jeremy Raisman:** I must point out that in the Statement of Objects and Reasons, paragraph 4, I drew attention to the fact that "the combination of a number of separate measures each of which has been moulded to fit its particular subject, necessarily includes their special features as well as those which are common to others in the group, and it follows that certain provisions which have hitherto been applicable only to certain goods will, after consolidation, become applicable over the whole field, either as a matter of course or by notification as circumstances may require. In particular the Bill provides that certain features of the salt law relating to transport by small coastal craft will become adaptable as necessary in the administration of other excise duties." The real necessity for this is, of course, that smuggling can most conveniently take place in certain kinds of small craft. At present we have power to deal with that by importing provisions of the Sea Customs Act, but now here we have ready to hand a suitable model for dealing with this type of smuggling. It is already in existence in relation to salt and this seemed to be a suitable model. Now, the difficulties which my Honourable friend anticipates are met in two ways. In the first place there is clause 25 which creates complete exceptions from the operation of clause 24. Clause 25 has three classes of exceptions and the third of those includes small quantities of excisable goods of the types which have been mentioned. But even more important than that is clause 30 which gives the Central Government power to exempt from the operation of this chapter the carriage of excisable goods within any legal limits or in any class of vessel. That is the important thing—the adjustment to the requirements of the situation so as not to create the absurd results which have been suggested must come by the use of these two sections.

[Sir Jeremy Raisman.]

This is the only way in which consolidation can take place, otherwise you have got to repeat your provisions for every commodity. For dealing with smuggling on small craft you will have to have a regular forest of different provisions.

**Mr. T. T. Krishnamachari:** Why not make it applicable to commodities by notification?

**The Honourable Sir Jeremy Raisman:** Well, that is a matter of drafting. We think this is a suitable model. The Honourable Member may think that we should have taken power by notification to deal with the carriage of excisable goods by small craft. Well, there was this model in existence which seemed suitable.

**Mr. T. T. Krishnamachari:** Why this circumlocutory method . . . .

**The Honourable Sir Jeremy Raisman:** That is a matter of opinion whether one man's method is more suitable than another. To us this was most suitable. We have to adjust the law to the practical requirements of the situation by the exercise of powers of exemption, or in the other case by the exercise of powers of application. But you cannot legislate completely for this type of thing merely by two or three clauses. You cannot do it . . . .

**Sir Cowasjee Jehangir:** Can you give us any idea of what exemptions under clause 30 you propose to have? What do you propose to do under clause 30? What will you exempt?

**The Honourable Sir Jeremy Raisman:** At this moment, standing here, I cannot give that information . . . .

**Maulana Zafar Ali Khan:** With your permission, Sir, one thing has puzzled me very much and I should like . . . .

**Mr. President** (The Honourable Sir Abdur Rahim): Order, order. The Honourable Member ought not to interrupt now.

**The Honourable Sir Jeremy Raisman:** I was answering my Honourable friend, Sir Cowasjee Jehangir, and I said that I could not at this moment give an indication of the exact scope of the exemption that will be drafted under clause 30; but it certainly would obviate the sort of anomaly which Honourable Members have in mind. That is all I can say, and I still think that this method of proceeding with the matter is a reasonable one and is suitable to the situation.

**Maulana Zafar Ali Khan:** Now, Sir, permit me to observe that in the case of an ordinary cart you insist upon the cart and the animals pulling it being confiscated; but in the case of vessel carrying excisable goods in other words, smuggling, you do not confiscate the vessel: how is that?

**Dr. P. N. Banerjee:** May I ask a question? Will the Honourable the Finance Member agree to place the draft rules, which the Central Government will make, before the Assembly, before they are given effect to?

**The Honourable Sir Jeremy Raisman:** I see that there is another amendment to that effect on the paper and I would rather not anticipate what I have to say.

**Sir Cowasjee Jehangir:** I hope the Honourable Member will keep in mind the difficulty of transport that exists due to war conditions and I hope that the rules made under section 30 will be more lenient than they otherwise would have been.

**The Honourable Sir Jeremy Raisman:** We shall certainly consider that.

**Mr. President** (The Honourable Sir Abdur Rahim): 'The question is: "That clause 24 of the Bill be omitted."

The motion was negatived.

Clause 24 was added to the Bill.

**Mr. T. T. Krishnamachari:** Sir, I do not move amendments Nos. 32 to 37, because they are consequential.

Clauses 25 to 31 were added to the Bill.

**Mr. T. T. Krishnamachari:** Sir, I move:

"That the proviso to clause 32 of the Bill be omitted."

This section finds a counterpart in the Bombay Salt Act of 1890 and that is its justification for finding a place in this Bill. The proviso itself is of an omnibus nature; it reads:

"Provided that the Collector of Central Excise may at any time withdraw or withhold a licence from the proprietor of any such salt factory, if no salt has been manufactured, excavated or collected in such salt factory for the three years ending on the thirtieth day of June last preceding the date of his order, or, with the previous sanction of the Central Board of Revenue, if such salt factory has not produced, on an average, during the said three years, at least five thousand maunds of salt per annum."

I do not know if this proviso finds a counterpart in the Madras Salt Act. Apparently it does not; otherwise it would be mentioned. In any event it seems that the Government have taken this opportunity of taking power to impose a new restriction on salt pan owners—one that exists at the moment in a very limited sphere in this country. I would ask the Honourable the Mover of the Bill what he would suggest should be done supposing there is a suit in regard to property rights in a particular salt pan. Supposing there is a suit for partition, supposing there were other points which will not be appreciated by the Collector of Central Excises, I see no reason to make the measure of universal application, taking advantage of this consolidating Bill which seeks to impose restrictions on property rights—or unduly so. It makes it obligatory on the owners to go and give evidence before the Collector of Central Excises that he is unable to perform the legitimate duties as owner of the salt pan; there are many occasions which perhaps may be within our knowledge when property owners are unable to make their properties yield what they ought to, the quantity which they would ordinarily yield, on account of various troubles. I think the onus of proving their inability and also their liability should not be cast upon the property owners, and I see no reason for this particular proviso which finds a place in only one Act applicable to one province should be made part of an All-India measure. I move.

**Mr. President** (The Honourable Sir Abdur Rahim): Amendment moved: "That the proviso to clause 32 of the Bill be omitted."

**Mr. H. Greenfield:** Sir, the object of including these two provisions—clauses 31 and 32—is to safeguard the rights of certain manufacturers, and the two clauses were, therefore, included exactly as they stand in the Bombay Salt Act. The object of the proviso is to secure that when it becomes uneconomical to maintain staff at a factory to safeguard the revenue accruing from that factory, that factory might then be closed. When it is no longer economical to retain the staff there, then the factory should be closed down . . . . .

**Sir Cowasjee Jehangir:** Which staff? Government?

**Mr. H. Greenfield:** Government staff. It costs a good deal of money to maintain staff at such factories; and when the revenue realisable from such a factory becomes so small that it is not worth while to expend all that money, then the factory should be closed down. Sir, I oppose the amendment.

**Mr. President** (The Honourable Sir Abdur Rahim): The question is:

"That the proviso to clause 32 of the Bill be omitted."

The motion was negatived.

Clause 32 was added to the Bill.

**Mr. T. T. Krishnamachari:** I move:

"That in the proviso to clause 33 of the Bill, all words occurring after the words 'clause (b) of this section' be omitted."

Let me first read the whole proviso.

"Provided that the Central Board of Revenue may, in the case of any officer performing the duties of an Assistant Collector of Central Excise, reduce the limits indicated in clause (b) of this section, and may confer on any officer the powers indicated in clause (a) or (b) of this section."

Clause 33 confers powers of adjudication on officers of central excise, and clause (b) limits the power of the Assistant Collector of Central Excise in this way, "up to confiscation of goods not exceeding five hundred rupees in value and imposition of penalty not exceeding two hundred and fifty rupees". And this proviso seeks to reduce the limits indicated in clause (b) of this section and confers the same power on any other officer. It is true that this proviso

[Mr. T. T. Krishnamachari.]

has a counterpart in the Sea Customs Act, clause 182, but with a slight variation. The proviso in the Sea Customs Act reads as follows:

"Provided that the Chief Customs-authority may, in the case of any officer performing the duties of a Customs-collector, limit his powers to those indicated by clause (b) or in clause (c) of this section, and may confer on any officer, by name or in virtue of his office, the powers indicated in clauses (a), (b) or (c) of this section."

The words, "by name or in virtue of his office" have been eliminated. It might be said that the sweeping provisions of section 12 of this Bill cover every thing. At a time when we are engaged in the good work of consolidating various measures it seems but right and proper to ask the Government to specify the type of officer who would exercise these powers, and so far as this proviso is concerned, by limiting the powers of the Assistant Collector of Central Excise, powers may be conferred on any officer, even of the rank of sub-inspector. I think the House has already had an opportunity of making its views known. I, therefore, feel that without precisely mentioning what type of officer it is, that is visualised by the Government on whom may be conferred the powers of an Assistant Collector of Central Excise, we are unable to accord our support to this part of this clause. Sir, I move.

**Mr. President** (The Honourable Sir Abdur Rahim): Amendment moved:

"That in the proviso to clause 33 of the Bill, all words occurring after the words 'clause (b) of this section' be omitted."

**Mr. Lalchand Navalrai**: I wish to say a few words on this. It seems that the powers of the Assistant Collector are being reduced and those may be conferred upon any inferior officer. The power is being taken away without any description of the kind of officers to whom this power will be delegated, we have not up to now learnt who those officers would be. In the first place, I do not understand why the power should be decentralised to any other officer. The Assistant Collector is a responsible man and generally we find that he has much experience of these things. In that case to give these powers to an inferior officer should not commend itself to the House and I hope the House will adopt the amendment.

**Mr. H. Greenfield**: This clause has been taken, with certain adaptations, from section 182 of the Sea Customs Act. It is necessary to have this proviso because it is, from time to time, necessary to empower certain officers in this way. For example, at present in the province of Sind our functions under the central excise laws are exercised by officers of the Government of Sind and it is necessary for us, therefore, to be able to entrust those officers with powers. Officers so entrusted would, of course, be officers comparable in rank with the Collector and Assistant Collector respectively. Sir, I oppose the amendment.

**Mr. President** (The Honourable Sir Abdur Rahim): The question is:

"That in the proviso to clause 33 of the Bill, all words occurring after the words 'clause (b) of this section' be omitted."

The motion was negatived.

Clause 33 was added to the Bill.

Clauses 34 and 35 were added to the Bill.

**Mr. T. T. Krishnamachari**: I move:

"That in clause 36 of the Bill, for the words 'The Central Government' the words 'A High Court having jurisdiction' be substituted."

The clause reads as follows:

"The Central Government may on the application of any person aggrieved by any decision or order passed under this Act or the rules made thereunder by any Central Excise Officer or by the Central Board of Revenue, and from which no appeal lies, reverse or modify such decision or order."

It may look a rather sweeping amendment to introduce the words, "A High Court having jurisdiction" in place of "Central Government". By reason of a recent decision of the Privy Council in respect of a matter emanating from the Madras High Court, the one remedy that is open to an aggrieved party in this country, namely, to obtain redress from the High Court by a writ of *certiorari*, has been denied to all people who are not residents of the three presidency towns of Calcutta, Madras and Bombay. The judgment, I think,



comes from Lord Simon, the Lord Chancellor, and his view is that the power of granting a writ of *certiorari* is confined to the limits of the original jurisdiction of the High Courts of the three presidency towns of Calcutta, Madras and Bombay. It places the position of the bulk of the citizens of this country in a very peculiar condition. It may be that people do not resort to a writ of *certiorari* ordinarily, but the fact that it exists is always there in the background and has a beneficial influence on the administration. The executive officer always knew that in matters where there has been grave injustice done to people, a writ of *certiorari* is possible, but the latest decision of the Privy Council takes away that remote privilege and the psychological strength that is provided to the citizen in this country.

I could argue for hours on end as to why that a High Court should have the jurisdiction, I have suggested. In fact, this and another amendment which I

5 P. M. hope to have the privilege of moving in this House rest on the interpretation of the Government's powers to constitute extra judicial tribunals and to make their finding in regard to the rights of citizens final. It is said that we in this country are still trying to approximate our standards of obtaining justice to that obtaining in Britain and I think, as things are today, a provision like this is particularly necessary in a measure which has been admitted by the Government as having been brought for purposes of consolidation, where the stringent provisions of the Salt Act have come into play, because the provisions of the other Acts were less stringent and were, therefore, not effective enough. Particularly in a measure of this sort, I think it is very necessary that the jurisdiction must be given to a High Court to have a final say. It is no safeguard to the citizen to say that the Central Government should be the final authority of appeal, as it is constituted today at any rate. Sir, I move.

**Mr. President** (The Honourable Sir Abdur Rahim): Amendment moved:

"That in clause 36 of the Bill, for the words 'The Central Government' the words 'A High Court having jurisdiction' be substituted."

The Assembly then adjourned till Eleven of the Clock on Wednesday, the 16th February, 1944.