

दूर करने के लिए एक्सीक्यूटिव मैजिस्ट्रेट को ज्यू-डिशियल मैजिस्ट्रेट कर रहे हैं ? यही प्रश्न में पूछना चाहता हूँ ।

**SHRI F. H. MOHSIN :** Sir, as I have already mentioned, the intention of moving these Resolutions is to keep up the continuity of the present arrangement that is prevailing in the Union territories of Delhi and Chandigarh. If there are any faulty decisions by the executive magistrates, there is a provision that they could approach the High Court in revision. My hon friend has pointed out some instances where proper decisions by the executive magistrates were not taken I am not aware of such instances. But if such instances are there, people have got the remedy to go to the High Court. The Central Government cannot interfere in these matters which are of a judicial nature. Hence I again appeal to the House to accept these Resolutions.

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

"In pursuance of clause (a) of section 478 of the Code of Criminal Procedure, 1973 (2 of 1974), this House resolves that the Central Government may, after consultation with the High Court of Delhi, by notification, direct that, in respect of the Union territory of Delhi, the references in sections 108, 109 and 110 of the said Code to a Judicial Magistrate of the first class shall be construed as references to an Executive Magistrate."

*The motion was adopted*

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

"In pursuance of clause (a) of section 478 of the Code of Criminal Procedure, 1973 (2 of 1974), this House resolves that the Central Government may, after consultation with the High Court of Punjab and Haryana, by notification,

direct that, in respect of the Union territory of Chandigarh, the references in sections 108, 109 and 110 of the said Code to a Judicial Magistrate of the first class shall be construed as references to an Executive Magistrate."

*The motion was adopted.*

15.05 hrs.

#### ECONOMIC OFFENCES (INAPPLICABILITY OF LIMITATION) BILL

THE MINISTER OF STATE IN THE MINISTRY OF FINANCE (SHRI K. R. GANESH) : I beg to move :

'That the Bill to provide for the inapplicability of the provisions of Chapter XXXVI of the Code of Criminal Procedure, 1973 to certain economic offences, as passed by Rajya Sabha, be taken into consideration."

The Code of Criminal Procedure, 1973 introduces a provision prescribing periods of limitation for taking cognizance of certain offences by courts. The term 'offence' as defined in the Code includes offences not only under the Indian Penal Code but also under the Income-tax and the other direct and indirect taxes Acts as well as various other economic laws. The period of limitation prescribed is six months, if the offence is punishable with fine only, one year, if the offence is punishable with imprisonment for a term not exceeding one year, and three years of the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. No limitation applies to offences punishable with imprisonment for a term exceeding three years. Offences for which a person can be prosecuted under the direct tax Acts are punishable with fines or imprisonment extending up to two years only. Hence, all these offences will be affected by the periods of limitation prescribed in the Code of Criminal Procedure, 1973. Some of the other Acts like the Customs Act, the Central Excise and Salt Act and the Gold (Control) Act do provide for imprisonment for a term

[Shri K. R. Ganesh]

up to seven years if the value of the smuggled goods, gold etc. exceeds Rs. 1 lakh. While the bigger offences under these latter Acts will thus be saved, offences relating to making of a false declaration etc. and individual cases where the amount involved is up to Rs. 1 lakh only will still be hit by the new provisions about limitations.

The period of limitation counts either from the date of the offence or from the date the offence comes to the knowledge of the aggrieved person or a police officer, or from the date on which the identity of the offender is known to the aggrieved person or to the police officer who is making the investigations. It is doubtful whether an officer of the Department administering the law can be said to be an aggrieved person for this purpose. Thus, the limitation will have to be counted in every case from the date of the offence. This would lead to serious difficulties in the administration of several laws dealing with economic offences.

15.06 hrs.

[SHRI JAGANNATHRAO JOSHI *in the Chair*]

In regard to offences under the direct tax laws, an offence may come to the notice of the Department, several years after its commission. For instance, assessments under the Income-tax Act can be reopened within eight or even sixteen years in cases of concealment. Offences detected in such proceedings may thus get barred by limitation for purposes of prosecution. Further, assessments in the bigger and more complicated cases can usually be completed only towards the end of the period of limitation for completing assessments, which is two years from the end of the assessment year under the Income-tax Act. In such cases, even if the offence detected in the course of the assessment is one punishable with imprisonment for more than one year, there will be hardly any time left, after completing the assessment, for starting prosecution proceedings.

Similarly, a search conducted, on receipt of information, may bring to light concealment and tax fraud committed several years earlier, but with the new provision of limitation, it may not be possible to prosecute the offender in such a case either. Offences regarding non-deduction of tax at source or non-payment of tax deducted may also come to light only after the period of limitation of one year applicable to such cases has already expired.

In relation to the Foreign Exchange Regulation Act, similar difficulties are bound to arise in respect of prosecutions. For instance, the Supreme Court has held that prosecutions under section 23 (1) (b) of that Act cannot be launched unless the process of adjudication proceedings has been gone through. This process takes time and it is often years before the cases are ripe for filing complaints in the courts. Another problem under the Foreign Exchange Regulation Act relates to prosecutions for non-payment of penalties as provided under section 23 F of that Act. The date of the offence is the date when the penalty has fallen due and the party has not paid the same. In a large number of cases, the Enforcement Directorate has not filed any prosecutions so far, since the parties have filed appeals before the Appellate Board. Prosecuting the parties when the appeals are pending would not be proper, but then in the meanwhile, the period of limitation may run out.

Under the Customs Act and Central Excises and Salt Act, investigation and adjudication proceedings in many cases take time. Quite often offences come to light long after their commission. Since it is desirable that prosecutions are launched after the adjudication proceedings are over, counting of limitation from the date of commission of the offence would create difficulties in respect of these Acts as well. More or less similar problems would arise in respect of offences under the other Acts listed in the Schedule to the Bill.

The provision of limitation introduced through the Code of Criminal Procedure, 1973 would thus create serious difficulties

in implementing the Government's policy of prosecuting those guilty of economic offences. It is, therefore, proposed in this Bill to make the provisions of Chapter XXXVI of the Code of Criminal Procedure, 1973 inapplicable to prosecutions for offences under the Acts specified in the Schedule to the Bill and also for any other offences which under the provisions of the Code of Criminal Procedure, 1973, may be tried along with such offences.

The proposal in this Bill is laudable and I hope that it will receive the unanimous support of the House.

Sr, I move.

MR. CHAIRMAN · Motion moved

"That the Bill to provide for the inapplicability of the provisions of Chapter XXXVI of the Code of Criminal Procedure, 1973, to certain economic offences, as passed by Rajya Sabha, be taken into consideration".

श्री श्री० आर० बड़े (खरगान) : मन्नापनि महाशय, मन्त्री महाशय न जा जिन पेश किया है उस का उद्देश्य या अर्थ है, लेकिन कांड आफ रिमिशन प्राप्ति के पीछे काफ निमित्तन का 'जा व्यवस्था की गई है, उस के पीछे भावना यह है कि किसी भी व्यक्ति पर किसी आफन के बारे में कार्यवाही किय जाने की तबवार न लटकती रहे। सरकार ने कोड आफ क्रिमिनल प्राप्ति के पाम कराने समय हम तरफ ध्यान नहीं दिया। अब उस को बुद्धि आई है कि कुछ आफेसिज की इनवेस्टीगेशन आदि में टाइम लगता है, इस निये निमित्तन की व्यवस्था को खत्म कर दिया जाये। अगर हम में ज्यादा टाइम लगता है, तो या तो सरकारी कर्मचारियों का आवश्यक कार्यवाही क्याकीय करनी चाहिए, और या निमित्तन की व्यवस्था को ही खत्म कर देना चाहिए। मैं समझता हू कि गवर्नमेंट की यह नीति गलत है कि निमित्तन की व्यवस्था

का खत्म कर दिया जाये, जिन के परिणामस्वरूप लोगों के लिए पर प्राप्तिकरण की तबवार लटकती रहेगी।

मन्त्री महोदय ने यह नहीं बताया है कि निमित्तन की व्यवस्था का खत्म करने के साथ साथ सरकारी कर्मचारियों का भी यह हितायत हो गई है कि जहां तक हा सके, वे इन आफेसिज के बारे में आवश्यक इनवेस्टीगेशन आदि जल्दी करें। मैं समझता हू कि चकि कुछ आफेसिज का पता लगाने और उन के बारे में इनवेस्टीगेशन करने में निमित्तन का समय निकल जाता है, इस लिए निमित्तन के प्राप्तिन को ही खत्म कर दिया जाये, यह नीति गलत है। इसने लोगों को आश पेशा हागा। अगर बिना आफेसिज के बारे में टाइम दिया गया है, तो उस टाइम के अन्दर अन्दर सब कार्यवाही ही जानी चाहिए।

इनकम टैक्स एक्ट के बारे में निमित्तन को खत्म करना या ठीक हा सकता है, लेकिन सेटल एम्पाइज एंड साल्ट टैक्स एक्ट आदि के बारे में निमित्तन का खत्म करना कहा तक ठीक है ? मैं समझता हू कि इस तरह निमित्तन को व्यवस्था को खत्म करना बुद्धिगियन प्रिन्सिपल और जूरिप्रुडेंस के विरुद्ध है। वास्तव में, शासन ने अभी भी इन बात की तरफ ध्यान नहीं दिया है कि उस के काम जूरिप्रुडेंस में बिनाफ है।

क्या शासन ने या कमीशन में पूछा है कि इन आफेसिज के बारे में निमित्तन का खत्म करने के संबंध में उस को प्राप्तिनियन क्या है ? यदि वह हम में समझन हा, तो बात दूसरी है। मेरा बिचार यह है कि जो कानून या जो नियमन सरकार के खिलाफ जाते हैं, उन के निमित्तन को खत्म करना ठीक नहीं है, क्योंकि यह जूरिप्रुडेंस के विरुद्ध है। इस लिए मैं इस बिना का विरोध करता हू।

SHRI K R GANESH : I have very exhaustively explained in the course of my introductory remarks the main purpose for

which the House's approval is sought for the inapplicability of Chapter XXXVI of the Cr. P. C. for economic offences. It has now been recognised that economic offences will have to be dealt with separately. The Law Commission has extensively gone into the nature and complexity of economic offences. Some of the other Acts which this Parliament has passed, the amendment to the Gold Control Act, Central Excise and Salt Tax Act, Customs Act and so on also indicate the new thinking as far as economic offences are concerned.

The main point is that economic offences may be detected much later than in the year in which they were committed. For instance, if you take an individual assessment of 1960 or 1962, its concealment or evasion may be detected much later. The income-tax authorities have the right to reopen the assessment if it is not barred by limitation. If you take customs also, smuggling operations may be detected much after they were undertaken. Therefore, there also if the limitation applied, it would prevent the authorities from proceeding against them.

There is another point. In these Acts, both in the Central Excise and Salt Act and in the Customs Act, and also in the Income-tax Act, there is a special procedure that has been laid down. In the Customs Act and in the Central Excise Act, there is a provision for adjudication. Adjudication has to proceed according to certain principles of natural justice, and it is always possible for the assessee to delay the adjudication, and unless the adjudication proceedings are completed, it is not possible to file a prosecution when prosecution is indicated.

For the reasons that I have indicated in the course of my speech, it is very necessary that these limitations should remain inapplicable to the economic offences. With these words, I commend the Bill for the acceptance of the House.

श्री भार० बी० बड़े : कुछ एनेक्टमेंट्स के बारे में लिमिटेशन की व्यवस्था लागू न हो,

क्या इस प्रश्न को सा कमीशन को रैफर किया गया है या नहीं ? मंत्री महोदय ने इस का जवाब नहीं दिया है ।

**SHRI K. R. GANESH :** The Law Commission may not have gone into this particular aspect of the question, but on the whole, the Law Commission has gone into the question of economic and social crimes, and it has indicated that there has to be some special procedure as far as the question of dealing with economic and social offences is concerned.

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

"That the Bill to provide for the inapplicability of the provisions of Chapter XXXVI of the Code of Criminal Procedure, 1973 to certain economic offences, as passed by Rajya Sabha, be taken into consideration."

*The motion was adopted.*

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

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

*The motion was adopted.*

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

**SHRI K. R. GANESH :** I beg to move :

"That the Bill be passed."

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

"That the Bill be passed."

*The motion was adopted.*