

12.13 hrs.

GIFT-TAX (AMENDMENT) BILL*

The Deputy Minister in the Ministry of Finance (Shrimati Tarkeshwari Sinha): Sir, on behalf of Shri Morarji Desai,

Shri Hari Vishnu Kamath: He is present in the House.

Shri Raghunath Singh (Varanasi): The hon. Minister is present. Why should it be "on behalf of"?

The Minister of Finance (Shri Morarji Desai): Sir, I beg to move for leave to introduce a Bill further to amend the Gift-tax Act, 1958.

Mr. Speaker: The question is:

"That leave be granted to introduce a Bill further to amend the Gift-tax Act, 1958."

The motion was adopted.

Shri Morarji Desai: Sir, I introduce the Bill.

12.14 hrs.

DEFENCE OF INDIA BILL†

The Minister of Home Affairs (Shri Lal Bahadur Shastri): Sir, I beg to move for leave to introduce a Bill to provide for special measures to ensure the public safety and interest, the defence of India and civil defence and for the trial of certain offences and for matters connected therewith.

Mr. Speaker: Motion moved:

"That leave be granted to introduce a Bill to provide for special measures to ensure the public safety and interest, the defence of India and civil defence and for the trial of certain offences and for matters connected therewith."

Shri Hari Vishnu Kamath (Hoshangabad): Mr. Speaker, I rise to a point of order. At the outset let me make it clear that I am not stickler for rules and regulations or niceties of the Constitution. At the moment, however, it is all the more necessary

Mr. Speaker: Can a point of order arise without relation to any statutory provision, Constitution or rules?

Shri Hari Vishnu Kamath: I mean the Constitution. It is all the more necessary that we should see that the spirit and forms of parliamentary institutions must flourish and must be shown to be superior to a totalitarian system. May I invite the attention of the House to article 103 of the Constitution?

Article 103, clause (2) says:

"an Ordinance promulgated under this article shall have the same force and effect as an Act of Parliament, but every such Ordinance—

shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks."

etc. I need not read the rest of it.

Mr. Speaker: Which article is he reading?

Shri Hari Vishnu Kamath: Article 103. . . I am sorry, Sir, it is article 123. My flag has been out of place. It is regarding the legislative powers of the President.

Now, the Defence of India Bill that is sought to be introduced in the House incorporates or embodies the Defence of India Ordinance (No. 4 of 1962) as well as the Defence of India (Amendment) Ordinance, 1962 (No. 6 of 1962). Rule 71, sub-rule (1) of the Rules of Procedure and

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†Introduced with the recommendation of the President.

[Shri Hari Vishnu Kamath.]

Conduct of Business in Lok Sabha says:—

“Whenever a Bill seeking to replace an Ordinance with or without modification is introduced in the House.....”

etc. I realise that this rule provides for modification of an Ordinance when it is sought to be replaced by a Bill and that is perhaps what the hon. Home Minister has attempted to do. He has incorporated the provisions of the Defence of India (Amendment) Ordinance, 1962 (No. 6 of 1962), that is, the amending Ordinance, in the Bill which he has not sought to place before the House. That means to say that both the Ordinances, that is, No. 4 and No. 6, have been comprised and included in the Defence of India Bill and perhaps that satisfies the provisions of rule 71(1) because the Defence of India Ordinance (No. 4) is sought to be modified to that extent by including the Defence of India (Amendment) Ordinance (No. 6) also in this Bill. It is left to you—because I am not a lawyer; so, I leave it to you—to say that modification means amendment also; perhaps, it will include amendment because the amending Ordinance also is sought to be incorporated in this Bill.

But, there is one difficulty in my humble judgment. I go back to the Constitutional provision, Clause (2) of article 123 says:—

“...every such Ordinance—

Shall be laid before both Houses of Parliament and shall cease to operate.....”

it does not say ‘lapse’—

“at the expiration of six weeks..”

What will be the consequent if this Defence of India (Amendment) Ordinance (No. 6) is not passed into an Act of Parliament by a separate Bill? What will be the effect in law and under the Constitution? It means that it will cease to operate and all

the provisions of that Ordinance will cease to operate. When an Ordinance ceases to operate, all the provisions also cease to operate. The provisions that are comprised in the amending Ordinance—however they may have been sought to be included in that Bill—are two or three. I will take that amending Ordinance. It is before me and it is before you also, I believe. It is a small amending Ordinance comprising only two or three provisions. What will happen to those provisions with regard to apprehension, detention of persons, custody and all that? It is not sought to be passed into an Act of Parliament separately. I would have been happy—you also would have been happy, I am sure and the House would have been happy—if both the Ordinances had been placed before the House as Bills and had been taken up together for discussion, and passed into law. That would have been the best course, perhaps—I am not sure. I leave it to you. But it ceases to operate.....

Mr. Speaker: The hon. Member must always be sure of his own point.

Shri Hari Vishnu Kamath: I am sure, but I leave it to you for final decision.

Mr. Speaker: But he says again and again, “I am not sure”.

Shri Hari Vishnu Kamath: That is a form of language; that is all. I submit.... (*Laughter*).... It is not a matter for laughter—I do not mean you, sir. Some hon. Members are likely to take it very lightly in this emergency. When the Ordinance ceases to operate, will these two provisions also cease to operate? The question might be raised in a court of law that they have ceased to operate. However much you may have tried to bring them into some other Bill, what will be the force of that under the law and the Constitution? I would submit it would be better for the Home Minister to present to the House two Bills separately embodying the provisions of these two Ordinances. Both

Bills may be taken together and passed into law.

There is another point I would like to make. During the last few days. Hon. Members must have seen various reports appearing in the press that such and such article has been suspended, the President has passed orders with regard to the suspension of such and such article. May I invite your attention to article 359, because this would be important and helpful when we take up the discussion of the Defence of India Bill. Without that information before us, the House will not be able to discuss competently the Defence of India Bill now sought to be introduced.

Mr. Speaker: If he apprehends any difficulties only in the discussion, he can refer to that at that time. If it is material to his point of order, then he may say.

Shri Hari Vishnu Kamath: The difficulty is, we get the information very late. If we get the information earlier, it will help the discussion.

Mr. Speaker: It is only that he wants the information to be placed before the House at an early date. That is all. He is making out a point of order which I have to answer. This is not a point of order.

Shri Hari Vishnu Kamath: It is not a point of order. Suppose the Bill is taken on Monday,.....

Mr. Speaker: That is a different question.

Shri Hari Vishnu Kamath: I will take it up later.

Mr. Speaker: What I have been able to follow is, Mr. Kamath says that there were two Ordinances, now there is one Bill that is being brought before the House. He says that according to this article of the Constitution, every Ordinance has to be replaced by a Bill and there ought to have been separate Bills replacing each Ordinance. Is that the point of order?

Shri Hari Vishnu Kamath: Yes.

Mr. Speaker: I do not feel there is any great weight.

Shri Tyagi (Dehra Dun): May I point out, this Proclamation includes both normal law and some articles of the Constitution as well. An Ordinance, when it comes in the shape of a Bill and seeks to amend the Constitution, perhaps, that would be treated differently than those sections which do not amend the Constitution.

Mr. Speaker: I could not follow. Does he support Mr. Kamath?

Shri Tyagi: My point is, this Ordinance covers the normal law as well as some articles of the Constitution which are amended. If that is to be passed by us, so far as those clauses which amend the Constitution are concerned, we have to give a different treatment because two-thirds majority and all that is needed, while for normal Bills, they get through by an ordinary majority. Therefore, I submitted, that perhaps such clauses....

Mr. Speaker: Is there any amendment of the Constitution contemplated?

Some Hon. Members: No.

Mr. Speaker: There is none. Why should Shri Tyagi take it that there is a certain amendment?

Shri Tyagi: There was suspension of some article.

Mr. Speaker: There is no amendment of any article of the Constitution in this Bill or in any of the Ordinances. No question arises there. There is nothing of the sort.

Shri Tyagi: Some article is suspended.

Mr. Speaker: That is provided in the Constitution itself. Whatever has been suspended, that is in consonance with the articles of the Constitution itself. Therefore, it is not an amendment of the Constitution. It is rather obeying the Constitution or acting

[Mr. Speaker]

according to the Constitution. Those steps have been taken in pursuance of the provisions of the Constitution. There is nothing that requires here in the Bill to modify or alter any of the articles.

So far as the objection of Mr. Kamath is concerned, I do not agree with him. I do not see any force there. The only thing that is required is that every Ordinance has to be replaced by a Bill passed by Parliament within six weeks after the assembling of Parliament and after this is passed, the provisions of both shall have come into the Bill and therefore each of them shall have been replaced by a Bill. Therefore, there would be no force in saying that the provision would be offended against and there would be any departure from them. Each of these Ordinances that were promulgated by the President, after the passing of this Bill, if the House adopts that Bill, each one of them shall have been replaced by a Bill passed by Parliament. There would be no difficulty. Automatically, because the Bill is replacing those Ordinances, the repealing of these is provided in the Bill. There would be no difficulty so far as the termination which Mr. Kamath has referred to. I do not think there is any force.

The question is:

"That leave be granted to introduce a Bill to provide for special measures to ensure the public safety and interest, the defence of India and civil defence and for the trial of certain offences and for matters connected therewith."

The motion was adopted.

Shri Lal Bahadur Shastri: I introduce the Bill.

12.27 hrs.

STATEMENT REGARDING ORDINANCES

The Minister of Home Affairs (Shri Lal Bahadur Shastri): I beg to lay on the Table a copy of the Explanatory statement giving reasons for immediate legislation by the Defence of India Ordinance, 1962 (No. 4 of 1962) and the Defence of India (Amendment) Ordinance, 1962 (No. 6 of 1962) as required under Rule 71(1) of the Rules of Procedure and Conduct of Business in Lok Sabha. [Placed in Library. See No. LT--530-62].

Mr. Speaker: Bills to be introduced.

Shri Daji: (Indore): Sir, before you pass, may I just through you request the Home Minister, before we begin discussion of the Bill, a consolidated statement of the Order passed by the President may be circulated to us so that we know where we stand?

Shri U. M. Trivedi: (Mandsaur): I support this request.

Shri Hari Vishnu Kamath (Hoshangabad): May I invite your attention to article 359 clause 3. Various reports have appeared in the press. We do not know that is what and where we stand.

Mr. Speaker: Those Orders that have been passed by the President after the Emergency may kindly be consolidated and circulated to the Members.

Shri Lal Bahadur Shastri: All right.

Shri Hari Vishnu Kamath: The Government will have to be more careful in these matters. Will you kindly read article 359. It was fought for a long time in the Constituent Assembly and you might recall that it was with great effort and perseverance that we managed to wrest from the powers that be...