

[Mr. Speaker]

the Mineral Oils (Additional Duties of Excise and Customs) Act, 1958, be taken into consideration."

The motion was adopted.

Mr. Speaker: The question is:

"That clauses 1 to 5, the Enacting Formula and the Title stand part of the Bill."

The motion was adopted.

Clauses 1 to 5, the Enacting Formula and the Title were added to the Bill.

Shri B. E. Bhagat: I beg to move:

"That the Bill be passed."

Mr. Speaker: The question is:

"That the Bill be passed."

The motion was adopted.

13.02 hrs.

FOREIGN EXCHANGE REGULATION (AMENDMENT) BILL, 1964.

The Minister of Finance (Shri T. T. Krishnamachari): Mr. Speaker, Sir, I beg to move*:

"That the Bill further to amend the Foreign Exchange Regulation Act, 1947, be taken into consideration."

The provisions of the Bill have considerable relevance inasmuch as our foreign exchange situation continues to be difficult. Last time, I came before this House in 1957 to fill up the lacuna we had discovered during the period of 10 years from 1947. On that occasion this law for regulating dealings in foreign exchange was also placed on a permanent footing as the need for regulation of foreign exchange transactions was likely to continue for a considerable time. We have lived with this shortage for quite some years and if the experience of other develop-

ing countries is any guide, we should be prepared for this situation to continue for still some more time to come.

The amendments now proposed aim at plugging some loopholes that have come to our notice and at strengthening the enforcement machinery charged with implementing the law. The experience gained in the implementation of the law is not restricted to Government only. Even the offenders and the people so inclined have shared in this knowledge. It has, therefore, become necessary to make suitable changes to meet the situation that now exists.

Our foreign exchange earnings on invisible account have shown a decline in recent years. People of Indian origin settled abroad have been making substantial remittances to this country but this source of foreign exchange has shown indications of drying up. I might mention for the benefit of the House that in respect of a particular country Malaya we were getting Rs. 18.9 crores in 1956-57; 1957-58—Rs. 17.4 crores; 1958-59—Rs. 12 crores; 1959-60—Rs. 10.6 crores; 1960-61—Rs. 4.7 crores and in 1961-62, for which we have accounts, it is Rs. 3.1 crores. This is indicative of the fact that this source is drying up. While there are various reasons for this, one problem we are concerned with is the racketeering that is going on through illegal channels. It is an offence now, of course, for a dealer not specifically authorised under the provisions of this Act to carry on foreign exchange transactions. But the actual recipient of such illegal remittances is not now liable under the law. It is now proposed through an amendment of subsection (1)(a) of section 5 of the Act to bring such persons within the mischief of law.

Today, no Indian resident can settle property in favour of a non-resident without obtaining the Reserve Bank's permission.

*Moved with the recommendation of the President.

Shri Hari Vishnu Kamath (Hoshan-gabad): I am sorry to interrupt the Finance Minister. But I think, when he speaks, and more so on this Bill we must have a quorum in the House.

Shri Nambiar (Tiruchirapalli): It is an important measure.

Mr. Speaker: The bell is being rung . . . Now there is quorum.

Shri T. T. Krishnamachari: Today, no Indian resident can settle property in favour of a non-resident without obtaining the Reserve Bank's permission. We had felt that such a settlement need not be restricted when it is made by "will" or as a gift. This was motivated by our desire to honour the last wishes of the dead and not to stifle the charitable instinct. I wish I could continue to be generous. The time, however, has arrived when all transfers of property in favour of non-residents have to be regulated doing away with the differential treatment given to "wills" and gifts. At the same time, we are rectifying what I consider an undue restriction. As the regulations stand today, settlements of property, otherwise than by "will", in favour of a non-resident, made without the permission of the Reserve Bank of India, are totally invalid in so far as they confer any right or benefit in favour of a non-resident. But our main concern is not to prevent a non-resident from acquiring this interest but is only to prevent the possible outgo of foreign exchange. Section 17 is, therefore, being amended to lay down that such transfers will not create an automatic right of remittances but will be quite valid otherwise.

We welcome foreign investment needed for our industrial development and this country has a good record of permitting repatriation of foreign capital and remittance of interest, dividends, profits, etc. To keep to this record, prudence requires that we take on responsibility only to the extent we can honour. Our present policy does not normally permit foreign

investment in purely trading, banking and commercial activities—fields where it does not possess this advantage. When a company incorporated in India seeks to issue shares in favour of a non-resident, it is obliged to obtain the permission of the Reserve Bank under the Foreign Exchange Regulation Act. This is the mechanism whereby the foreign investment is regulated to those sectors of industry where it is most needed. If a foreign company, however, chooses to undertake trading and marketing activities without taking the trouble of incorporating a company under the Indian laws, it is under no obligation to seek permission under any law of this country. This is an obvious lacuna in our Exchange Control Regulation and we propose to take this opportunity to fill the gap. The new Section 18A lays down that a company incorporated outside India or a company incorporated in India but substantially controlled by non-residents can act as an agent in trading and commercial transactions or as advisers only with the permission of the Reserve Bank. This is an enabling law in line with Government's proclaimed policy on foreign investments and does not imply any new policy departure in this regard.

The second category of the amendments proposed seeks to streamline our machinery for enforcement. However perfect and well meaning the law may be, the desired objective can be achieved only by organizing proper machinery to adequately deal with the work. The number of cases registered with the Directorate of Enforcement for the violation of the provisions of this law has risen from nearly 1,700 in 1960 to approximately 3,500 in 1963. It is not merely the volume of the work that has multiplied but the nature of the cases themselves is getting more and more complex. In 1957 when adjudication was first adopted as a speedier and more expedient method of settling these cases in lieu of prosecution, the power of adjudication was conferred only on the Director himself and not on any other officer

[Shri T. T. Krishnamachari]

in the hierarchy. Our expectation at that time was that the number of foreign exchange cases would not be large. I am afraid that this expectation has been belied. The volume of work in the investigation of numerous cases and initiating adjudication proceedings necessitates that the Directorate of Enforcement should get full assistance from officers of Customs, Central Excise, Police and other Departments of Government. We are taking powers to entrust any or all of the functions of the Director of Enforcement to officers of the above-mentioned Departments.

To enable the Directorate of Enforcement to investigate any violations of law effectively, it is proposed to give these officers powers which the customs officers have been enjoying, that is, power to arrest, to stop and search conveyances, to search premises, to examine persons, to summon persons and record their evidence etc. These are measures to put some teeth into this organisation, and I am certain that I have the whole House with me in this matter. If in the course of investigation, the officers of the Directorate of Enforcement come across documents which would be of interest to other Departments of the Government, we are empowering them to communicate the relevant information to the concerned duly authorised officers.

Appeals from the decisions of the Director of Enforcement are heard by the appellate board which consists of a chairman and one more member. The composition of the appellate board is being altered so as to have three persons in all in order to take care of those contingencies where there is a disagreement in the views of the members of the Board.

Shri Hari Vishnu Kamath: What about investigation by the enforcement directorate in foreign countries?

Shri T. T. Krishnamachari: We have to depend upon other agencies for it such as the Interpol or such other agency which may help us in this matter.

We are also providing for an appeal against the decisions of the board to the High Court on points of law only. The punishments provided under this law cannot have a deterrent effect unless a social stigma is created against the offenders. It is, therefore, being provided that subject to such conditions as may be prescribed, the names and other particulars of persons found guilty of contravention of this law can be published.

Sir, I move.

Mr. Speaker: Motion moved:

"That the Bill further to amend the Foreign Exchange Regulation Act, 1947, be taken into consideration."

There are no amendments to the clauses excepting only one, I think. Therefore, I do not think that we should allot much time for the clause-by-clause consideration stage.

Shri Hari Vishnu Kamath: What is the time allotted for this Bill?

Mr. Speaker: We had no idea ourselves: we had allotted 4 hours, but that appears to be too much.

Shri Hari Vishnu Kamath: Perhaps we may have three hours.

Shri N. Dandekar (Gonda): I am glad that this measure has been brought forward. I know over the years both from the point of view of industry that requires foreign exchange as well as from the point of view of a large number of people who want it to educate their children abroad and for other types of normal necessities, how very much they are being adversely affected by the fact of the shortage of

foreign exchange. I would endorse the point of view urged by the Finance Minister that there is need, wherever possible, to tighten up the machinery and various other provisions of the Foreign Exchange Regulation Act, so as to reduce to the minimum, at any rate, leakages of foreign exchange, quite apart from the problem of how to earn more foreign exchange or how to spend less foreign exchange. So, in general, indeed more than in general, on the whole, I am entirely in agreement with the proposal and support the Bill.

In doing so, however, I would like to take this opportunity to make some observations both of a general kind and some of a specific kind in relation to some of the clauses, in the hope that the Finance Minister, when he replies to the debate would be either able to remove some of the doubts or better still be able to give in some places, where assurances are needed, appropriate assurances.

As regards the general problem, there are certain activities of Government themselves which I think ought to come under closer scrutiny of the Finance Ministry and in particular, of the machinery of the Reserve Bank. I say this with some knowledge and at the same time some reluctance, because the particular Ministry that I am referring to is the Ministry of Commerce concerned with the promotion of exports. I know that in the last two years that Ministry has done in substance a considerable job to promote exports, and whatever I am going to say should not be interpreted as detracting from the efforts of the Minister in charge of the Commerce Ministry. But I do think that two aspects of the activities in the Commerce Ministry which indicate rather more zeal than discretion do require some outside scrutiny or some outside advice or guidance such as could be furnished by the Finance Ministry through the Economic Affairs Department or by the Reserve Bank.

Firstly, there is the question of export promotion incentives. Export promotion as such is desirable; to some extent, incentives are also desirable. But I am clear in my mind, and I think that this is what one hears all over India—and I do travel a good deal in connection with my own affairs—that the two aspects connected with export promotion, mainly the incentives that they get for having a part of the foreign exchange earnings allocated for purposes of imports, and the hawking around that goes on and the enormous earnings that are possible by hawking around these import incentives are something that wants looking into, because they really beat down the rupee in the foreign exchange market, since it is virtually devaluation of a particular kind.

It is urged perhaps, and I would earnestly say this to the Finance Minister, that this business of export incentives and the mode of their utilisation and so on and so forth has reached a stage at which it does want looking into as something—I do not know the exact mechanism—that is probably a great deal of a source of avoidance of foreign exchange control in one way or another, not the normal thing of over-invoicing of exports and under-invoicing of imports, which is all a very tricky business, but this export incentive which one uses for purchase by hawking around the available foreign exchange on the basis of these incentives.

The second thing is State trading. I think the time has come—again I do not wish in this particular debate to characterise the general activities and policies of the State Trading Corporation, because that would not be appropriate on this occasion, but I do urge this—when the Reserve Bank and the Economic Affairs Department, and more particularly the Reserve Bank should take note of the tendencies that are developing namely that every time there is some little scope for exports or imports, the State trading jumps in and creates a kind of relative mono-

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poly and frequently the whole thing gets obscured under the guise of trading in rupees with rupee-payment countries.

At least two things have been happening as a result of this gathering together of a good deal of Indian and foreign trade into the hands of the State Trading Corporation with the assistance of a number of not necessarily open but understood privileges which the State Trading Corporation undoubtedly obtains from the Ministries concerned in the matter of permits and licences and quotas and the lot. The rupee trade seems an attractive business, but there is a good deal of flogging of Indian goods in the rupee-payment countries, and those goods find their way at lower price in the open foreign exchange markets with the result that in regard to the amount of foreign exchange in the sense of the non-rupee foreign exchange that we ought to be earning, we are losing, and the Indian goods get flogged around in the European countries outside the Iron Curtain.

13.19 hrs.

[MR. DEPUTY-SPEAKER *in the Chair*]

Another thing is this that the drive for exports through the State Trading Corporation, even if it is in terms of rupees, as I said, but particularly even in other terms, is having, I believe, a kind of depressing effect on the price situation for Indian goods *vis-a-vis* foreign countries. I would, therefore, urge that unwittingly—I am not saying that it is deliberate, but I am saying 'unwittingly', I want to be quite clear about that—there is more zeal than discretion in the matter of export promotion, and we know that the activities of the State Trading Corporation in foreign trade are causing this country some loss in foreign exchange.

Now the one and only clause on which I wish to make certain com-

ments—and they are comments more in the sense of expressing my doubts and fears in the hope that the Minister will clear them and give appropriate assurances—is clause 13 which is concerned with enacting a new section, section 18A, to which the Minister referred. I am looking at the effect of this clause. Its purposes and intentions apparently, are clear and sound. I have no comment as to the purposes and intentions. But I would like to bring to the Finance Minister's notice the possible repercussions of this, depending upon certain types of interpretations and certain types of working of this clause upon foreign investments in India on the one hand and upon foreign collaboration arrangements with Indian concerns on the other. What is sought to be brought under control, if one may express it in general terms, is controlled agencies in India, agencies that are really controlled from abroad, whether it be through a branch in India or a subsidiary concern in India or a controlled firm of which the directors are appointed by the foreign concern or a company in India of which the directors are controlled by an outside company. The particular directions in which specifically the control is to be exercised over these types of organisations are in regard to their selling agency arrangements or their management advisory workings or their technical advisory workings.

The first point that worries me a bit is whether existing agencies of this type, existing institutional set-ups already in India without the approval in the sense of tacit approval—because all their foreign exchange transactions are subject to scrutiny by the Reserve Bank of India—whether existing arrangements are intended to be affected in any way. Many of these existing arrangements, particularly those involving the management services or technical advisory services, especially if they involve outsiders coming in and giving technical advice and getting tax benefits and so forth,

are very frequently the subject of explicit tax exemptions under the Income Tax Act. But it does require some assurance that existing arrangements will not be adversely affected, because there is nothing more that shakes confidence of people abroad than that even existing arrangements can be upset, and consequently people find it difficult to embark upon new arrangements.

Now there are two types of arrangements—I would like to go in some detail into this because all I am seeking is some special policy assurances where needed—there are two groups or types of cases. A company abroad may have a subsidiary or an agency here which, apart from whatever it is producing, may also be the selling agents of its principal company in India. It may also act as the agent of the principal company in India for rendering managerial advice or technical advice to various Indian concerns. Another type is where the Indian concern, the Indian subsidiary or Indian-controlled concern, whatever one calls it, on its own embarks upon activities of this kind, which it may undertake because of its specialised experience, because of the fact that it has got a wide ground organisation, because of the fact that it has also got resources and the technical and other know-how. The Indian subsidiary or branch or agency, whatever it is, may on its own be acting as selling agent for Indian concerns or management advisers to Indian concerns or technical advisers to Indian concerns. I know in fact of a large number of cases—it would not be proper to mention their names here—of perfectly honourable concerns which have been associated with this country, which have these arrangements already existing, which are developing these arrangements in the future—all of which is of great benefit to the industrial development of the country.

Now, what is the policy of Government, generally speaking, in regard to

these matters, both in relation to existing concerns acting as agents for various things, acting for their principals or acting as agents for various things to Indian concerns. What would be the policy of Government in regard to new set-ups of this kind?

Shri T. T. Krishnamachari: Wholly foreign-owned or foreign controlled?

Shri N. Dandekar: Sometimes wholly foreign-owned, sometimes majority holding foreign, sometimes even minority holdings foreign. I happen to be director of a company which has got a minority interest of a foreign concern. But at the same time, a good deal of technical aid and assistance would be funnelled through this concern to other concerns, Indian concerns. They vary from wholly owned subsidiaries of foreign concerns to a subsidiary of a foreign concern which is not wholly owned by them, but in which they have a substantial minority interest. There are various kinds.

Similarly there are arrangements where some merely act as agents of their principals for the things they do not themselves manufacture. We may be manufacturing products A, B and C; the foreign concern may be making products D, E and F for which we would be the agents for their marketing in India. The arrangements are very complex. But the general pattern is this: they act as agents of their principals for selling other things, for conveying through themselves management and other advice to concerns in India or for conveying technical assistance to people. Others embark on their own,—well established concerns in India; some of them are well known in India—they on their own undertake developments of a kind which involve them in accepting selling and distributive arrangements for Indian manufacturers or technical advisory arrangements.

I have in fact another case, a proposal from an Indian company: could

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we advise them on the manufacture of a certain product? Could we advise them on the layout of plant and design? Could we advise them or actually undertake for them selling agency arrangements. I am referring to a company which is not a wholly owned British company but is a subsidiary of that company to a substantial extent. These are some of the doubts in relation to the operation, so to speak, of this particular new section that is to be introduced.

Finally, one comment I would like to make on the wider powers and widening of the officer corps in connection with enforcement. I think it is a good thing. I do think there is a good deal of evasion going on of foreign exchange. To a country which is developing, to a country like ours in which there is almost a scramble in regard to the situation concerning availability of foreign exchange, every leakage is a leakage of life blood and if we do not plug it, I think it will be so much life-blood loss to the economy.

At the same time, I would like to say this—this is from one who has been in industry for quite some time. You will have all the sympathies of a very large number of industrial, commercial, trading and other concerns and individuals if technical offences were not dealt with vindictively. There is today a terrible fear. In one of the cases in which my advice was asked, I said, 'Place the whole thing before them'. I am satisfied that the offence is technical, that you have not done this *mala fide*, that the amounts involved are small, that there was no organised attempt to do. I am sure that if you place this before the enforcement officer who is making the inquiry, he will probably say, 'Do not do this again.' But they are frightened like blazes; they are really, terribly frightened. There is a feeling that in fact the attitude of the officers becomes—the less the seriousness of the offence, the worse the attitude. I can understand that the officers—I have

also been one—more often get frustrated in the sense that the more one finds it difficult to find an offence having gone into the case, the weaker officer would like to fasten it on the person by catching him for a technical offence and so forth.

I hope the Finance Minister will personally try to instil a spirit into the enforcement branch which, I agree, is very necessary, which I agree in terms of manpower are to be widened, which I agree ought to be integrated with the customs, central excise and all that kind of thing. I do very seriously urge that there is a good deal of sympathy of which full advantage ought to be taken by the enforcement branch if only for technical offences they do not hound people as terribly as they are doing at the moment. If harshness both in the course of investigation as well as in the matter of penalties were avoided where offences are clearly of a technical, you will get a tremendous cooperation from industry and trade. I particularly mention this because very often one is put in a very difficult position because of the export promotion and that kind of thing. The natural desire of the board of trade is to push exports and they are pressing to export even at a loss. But one who exports at a loss or every transaction that is exported at a loss should not be suspect from the foreign exchange point of view. We must take the point of view of the industrial unit concerned where because of certain other advantages that are accruing to them in terms of export incentives and because they want to fall in line with the Government policy they may export at a loss. Then, if there was some cause for a technical offence, they should not be told: you should have got for this export more than what you say. A lot of complications arise then. There are these doubts and fears.

With these suggestions, I repeat that I am fully in favour of this Bill and support it wholeheartedly.

Shri H. N. Mukerjee (Calcutta Central): Mr. Deputy-Speaker, Sir, it is not normally that I speak on this kind of Bill but certain circumstances have required me to rush into spheres in which people wise in the ways of finance fear to tread. But I am always glad, as the verbal exchanges earlier this morning indicated, to cross swords with the Finance Minister, though on this occasion I propose, as in the case of the Wealth Tax Bill, to be helpful if he is agreeable to accepting my assistance. The Finance Minister has told us what of course is known to the country about the rather dangerous factors involved, the fact of the continuous fall in our foreign exchange earnings and it appears that, if any forecast is to be made, this shortage of foreign exchange is bound to continue for at least another decade or so. This naturally requires that we try to tighten whatever measures we have got in order to see that the racketeering through illegal channels to which the Finance Minister made a reference is stopped.

Before I proceed further into the subject I shall refer to what my friend Mr. Dandekar said a little while ago when he expressed his apprehension that in many cases perhaps technical offences tended to be dealt with vindictively and he added that many of his friends in the upper bracket of the economic world were almost frightened in regard to what might happen over such matters as foreign exchange regulation. If I may say so, in all humility, it would be a good thing if these people are somewhat frightened. The country wants them to be frightened because the country has already discovered how these very particular gentlemen are in possession of powers and influences of all kinds and circumstances which favour their having the largest share of the economic wealth of our country. Therefore, it is very important that we try to stop illegal practices through which our foreign exchange earnings, meagre as they are, for certain unavoidable reasons per-

haps, are being minimised to a very dangerous extent.

I have a feeling that for this kind of Bill which would elicit support from every side of the House, including the Swatantra side, a little more time is given to Members for studying these measures and suggesting certain methods which could be of some assistance to Government. I do not suggest that there should have been a reference to the Select Committee because that may cause a certain amount of delay which is not warranted in the circumstances but I feel that instead of having these debates in the House where we talk across the table and which is reported in the next day's newspapers—a sort of a polymical atmosphere is necessarily introduced and as long as parliamentary life is organised in the way it is, these measures would be discussed in the House and certain things will have to be said in a particular way—But for measures of this description the House can very well go into committee. The Finance Minister has his own consultative committee but I know that the terms of reference of our consultative committees are so peculiar and inhibited that nothing much can be done in these consultative committees.

Shri T. T. Krishnamachari: I am not bound by the terms of reference; if hon. Members want information which does not refer to the details of administration, I am quite prepared to give whatever they want and they can carry on the discussion there.

Shri H. N. Mukerjee: My suggestion was that in measures of this description, where the delay involved in reference to the Select Committee needs to be prevented, it is desirable perhaps for Members to sit down together in a different atmosphere than what prevails in the House and suggest ways and means which could be of some assistance to the administration. The consultative committee, I know, has no powers nor has the Minister any obligation to it. He is only

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exercising some courtesy in putting forth some information and that sort of thing. I am not going into details of this matter. I am merely suggesting that the House could convert itself into committee and discuss those matters over which there is no basic disagreement.

There is one aspect of our foreign exchange earnings position to which I wish to draw the attention of the House and the Government and that flows from the recent policy which is of course a development of an earlier policy—the policy of encouragement to foreign investment I know that it has been argued by the Finance Minister and his colleagues have told us several times in the House as well as outside that India has to bear a huge burden of debt repayment in the years to come and that recourse to foreign private capital is necessary to relieve this burden. I find this reasoning not quite acceptable because larger foreign participation in our industries which is taking place day by day will in fact lead to a more cumulative draft on our foreign exchange reserves, once the projects are commissioned. I think it is commonsense that given the choice between loan and equity capital, the draft arising from dividends would be larger and more continuous than that arising from interest payment on loan capital. Since the burden of payments on account of dividend is likely to be heavy and is likely to increase rapidly in the years to come, we should do something in regard to our policy about encouragement to foreign private investment. This foreign private investment has recently been growing rather dangerously and I shall quote a Government publication, the *Indian and Foreign Review* which the External Affairs Ministry brings out. It says that in 1963 the United States private investment earned a comparatively high profit ratio in India and according to the US Department of Commerce, the earnings ratio on the total US business investment in India went up from 8.8

per cent in 1960 to 13.2 in 1962. On the contrary the earnings ratio on US business investment in Western Europe declined from 11.5 in 1960 to 10.9 in 1962. So far as US investment in manufacturing industries in India is concerned, the earnings ratio is still higher. It was 19.2 and 20.6 in 1961 and 1962 as against 10.2 and 12.6 in Western Europe in the same years. I know these figures might be characterised as trite; they might have been quoted in this House even earlier, but my point is to emphasise that if we are going to see to it that our foreign exchange resources rise, it is necessary for us to change our recent orientations of policy in regard to foreign investments. Considering our balance of payment position in the long-run perspective, it is hardly likely that the country will be in a position to bear this burden in the next 10 to 20 years. At the most, what may happen is that the burden will be shifted from tomorrow to the day after.

But I wish to emphasise this point because the terms on which the foreign collaboration is generally allowed have, I submit, to be considered very carefully from the point of view of our foreign exchange resources position. To mention just one point, the most of the collaboration agreements specify that the items to be manufactured cannot be exported. To entertain the hope that foreign capital will contribute substantially to higher foreign exchange earnings is rather unrealistic, and therefore, I am rather apprehensive about the kind of way foreign capital is infiltrating more and more into our economy.

The official thinking in our country is such that it is now virtually impossible for an Indian firm to start up or expand without presenting a scheme for foreign collaboration—perhaps Shri Dandekar also will agree with me there—and it is almost impossible for an Indian firm to get certain kinds of facilities unless they can show they have got some foreign collaboration

and in that case their prestige-value rises. This happens even in such firmly-based Indian industries like cement or sewing-machines or bicycles as well as such things as ink and pen, tooth-brushes and tooth-paste. One supposed reason for this is, that collaboration agreements give us painless and immediate relief to the balance of payments by providing foreign exchange or its equivalent in imported plant and machinery. But my submission would be, and I would beg of the Finance Ministry to examine this position more carefully because this matter has come up in very serious economic journals which have no particular ideological axe to grind—we have got to examine how these foreign collaboration agreements are working to the detriment or otherwise of our country's economy.

These foreign firms have very cogent and very selfish reasons of their own for seeking Indian collaboration. They do not like the look of us; they do not like the colour of our skin. They have their old kind of superiority complex—we know all that—and those people who get into the higher brackets of employment in these companies with foreign collaboration are entirely dominated, effectively speaking, by foreigners, while the Indians there have to develop a certain mannerism which would eloquently emphasise their distinctness from the rest of the Indian community. We know that, they do not like the look of us, but they are having these collaboration agreements for their own selfish reasons which are based purely on economic calculation. Most important of all is their growing need of local intermediaries. The whole world is a very different place from what it was when the second world war was fought, and now they have to have this assistance of local intermediaries.

Again, in many cases—how many cases, it is impossible for us to know without free access to the files of collaboration agreements which our Minister surely will have somewhere at

his disposal—what appears to be genuine financial involvement on the part of the foreign partner is no more than a mere allocation of shares in lieu of royalty payment or payment for plant sold to the Indian firm, the latter being a form of delayed and highly profitable sales revenue transaction for the foreign partner. There is strong reason for suspicion that what appears as financial enterprise is little more than sales of machinery and equipment on deferred payment terms at a price which certainly would appreciate with time and which is certainly going to cause some detriment to our balance of payment position. Payments abroad on account of royalties, patent fees, technical and professional services have more than doubled in the last decade, and where substantial equity participation is involved, royalty payments are not normally allowed, but there are some very eloquent exceptions to this rule.

In this connection, I found a great deal of very helpful material in a study by a foreigner—at least the name is foreign—Michael Kildrom—who has written on the behaviour of foreign capital—a longish article—in the *Economics Weekly* of Bombay, special number, which came out in July, 1964. And there, this student, on the question of behaviour of foreign capital in India, gives us some very significant examples of how these foreign collaborators, very far from assisting the true development of our economy, feather their own nests which are already particularly prosperous. He gives a number of instances to show how the terms of the technical collaboration are such that India suffers from the point of view of her foreign-exchange resources. He gives an instance of Synthetics and Chemicals, Ltd.—Shri Dandekar surely knows about these people—who, in 1960 undertook payment for technical assistance, know-how, etc. to its American collaborator, Firestone Tyre & Rubber Co., totalling Rs. 1.9 crores over a ten-year period. But Firestone's investment in the company is no more than Rs. 1.5 crores; besides that, they are earning dividends. Fire-

stones have put in Rs. 1.5 crores stones have put in Rs. 1.5 crores as capital; they are getting dividends on it, and fairly fat dividends. I should imagine, and on top of it, for technical assistance, know-how, etc., in ten years' time they have got Rs. 1.9 crores. This is what I am quoting from this article to which I have already made a reference.

Then he gives another instance, the agreement between the Madras Aluminium Company and Montecatini of Italy. Here, the foreign stake was Rs. 1.5 crores and payment for services—a heavy amount—Rs. 40 lakhs, on engineering fees, drawings and other assistance; Rs. 35 lakhs for experts, supervision and other services; and Rs. 45 lakhs for knowhow, totalling Rs. 1.2 crores. This is extremely substantial. Very, very heavy amounts are drained away from our country by devious ways, and a very sophisticated justification is given to it as if we are being profited by this kind of transaction. As a matter of fact, even though the knowhow is advantageous,—I admit that—they are selling that knowhow at a price, which is charging compound interest on what they had already invested in the process of acquiring that knowhow.

He gives another instance. This again refers to somewhere in Bombay—Messrs. Birajlal & Co., Lonavla, near Poona, I expect. There is an agreement between Steyr-Daimler-Puch AG of Austria and Messrs. Birajlal & Co., of Lonavla signed in 1960, the Indian party undertaking to pay royalty of £13,000 per annum subject to Indian taxes, but in no event less than £6,500 per annum between the 5th and the 10th year of the agreement's currency. The Austrian firm would receive, therefore, between Rs. 4,32,500 and Rs. 8,65,000 in royalty, besides dividends on its equity of Rs. 5 lakhs and interest at six per cent per annum guaranteed by the Reserve Bank of India on 4.5 million shilling loan for the purchase of machine-tools manufactured and supplied by Steyr.

This is a wonderful example. So many others also are quoted in this article which suggests how the price of foreign knowhow is most exorbitant. It is quite interesting to notice that even the Reserve Bank of India had remarked in one of its surveys that some companies registered in India instead of bringing funds from abroad bring equipment and issue to the foreigners in lieu thereof shares in the companies against the import of goods which make a great deal of profit at our expense. Patentees also are almost all foreigners, heavily concentrated amongst the international giants like General Electric or Standard Telephone and Cable or Phillips. On this matter, Mr. Justice Ayyangar had once made the charge that they block our industrial development and exact unreasonably high payments from Indian licensees or importers. It is noticed also how there is a difference between the approaches of certain foreign countries and certain others. I am inclined to quote from out of this very article something which was written by an extremely pro-west journalist, who used to be here from time to time—Mrs. Taya Zinkin—who wrote in one of her books, which is quoted here as follows:

"In the West, Indian trainees make friends and enjoy cinemas and plays, but they always sense a forbidden technical door. In Russia they get bored and exhausted but are initiated into all trade secrets."

It is very important for our people, when they go abroad, not just to go the round of the night clubs and other such places of delectation, but to discover certain other things, the knowhow concerned. But in the western countries, it seems the know-how is kept under lock and key and our people are sent round enjoying themselves and going back possibly with a degree or diploma, or God knows what other kind of certificate, which actually comes to very little when the real im-

plementation of certain projects requiring particular skill is concerned.

In this article, which I particularly commend to the attention of the Finance Minister, this foreign student concludes like this. Of course, there are many methods adopted by the Government of India to see that Indian economy is not detrimentally affected, but he says:

"The Government of India is alive to the existence of these difficulties and is prepared, where necessary, to counter them. That it has been able to do so, has done so is not disputed. What is surprising is the degree of tolerance that it shows."

The Government of India shows not only a degree of tolerance, but a great deal of acquiescence in certain processes happening in our economy, which will not ultimately redound to making us a truly independent factor in the economy of the world.

Another point which we have tried from time to time to impress upon the Finance Minister is in regard to profit remittances which have to be carefully checked. I am not suggesting that Government stops these profit remittances straightaway. I am not in a position to suggest it, because it would not be any good. But there should be a very careful scrutiny and screening of foreign collaboration agreements. The obvious leaks in the investment accounts should be closed. One such obvious leak is that of discounting export bills in the London market, which could be readily taken care of by the Reserve Bank. I do not see why the Reserve Bank does not do this job of work. The Reserve Bank has got the personnel and the capacity and it is incumbent upon them, from the point of view of our economic interest, that the Reserve Bank takes up this job rather than we are left to the mercies of the manipulators in the London money market.

There are so many others, ranging from smuggling of gold, Swiss watches

and American cigarettes to under-invoicing of export bills and over-invoicing of import bills. Stepping up our exports is, therefore, one of our main instruments, and saving on invisibles also has to be done as far as we possibly can. In consequence of the failure of the planned out-put of steel, fertilisers, etc. to come up to schedule and the so-called maintenance imports which might cost annually about Rs 1000 crores, the foreign exchange involved would have to be met by stepping up exports and by saving on invisibles. That will give us some idea of the magnitude of the task, which the Finance Minister also has told us about and I wish to emphasise how very urgent it is for us to see that we take all possible steps in order to augment our foreign exchange resources.

I would like also to ask the Finance Minister why it is that targets set for the earlier years of the Plan, particularly in regard to the power programmes, which were very modest were not achieved, partly because foreign exchange which had already been commissioned for the purpose has not been utilised. I know lack of foreign exchange is trotted out as a standard excuse for shortfalls in the power programme, but that is not the whole story. Large amounts of foreign aid secured for power projects have remained unutilised for long periods because of delay in the execution of our projects to which the aid was tied. If it is lack of foreign exchange which holds up execution of power projects, how do we account for the interminable delays in the utilisation of foreign exchange that is already available? Therefore, while we surely want more foreign exchange to be available, we have to make sure that whatever foreign exchange is made available, particularly for purposes of our power projects, are utilised and they are not left more or less to be kept in abeyance.

On this question which Mr. Dandekar had mentioned earlier and to which also I made some further reference about technical offences being

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dealt with vindictively, I discovered on the other hand, if newspaper reports, which appear to be quite credible—they are not contradicted at least if they are any indication, that apart from being frightened, many of these people take advantage of whatever influence they have with the administration. Here is a report from the Special Correspondent in Delhi about action against a big British business concern of Calcutta under the Foreign Exchange Regulation Act having been taken. I quote:

"Getting scent of this decision, a highly placed man of the company rushed to Delhi and wanted to meet the Finance Minister, Mr. T. T. Krishnamachari. The Finance Minister refused to see him on the ground that the case might finally come to him for review after the action and appeal in the case were disposed of. So, he could not meet anyone connected with the firm involved in this case.

The firm's representative then moved the British High Commissioner for intervening with the Prime Minister in this matter. The Finance Minister is reported to have told the Prime Minister that it would not be advisable to meet the firm's representative or drop the case as the amounts involved were huge and there had already been some publicity about this case.

Besides, the Opposition would press the matter in Parliament.

At last the firm's representative met the Finance Secretary, who saw him only for a few minutes and told him that he had already signed the file ordering that action might be taken against the company and so he could not do anything in the matter."

I am quoting this not to show my feelings of disapproval of the Ministry.

The Ministry has behaved very correctly. The Finance Minister has refused to see him. The Finance Secretary has told him that the file will proceed according to the usual ways and all that. That is perfectly correct and a very good thing to do. But the fact remains that here is a British firm, which possibly is a century old, which has been dominating over our country's economy and used to a sort of lording it over the place. They send their representative. At last they get the High Commissioner to try to intervene in the matter. They have access to the highest possible places. Then again, according to the paper's report, because some publicity having already taken place in regard to this British business firm and because of the Opposition being likely to press the matter in Parliament, they were stopped.

Shri T. T. Krishnamachari: Will he allow me to intervene for a moment? These were not the considerations. Of course, I know the opposition is vigilant. Even my party is vigilant. What has been done has been done merely because that has to be done.

Shri H. N. Mukerjee: I am very glad if that kind of vigilance is consistently pursued by the Finance Ministry. We never know who the people are in most of these cases. It is not a question of personal animus or anything. It is only on account of the over-riding consideration which we all have that the economic interests of our country which are in jeopardy have got to be assisted to the best of our ability that we bring up these things. My point is, these people about whom Mr. Dankekar tried to give a picture of their being innocent little lambs who do not quite know the ways of big money, who are frightened when some laws are in operation or some regulations are going to be used that picture is somewhat misleading. I would rather like them to be frightened either because of the vigilance of the Finance Ministry or because of the vigi-

lance of Parliament. I would rather trust the vigilance of Parliament than the vigilance of the Finance Ministry because that unfortunately has been our experience.

14 hrs.

It is very necessary for Parliament to put its foot down when this kind of thing appears to be taking place. As I said earlier when I began, it is with a view to assisting the Ministry in this job of trying to stop the frittering away of our foreign exchange resources which is happening in different ways that I have tried to participate in this debate. I could have brought up a number of other instances, mentioning the names of all of them. But I never like the idea of mentioning names. I did not even mention the name of this British firm, which perhaps most people in the House know about. I do not like the idea of it. I have got so many other things to which reference could possibly have been made, but it is not necessary, and I wish the Finance Minister to reiterate, as he has done already in a preliminary way, that there should be that kind of vigilance, that kind of tightening up of the regulations, that kind of implementation of decisions in these matters which would prevent the frittering away of our foreign exchange resources.

Shri Sachindra Chaudhuri (Ghatel): Sir, I have heard with very great interest and very great respect the two speeches made, one by Shri Dandekar and the other by Shri Mukerjee. There is no dispute that the measure which has been introduced is wise and should be supported. The condition of this country so far as foreign exchange is concerned is precarious and every endeavour has to be made to stop leakages. But I find myself more in agreement with Shri Dandekar, I must confess, than I do with Shri Mukerjee (*Interruption*). I feel Shri Mukerjee is saying that he believes that it is so. That is so and I have said it.

I shall give my reasons now. Shri Dandekar has not criticised any of the sections or any of the provisions. In fact, he supports the Bill in all its aspects. He only wanted a clarification of section 18A. So far as that is concerned, I dare say that those who are charged with administering the law, particularly the Reserve Bank, will be well informed as to what have been the activities in the past of any particular agent or what is likely to be the activities of an agency in future, of either the present agents or new ones. We may take it that it is a responsible body and it will see to it that in giving or withholding the consent or approval that is necessary there is no laxity or harshness. This is a matter which really concerns not so much the law but the way in which the law is to be administered, and until it is administered, it is hardly possible to make any comments on the administration.

I think, Sir, that Shri Dandekar who has been himself an able administrator at one time will agree with me that these are administrative matters. There may be certain difficulties, but by and large it would be, I take it, the task of the Ministry and, indeed, the endeavour of the Minister to see that these rules are equitably administered, that the law is even handedly applied. So, I do not suffer from the fear that he has—and for which, he seeks a clarification. I doubt very much whether the hon. Finance Minister can give him the clarification here. How can he say that in the case of A, B and C he is not going to give the consent but in the case of X, Y and Z he is going to give the consent? That, I say, is an administrative matter.

So far as fear is concerned, in the profession which I practise I have found that fear is there, and, I would be even constrained to say, sometimes that fear is justified. It is no carping criticism on any officer if he wants to be zealous. An officer is zealous if he is unguided in these matters. He feels he has got to administer the law, and

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whether there is a technical breach or a substantial breach, after all, the individual judgment must decide. Without guidance that judgment may operate adversely to the purpose for which this enactment is being proposed.

May I suggest for the consideration of the hon. Finance Minister that as it is a matter of law he might, either in this enactment or by rules, make a provision that there should be some kind of control or superintendence by the Supreme Court, some guidance given to these officers by the Supreme Court by having a control over these officers, by laying down the procedure which they are to follow and ultimately controlling them by exercising some correcting powers. It would remove this fear which is, as I say, a genuine fear in the minds of those people who may be subjected to investigation.

Now, Sir, one thing has got to be realised. While harshness might cause fear, mildness might cause excesses on the other side. In that view I feel that with the moderating influence of the Supreme Court the real culprits will not escape and those who are merely guilty of technical offences would not be punished too harsh or treated too hard.

In the case of my hon. friend, Shri Mukerjee, I am reminded of what Oliver Cromwell said once:

"Ye sons of Zerubia

Ye be too hard for me."

My hon. friend has been very hard really on collaboration. It must be granted that when a foreigner comes into the country with money he is not doing so with any altruistic purpose nor is he doing it for the benefit of his health. He must seek profit and it is a matter of negotiation as to how much profit we can give. That negotiation must be based on this, that our profit is at least commensurate with what we pay. Therefore, in each case there has got to be negotiation as to the

terms on which collaboration is to be given. Formidable figures have been quoted by Shri Mukerjee in crores. My intelligence and my conception are very limited and I cannot conceive of Rs. 15 crores or Rs. 110 crores.

Shri Hari Vishnu Kamath: You are very modest.

Shri Sachindra Chaudhuri: I am not modest, I am truthful. But what I can say is this, that when we think in terms of having equity shares to the tune of Rs. 1.5 crores and having to pay Rs. 1.9 crores for technical service or advice, we have to consider what we are getting in exchange. If by spending Rs. 2 crores or Rs. 3 crores—my arithmetic is always bad—we get Rs. 5 crores, is it a bad investment? That is the thing which we have to consider. The other side of the picture has not been disclosed by my hon. friend, Shri Mukerjee. I am perfectly certain that so far as the Ministry is concerned—the concerned Ministry—it is not going to give its blessings to a scheme of co-operation which on a proper assessment is not going to produce profit for this country but merely going to pour foreign exchange out of the country into the pockets of collaborators. Therefore while the warning which was given by my hon. friend is a good warning, I imagine and I expect that that warning has been very well followed in the past.

Also, the purpose of this particular enactment, if I gather right, is not to stop collaboration or to regulate collaboration, but the purpose is to stop the leakage of foreign exchange. On that, Sir, again, I ask my hon. friend, Shri Mukerjee to consider this. On the one hand he has got this evidence that so much money goes out. Has he, on the other hand, considered how much benefit flows into this country from this outflow? My hon. friend made a point that sometimes what is a sale is turned into a payment by equity share distribution. When we require some machinery which is going to be used in this country, there are

many and various ways of paying for it. We do not have cash at the moment to pay for it. Therefore, what we do is to say that we shall take that as their contribution for the purpose of running our concern. Having taken that, we have to service it. Whether we pay for it by a somewhat uncertain flow of dividends or an out-flow of interest whether we give them the chance of making profit in the shape of dividends on the equity shares, it makes little difference, except this that so far as the loan is concerned the loan has got to be serviced with interest whereas so far as the dividends on equity shares or any other shares are concerned these are related to the prosperity of the business. If we are paying 11·8 or 13·6 or 8·8 in the shape of dividends, it certainly means this, that that dividend is flowing out of this country because the particular concern which has got the loan of the machinery or purchased the machinery or got a loan of money to purchase the machinery in the shape of equity capital is making profit enough to justify the payment of this amount. Also, it must not be forgotten that when equity dividend goes out of the country it is taxed in this country and what is taken out is only that amount which is allowed after deduction of taxes. When we are thinking in terms of business, every person, every private individual, considers whether or not that business is going to be profitable to him after having paid the interests on the loan or, for the matter of that, the equity dividend. Equally, when the country has to do it, it has to consider it and come to the conclusion whether it is necessary for the purpose of the better development of the country, it has to consider what it is going to get in return.

Then Shri Mukerjee also made a point of a particular British company which he claims had offended against the laws of this country and he said this particular British company had access to the High Commissioner of that particular country. How can the Finance Minister, I ask myself and,

through you, Sir, I ask him, my hon. friend, Shri Mukerjee, how can the Finance Minister prevent a particular national of another country from having access to the representative of that country? But he has himself admitted that the Finance Minister and his Ministry has been completely correct in their approach to this problem. If that is so, I think the Finance Minister really deserves not only our support but also our congratulations, our appreciation. I should say that it is no reflection on the Finance Ministry in any sense to say that although it was approached by a powerful representative of a powerful country, yet it did what was good for this country. Although left-handed, although oblique, my hon. friend, Shri Mukerjee has really paid a compliment, no doubt deserved, to the Finance Minister and the Finance Ministry. I would conclude by saying for the consideration of the Hon'ble Finance Minister that he should not only remove the fear but should give a positive assurance to anyone who is not a citizen of this country, an assurance which is needed to establish confidence and, at the same time, to ensure that the law is properly administered, that the Supreme Court will guide the administrative activities of the Directors and Deputy Directors who are put in.

Shri Morarka (Jhunjhunu): Mr. Deputy-Speaker, unlike the two hon. Members who just preceded me, I would not like to say anything on the general problem of foreign exchange which this country faces. I would rather confine myself to the actual provisions of this Bill, and some of the remarks which I am going to make are meant to seek clarifications and others are meant to point out some lacunae, as I see, in drafting.

The main object of this Bill is to give more powers to the Reserve Bank and to the Central Government for better enforcement of the provisions of the Act. True, some of these powers are extraordinary and one may say they are in a way arbitrary; but, look-

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ing to the conditions through which this country is passing, particularly the malady of the foreign exchange, I think such remedies are necessary and hence one cannot seriously object to these powers, particularly when these powers are given to the Reserve Bank, an institution which has earned a reputation for impartiality and a very high degree of integrity.

Coming to the provisions of this Bill, the first point to which I wish to draw attention is in clause 2. Clause 2 says:

"In sub-section (2) of section 1 of the Foreign Exchange Regulation Act, 1947 (hereinafter referred to as the principal Act), the words "and to branches and agencies outside India of companies or bodies corporate registered or incorporated in India" shall be inserted at the end."

The purpose of this provision is, that the Foreign Exchange Regulation Act would apply not only to the citizens of India abroad, but it would also apply to the branches or agencies of the Indian companies abroad. Firstly, why is this provision made applicable only to the branches and agencies of companies incorporated in India. Suppose a private business firm or an individual has an agency or branch abroad, would the provisions of this Act apply to him or it? If it is the intention that the provisions of this Act should apply to those agencies also, then I think the clause will need some amendment.

The Minister of Planning (Shri B. B. Bhagat): This refers to agencies of Indian firms outside India.

Shri Morarka: Yes, it refers to agencies of firms which are registered or unregistered in India but which have an agency or branch outside India. Now you are applying the provisions to the agencies and branches of Indian companies outside India. But what would be the position about

branches or agencies of Indian firms or agencies of individuals outside India.

Secondly, according to this amendment, the provisions of this Act are sought to be applied to branches and agencies. I can understand that. But how can it be applied to "agencies outside India"? Suppose those agencies consist entirely of foreigners? Suppose an Indian company appoints a foreign company outside India as its agent for buying or selling some goods from India? If all the partners, or shareholders or directors or controllers of that business institution, which is the agent of the Indian company or firm outside India, consist entirely of foreigners, hundred per cent foreigners, then, how can you apply the provisions of this Act to that agency?

Shri Heda (Nizamabad): It would not apply.

Shri Morarka: My hon. friend says it would not apply. The definition which is sought to be added is "and to branches and agencies outside India of companies or bodies corporate registered or incorporated in India". A branch of an Indian company, I can understand. But the agency of an Indian company may consist of persons who are entirely of foreign origin. Therefore, I think that this particular amendment, as is sought to be made in clause 2, deserves attention and scrutiny by the hon. Finance Minister.

Shri Badar (Khargone): I have suggested the addition of "foreign agents".

Shri Morarka: The amendment of the hon. Member will make the position more difficult. How can you apply the provisions of this Act to a foreign individual who never comes to India, who has nothing to do with this country, who never comes within the clutches of this Act? How can you apply this Act on an individual

of another country living in that country.

Dr. M. S. Aney (Nagpur): Do you mean to say that this amendment would be infructuous?

Shri Morarka: I say that the purpose of this amendment would be limited and would not cover all cases which Government may have in mind.

Then I come to my second point.

The second amendment in clause 10 says:

"after clause (b), the following clause shall be inserted, namely:—

(c)"

and then they put clause (c). My question is whether this clause (c) is in substitution of the existing clause (c) or whether it has been transplanted somewhere else.

The second point is: What would happen to clause (d), because the amendment says:

"after clause (b), the following clause shall be inserted"

and then they only give clause (c).

Mr. Deputy-Speaker: Is there a clause (c) in the original Act?

Shri Morarka: Yes, Sir; if you will kindly take a copy of the original Act....

Mr. Deputy-Speaker: No; there is no clause (c).

Shri Morarka: If you see section 13 of the Act, not clause 13 of the Bill....

Shri B. R. Bhagat: But in sub-section (4) there is no clause (c).

Shri Morarka: I stand corrected; the hon. Minister is correct. Actually, I was referring to sub-section (1), whereas the amendment refers to sub-section (4).

Then, my main objection is against clause 13. This clause seeks to introduce a new section, section 18A. This is a new section which is sought to be introduced in this Act. I have several points to make about this new section. The first is that section 18A says:

"Without prejudice to the provisions of section 21 and notwithstanding anything contained in any other provision of this Act" etc.

Section 21 of the parent Act says:

"(1) No person shall enter into any contract or agreement which would directly or indirectly evade or avoid in any way the operation of any provision of this Act or of any rule, direction or order made thereunder.

(2) Any provision of, or having effect under, this Act that a thing shall not be done without the permission of the Central Government or the Reserve Bank, shall not render invalid any agreement by any person to do that thing" etc.

This is the most important part, namely,—

"shall not render invalid any agreement by any person to do that thing."

So, even if there is an agreement which is subject to the approval of the Government or of the Reserve Bank, merely the entering into that agreement would not be void or invalid. The new section 18A says:

"Without prejudice to the provisions of section 21";

in other words, the provisions of section 21 would govern the provisions of the new section 18A also.

Now, the new section 18A says:

"Without prejudice to the provisions of section 21 and not-

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withstanding anything contained in any other provision of this Act, a company (other than a banking company) which is not incorporated under any law in force in India or which is controlled directly or indirectly by persons resident outside India, or any branch or office of any such company in India or a firm consisting wholly or in part of persons resident outside India, shall not accept appointment as—

- (a) agent in India of any person, company or firm in the trading or commercial transactions thereof, or
- (b) technical or management adviser in India of any person, company or firm,

except with the general or special permission of the Central Government or the Reserve Bank; and where such appointment is accepted without such permission, it shall be void."

Section 18A says, "It shall be void" if it is entered into without permission; section 21 says, "It shall not be void". Further, section 18A says, "Without prejudice to the provisions of section 21"; so section 21 still continues and will override the provisions of section 18A. Which of these two provisions will have more value? Will the provisions of section 21, which are general provisions saying that agreements which are subject to the permission of Government or of the Reserve Bank shall not be rendered void, prevail; or, will section 18A, which says that an agreement of that type will become void, prevail? I think, that requires clarification.

My next point is this. In this section 18A they say:

"a company... which is not incorporated under any law in force

in India or which is controlled directly or indirectly".

What is the meaning of "a company... controlled directly or indirectly"? There is no definition of the word "controlled". Instead of introducing this new thing, why did the Government not adopt the definition of "company" as defined in this very Act in section 18, Explanation I? In the parent Act in section 18, Explanation I, they have defined what are the companies which are incorporated in India or which are incorporated outside India but which are under the control etc. I will read out Explanation I. It says:

"The companies referred to in sub-section (1) are companies not incorporated under any law in force in India in the case of which any of the following conditions is fulfilled:

- (a) that the company is by any means controlled directly or indirectly by person resident in India; or
- (b) that more than one-half of the sums which, on a liquidation thereof, would be receivable by holders of share or loan capital, would be receivable directly or indirectly by, or for the benefit of, persons resident in India; or
- (c) that more than one-half of the assets which, on a liquidation thereof, would be available for distribution after the payment of creditors, would be receivable directly or indirectly by, or for the benefit of, persons resident in India; or
- (d) that more than one-half—
 - (i) of the interest payable on its loans and loan capital, if any, or
 - (ii) of the dividends payable on its preference share capital, if any, or

(iii) of the dividends payable on its share capital, if any, not being preference share capital,

is receivable directly or indirectly by, or for the benefit of, persons resident in India."

This definition was very exhaustive and if they had adopted the same definition for the companies mentioned in section 18A, I think, the difficulties could have been solved and it would have been more easy for the courts also to understand as to what they mean by companies registered in India or controlled by foreigners or companies not registered in India but doing business here.

The third point is that the main purpose of this clause is that foreign companies or firms should not have agency business in India, earn money and remit it to foreign countries because when they earn money under the standing agreements etc., we have to allow them to remit it to the foreign countries. In order to prevent this major drain on our foreign exchange, it is sought to control the appointment of such persons as agents of any Indian company. But then, again, the restriction which is sought to be imposed by this section is in a way limited. What it says is:

"agents in India of any person, company or firm in the trading or commercial transactions thereof".

What about industrial or manufacturing activities? If an Indian company appoints a foreign firm or company as its agents for any of the manufacturing operations or for other industrial activities and they pay a commission for that, I do not think that would be covered by either (a) or (b). Clause (b) says:

"technical or management adviser in India".

Instead of having this limited provision, that is, "agents in India of any person, company or firm in the trad-

ing or commercial transactions", they should have said "agents for any purpose". After all, with the permission of the Government of India or of the Reserve Bank you could always permit them even for commercial and trading purposes; even for industrial purposes. So, all that the provision would require is that before a firm accepts such an agency it must come to the Government for approval or permission, when it is a foreign firm. I do not think there was anything wrong if you had made a general provision that any foreign firm accepting any assignment which is likely to bring to it income in India, before accepting any such assignment, must have the approval of the Reserve Bank or the Government which will examine the implications, foreign-exchange implications, of such an agreement and then in its wisdom it may give permission or it may not give permission.

So I think that instead of having this limited thing now and coming again after two or three months for another amendment when you may find another difficulty, loophole or lacuna, it is better to give a little more time to such Bills and have a thorough draft to carry out Government's policy and Government's intention.

I am sure that the intention of the Government in bringing forward this Bill is to prevent this drain of foreign exchange by these foreign people doing only agency work in India—they get commissions which, under our existing code of conduct etc., we are bound to allow them to remit to their mother country.

Then there is another purely drafting point. Here you use the words persons, firms and companies, in the same line person, firm and company. I think the word "person" includes companies and firms also. "Person" does not mean an individual. Here in the context of our legal terminology, the expression "person" is said to include not only individuals but also firms and body

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corporate. If that is so, there is no point at all in having this expression, because it will cause confusion. The lawyers and the courts would say, "well, the intention of Parliament must have been different when it used the expressions differently", and they will try to give a restricted meaning to the word "person". They will feel: unless there is a definite meaning, why are they using the word "person" separate from companies and firms. I think the well-defined meaning of "person" should have been adopted in this context also.

The question which has put by Shri Dandekar is relevant in this context, namely, would this provision apply only to future companies or future agencies, or to existing ones also? Would there be an occasion for Government to review the existing arrangements also? I think that if the provisions are to be made properly effective, the Government should take an early occasion to review all these agreements and arrangements; because, most of the companies or agencies are already committed, and unless you review them you will not be able to make a real saving in the foreign-exchange remittances.

Then they say that the Reserve Bank or the Central Government would give permission or approval for appointing a company or a firm or an individual as an agent for certain activities of the companies or firms or individuals in India. They may give permission, they may not give permission. But there is no indication as to what would be the criteria which will be followed. Instead of that, if they had said that if any firm desires to remit any money out of India, that remittance would not be possible without the specific sanction of the Government, that would have been better.

Instead of restricting the appointment of these people—the main purpose is to restrict the remittance—why not restrict the remittances and

say, "if any such appointment is made without the approval of the Government or the Reserve Bank, then the concerned firm shall not be entitled to remit its income or any part thereof outside India". I say this because, then there would be less of discrimination, there would be less of executive fear, there would be some sort of uniformity and, if I may say so, less of discrimination.

The reason is this, that today I cannot appoint any firm as an agent, whether that agent wants to keep the money in India or wants to remit it abroad, whereas another person may be able to do that if he can convince the Government of India that it is in the interests of the country. My point is that so far as the interest of the country is concerned, in this context it is governed only by one consideration, namely, whether the person receiving the money shall or shall not be remitting it outside India.

So, while I approve of the scheme that Government should take all steps to plug the loopholes and tighten the provisions, I think the same objective of the Government could have been achieved in a better way by restricting the facility to remit the money—by restricting the remittances rather than by restricting the right to appoint some people as their agents.

Dr. M. S. Aney: Do not rely upon discretion.

Shri Morarka: There would be no discretion so far as the appointment is concerned: discretion would be only for allowing the remittances.

Now I come finally to clause 15. But before I come to that clause, I want to say a word about the proposed section 18B contained in clause 13. The proposed new section 18B restricts the travel agencies, airlines, etc. from booking and reserving tickets for travelling either wholly or partly outside India, except with the per-

mission of the Reserve Bank etc. Now, as it is, with the existence of the P form and the existence of other restrictions, no travel agent to my knowledge can book a ticket for anybody, either an Indian citizen or foreigner, if it is to be paid by Indian money by an Indian, without the permission of the Reserve Bank. Even if I want to book a ticket for a foreigner, if I want to invite him from abroad, even then I require the Reserve Bank's permission before I buy a ticket for him—of course, I require permission, P form, everything for my own ticket.

So I do not know what is the necessity of duplicating the provision, because if the Reserve Bank issues a permit, a foreign-exchange permit, to me, or a P form to me, that means that they have examined my case and they have approved of my going abroad. And that P form or foreign exchange should be enough to enable the airlines or travel agents to issue a ticket for me. While these provisions are necessary, at the same time, we should see that there is no unnecessary duplication or that there are no cumbersome or difficult provisions made. Because, even the judges of the High Courts say nowadays that the speed with which we pass the laws is such, the volume of laws passed by Parliament is such that, leaving aside the question that there should be a healthy growth of every law, they are not even aware of the provisions of the law. The judges and advocates, all these people say they are not fully conversant with the provisions of the law, leave alone the citizens and illiterate masses.

Therefore I think that the system of P form and the system of foreign-exchange permit which are necessary before we can buy a ticket are enough and no further restriction on that score is necessary.

Dr. M. S. Aney: May I ask one question? Would the proposed section 18B cover cases like that of

Walcott—a foreigner coming and getting his ticket and running away? Will that case be covered by this?

Shri Morarka: No. Section 18B, in my opinion, will not cover those cases which relate to foreigners and where foreigners buy tickets with foreign currency outside. The P form is required for them if they have stayed in India for a certain time. But so far as Indian citizens are concerned, this 18B would make things a little more difficult. Maybe, ultimately this 18B might cover cases like that of Walcott etc. also. But on a first reading by impression is that it will not.

Dr. M. S. Aney: I thought it was intended for things like that.

Shri Morarka: Then, Sir, clause 15 introduces new sections 19A, 19B, 19C, 19D, etc.

19A deals with power to search suspected persons; 19B deals with power to arrest; 19C deals with power to search any vehicle or conveyance and 19D deals with power to search premises. 19A which relates to the search of a person says:

"If any officer of Enforcement authorised in this behalf by the Central Government, by general or special order, has reason to believe that any person has secreted about his person any documents which will be useful for or relevant to any proceeding under this Act, he may search that person."

But then sub-section (2) says:

"When any officer of Enforcement is about to search any person under the provisions of this section, the officer of Enforcement shall, if such person so requires,....

—that is, if the suspected person so requires—

"take such person without unnecessary delay to the nearest

[Shri Morarka]

gazetted officer of Enforcement superior in rank to him or a magistrate."

If he objects to the search being made by that officer, then he shall be taken either to a magistrate or a gazetted officer superior in rank to that officer. Then, if the magistrate or a superior officer, after hearing him, feels that no search is necessary, he will forthwith release him or send him away. On the other hand, if he feels that the search is necessary, then the search will be ordered. The point which I want to make here is this. In the case of searching a person, a right to object the search being made by the Enforcement officer is given to the suspected person, that is, he can ask for being taken either to a magistrate or to a senior officer. But when you come to his actual arrest, this very officer can arrest him without any option being given to the suspected person to be taken either to a magistrate or any superior officer. I want to ask: Which is a more serious thing? Is it his search or his arrest? If a person can object, according to the scheme of this Bill, for being searched by a particular officer, why is this right not being given to him if he feels that his arrest is illegal or unwarranted or malicious? Why do you prevent him from asking for the same facility which you give him in the case of his search being made? I can understand if you had not given him this right against his search being made and had given him this right against his arrest which is far more serious than his search.

श्री बड़े: क्या लैड, सी एंड एयर कस्टम
एक्ट में इस प्रकार की प्राविजन है या नहीं
वही प्राविजन इस में है।

Shri Morarka: I can give an answer to my hon. friend. If a mistake is made in one Act, should we perpetuate the mistake in all the Acts?

Secondly, I am not objecting to this provision or that provision. But what I say is this. On grounds of equity, natural justice and fairness to the person, if you give him an option of going to a superior officer against his search being made, you must give him the same facility when he is being arrested.

Dr. M. S. Aney: Does he not think that the purpose of the Act will be defeated by that?

Shri Morarka: It is not a case where you are dealing with the documents. Here is a case where you are dealing with a person. Now, even if he goes to a superior officer, he is not acquitted. All that he wants is that instead of the inferior mind being applied to the circumstances or to the facts of the case, the superior mind, if I may call that, may be applied.

Shri Man Singh P. Patel (Mehsana): Not superior mind; superior officer's mind.

Shri Morarka: That is right. In this Bill, you have given this facility against the search of a person. Now, take another case. Under 19C, you can search any vehicle or an animal or any other carriage which carries goods. If one can object to a person being searched by an officer of a particular rank, how is it that one cannot object to one's vehicle or ship or animal being searched by the officer of the same rank? It may be that the provision in 19A is more generous and the provisions in 19B, 19C and 19D are a little more strict. But I think the case of arrest is more serious than the case of search. Again, the case of searching one's house is more serious than the question of searching a person.

Therefore, I feel that some of the provisions of this Bill, particularly, clauses 13 and 15 and, as I said in the beginning, clause 2, need a little more scrutiny at the hands of the hon. Finance Minister and his able officers.

I have no doubt that they must have given sufficient consideration in their own way to these problems and in order to meet them they have brought in these provisions. I think a few things which I have pointed out might improve the Bill if they are accepted. It may appear to some Members that I am pleading for making the Bill lenient. That is not my purpose. I only say that you must make the Bill a little more homogeneous, a little more logical, and you must give the citizens or the persons a little more fairplay.

Shri Heda: Mr. Deputy-Speaker, Sir, the various clauses of the Bill make an effort to improve the present Foreign Exchange Regulation Act. Except one or two clauses, all of them are of minor significance. However, the cumulative effect of all these clauses will be the tightening up of the foreign exchange provisions and their better execution and the result will be that the overall position will improve.

At the same time, I take note of the deteriorating foreign-exchange position of ours and from this angle certain questions that were put in the question Hour today aroused a good deal of interest. In fact, a pointed question was asked from the Finance Minister as to whether along with the official rate he was aware of the non-official rate as quoted in other countries. He refused to give his knowledge of any non-official rate being there. But I think it is his duty to find out what non-official rates are obtaining in different countries. My own knowledge is that today in London there are a number of banks and even private bankers who accept the rupee at the rate of Rs. 20 to 22 per pound. Sometimes I feel surprised as to what they do with those rupees. There are so many loopholes by which they can easily convert those rupees into pounds or use them in India itself. This poses a very serious problem. It not only brings

down the prestige of our country—for, a country's name is generally judged by its foreign policy and by the value of its currency—but it also shows clearly that there is something radically wrong with the execution of our policies.

If you look at the working of the Air India International, you will find that they are not getting that much increase in business as they had been getting before, and a number of Indians have now started coming not by Air India but by other airlines. What is the reason for this? The reason is that the airlines of other countries are giving them lower rates; they are under-cutting the rates. Suppose the international rate is £130 or £135 from London to Delhi or Bombay; the other companies are prepared to accept £100, and they are able to do so because with those £100, they can purchase rupees at the rate of Rs. 20 or 22 per pound, and the very same rupees can be used in India, and thereby they get the value of £135 or even at a little more.

Shri Hari Vishnu Kamath: More foreigners are flying by Air India nowadays.

Shri Heda: That is exactly my point. When Air India service is so good and it has such an international reputation that not only the Indians but foreigners also insist on flying by Air India.....

Shri B. R. Bhagat: It is very popular.

Shri Heda: . . . how is it that a number of Indians are not flying by that service? It is not that they are not patriotic. Sometimes they are short of money and sometimes there are other reasons. Therefore here is as case where Government should seriously consider over this matter.

As my hon. friend Shri Morarka has said, the Reserve Bank has got a very good name, but their execution has been very poor. My own experience is that the foreign exchange control

[Shri Heda]

which is in the hands of the Reserve Bank is very inhuman in the sense that they go by technicalities and they go by what appears on the paper, and very little discretion is exercised by them. I wanted to stop at Moscow recently. My sister-in-law was in Moscow, and I wanted to pay her a visit for a few days, because I thought that would give me a good opportunity to look around Moscow, but I was told that sister-in-law was not a blood relation; sister alone was a blood relation and not sister's husband or wife's sister. Though there are a number of Acts where the spouse has been equated....

Shri Harj Vishnu Kamath: Was she the hon. Member's brother's wife?

Shri Heda: No, she was my wife's sister.

I have come across a number of similar cases, but I would narrate only one case which I think was the harshest one. A young lady born in England having British citizenship before she was married—her entire family, father, uncle and others were doing good business in London—was married and came to India. Meanwhile, her father expired. Naturally she wanted to go back to England. She knew that the foreign exchange difficulties would be there and, therefore, she might not be able to go there, but her uncle was discreet enough to send her return ticket from there. Even then, the Reserve Bank did not allow her to go, even though her father had expired, and her uncle had sent return tickets for her and she had held British citizenship before she was married and her parents were in England and were doing, as British citizens, though of Indian origin, good business there. These are the hardships that we find on the one side, but on the other side, we find that we can get foreign exchange in ample measure but at slightly exorbitant rates. As I have said, open selling of the Indian rupee at the rate of Rs. 20 or 22 per pound

does not create a good impression about the foreign exchange control of regulation by our country.

Shri Dandekar had referred to one aspect in his speech, to which I do not agree. He had stated that certain measures taken by the Commerce and Industry Ministry, particularly the Commerce Ministry, were not good, and he particularly mentioned the export promotion incentives. These export promotion incentives have done two good things for our country. One of them is that with these incentives it is possible for an Indian exporter to export Indian goods even at a loss. My knowledge on this matter is not up to date, but I think that about a month or so before, the foreign exchange value prevalent in India was between 50 and 60 per cent; so if a person exports and earns Rs. 1 lakh of foreign exchange, then he can bear a loss of about Rs. 25,000 to Rs. 40,000; because he can earn Rs. 50,000 or Rs. 60,000 by that incentive. So, one definite advantage was that we were able to export even at a loss. That was one reason why the exports were going up.

The second advantage is that some of our industries which want foreign exchange could buy it from the foreign exchange earned by these incentives, and thereby save a lot. Here, I would pose a question for the serious consideration of the Finance Minister. In the matter of foreign participation, he allows equity participation, rather he gives a preference to it, but he does not allow foreign loans. The point is that most of the companies which have foreign collaboration go into production and earn well. In fact, any company which has got foreign collaboration is assured of success for two reasons; one is that the foreign collaboration takes care to see whether the company will earn profit well or not. Secondly, the varied processing done in our Development Wing is very good, and that itself is a guarantee that any scheme sanctioned by

Government is assured of success. That is why most of the companies without any exception, which have foreign collaboration have been very successful. So, the point is that on equity you pay a dividend which is in most cases far higher than the interest that you would be paying on the loans. I do not know why my hon. friend Shri H. N. Mukerjee gave us only the figures relating to interest on loans, but did not give us the figures regarding equity capital, but he was good enough to mention that the dividends on the equity capital would be higher. They are higher, and there is no doubt about it. Therefore, Government should seriously consider over this matter and if in any foreign collaboration along with equity participation or even without any equity participation there is an offer of foreign loan, that should be accepted, and that that would relieve the Government of the burden while paying dividends and other things.

A few other points were brought in but only two or three of them were very relevant and important. The powers given under the new sections that are being inserted by this Bill are very wide. Shri Morarka gave a few details of these powers. An officer can search, arrest and do so many other things. These are very wide powers, and in the circumstances it appears that these powers are necessary. But experience shows that the Finance Ministry had been taking powers and powers all the time but has not been enforcing them as it should. That is why there is a feeling in the House that mere taking of powers without any intention to use them or without an adequate need for their use does not look good. It only creates a feeling that we are creating an economy or administration which is after more and more control. So when the Finance Minister has come forward seeking these powers—I have no doubt that he will get them, he should get them—I do hope that he would use them and thereby improve the foreign exchange position. I support the Bill.

15 hrs.

Shrimati Tarkeshwari Sinha (Barh): I welcome these provisions of the Bill, consideration of which has been moved by the Finance Minister, more so because now is the time when we have to conserve our foreign exchange resources to the best of our capacity.

According to a statement he made only recently, the Finance Minister said that he was very worried about the foreign exchange position which is not too happy. When we look at the figures he gave, it makes us also very worried. During the Fourth Plan, the foreign debt obligation we shall have incurred in the country would be Rs. 1100 crores, Rs. 600 crores by way of interest and Rs. 500 crores by way of repayment of debt. Apart from that, there is, according to him, the problem immediately facing us of finding resources of the order of Rs. 50 crores to pay back to the IMF; I am sure with his ingenuity he will do something to avoid this drain at the present moment.

Therefore, I welcome the Bill. However, I feel the provisions and their impact will just amount to only tinkering with the problem. I am sure that the powers sought to be given to the Reserve Bank and the Director of Enforcement and also the facilities which have been given to the public by way of appeal to the High Court against the legal decisions of the enforcement directorate and the tribunal, are for the benefit of the public. All the same, I feel this is not going to solve our problem so much though these measures can prevent loopholes and mitigate to a very great extent some of the headaches which we have been facing in this country in this field.

One of the peculiar problems that has come to notice is concerning the tourist traffic. In numbers, tourist traffic from abroad to this country has increased very much, but the earnings therefrom have more or less been static, if we compare the figures of the present year with those of the previous three or four years. The earnings have been negligible. When we compare

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our figures with those of other countries like Japan and Italy, we find the position shocking—that the tourist traffic coming to this country hardly gives us any foreign exchange. The point is that they have tried to find out a short-circuit way of getting money here by some means, and they just do not bother to pay the foreign exchange for all the tours they take in this country. Many people who are honest do really pay in foreign exchange, but a large number out of this tourist population has not given us a satisfactory return. I am sure with the tightening of some of the provisions, this phenomenon will be considerably checked.

There is another problem remaining—that of remittances from abroad. I was sometime back in the Finance Ministry; from personal experience also, I have noticed that remittances of Indians from abroad have been falling year to year. According to answers given to questions here—subject to correction—there has been a fall of 60 per cent in the remittances as compared to previous years. This really provides a very big loophole for foreign exchange violation because some sort of arrangement is being made by which remittances are not sent here but are mutually exchanged between foreigners and Indians. The Indians overseas do not send money here; they make arrangements to pay the money to the tourists who come here through some of their relations—and *vice versa*. This has become a very big problem, one to be reckoned with. Therefore, I am happy that some of these provisions have been proposed to be enacted.

But the basic crux of the situation is that we have been sandwiched between two things: on the one hand, we have the foreign exchange scarcity; on the other, there has not been a very proper utilisation of the foreign exchange we have got. The latter also means a great loss. By conserving foreign exchange we will be able to

collect a few crores, but the loss we incur through delay lack of proper technical collaboration non-preparation of project reports, non-presentation of those reports to the foreign collaborators etc., is in proportion much higher than the amount of foreign exchange we lose by these violations of exchange regulations. Therefore the problem has to be tackled not by one set of measures alone but on a wider front.

This is not the opportunity to go into general questions of foreign exchange and its disbursements. All the same, I have taken this opportunity while speaking on this Bill to say that there are many things which have to be checked in order to curb current violations of foreign exchange regulations, hiding away foreign exchange, indulging in under-invoicing and over-invoicing, and also ensuring better utilisation of the foreign aid we get from so many agencies.

There is one thing. There has been a wide difference between the statistics compiled by the Directorate General of Commercial Intelligence and Statistics and the data we get from the Reserve Bank. It is good that Government had set up a committee in March 1964. Subject to correction, the committee has made its recommendations. There is a wide variation between the statistics prepared by the two agencies I mentioned. That really leaves scope for a lot of abuses. If these two data can be reconciled—I know that there can be variation between two agencies functioning because the problems are very complex. The collection agencies are so many—it can be ensured that there is not such a wide variation; some sort of parity should be maintained between such agencies which maintain such information. Therefore, Government should try to bring the statistics and intelligence data about foreign exchange in a more up-to-date form. This will check abuses and conserve foreign exchange in a much better manner.

Another point. We are going to suffer very much because of the levy by the U.K. of a 15 per cent surcharge on its imports. According to assessments being made from time to time, it seems we are going to lose nearly 30 per cent of our exports. This situation stresses the need for better conservation of foreign exchange. Our balance of payments position, looking to the present situation, is going to be very much adversely affected by this surcharge. Therefore, I would suggest that we should have our project reports and other things ready so that work could start as soon as we get the foreign aid. Generally what happens is, as in the consortium aid we have got, that the report is not ready, we just wait for the allotment of foreign exchange for a particular project from a particular country. After receiving it we start going into the reports so much so that even the geological survey is not ready. In some cases, I have found that the project reports have been so much delayed because the geological survey was not made. One example is cement; another is bauxite. We have a planned programme for producing aluminium but the proper geological survey for bauxite has not been there. The second thing is cement. We have a general programme for expansion of cement production without looking into the geological capabilities and the availability of limestone. I gave these two examples to show that without proper advance planning we could not utilise our foreign exchange as we should.

Some of the industrialists go in for industrial expansion. They may or may not have the resources. When they go abroad for foreign-exchange requirements, they get the foreign exchange through deferred payment. But such facilities are not granted to them internally with the result that even the foreign exchange that they get is not properly utilised, causing loss to the planned economy. The development bank that has come into existence and other financial and credit

agencies should initiate a system of deferred payment to be met on the basis of foreign exchange allotment which is likely to be available for a certain project. Sometimes the projects are not initiated because of lack of facilities here. I know personally a case where foreign exchange was committed; plants were ordered from West Germany but some technical collaboration was called for from East Germany. Due to some political complications, the West German Government decided not to allow German banks to give foreign credit. The whole programme was bogged down for 2½ years. With great difficulty some foreign exchange was allotted from the free reserves. There may be other similar cases; therefore, some such allotment should be made in such cases, where the Government has concurred with the programmes.

I do not know whether this is very relevant to this Bill but I would like to take this opportunity to suggest one point. A huge project costing Rs. 40 or 50 crores or even Rs. 2 crores but involving a foreign exchange of Rs 5 or 10 lakhs may be there; the party has got enough resources in rupees. But that party is asked to go in search of foreign collaborators for that small amount of foreign exchange with the result that the project or unit gets delayed. Compared to the loss to the country due to the delay thus caused it would be advantageous to release a small amount from the free foreign exchange resources on payment of rupee equivalent so that the project may get going quickly.

Lastly, about standardisation. The Reserve Bank has taken powers to frame some standard regulations for foreign collaboration with Indian counterparts. In such cases technical collaboration is an important and significant part. In this field of technical collaboration, lot of abuses are there. The remittance of foreign exchange from this country on the basis of technical collaboration allows for laxity. Therefore, I would request the Government to follow some kind

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of standardisation in the matter of technical collaboration if it is not possible to have complete standardisation. Some standard formula should be there so that collaboration agreements can fall into that pattern. It will also avoid the necessity of going into the merits of every case or into every point of an agreement which will cause a lot of delay. That is why I suggest that some kind of technical standardisation should be maintained which may affect technical collaboration generally.

Finally, I would request the Government to take the problem of advance budgeting in foreign exchange and foreign collaboration very seriously. At present, it is done only for six months periods. This is not proper in a country which spends thousands of crores of foreign exchange. Government should have a long-term planning of foreign exchange allotments. Otherwise, foreign exchange allotment becomes very uncertain and a lot of other problems arise: we find ourselves in a very tight corner. Advance, long-term foreign exchange budgeting would be helpful in this period of difficult foreign-exchange situation. So, I would ask the Finance Minister to consider this. He is very resourceful and he is also a man of great tenacity. If he takes it into his mind, he can do it, in spite of delaying by some; they cannot really stop his will. Not that I think that Mr. Wilson has done wonders but I would certainly say that Mr. Wilson, the present Prime Minister of Britain with five or six majority, has taken so many steps to improve the economy of his country. These steps are very vital because they have affected every person, including the consumer. But there is that conviction that ultimately the results of these will be good for Britain. I am sure the Finance Minister who has got the same tenacity of purpose and also great perseverance also does not want all the time to play to the gallery which is a growing and very dangerous phenomenon in the leader-

ship today—excuse my saying so—and I am sure he will be bold enough to take steps and do something about our foreign exchange.

श्री श्रीकार लाल बरबा (कोटा) :
उपाध्यक्ष महोदय, जहाँ कई माननीय सदस्यों ने इस फौरेन एक्सचेंज रेगुलेशन (अमेन्डमेंट) बिल का समर्थन किया है वहाँ में भी उस का समर्थन करता हूँ। मूल ऐक्ट में यह जो संशोधन किया जा रहा है मेरी समझ में वह इससे और भी अधिक कठोर होना चाहिए क्योंकि इस डालर की दुनिया के अन्दर दो ही व्यक्ति जीवित रह सकते हैं, चंदे वाले या धंधे वाले। अब या तो उस के अन्दर इतनी समझ हो कि वह चंदा देता रहे या उसमें इतनी क्षमता हो कि वह किसी धंधे के बहाने विदेशी मुद्रा प्राप्त कर ले। इसलिए इसमें जो यह अधिकार दिया है, मैं तो इतना भी कहूँगा कि इस में जो अपील की छूट दी है, यह अपील करने की छूट भी नहीं देनी चाहिए।

जब वित्त मंत्री जी से मैंने यह सवाल पूछा था कि सन् 1963-64 में कितनी विदेशी मुद्रा पकड़ी गई तो उन्होंने उसका कोई जबाब न देते हुए सिर्फ यह कह दिया कि कैसेज चल रहे हैं। अब किस खाली चलने से क्या होता है? इसी तरह से मेरे एक सज्जन भाई ने यह पूछा कि बिड़ला जी का क्या हुआ तो उन्होंने यह कह दिया कि साहब बिड़ला की कोई एक कम्पनी नहीं है बल्कि वे बहुत सी हैं। अब मेरा कहना यह है कि बिड़ला का नाम तो एक ही है, शाखाएं भले ही उसकी अनेक हैं। लेकिन उसने भी हालांकि बहुत कुछ गोलमाल किया है तो भी उसकी जांच नहीं हुई। आखिर क्यों नहीं हुई?

हमारी सरकार कानूनों में संशोधन पर संशोधन करती चली जा रही है और वह आमतौर पर हमारी

इस संसद् द्वारा स्वीकृत हो ही जाते हैं लेकिन सरकार द्वारा उनका ठीक से पालन नहीं कराया जाता है। अभी कुछ दिन की बात है कि कुछ फिल्म स्टार्स और फिल्म कम्पनियों के लोगों को पकड़ लिया गया था लेकिन उनके केस को और जांच को खत्म कर दिया गया। कुछ दिन जाचवांच की गई और बड़ा हल्ला हुआ कि इतने लाकर पकड़े गए, इतने लाख की विदेशी मुद्रा प्राप्त की गई। लेकिन उस का नतीजा क्या हुआ ?

आज विदेशी मुद्रा के कारण ही हमारे देश-वासियों के मुंह पर ताला लगा हुआ है। आज शक्कर का दाना क्यों नहीं मिलता है ? इसलिए कि हम नुक्सान उठा कर भी शक्कर बाहर भेज देते हैं। क्यों ? इसलिए कि हमारे यहां विदेशी-मुद्रा की कमी है और हमने विदेशी मुद्रा प्राप्त करनी है।

विदेशी मुद्रा और डालर की दुनिया में गरीब काश्तकार तो होते ही नहीं, न कोई गरीब बनिया होता है, न कोई बेचारा गरीब रोजगार करने वाला होता है। इस डालर की दुनिया में तो चंदापति और लखपति होते हैं, जिनको कोई पूछता नहीं है। अगर उनको पकड़ा जाये, तो उनके हाथ में एक ही हथियार होता है कि चन्दा देना बन्द करो और इधर धन्धा बन्द हो जाता है। मैं कहना चाहता हूं कि उनको इतनी छूट देना या पकड़ क छोड़ देना कहां तक उचित है।

पंच-वर्षीय योजना के बाद दंड को कठोर किया गया, लेकिन फिर छूट दे दी गई। आज फिर यह संशोधन लाया जा रहा है। कुछ दिन यह चलेगा और फिर छूट दे दी जायेगी। अभी श्री मोरारका ने कहा कि यह कानून भावी कम्पनियों पर लागू होगा। 1947 में यह कानून बना, जिस में आज संशोधन हो रहा है। तो क्यों उन को छोड़ा जा रहा है। वही करोड़पति उन कम्पनियों के मालिक हैं। उन को ही कम्पनियां चल

रही हैं। वे भी बचना चाहते हैं। कोई कह देता है कि मैं ने आर्म रेस से यह रुपया पाया है, कोई कता है कि मैंने अमुक से लिया है।

आज हमारे देशवासियों ने इस विदेशी मुद्रा को प्राप्त करने के लिए लंका और बर्मा में जा कर कारखाने खोल दिए। नतीजा यह हुआ कि जब उन्होंने धक्के दे कर निकाल दिया, तो वे गवर्नमेंट से फरियाद करते हैं कि हमें बचाओ।

सब से पहली बात तो यह है कि विदेशी मुद्रा का सही उपयोग करना चाहिये। आज विदेशी मुद्रा का सही उपयोग नहीं होता है। राजस्थान और मध्य प्रदेश में गांवों की दुनिया में किसी को यह पता नहीं है कि विदेशी मुद्रा क्या है। वे बेचारे समझते हैं कि विदेशी मुद्रा शायद कोई घड़ी होगी, जो हाथ पर बांध ली, या कोई खुंगाली होगी, जो कि गले में पहन ली। कोई समझता ही नहीं है कि विदेशी मुद्रा क्या है। बेचारे छोटे छोटे काश्तकार छोटे छोटे कारखानों और फ्रंट-रियों के लिए लाइसेंस ले कर बैठ जाते हैं, लेकिन उन के लिये मशीनें नहीं मिलती हैं। उन को कहा जाता है कि विदेशी मुद्रा नहीं है। वे पूछते फिरते हैं कि यह विदेशी मुद्रा क्या बवाल आ गया। आज सीमेंट की कमी क्यों है ? आज मेरे पास उत्तर प्रदेश से एक लैटर आया, जिस में कहा गया है कि तीन साल हो गए लाइसेंस लिए हुए, लेकिन मशीन नहीं है और इस लिए फ्रैक्टरी में जो तीस, चालीस, पचास हजार रुपया लगाया हुआ है, वह बर्बाद पड़ा है।

सब से पहले हम को लघु उद्योगों को प्रोत्साहन देना चाहिए। हम को इन बड़े बड़े मगरमच्छों को तरफ ध्यान नहीं देना चाहिये। गांवों में छोटे छोटे लघु उद्योग खोलने के लिए हमें विदेशी मुद्रा ज्यादा से ज्यादा देनी चाहिए, लेकिन सरकार ऐसा नहीं करती है। यह

[श्री श्रींकार लाल बेरवा]

सरकार उन लोगों की तरफ देखती है, जोकि चन्दा देते हैं। लेकिन बेचारे गरीब किसान क्या करें ?

आज विदेशी मुद्रा का उपयोग यह होता है कि करोड़ों रुपये की ब्रांडी मंगाई जाती है। अरे, देसी शराब पी लो, ब्रांडी का क्या काम है ? ऐसे नाजायज़, ऊल-जलूल कामों के लिए हमारी विदेशी मुद्रा बर्बाद होती है। क्या यह उचित है कि देश के मुंह पर पट्टी बांध कर विदेशी मुद्रा प्राप्त की जाये और उस को ऐसे कामों पर खर्च कर दिया जाये। गरीब किसान तो मारा जाये और बड़ा आदमी विदेशी मुद्रा से विलायती शराब पी कर घर में बैठे, यह उचित नहीं है और इस को बन्द करना चाहिए। आज बेचारा गरीब किसान जानता नहीं है कि विदेशी मुद्रा क्या होती है। उस को विदेशी मुद्रा का अर्थ बताना चाहिए।

ज्यादातर यह होता है कि जिन की बड़ी बड़ी कम्पनियां हैं, विदेशों में उन के एजेंट पड़े रहते हैं। वे वहां सौदा कर लेते हैं और विदेशी मुद्रा को यहां आने ही नहीं देते हैं। वित्त मंत्री ने कहा है कि विदेशी मुद्रा में लगातार कमी होती जा रही है। इस कमी का कारण क्या है ? माल ज्यादा भेज देते हैं और बिल कम बनाते हैं और उस के भरोसे फिर विदेशी मुद्रा प्राप्त कर लेते हैं। दे दिया दू चार हजार रुपया। विदेशी मुद्रा प्राप्त करने का साधन क्या है ?

व्यापारी जो बीजक बनाता है, उस के बारे में कोई कानून नहीं है। उस पर भी कंट्रोल होना चाहिए। जब तक उस पर कंट्रोल नहीं होगा, तब तक हमारे देश में विदेशी मुद्रा नहीं बच सकती, क्योंकि बड़े बड़े मगरमच्छ रिश्वत के सहारे बीजक कम बना लेते हैं, माल ज्यादा भेज देते हैं और इस प्रकार विदेशी मुद्रा ज्यादा प्राप्त कर लेते हैं

इस का नतीजा यह होता है कि विदेशी मुद्रा हम को नहीं मिलती है। सरकार को पहले इन कम्पनियों के एजेंटों का पता लगाना चाहिए। अभी बर्ड कम्पनी पर 67 हजार रुपये जुर्माना हुआ। क्यों हुआ ? लेकिन इस से क्या हो जाता है ? मान लो किसी चोर ने एक लाख रुपये की चोरी की और फिर पचास हजार का दान दे दिया या सुरक्षा कोष में दे दिया, तो क्या वह दान है ? मैं समझता हूँ, कि अगर किसी ने एक लाख रुपये की विदेशी मुद्रा की चोरी की हो, तो उस को दो लाख रुपये का दंड देना चाहिए। उस को छोड़ना नहीं चाहिए।

ऐसे लोगों को अपील की अनुमति भी नहीं देनी चाहिए। अपील की अनुमति देने से ऐसे लोगों को इस बात का समय और अवसर मिल जाता है कि वह भ्रष्टाचार कर के, रिश्वत दे कर, साफ बरी हो जायें। हम ने अक्सर यह देखा है कि जो लोग पकड़े जाते हैं, वे अपील में बरी हो जाते हैं। हम ने सुना कि रामरत्न कोछड़ डाकुओं का साथ देने और सीमा पर ब्लैक-मार्केटिंग करने के केस से बरी हो गया। जब डाकू बरी हो जाते हैं, तो विदेशी मुद्रा के डाकू तो फ़ौरन बरी हो जायेंगे, क्योंकि वे करोड़पति और लखपति से कम नहीं होते हैं। इसलिए उन को अपील की अनुमति नहीं देनी चाहिए।

अन्त में मैं यह कहना चाहता हूँ कि छोटे किसानों को लघु उद्योगों के लिए विदेशी मुद्रा दे कर प्रोत्साहन देना चाहिए। विदेशी मुद्रा के डाकुओं को अपील की छूट नहीं देनी चाहिए।

Shri S. M. Banerjee (Kanpur): Mr. Deputy-Speaker, Sir, I rise to support this Bill and I hope when this Bill becomes an Act it will give more powers to the Directorate of Enforcement and to the Reserve Bank. I must admire the work done by the Enforcement Directorate and I have

no word to praise how efficiently that director—a man of unquestionable integrity—has sat on judgment of so many appeals and cases. The whole difficulty is this: we are confronted with two problems: one is how to save our foreign exchange and the second is, how to earn foreign exchange. There are certain provisions in the Bill which, if rigidly followed, will surely stop the drain of foreign exchange.

15.28 hrs.

[DR. SAROJINI MAHISHI *in the Chair*]

That will naturally result in some rise in foreign exchange for our country. There are certain aspects of this Bill, and to illustrate, I must take this opportunity of giving certain instances. This morning, in reply to a question, the hon. Minister stated that there were about 2,000 cases from 1st January, 1964 to 30th November or 31st October, 1964—I am not sure—of violation of foreign exchange. The cases may be more in number. But I would like to know what steps have been taken to see that those people who are caught for violation of foreign exchange are punished suitably.

A case has been referred to by my hon friend Shri Onkar Lal Berwa, namely of Bird & Co. I do not seek a judgment whether this fine of Rs. 67,000 is more or less. But I have a feeling that those big companies—I do not for a moment imply any motive either on the part of the Finance Minister or on the part of his Ministry—who have some approaches, and those who can possibly influence, and have some political influence, can get away with a meagre fine. Sometimes this directorate is placed in very awkward position when there is political interference. There should be no political interference in such matters, whether it is Jain, Birlas, Bird & Company or anyone. If we politicians including Ministers have full confidence and faith in the working of the directorate, I hope the

cases will be disposed of more expeditiously and justice will not be denied to them; at the same time, they will be punished if they are guilty.

This morning during Question Hour I asked whether there are certain business houses in the country which are maintaining regular offices abroad, especially England and USA. I referred to the house of Birlas. I was told by the hon. Finance Minister that he has no knowledge. I would only request him, let this House know whether it is a fact that they are maintaining an office and conserving foreign exchange to the tune of crores by under-invoicing in jute carpet packing. This is true not only of Birlas but all those who are exporting jute goods. I am not talking of jute, but jute carpet packing and other jute goods. In such cases, if they are maintaining some offices, what is the procedure for checking their balance-sheets? When it was declared in this House that those who have foreign assets and foreign accounts must declare boldly their assets and no action will be taken—a particular date was fixed, November 1961 or 1962, I speak subject to correction—what was the total asset which was declared by the big business houses? Something was said about our late beloved Prime Minister. We were not concerned with that; we are more concerned with those who with the help of under-invoicing are building up empires in this country. What action has been taken against them? How is it that whenever we raise the question of big business houses, we get some evasive reply? I do not say it is deliberate. We want a definite reply whether they are maintaining offices abroad and whether we have any procedure or basis with us with the help of which we could possibly know what is their foreign exchange reserve and how they are utilising it.

I come to remittances. Remittances by the oil companies has been mentioned by my hon. friend, Shri Mukerjee. What was their asset in the country and what were their remittances in the pre-independence

[Shri S. M. Banerjee]

days? What are their remittances today? I know some of the companies. Thank God the British India Corporation is in the hands of Indians now. When the Britishers left, they left it in scrap. They were only interested in earning foreign exchange at the cost of our country. They were not interested in running these concerns, because whatever money they spent in India, they earned thousand times more. Now that it is in the hands of Indians, I hope with the help of LIC we will be able to run it effectively.

What is happening in tea? What about their remittances? What about other big companies owned by the foreigners in our country? That is a matter to be considered. If the Minister wants no drainage in our foreign exchange, if we want to improve our foreign exchange position to help in building our national economy, it is necessary that we should be more strict in these matters. Certain searches have taken place in Calcutta, Bombay and Kanpur and big business houses in other places. What was the total foreign currency found? It was a very meagre amount. There is a sentence in the Statement of Objects and Reasons which says:

"to control and regulate the appointment of foreign companies, firms or branches thereof as the agents of advisers of firms in India".

What are these agents and their counterparts in foreign countries doing? The Statement of Objects and Reasons further says:

"to include provisions on the lines of Rule 132A of the Defence of India Rules, 1962, prohibiting unauthorised dealings in foreign exchange brought in by tourists and tightening the control over such dealings".

When it is said that the Government is going to take strict measures so that foreigners may not play some

mischievous on our country, it reminds me of the Walcott story. He came every time, he conquered and went away. There are thousands of Walcotts. According to Mr. Walcott and his associates, India has become a paradise of smugglers. In Delhi itself, right from the airport to Connaught Place, there is a regular business going on. Anybody may go from this place with only Rs. 40 in his pocket. Previously foreign exchange was sanctioned for world tour. When I went in 1960 I was given about £ 30. Later on it was reduced to only Rs. 75. Now it is reduced to Rs. 40. It may be reduced to Re. 1. but people have their contacts outside. They go abroad with a pack of cigarettes and bring all sorts of materials. This is how this vicious chain functions. They have an international gang, an international brotherhood of smugglers and others dealing in foreign exchange.

I would like to know what has happened to those cases of foreign exchange violation by a very big business house in Calcutta—Bengal Enamels. Their workshop was searched in Palta in 24 Parganas. A case was started against them. But they have very good contacts in Delhi to influence the Ministers and others and to see that the cases are hushed up. The poor director is sandwiched between this big company and the political influence and sometimes he has no option but to resign. I do not know what will become of the directorate if this political interference is not stopped. I know of a big businessman who is supposed to be the king of hoarders. Hashim Premji was arrested on a charge of foreign exchange violation. What happened to him? We know there is no case against him and he has been exonerated. He was caught here under DIR, but he has been exonerated. When one of the political leaders, who was a member of this House in 1957, was involved, his name was proclaimed. It was announced that we had caught a big political leader. But what

happened to this king of hoarders who has been let off? What happened to another Member of Parliament who was also involved? Nothing. It is because the political influence is much more now, and it is impossible for this Directorate to function unless this political influence is taken out of it.

Then, I would like to know what machinery we have to have a screening of foreign firms in this country. About Bird and Company, as I said sometime back, when one bird was caught another bird flew away. He was not caught. Later on he came. I would request the Minister, when he replies to the debate, to give replies to the various points that have been raised.

We are in need of foreign exchange. We want to conserve foreign exchange. Our whole economy will come to a stand-still, our industrialisation will come to a stand-still if for mere foreign exchange we are unable to import machineries for our big units. I hope and trust the hon. Minister will take necessary action and see that there is not merely the passage of this Bill. As you know, Madam,—you are an eminent lawyer—we have passed much more legislation in ten years than what other countries have done in hundred years. We are very good in passing Bills. But what about their implementation?

Certain points were made by Shri-mati Tarkeshwari Sinha who had the bitter experience of the Finance Ministry. I want to know whether any note will be taken of them. I hope the hon. Minister will kindly reply as to what positive steps have been taken. It is no use reducing the foreign exchange from Rs. 75 to Rs. 40. But it is also true that some people can send their children abroad for study on all matters. Whether it is engineering, medical or any other subject, this restriction does not apply to them. But if I want to send my son they will say that India is prosperous and that with Shri Chagla it will prosper more in, education. If

my son wants to become an engineer I will have to send him to Pilani, Banaras or Shibpur. There should be one rule for all and I hope the hon. Minister will see to it.

Madam, I lend my full-throated support to this measure and I hope it will be a success within no time.

Shri D. C. Sharma (Gurdaspur): Sir, I have heard speeches on the floor of this House today which have been pro-west and pro-east. I have heard speeches today which have thrown a sneaking sympathy for big business. I have also heard speeches today which have shown a great deal of interest in smuggling as a profitable profession.

Shri S. M. Banerjee: Much more than as a Member of Parliament.

Shri D. C. Sharma: But the fact of the matter is this, that if you think that you can stop the violation of the foreign exchange regulations by this Act you are living in a world which has no touch with reality.

The hon. Member referred to a British firm which had indulged in violations of foreign exchange. I do not know what the fate of that firm is. I know of an Indian firm which indulged in this kind of violation on a very large scale and on which a deterrent punishment of fine was imposed. But, thanks to the democratic processes of our country and thanks to the liberal tendencies in our country, that punishment went on being reduced and ultimately it came to a very nominal fine.

What I am submitting very respectfully is this. There are two types of persons who indulge in this kind of smuggling activity and foreign exchange violations. There are some good men who casually succumb to the temptation and I am sure the Bill of Shri Krishnamachari will put the fear of God in their hearts and they will perhaps be saved from that occasional temptation. They will not try to incur the mischief of this Bill

[Shri D. C. Sharma]

by going in for any kind of transaction which is not in keeping with the canons of morality. But there are some habitual offenders who have made a profession of doing this thing.

When I read this Bill I find that the whole approach is institutional—you are dealing with firms, travelling agents, this organised body and that body. Of course, the institutions which can be guilty of these violations should be dealt with adequately. But I ask one question. What is going to happen to those persons who do this kind of violation on person-to-person basis? And that kind of thing goes on. You can catch a British firm or an Indian firm sometimes, but smuggling like anti-prohibition is spread all over the country and I do not find anything in this Bill except (e) which shows to me how the person-to-person transactions in violation of the foreign exchange regulations are going to be met. Unless you deal with this problem on that level, I think it is no use giving additional powers to the Reserve Bank, because it would not help us to tighten the screw on foreign firms here or to add to our scrutiny of the Indian firms which have their agents elsewhere. It will not help us very much.

15.48 hrs.

[MR. SPEAKER in the Chair]

I tell you that the sources of leakage of our foreign exchange are not those which were described by Shri Hiren Mukerjee. We want the know-how and we have to pay back our debts; the companies have to get their dividends. I do not want that all developmental activities in this country should be stopped because some persons get fees for the expertise they give us or because some persons get dividend from the firms which they run here and which are going to do ultimate good to this country. There may be the possibility of leakage from that point of view also. But I would

say that the smuggler or violator of foreign exchange regulations should not have soft dealing at the hands of the Finance Ministry. Of course, the appellate tribunal has been enlarged; instead of two persons we will have three persons and he will go to the High Court if any point of law is involved. He can be arrested but he cannot be searched without something. I do not know why the Finance Minister is making such a distinction between "search" and "arrest"; "arrest" is arrest, but "search" is a more serious matter than arrest. I should have said that "arrest" and "search" should have been placed at par with each other. There should have been no distinction made. But on account of the liberal tendencies of our Government and the Finance Ministry some distinction has been made. I think, it can go as it is.

But my only point is that if the Finance Minister wants to deal with this evil which is rampant and is getting more and more out of control—it is taking hold of not only the big persons but the petty shopkeepers, the tourists and all those persons who want to go abroad or who want to come to this country—if he wants to tackle them properly, he should say that they would be tried in a summary fashion as the hoarder or the black-marketer is going to be tried.

H. G. Wells in one of his moments of insight said, 'Sometimes we want to kill an elephant but we use a toy-gun.' When I look at the provisions of this Bill, salutary and good so far as they go, I see that to kill the violations which are taking place on a very big scale in this country and which have the dimensions and the height and the weight and the strength of an elephant, we have forged this toy-gun and I can assure you that this toy-gun will not help us and will not go very far.

Therefore I would say to the hon. Minister that he should divide the

offenders into two classes. Let the first offence be dealt with in the way in which he has explained in the Bill because I do not want to give a shock to his liberal and democratic sympathies. Whether he is a person or an institution, let him have the kind of this liberal, generous, legal treatment as is given in this Bill; but so far as the second offence is concerned, I think, there should be a summary trial. If a British firm goes wrong, I think, it should be asked to wind up its business. If an Indian firm errs, I think, it should be closed down. If a person errs once, he may be dealt with softly because that is the intention of Government; but if he errs twice, I think, something else should be done.

In the whole of this Bill I have not come across one thing and it is this. How do you come to know these things? How do you get to know these violations of foreign exchange regulations? Have you got any machinery? You become wise only after the event. You lock the stable after the horse has been stolen. I think, the Finance Ministry should have evolved a machinery, some kind of a vigilance commission or a vigilance body or a bureau of investigation, to know where these violations are taking place. Unless that machinery is there, I am sure, this Bill, with all its good intentions, will not have that effect which the hon. Minister wants it to have.

Another point that I want to make is this. The hon. Minister, I think, if I understood him aright, referred to a social stigma—if I am not correct, he will correct me—that we attach to a person who violates the foreign exchange regulations. I think he said something like that. If our public opinion had been vigilant, as our Finance Minister thinks it to be, if we had had the conception of social stigma to which he referred in his opening speech, I think, most of the regulations, most of the provisions of this Bill would not have been needed.

Unfortunately, as our society is constituted today, I find that all these persons, the hoarder, the black-marketeer, the speculator in grains and other things and also the smuggler, do not suffer from any kind of social disability. They do not suffer from any kind of social stigma. I would, therefore, ask the hon. Finance Minister: How is he going to educate the public opinion? In what way is he going to call into action that great instrument of democracy, the public opinion so that a firm which has a person who commits this wrong or somebody else who goes against this kind of a thing does not receive any kind of social approval? Has he got that thing in view? Has he got any machinery in view? I do not think he has any machinery for that. So, I say that this legal approach to this problem is good as far as it goes.

Some Members have referred to clause 2 or clause 13 or clause 15. I have read those clauses very carefully and, I think, they are admirably worded. Their intention is very clear and they have not erred on the side of excess in any way. They are just and equitable. But nobody has come forward to tell us how this great evil is to be put down. I sometimes go abroad. Of course, sometimes I go abroad under your auspices and then I behave like a student under the auspices of a principal. But sometimes I go abroad on my own and I meet persons abroad.

Shri S. M. Banerjee: How did you get the foreign exchange?

Shri D. C. Sharma: I asked them as to how much of foreign exchange did they get when they started from India. Only with Rs. 40 in their pockets. And yet they travel all over the world; they go from one country to another country and they live in good hotels. They spend money and they bring back the presents for their friends and relatives. They do all kinds of things. I ask you one ques-

[Shri D. C. Sharma]

tion: What are you going to do about these persons? They are not to be touched by this Bill. You are only touching the established kinds of business and other things.

I would congratulate the hon. Minister on having given very serious thought to this problem, on having brought forward this Bill, on having tried to tighten the screw on certain types of persons or institutions that err, but I would say that in this Bill there should have been a provision that anyone who is guilty of a violation of the foreign exchange regulations, if not for the first time, at least for the second time, would have only summary trial and that summary trial would be at the hands of a member of the appellate tribunal or at the hands of a presidency magistrate or some other kind of magistrate. If the hon. Minister had provided something like that, I would have felt that this Bill would achieve the maximum of effect, but as it is, I think it is not going to produce those results which the hon. Finance Minister very much likes to produce.

16 hrs.

Shri T. T. Krishnamachari: It is unfortunate that it is a very thin House . . .

Shri S. M. Banerjee: We should have quorum at least when the hon. Minister speaks. At least he should have the privilege of having quorum.

Shri T. T. Krishnamachari: Should the question of quorum be raised now?

Shri Khadilkar (Khed): Once the question is raised, there is no alternative but to ring the bell.

Mr. Speaker: The hon. Minister has said that he feels that it is a thin House. Shri S. M. Banerjee has caught that word.

Shri T. T. Krishnamachari: I am sorry for the inadvertency.

Mr. Speaker: Let the bell be rung—

Even after the bell has rung there is no quorum. I shall have the bell rung for a second time—

Now, there is quorum. The hon. Minister can continue.

Shri T. T. Krishnamachari: I am sorry that I should have made an inadvertent reference to a thin House.

Mr. Speaker: Even otherwise, some other Member might have raised the question.

Shri T. T. Krishnamachari: In my experience in the House, this is one of the debates that we have had here which is completely devoid of any hon. Member's criticism for criticism's sake, from all points of view.

The debate was opened by Shri Dandekar with a number of very useful suggestions. Though some of the remarks made by hon. Members do not pertain to this Bill strictly, many of the suggestions and criticisms made have to be taken note of by Government in the various departments concerned.

What fell from the hon. Member for Gonda in regard to certain defects in matters in which we are showing a lot of zeal, which I believe is praiseworthy, should be noted. I quite agree with him that in promotional activities in the matter of experts we are sometimes cheated. I had mentioned in my opening speech today that not only do we find out lacuna in the legislation that we enact here and try to rectify them as Government and implement the legislation, but the people for whom the legislation is intended also find loopholes which allow them to act freely. And practically every regulation, whether it is big, whether it has the support of parliamentary sanction or has been devised by administrative ingenuity is of the same variety. The export promotion activit-

ies and export incentives are all intended in good faith to help people to be able to export. But it happens that the prices ruling locally do not permit them to make the same amount of profit if they export outside. But there is no denying that these are being abused to some extent. The figures I quoted in regard to what are called invisible remittances, particularly from Malaya, which have been dropping systematically almost to the point of zero are indicative of the fact that people who get export incentives are able to get a larger amount of monies remitted to this country for goods that they sell outside through these means.

It is a known fact that there are agents who go and canvass for payment of rupees in India for receipt of pounds or dollars, as the case may be, in London, Kuwait and in every place where there is an Indian congregation. And they offer very attractive terms. I have in fact received letters from Indians in the Persian Gulf and Aden who say that Pakistan offers....

Mr. Speaker: I was going to mention it. This was disclosed to me when I was in London, recently.

Shri T. T. Krishnamachari: As a matter of fact, when I was there, Indians came to me and told that the remittances that are made to India are about £100,000 every week, and if we could give them something more, then they would pass the remittances through us. Unfortunately, we are bound by the code of the IMF.

Mr. Speaker: Pakistan is not?

Shri T. T. Krishnamachari: Pakistan is doing it. I think they are now facing the music. They are going to be called upon to explain. Naturally, the IMF says, 'if you are paying a higher amount of money for getting sterling, your rupee is overvalued; you should devalue'. That is why, though we might probably get about

Rs. 5-7 crores worth of foreign exchange, we would be leaving ourselves open to that charge by the IMF if we did so.

Mr. Speaker: Is it a fact that Pakistan is supplementing those remittances by 50 per cent?

Shri T. T. Krishnamachari: 40—so far. Even from Kuwait and Aden, I have got letters saying that Pakistan pays Rs. 20 for every pound.

Mr. Speaker: Less than that.

Shri T. T. Krishnamachari: Sometimes 18—that comes somewhere between 40—50. But we are precluded from adopting this method merely because we happen to be one of the senior members of the IMF, one of the permanent members.

Shri D. C. Sharma: And good boys.

Shri T. T. Krishnamachari: Even in regard to these export incentives one has to be very careful. If the incentives are such as amount to dumping our goods, the IMF will say: your rupee is over valued. We are bound by international conventions not to take measures which defeat the regulations. But we know that it is being done.

Mr. Speaker: Is it not possible to catch these businessmen or these agencies who pay them here in India?

Shri T. T. Krishnamachari: It is not possible. The Chair knows that there are a number of people in Punjab, in the villages who get remittances. It is very difficult to catch them. Even if we catch them it is difficult to prove. Then, there is the element of harassment also. Poor people get remittances from their sons and other relations in England, small amounts of Rs. 40 or so, for which they pay £2 there. I do not want to put the law into motion against small traders and small people as I am afraid that the small people would be harassed. While I do not at

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all interfere with the discretion of the Exchange Controller in his operations, I have often mentioned to him not to take serious notice of small things. I happened to know that when I was away from Delhi for the sake of an error of £4 in an invoice, the office of a firm was searched. Even that was not given by them but given by somebody else but it was a difference of £4 and the firm abroad wrote and said: we have under-charged £4: so pay so-and-so. In fact I have issued instructions that in the case of amounts of Rs. 50 or Rs. 100, they need not take any action, not even send a warning but merely draw their attention. If the amount is something like Rs. 500, I have told them: warn them. If it is anything more than that, well go ahead with the application of the law. To set the law in motion against small people may harass them. I have myself seen, when I was not in office, how it is being done. Therefore, while I welcome the caution given by the hon. Members, I am also apprehensive of the fact that if we go into the details in regard to small matters, there would be a lot of harassment.

I can also tell the House that it is very difficult for any person that goes abroad not to infringe the technicalities of the law. We give a certain amount of money and we say: do not purchase anything. Do you mean that I cannot buy a tooth paste and bring it back if it is not fully used. Does it mean that I should not purchase some hypodermic needles a packet of them, and after using only one, bring back the other eleven with me? Technically, I may be making a breach of the law. We should frame the law in such a way so that people may not spend more than 25 per cent of the amount given to them, for purchases. You give money to them for an emergency, for going to a doctor. While in London, for an ailment of a small nature, I had to get a prescription and one of my medical advisers told me that he would like

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to take me to a doctor. I knew the doctor would charge about £5. But he said: you need not pay the amount out of your pocket because you are a Government official. Well, in my case Government will pay for it. If it had been somebody else, he will have to pay £5. Therefore, some kind of a flexibility has to be put into this regulation. But at the same time, it can lead to abuses. I have no doubt in my mind that out of every ten persons going with this form, about five or six abuse these things. It is a thing which we know. But where should the line be drawn? I would like to try and say in these regulations that any person that goes abroad could spend 25 per cent of the money given to him without accounting for it, for anything that he likes. I know, and the Chair knows, and we know, that you cannot go out without probably giving a tip. Can we say that this is not a legitimate expense? But the law can be an ass. I quite recognise it. (*Interruption*). We will try as far as possible by means of rules to say what the latitude should be.

Mr. Speaker: Shri Khadilkar, while he was there, wanted a little medicine. He was first asked to get the prescription of a doctor there; he spent that money which was not authorised!

The Minister of Rehabilitation (Shri Tyagi): The period out of office has made the hon. Minister wiser and more generous!

Shri T. T. Krishnamachari: I am aware of what the Speaker said just now. (*Interruption*).

Mr. Speaker: He has actual experience of all the things.

Shri T. T. Krishnamachari: I am told now—I did not know we could have personal requirements bought for Rs. 75. I would like hereafter that it should be about 25 per cent; if a man is permitted to stay a month and is given some pounds, he could spend a portion of it for personal requirements.

The other point that Shri Dandekar mentioned was about State trading. The original culprit, so far as State trading is concerned—I am not boasting and I am merely calling a guilt to myself—was myself! It was essentially intended, to begin with, for purposes of dealing with those countries which have State trading. There is no point in asking a trader to deal with countries which have State trading. Actually, it is to enlarge. But I can say this. There was a time undoubtedly when my hon. friend Shri Dandekar was on this side, when I was on the other side. When he was a member of the Board of Revenue, I had, I think probably come up with some criticism of his activities as a private Member. But I have unfortunately, over a period of years—not since I became a Minister—probably over a period of about 30 years, progressively gone towards thinking that State regulation is imperative in a country like ours. Otherwise, there is no chance of giving even a little help to the poor people. So, State trading has come and has come to stay. But I can understand the abuse. I know for a fact in regard to trading with certain East European countries that the price offered to us in barter looks a little more and often is under-sold in markets in Hamburg and Trieste. It is not taken to that country. We know about it. In fact, at one time, some east European countries also shipped to South Africa goods which were meant for them. We know about it. But the way to get over it is to have a more careful watch and to have a better regulation of the State trading organisation. But, by and large, I should say as a person who has rather a critical eye in regard to the working of many of the Government concerns that State trading has done good. In fact on the one side, we have done extraordinarily well. Even otherwise it is not so bad. But it happens like many Government offices; it grows. The cost sometimes mounts up. But it is a matter which has to be looked into.

One objection that Shri Dandekar had was to section 18A. So far as section 18A is concerned, may I tell the hon. Member that in my, shall I say, *Poorvashrama* or my previous birth, I was a businessman?

Shri Yashpal Singh (Kairana):
Porva Janma.

Shri T. T. Krishnamachari: As an Indian businessman, I had to compete with European—

Shri D. C. Sharma: Which *Brigu Samhita* did you consult?

Shri T. T. Krishnamachari: It happened within my memory. I said I was an Indian businessman. I felt even in those days that if ever we had self Government, we should have something like section 18A, a sort of control over the operation of foreign people and their agents. To some extent, in fact, as a person who was largely employed in trade and to a very small extent, industry, I was anti-foreigner in those days. I thought they had come here for taking out. Though I was doing a lot of business with foreigners, though those people who came here, foreigners who came here to trade, should not have come and it should be left to Indians so that I could live—wholly a selfish idea. But it had something; I had certain knowledge about it.

Beside, I might assure my hon. friend that for one thing, it was this section, 18A has no retrospective effect; secondly, all that you insist is you should get permission. Permission has to be given, and there should be a sort of, more or less, register of such permission given from time to time. It should be put on a register, whether it is done by the Government or the Reserve Bank or by the Company Law Administration. I happen to know, it is within my personal knowledge, that not now, but 30 years back, a foreigner can come here and do anything, whereas it is not possible for an Indian to go and open an office somewhere else. Not

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only our own regulations stand as a bar to it, but their own regulation also stands as a bar to it.

Much can be done by the foreigners coming in. At the present moment, for mere services, we pay the foreigners a little more than Rs. 5 crores a year. I feel it is necessary to have a record. You need not absolutely prohibit it. Very many are unnecessary. My friend Mr. Mukerjee, mentioned about various ordinary articles of common use, which have a foreign name for which we pay a big royalty. I am not one of these who believe that our Indian businessmen should not use a branded name. It saves a lot of money for them. Their goods are well advertised, well-known and have to conform to a certain quality. At the same time, if you are paying a big royalty to them, it is needless. Probably we can spend the money here locally in advertising rather than pay a big royalty. That kind of thing creeps in though we are putting in a heavy tax on the royalty and mop up quite a large portion of it. One thing the Finance Minister is definitely against, namely, any royalty or any other payment free of tax. We are against it, unless it be of a nominal nature. We have taken care of it, and I quite agree with my friend Mr. Mukerjee, that, that may be a way of money going out.

Another point he raised, not particularly related to the Bill, was the question of profits by foreign firms, and the official books which have given these profits. There is an element of distortion in this. It would be remedied in regard to future investments. Now we insist on a particular relation between equity capital and loan capital. Normally it is 2:1. We have relaxed it to 2½:1. This kind of thing was not there before. So much so, one particular company he mentioned—Firestone—in the early days had only a capital of Rs. 20,000. But still they are remitting Rs. 1 crore every year as profits. The real fact is, they are

working on what was loaned to the Indian company by the American company and whatever they remitted in relation to the capital, it was unreal. It worked out to probably 240 per cent. Once you add this 240 per cent in the case of one company to others, then it shows probably 13 or 14 per cent generally.

I happen to know about it personally because, we intimated a price enquiry against these tyre companies in 1954, which was stoutly resisted. We went into the details of their working. I found to my surprise that one company with a profit of Rs. 1 crore had a capital base of only Rs. 20,000 so that the profits in relation to the capital worked out to 200 per cent or something like that. That distorts the whole figure. It is not as big as people make it out to be, because very many of these American firms—even the oil companies—have got a low capital and a large amount of debt, on which they pay interest and on the capital the dividend is high. Very possibly our dividend tax will take care of it now. But it is a distortion, which has been remedied in the case of the Firestone Company. During the time I was not in Government, they have somehow managed to raise their capital. Whether they paid anything by way of tax, I do not know. But their capital is now fairly big. Their profit in relation to the capital is not as much a fantastic percentage as it was originally.

I will not go into the details of many things mentioned by Mr. Mukerjee. As I said, they do not relate to the particular Bill, but to the general policy of Government in regard to foreign capital. It is a thing which is known. It is a question of valued judgment whether we should have foreign loans or foreign private capital. In fact, in some cases foreign loans carry far more political power with them. Foreign loans are all dated loans. It is not as if we get a loan from the International Development Association which is an an-

nexe of the World Bank, where the loan is for a long duration of 40 years or 60 years and we pay only a committal charge of $\frac{3}{4}$ per cent. That kind of loan is all right. The P.L. 480 loans are also for 40 years. Many other loans are dated loans for 8 years, 9 years and 10 years, and when the repayment position comes, naturally it is difficult for us; we have to ask for extension.

In regard to foreign investment, even in the case of German investment, if we nationalise we have to pay in three years. Remittances of dividends have to be allowed. Over the question of liquidation and all that, if we want to pay it in six years, we have the time over which to work out. If the Government loans money to you, then there is the governmental pull. If you have private foreign capital, every man who invests his money gets an interest in India and therefore he pleads our case. The advantage, therefore, according to me, is more in favour of foreign private capital than governmental loans. It may be different in the case of other people. It is a matter of how you look at it. I may be merely looking at it from the point of view of a Finance Minister who has to find the money. I can always twist these people and see that they do not go away. Many of them plough their money back. Sometimes they find that India is safer than taking the money to their country because something may happen in their country; there may be the fear of devaluation and so on. To me, as a person who is on the saddle, it looks as though foreign private capital is a better proposition than foreign loans.

But there is one thing which has to be conceded and which apparently everybody concedes, that in regard to the development that we are envisaging, not only in the Fourth Plan but also in the Fifth Plan, we will have to import foreign capital—because there is no escape from it—and also, perhaps, raw materials for our industries to some extent. I hope we will not have to import food as we

are doing now. Therefore, we are not in a position to be, a sort of, particular or finicky about this matter.

Shri Morarka, who is a good student, I think, this time has not been quite so good for the reason that he has undertaken a public responsibility and he does not find much time for this kind of thing. He raised certain doubts in regard to drafting. I do not propose to go into it at length. He has referred to the question of absence in regard to reference of an individual. "Citizens of India outside India" are referred to in Section 1 of the Act. He has also mentioned that there are conflicts between 18A, which is covered by clause 13, and 18. The two things are completely different. 18A is permissive. What you do is that you ask the people to merely register themselves and give information to the Reserve Bank or the proper department of government. There is no sequence. Even though this comes after 18, there is no direct sequence. This does not follow as a consequence of 18. I shall have all that he has said, examined, but from the examination that I have been able to make so far it does not seem that the drafting is bad. I shall certainly have the matter examined if there is any need. The Bill itself has gone through a fair amount of examination by different bodies, because not only the Foreign Exchange Control Office but also the Economic Affairs Department which deals with this as also the Law Department have all gone through it.

He also asked: Why not restrict remittances? We cannot. In fact, any absolute restriction on remittances means we go against the provisions of the membership of the International Monetary Fund. All that we can do is to control the remittances, rather than put an absolute restriction.

One point that he made was the distinction between sections 19A and 19B that in the case of search, certain safeguards have been mentioned while

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in the case of arrests no safeguards are mentioned. Arrests are governed by the provisions of the existing law. Therefore, no safeguard need be mentioned. A person cannot be arrested unless you comply with the provisions of the existing law.

Shri Banerjee mentioned certain points in regard to maintenance of offices abroad. The point about it is this. When I say that I have no information, generally I have the same information which the hon. Member who asks the question has, namely, that these firms have offices abroad. But once I say that I have information, I must be able to say: what are the firms, where are their offices, what are they doing, which are the laws they are violating and so on about which I know nothing, unless I call for information. Of course, the information is available with the Reserve Bank. We can call for that information when we have some information about the misdeeds of any particular firm because then there is some relevance to it. Professor Hiren Mukerjee also referred to this matter. It is a good thing that we are sharp sometimes. As Shri Ranga said, because of being sharp I raised my voice. The fact really is this. As the Chair very rightly pointed out, we are in a very difficult position. Of course, hon. Members are in a different position. Government is not in a position to hazard an opinion about an individual or firm unless it is sure of its facts. I know many people have got offices abroad. But where precisely they have got it, who are manning it, how they are transacting, in what names, are they purely Indian firms or they have foreign partners also, on these questions I do not have information; I have to call for information.

There are two things. We are between two stools. Sometimes it is necessary for the Indians to have an office abroad so that they can get the export business into their hands. We have tried to open offices of the State Trading Corporation; oftentimes we

have found it easier to appoint agents because STC is subject to taxation in many countries and cannot plead diplomatic immunity. So oftentimes we ask the private person to get into business and open an office abroad. At the same time, we know of persons who abuse this privilege, keep double records and cheat us of foreign exchange, which is far more valuable for the person who does not have it. We are watching this matter. The whole thing is being watched and to the extent possible action is being taken.

I know I can hazard a statement and I can say so much money is there, divided into three classes or categories of Indians. One particular class has about Rs. 50 crores or 60 crores. That is because of past circumstances. The second class of people have a certain amount of money. The third class by controlling the purchases has acquired a certain amount of money. I can make a guess of the total of it.

My hon. friend, Shri Kamath, is not here. He asked me if Indians have accounts in Swiss banks. They are numbered accounts. I know they have it in Swiss banks. But the Swiss banks are very clever and they keep those accounts as dead secret. Sometimes even Governments keep accounts in Swiss banks. The Spanish Government had some accounts in the Swiss banks and when a representative of the bank went to Spain for a sort of check-up and asked for instructions, they arrested him to get the code numbers of the accounts from him. Immediately the Swiss banks said: we will not send any person to your country; if you want to do any transaction, you come to this country and do it.

We happen to know something about it. But the problem today is, we are not in a position to lay our hands exactly on the person concerned unless we have all the information, unless some information comes to us. We know that some persons are es-

caping merely because legally we cannot bring home an offence. Many persons have accounts abroad and they get remittances for various other purposes. We know it; we know it even a little more precisely. But we can do nothing more about it, if somebody operates in another place. I can also say, maybe, there are one or two Government offices, who prefer to encourage purchases abroad than purchases locally for various reasons; quite possible. We know it. But we cannot lay our hands on those persons. This is a thing which would exist and all that we could do is to mitigate it by vigilance.

Then, my hon. friend and former colleague, Shrimati Tarkeshwari Sinha, spoke and somebody said that she spoke with authority; but I do not think that it has anything to do with this particular Bill.

One reference was made by Professor Hiren Mukerjee in regard to allotments made by foreign countries for power plants not being made use of. As a matter of fact, I think, against power plants in the Third Plan the allotments are of Rs. 381 crores, out of which Rs. 334 crores have been committed and Rs. 39 crores are expected to be committed very soon; so that, that covers practically the whole amount except for Rs. 10 crores or Rs. 12 crores. It is not as bad as it was because it happens to be one of my special responsibilities and I am keeping a careful watch on it.

I know, Professor Sharma made a very useful speech in support of the Bill and I am very grateful to him for it. So am I grateful to Shri Heda. He mentioned the manner in which various other departments of Government work, like the Industries Department or the Commerce Department. These have been made note of. I am not in a position to answer straightaway why there has been delay in the granting of approval in regard to a particular matter or in

regard to granting of licence to somebody else.

One subject which I would like to refer to, is a very valuable contribution to the debate made by my hon. friend, Shri Sachin Chaudhuri. I think, he will find an echo in me for his sentiments. I am speaking purely in a personal capacity now. I do not want to commit my Government to anything that I say. I have been feeling in the same way as he does. Whatever hon. Members opposite might say—and I am grateful to the few references made by Shri Hiren Mukerjee in that regard today—we feel, we have a certain amount of moral responsibility largely because of the heritage, not because of any virtue in us. Whatever people might say, the word “Jawaharlal Nehru” makes one shiver slightly. He says that he has left us in this position with a responsibility and I do feel that my colleagues are very careful in what they do. But, at the same time, the amount of power that must gather into the hands of Government as time goes on which seems to be inevitable—no matter what anybody says, the responsibility of Government to look after the welfare of the people to the maximum possible extent cannot be evaded; therefore, power must sort of aggregate into the hands of Government as time goes on—and the checks on that power—of course, Parliament is a great check, but as I said today, even though it was merely a matter of an exchange, I feel as a person who has been a parliamentarian for a number of years that Parliament's check is a wholesome one,—even more so I feel that in most of these administrative tribunals it should increasingly be possible for us to bring in the Supreme Court as the final arbiter and the executive must submit itself to a certain amount of discipline. In fact, one hon. Member mentioned: Is that not injustice, is that not political power? Yes, oftentimes I feel; I have repented it. The incident that was referred to by Shri Hiren Mukerjee

[Shri T. T. Krishnamachari]

is about three-fourths right. But sometimes you can make a slip-up; it is possible. Therefore, increasingly, I think, the question of determination of matters which have a quasi-judicial character in them must go to the Supreme Court. I feel that if the work of tribunals is reviewed or even the appointments are made by the committee of judges of the Supreme Court, I think, we will all be the better for it. I hope, we will be able to take that step progressively not so much because we are afraid of ourselves doing wrong, but you never know. After all, human beings may do wrong sometimes. You might slip up sometimes and the judiciary happens to be the ultimate repository of all hope.

So, I think, it is worth while having some kind of a judicial review, not merely by means of a person going in appeal and waiting for years. We know the arrears that exist in High Courts. So, this should be some kind of a quick summary survey like the review of calendar cases which are being made by the High Courts; some kind of supervision in regard to administrative decisions should be made. I hope Mr. Sachindra Chaudhuri will take the initiative to help this Government to evolve an administrative law ultimately. I think we need it. As I said, hon. Members should not say that it is the policy of the Government. My colleagues have not been consulted. I do not commit anyone of them to it. But that is purely my personal view and I feel happier and safer when we enact legislation of this nature which we have to because the number of wrong-doers is increasing and their ingenuity is increasing even more in geometrical progression. At the same time, some kind of a check has to be there, and the administrative competence to deal with them. It is very difficult to work in this atmosphere. Sometimes money power does not act but it does act and it can act. Therefore, some kind

of a review of this nature is necessary.

There is one thing more. In this country when we hear so much about corruption, most of it, I am afraid, is exaggerated. We are, at any rate, leaving the judiciary free. We have not mentioned about it. We have not brought that into the usual talk. I think some kind of a judicial review must be there. I will suggest to Mr. Sachindra Chaudhuri and other lawyer Members to think of helping the Government, or rather suggesting to Government to evolve an administrative law. I am very grateful for their support.

Mr. Speaker: The question is:

“That the Bill further to amend the Foreign Exchange Regulation Act, 1947, be taken into consideration.”

The motion was adopted.

Mr. Speaker: Is Mr. Bade going to move his amendment No. 1 to clause 2?

Shri Bade: Yes, Sir.

I beg to move:

Page 1, line 9,—

after “agencies” insert—

“and foreign agents”. (1)

The hon. Member, Mr. Morarka said that it will be more awkward. But I do not feel like that. As the hon. Minister has said, he wants to plug the loopholes. The agencies are not foreign agents. Supposing there are foreign agents working in a company incorporated in India, then they will not be included in this. There are many cases like that. Therefore, I wanted that these foreign agents may also be included.

Shri Heda: How can you have control over them?

Shri Bade: But they cannot take any foreign exchange on our behalf and put it in our account.

Shri T. T. Krishnamachari: I am advised by my legal advisers that this is not the intention. You can have no control over foreign agents.

Mr. Speaker: I shall now put amendment No. 1 to the vote of the House.

Amendment No. 1 was put and negatived.

Mr. Speaker: The question is:

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Mr. Speaker: The question is:

"That clauses 3 and 4 stand part of the Bill."

The motion was adopted.

Clauses 3 and 4 were added to the Bill.

Clause 5—(Amendment of section 4).

Shri Bade: Sir, I oppose this clause 5. I submitted some amendments but they were not admitted by you. This is what it says:

"In section 4 of the principal Act, in sub-section (1), for the words "buy or borrow from", the words "buy or otherwise acquire or borrow from" and for the words "sell or lend to", the words "sell or otherwise transfer or lend to" shall be substituted."

What is the meaning of words "buy or otherwise acquire or borrow from"?

Dr. M. S. Aney: On a point of order. After the amendments have been rejected by you, can they be debated again in the House?

Mr. Speaker: He can oppose the clause.

Shri Nambiar: While opposing this clause, he is making these remarks.

Shri Bade: Then, what is the meaning of the words "sell or otherwise transfer"? Sir, there was one case in the Calcutta High Court, that is, 1964 Calcutta 418. This is what they have said:

"This is a very sweeping restriction and it is interesting to recall the words of Lord Goddard C. J. in *Pickett v. Fesq* (1949) 2 A 11 E R 705....

The judgment says:

"It may not generally be known how rigid and far-reaching are the provisions of the Exchange Control Act, 1947. It has been pointed out by high authority that if a person plays a game of cards in this country with a person who does not live in one of the scheduled territories—as for instance, an American—and at the end of the game he hands in five shillings which he has lost to him, he is really committing an offence. I do not suppose that in these circumstances anybody would say that a serious offence has been committed or that there would be likely to be a prosecution but the Act is wide enough to cover such a case."

The words 'buy or otherwise acquire or otherwise transfer' may mean that even if in a game of cards a person loses and another takes the foreign exchange, that other person would come within the mischief of the term 'otherwise acquire'. I feel that the wording in this clause is somewhat loose. The hon. Minister has said that this is intended in those cases where the foreign exchange has passed through so many hands, and to cover such cases, this particular section has been worded like this. But I think Government have not found any proper wording for it, and, therefore, they have used these words 'otherwise acquire' and so on. The terms 'or otherwise acquire' and 'or otherwise transfer' would mean something which is very wide.

Mr. Speaker: The hon. Member has also used the term 'otherwise'.

Shri T. T. Krishnamachari: In the course of our experience it has been found that the terminology used in section 4(1) which the hon. Member has read does not cover all possible methods by which foreign exchange can be acquired. For instance, if a person earns foreign exchange as a gift or as a donation, how will the hon. Member find a place for it? Even though the courts might in a particular case say that the term 'otherwise' is rather vague, how else can we provide for such cases? Cases of gift, donation or benefit in a trust etc., are the main things which have to be included, and this is what this particular provision really means.

Mr. Speaker: The question is:

"That clause 5 stand part of the Bill".

The motion was adopted.

Clause 5 was added to the Bill.

Clause 6 to 24, clause 1, the Enacting Formula and the Title were added to the Bill.

Shri T. T. Krishnamachari: I beg to move:

"That the Bill be passed".

Mr. Speaker: The question is:

"That the Bill be passed".

The motion was adopted.

16.47 hrs.

INDIAN TRADE UNIONS (AMENDMENT) BILL

The Minister of Labour and Employment (Shri D. Sanjivayya): I beg to move:

"That the Bill further to amend the Indian Trade Unions Act, 1926, as passed by Rajya Sabha, be taken into consideration."

This is a very small Bill. The Indian Trade Unions Act, 1926 provides for the registration of trade unions and in certain respects defines the rights and liabilities of the registered trade unions. Under section 4 of the Act, any seven or more persons of a trade union can form themselves into an association and ask for registration under the Trade Unions Act but the provisions of the Act do not debar any convicted persons, especially those who are convicted of offences involving moral turpitude.

This was brought to the notice by one State Government, and they felt really annoyed that persons convicted of offences involving moral turpitude began to represent several trade unions in various courts under the Workmen's Compensation Act, authorities under the payment of wages and other Allied Acts. So, this amendment was placed before the Standing Labour Committee at its 21st session held in Delhi on 27th December, 1963. The committee agreed that an amendment to the Indian Trade Unions Act might be proposed to debar such persons from becoming even members, but Government later on considered that it might not be desirable to debar such persons from becoming ordinary members of the trade unions, but it would be sufficient if we debarred them from becoming office bearers or members of the executive committee of such trade unions.

So, accordingly, this amendment is proposed. Taking advantage of this, we have proposed one or two other amendments. They are very innocuous. For instance, the term 'Officer of a trade union' is used in the Indian Trade Unions Act. We want to replace this term by the term 'office-bearer'.

The other one relates to the submission of accounts. At present Trade union returns are to be submitted by the end of 31st March every year. But most of the labour statistics correspond to the calendar year, i.e. 1st January to 31st December. So we thought it would be desirable to amend the Indian Trade Unions Act so