

INDIAN POWER ALCOHOL (AMENDMENT) BILL

The Minister of Commerce and Industry (Shri T. T. Krishnamachari): I beg to move:

"That the Bill to amend the Indian Power Alcohol Act, 1948, be taken into consideration."

The measure before the House falls into two parts. Clause 2 seeks to extend the enactment to Part B States. It was all along only applicable to Part A and Part C States. Clause 3 seeks to impose a declaration as to the expediency of control by the Union. Clause 4 validates certain acts, provides indemnity in respect of any defect in any action taken by Government that might ensue because this declaration has come into operation only on the 8th of May, 1952, by virtue of the fact that power alcohol is a scheduled industry under the Industries (Development and Regulation) Act, 1951.

The position is this. Entry 34 in List I of the Seventh Schedule to the Government of India Act before its amendment in 1948, reads as follows:

"34. Development of industries where development under Dominion control is declared by Dominion law to be expedient in the public interest."

The Indian Power Alcohol Act, 1948, was passed with reference to this particular Entry. And Section 2 of that Act contains the following declaration, viz.,

"that it is hereby declared that it is expedient in the public interest that the Central Government should take under its control the development of power alcohol industry".

Under our Constitution, the relevant entry is Entry 52 in the Union List, the language of which is somewhat different from the language employed in the corresponding entry in the Government of India Act. Entry 52 reads:

"Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest".

It is no doubt true that all existing laws have been continued in force after the commencement of the Constitution by article 372 (1), but it is somewhat doubtful whether the old declaration contained in Section 2 of the Power Alcohol Act continues to be

effective after such commencement. As I have said, Entry 52 requires that the declaration should be by Parliament by law. And it is understood that this Entry was cast in its present form advisedly, the object being that in respect of every industry, Parliament should be required to exercise its discretion. It will also be noticed that where an existing declaration has to be continued in force without any further action, specific provision has to be made for the purpose, as for example the entry in regard to Ports. It reads:

"27. Ports declared by or under law made by Parliament or existing law to be major ports,"

It is rather unfortunate that when we scrutinised the Lists, we unintentionally used language which sought to import a distinction between two items. In fact, today lawyers will say that while there has been a specific intention shown in regard to the Entry as respects ports where an existing law has been mentioned, no such mention has been made in regard to industries generally. But, I must admit that, as one of those who should have scrutinised this particular provision, there is a lapse, on my part, but all that does not save the present situation.

As I said before, the Industries (Development and Regulation) Act of 1951 now includes power and industrial alcohol in the Schedule. After the commencement of the Act which was brought into force on 8th May 1952, it is fairly clear that power alcohol is in the Union List. But the action taken from the commencement of the Constitution until the 8th May 1952 has to be saved. And this is what is being done by clause 4 of this particular measure. Opportunity has been taken to recast the declaration in conformity with the Entry in List No. I. It is not altogether something new for us, for Government has taken this kind of step on previous occasions. A similar difficulty was felt with reference to certain inflammable substances which were being regulated before the Constitution came into force, under section 30 of the Petroleum Act. Parliament enacted a law called the Inflammable Substance Act (Act XX of 1952) declaring certain inflammable substances to be dangerously inflammable within the meaning of Entry 53 in List No. I, the Union List, making the Petroleum Act formally applicable thereto.

I would like to say a word on what has been done under this Act. Though in actual fact this Act is more than four years old, it has not been applied to any area until this year. On 1st March 1952, it was made applicable to

19 *tehsils* in the Punjab. Just a few days back it has been applied on the 16th November to four more *tehsils* in the Punjab. Uttar Pradesh had an Act of its own, but this Act has been made applicable to Uttar Pradesh on the 1st October 1952. On the 1st March 1952, again, his Act was made applicable to four places in Vindhya Pradesh, and on 7th April to two more places in Vindhya Pradesh, and on 17th May, to one place. It would therefore be evident to the House that the Act itself has been made applicable at the earliest date of March 1st, 1952, and what we seek to validate now is in respect of acts between 1st March and 8th May 1952 virtually.

A point might be raised by hon. Members that if the Act of 1948 was not valid then this particular industry would fall within the State List, and so the States are the persons to deal with the matter. But unfortunately the States cannot validate an Act of this nature, and naturally the Centre has to do it. If it is maintained that any great mischief has been done, I would at once like to assure the hon. Members that the mischief that has been done is next to nothing. It might be maintained by some hon. Members that this is something which is extraordinary, something against constitutional law and usage. Well, we will hear all those arguments, and I do not want to prejudge the issue at the moment. As I said, so far as the Central responsibility is concerned in this matter, it comes only on the 1st March, for progress has been made in regard to power alcohol industry in the various States. I think on previous occasions I had given by way of replies to questions tabled by the hon. Members of this House, details in regard to the production of power alcohol. If any Member should require it again, I should be prepared to give the information.

Mr. Chairman: Motion moved:

"That the Bill to amend the Indian Power Alcohol Act, 1948, be taken into consideration."

Shri N. C. Chatterjee (Hooghly): I would like to point out to you that the Bill as framed violates article 20 of the Constitution, which impose a constitutional limitation on the power of Parliament itself to pass *ex post facto* or retrospective criminal law. Our Constitution makers have deliberately followed the American Constitution which says that no *ex post facto* law shall be passed. And our Constitution says:

"No person shall be convicted of any offence except for violation of

a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence."

You will recall that the Suoreme Court of America in *Calder vs. Bull* has said that every law that makes action done before the passing of the law *ex post facto* punishable is illegal. Our Constitution makers have not used the words *ex post facto*, as in the American Constitution but it is even clearer. Therefore, although a sovereign Parliament or Legislature has power to enact both prospective as well as retrospective laws, this article has consciously set a limitation upon the law-making power of Parliament and said that no legislative authority in India can enact a criminal law *ex post facto*. The present clause 4 in the Bill violates, therefore, this article 20 of the Constitution, which although it does not use the expression *ex post facto*, still clearly enumerates the consequences that such criminal law will be void if it is intended to have any retrospective effect.

Now clause 4 of the present Bill reads:

"All acts of executive authority, proceedings and sentences which have been done, taken or passed with respect to, or on account of power alcohol during the period commencing on the 26th day of January 1950, and ending with the commencement of the Industries (Development and Regulation) Act, 1951 (LXV of 1951), by the Government or by any officer of the Government or by any other authority in the belief or purported belief that the acts, proceedings or sentences were being done, taken or passed under the Indian Power Alcohol Act, 1948, shall be as valid and operative as if they had been done, taken or passed in accordance with law. . . ."

I submit that this is a clear infringement of the mandatory provision of article 20 of the Constitution. It cannot be said that although a law was not valid on that date, still any sentence passed under that law will be treated as valid and operative as if that law had been passed validly at that time. This is clearly an infringement of the prohibition of retrospective criminal law being passed, and I ask the hon. Minister to seriously consider this aspect of the matter. I submit that clause 4 requires drastic alteration.

Shri T. T. Krishnamachari: I recognise that coming as it does from an authority of the eminence of the hon. Member who has just spoken, the point requires consideration. But I think the point has been raised at the wrong forum. The proper forum to raise this point is, after the Act is passed.....

Shri N. C. Chatterjee: No, Sir, this is the proper forum and time. I am asking Parliament and the hon. Minister not to pass a law which would be clearly repugnant to the Constitution.

Shri T. T. Krishnamachari: I humbly submit that I am only following the usages of this particular House as laid down by the hon. Speaker of the House. What my hon. friend has referred to deals only with regard to the provision of article 20 (1), that—

“No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act ...”

5 P.M.

That provision will apply only in regard to sentences passed, which are sought to be indemnified and validated under clause 4 of this Act. It will be perfectly open to my hon. friend after

this Bill is passed and made into law, should any person complain that he has been charged for violating a provision of the Power Alcohol Act 1948 and sentenced to imprisonment, to go to the court and get him released.

Shri N. C. Chatterjee: May I draw the attention of the hon. Minister to article 13 (2) of the Constitution?

“The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.”

You know, Sir, State is defined in this Part of the Constitution as meaning Parliament and the Legislatures. Therefore, it says: Parliament of India shall not make any law which takes away or abridges the Fundamental Rights.

Shri T. T. Krishnamachari rose—

Mr. Chairman: Order, order. It is already past five. The House will now stand adjourned.

The House then adjourned till a Quarter to Eleven of the Clock on Tuesday, the 25th November, 1952.