

## NOES

Barua, Shri Hem  
Chakravarty, Shrimati Renu  
Chandramani Kalo, Shri  
Dasgupta, Shri B.  
Deb, Shri P. G.  
Deo, Shri P. K.  
Dharmalingam, Shri  
Gaikwad, Shri B. K.  
Ghodesar, Shri Fatehsinh  
Ghosal, Shri  
Ghose, Shri Bimal  
Ghose, Shri S.  
Godsora, Shri S. C.  
Gopalan, Shri A. K.  
Gupta, Shri Sadhan  
Imam, Shri Mohamed

Jadhav, Shri  
Kamble, Shri B. C.  
Katti, Shri D.A.  
Krishnaswami, Dr.  
Kumarar, Shri  
Kunhan, Shri  
Mahanty, Shri  
Mansy, Shri  
Mazin, Shri  
Menoo, Shri Narayanankutty  
Mullick, Shri B. C.  
Nair, Shri Vasudevan  
Nayar, Shri V. P.  
Panigrahi, Shri  
Parmar, Shri K. U.  
Parvathi Krishnan, Shrimati

Patel, Shri P. R.  
Paril, Shri Nana  
Prodhan, Shri B. C.  
Rai, Shri Khushwaq  
Rao, Shri D. V.  
Rao, Shri T. B. Vittal  
Reddy, Shri Nagi  
Sampath, Shri E.V.K.  
Soren, Shri  
Sugandhi, Shri  
Supakar, Shri  
Thevar, Shri  
Vajpayee, Shri  
Valvi, Shri  
Verma, Shri Ramji

*The motion was adopted.*

### FOREIGN EXCHANGE REGULATION (AMENDMENT) BILL

**The Minister of Finance (Shri T. T. Krishnamachari):** I beg to move\*:

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

**Dr. Krishnaswami (Chingleput):** Let the House have order. Some hon. Members are leaving the House.

**Shri V. P. Nayar (Quilon):** The Minister is bringing Bill after Bill hour after hour.

**Mr. Speaker:** There is greater enthusiasm in the Opposition.

Soon after a Bill is passed, I should say 'Let the House be cleared', as I often say, 'Let the Lobbies be cleared', and then the hon. Minister in charge of the next item of business may start.

**Shri T. T. Krishnamachari:** The main purpose of the Bill is to place the Foreign Exchange Regulation Act on a permanent footing. As it stands at present, its life will expire on 31st December 1957. When the Foreign

Exchange Regulation Bill was first placed before the Legislative Assembly in 1946, the period for which it would remain in force was not specified. Government's intention was to make it permanent with a view to safeguard our balance of payments, but when the Bill went before the Select Committee, it took a more optimistic view, and thought that world trade and economic conditions would return to normal after the initial postwar period. The Committee, therefore, recommended that the duration of the Act be limited to five years with powers to Government to extend it for another three years. As the Act came into force on the 25th March 1947, it would have expired on the 24th March 1952. Government, however, came to Parliament which extended the Act till the 31st December, 1957. It will now expire on that date unless extended again.

I have, therefore, come before this House for an extension of the Act without time-limit. Our expectation that world trade and economic conditions would stabilise themselves after the initial postwar period has not been fulfilled. As the House is well aware, our foreign exchange situation is still

\*Moved with the recommendation of the President.

very difficult and we have been compelled to tighten our exchange control in various directions. If the trend of events in this and other countries is any guide, the shortage of foreign exchange is likely to continue *ad infinitum*. Our development programme under the Five Year Plan also compels us to husband our external resources properly. In these circumstances the continuance of the Foreign Exchange Regulation Act seems unavoidable, and it is, therefore, proposed to place it on a permanent footing by deleting the duration clause. This, as I have already pointed out, is the main purpose of the Bill.

I am taking this opportunity for certain other amendments which have been dictated by the experience gained in the working of the Act over a period of years. The most important of these amendments is the one providing for departmental inquiry and adjudication of Foreign Exchange offences by an authority constituted by Government on the lines of the Sea Customs Act. Experience has shown that successful prosecution of these offences is not possible in many cases. It is difficult, for instance, to get legal evidence in these cases which has to be obtained from countries outside India. It has also happened that complaints filed in court for certain offences have been leniently dealt with by an imposition of nominal fines. In these circumstances it appears advisable that contraventions of the major provisions of the Act should be allowed to be adjudged in the same manner as the Customs authorities have been doing under the Sea Customs Act.

13-11 hrs.

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

Under this latter Act various Customs Officers are empowered to impose penalties for certain offences specified in the Act. When it is the Customs Collector dealing with the offence, there is no limitation as to the penalty to be imposed, while for other sub-

ordinate officers the Act lays down certain limits up to which penalty can be imposed. But, from these officers an appeal goes to the Central Board of Revenue. There is no further appeal from the Board but the Central Government can reverse or modify the orders on an application from the aggrieved party. I wish to proceed on somewhat the same lines in regard to the offences coming under the Foreign Exchange Regulation Act. We have already a Director of Enforcement functioning to deal with cases arising out of these contraventions. He will now be empowered to adjudge some of the major offences and impose penalties, but he will not have unlimited powers as the Customs Collectors have under the Sea Customs Act. He will be able to levy a fine not exceeding three times the value of foreign exchange involved in the violation or Rs. 5000 whichever is more. He will also be empowered to refer any case to court instead of adjudicating himself, if during enquiry he is of opinion, that the penalty which he is empowered to impose, would not be adequate and a sentence of imprisonment is called for to have deterrent effect. In the cases dealt with by the adjudicating officer, in addition to the fines imposed, he can confiscate goods, currency, security, gold, or silver involved in the contravention. He can also order the repatriation of foreign holdings, if any. Such repatriation is essential as the whole object of exchange control is to conserve our external resources.

I do not propose to empower any other officer below the rank of Director to adjudicate, because the number of foreign exchange cases will not be as large as the customs cases, at any rate, that is our expectation. An appeal will lie from the Director's orders to an Appellate Board consisting of a Chairman and another member. There will be no further appeal from this Appellate Board. I feel that the imposition of penalties by the adjudicating authority in the manner indicated will prove to be more effective in checking foreign exchange

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offences than the present system of prosecution for all types of cases.

The next amendment to which I would like to draw the attention of the House is to the new Section 13(a) relating to the encashment of Government securities which are for the time being payable in Pakistan. In a number of cases in the past, Indians engaged in business in Pakistan have tried to transfer their funds in the shape of these securities with the intention of getting them cashed in India. These securities which are at present enfaced for payment in Pakistan are presented to the Reserve Bank for re-enforcement in India. This is no doubt a violation of the Foreign Exchange Regulation Act, and the person concerned can be prosecuted. But it is not open to the Reserve Bank to refuse re-enforcement of the securities for payment of interest in India once they are presented for such purpose.

I would like to make this position clear to the House by explaining in some detail the mechanism involved in such re-enforcement. In the text appearing on the face of these securities, it is stated that payment of interest etc. will be made at a particular Treasury in India, in most cases at Fort William, Calcutta. Sometimes the place of payment is changed temporarily on the request of the holder. The security is then re-enfaced for payment at a Treasury other than the one mentioned in the security. This is a concession. Re-enforcement for payment at a Treasury in Pakistan or any other country is also a concession; but it is the legal right of the holder to receive payment at the Treasury originally specified in the security. It is, therefore, not legally possible to refuse re-enforcement of the Government securities imported into India. The purpose of this amendment is to remove this lacuna and take legal powers to enable the Reserve Bank of India to refuse encashment of the securities. It is not the intention of this amendment to prevent every transfer of securities from

other countries to India. All that is intended is that such transfer will not be permitted except with the permission of the Reserve Bank. This permission will of course be given in cases which do not involve any violation of the Foreign Exchange Regulation. But the amendment will help Government to withhold permission in a case where large scale transfer of securities is deliberately intended to the prejudice of India's interests.

Another amendment to which I must also draw the attention of the House is the one prohibiting the transfer of shares or business interests by a non-resident to another non-resident. Under the present regulations no person resident in India can transfer his shares or business interests to a non-resident except with the permission of the Reserve Bank. There is no law to prevent the transfer taking place outside India between two non-residents. The amendment has been suggested with a view to prevent foreign shareholders in a company incorporated in India from transferring their interests to other foreign nationals resident outside India without our getting to know about it.

There are two other amendments concerned with the custody of documents seized as a result of a search warrant and the inspection of books of authorised dealers. At present the documents which are seized under the orders of a magistrate are kept in the custody of the magistrate. Sometimes it has happened that the seized documents have been returned to the party on application even before the scrutiny was completed. This creates difficulties in investigation. So, what is proposed now to be done is to allow custody of documents to the Enforcement Unit for a reasonable period of time not exceeding four months. This is exactly on the lines of the British Exchange Control Act. As far as the inspection of books of authorised dealers is concerned, at present the Reserve Bank or the Enforcement Authority has to take

recourse to Section 35 of the Banking Companies Act for such inspection, which causes delay and inconvenience. It is proposed to make a provision in the Foreign Exchange Regulation Act itself which would enable the Reserve Bank or the Enforcement Authority to carry out inspection without reference to the Banking Companies Act.

The other amendments in this Bill are comparatively minor. They are either drafting changes or intended to make certain definitions clearer. I do not think I should take the time of the House in explaining these minor matters. However, I have explained the main provisions of the Bill as clearly as possible, and I commend the motion to the House.

**Mr. Deputy-Speaker:** Motion moved:

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

There is a motion for circulation in the name of Shri Shree Narayan Das. I find he is not present in the House.

**Shri V. P. Nayar:** Mr. Deputy-Speaker, I submit that this Bill should not be considered merely on the wording of the various amendments. This, no doubt, is a very important measure, and it is essential in the context that we are in today in respect of foreign exchange, that we should assess the Bill and also the Act as it has worked all these 12 years from that context.

I submit, if you consider the amendments by themselves, possibly, what the hon. Minister said, that some are major and some are minor, is correct. But, when we consider the provisions of the Bill which is to be made permanent, we must also have a consideration in retrospect and find out what has been the result of this Bill.

I find that under the existing Act a number of rules have been laid down covering almost every conceivable aspect of regulating foreign exchange. For example, I have the Reserve Bank's Exchange Control

Manual running into 200 pages with all meticulous details. No doubt, it has to some extent exercised a little control. But I want to ask this question whether, despite such control, is it not a fact that the country has landed itself in a soup in respect of foreign exchange. It is not merely a question of having a control by making certain regulations in the book and adding on to it. It is really a question of policy. It is not merely a question whether a particular rule empowers the Government and the Reserve Bank to take cognizance of an offence or to deal with it in a proper manner; it is a question whether foreign exchange prices which we find today are the result of the working of this Act or due to a lacuna in it or whether they are attributable to question of policy. I do not want to dilate upon that because we have had a discussion on that, but I say that, with all the emphasis at my command, it is because the policy has gone wrong. It is not because of the lacuna merely in the existing regulations that the hon. Minister has to come forward and say now, as he has said in the Statement of Objects and Reasons, that "India still continues to be short of foreign exchange and it is necessary to ensure that our foreign exchange resources are conserved in the national interest".

If this were true, and if this was the state of affairs resulting from the working of this Act, I do not think almost the very same phrases, and the very same words, would have been used by the hon. Mr. Liaqat Ali Khan when he moved the original Bill for consideration. I find that my friend's Statement of Object and Reasons is very much alike to what I find during the discussion of the Bill in 1946 or 1947, when Mr. Liaqat Ali Khan moved the original Bill. I shall read only one sentence to show that, at that time, when moving the original Bill for consideration, the same words were used. This is what Mr. Liaqat Ali Khan said:

"Government have given very careful consideration to this matter and they have come to the

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conclusion that it is necessary in the interests of India, not only in the interests of India, but to ensure that the best use is made of our foreign exchange resources in implementing our programmes of industrialisation and development of the country".

I do not find any difference from that pronouncement, and for all these years, after that original Bill was passed, we find that this regulation is in force. What is the result? It was very definitely urged in the House at that time, when Mr. Liaquat Ali Khan moved his Bill, that there should be an overall emphasis on husbanding the foreign exchange resources of this country and directing it for certain uses which are essential. It was pointed out by eminent Members of the House then that for the foreign exchange which this country earns there should be an absolute control, and that we should indulge only in purchases of the most essential articles. I find a very good speech of Mr. Manu Subedar and incidentally it might be interesting to the House that Mr. Subedar referred to Mr. Ayyangar also—possibly it was our respected Speaker who was a Member of the House. Of course, the way in which it is referred to is very interesting. It appears that it was on account of certain articles the emphasis on which, as a consumer good, was stressed by Mr. Manu Subedar. In pressing his claims for control, he said—I shall just read one sentence because it is interesting, after twelve years—

"For example, the lip-sticks referred to by my hon. friend, Mr. Ayyangar, who keeps observing lip-sticks everywhere, would have to be checked".

Even in that context, in 1946 or 1947—

Mr. Deputy-Speaker: Does it apply now to the hon. Member?

Shri V. P. Nayar: Yes; — it does not apply to me. It applies to so many others.

Mr. Deputy-Speaker: He should not change his ground now.

Shri V. P. Nayar: I could not hear you. My object in saying this is only because of this: in his statement given in reply to the debate the other day, the hon. Minister of Commerce and Industry gave out some figures to show how we have been spending our foreign exchange. He quoted that in 1952 we had spent Rs. 360 crores only for consumer goods which includes, as you know, lip-sticks, hair-oils, dyes and what not. In 1953, it came down to Rs. 221 crores. In 1954, it was Rs. 211 crores. In 1955, it was Rs. 200 crores and in 1956, Rs. 193 crores. My submission is that during these five years, the years of the first Five Year Plan, despite the foreign exchange regulation and control, due to defective policy, we have been forced to import articles to the total worth of Rs. 1,185 crores as consumer goods, not an inconsiderable sum, at any rate, in the context of developing economy. Even as early as 1946, Mr. Liaquat Ali Khan said that,—when he brought forward such a measure—we have to conserve every effort in what we earn outside, while in the years to follow, we find that Rs. 1,185 crores are spent, as admitted by the Minister himself.

Now, I want the House to consider what the difficulties in foreign exchange regulations are due to. I am not going to give out the reasons, because they will be questioned and they will not be accepted. It is the Reserve Bank which makes an analysis of it. I want to emphasise that it is not merely a question of the rules and regulations which are to determine the exact nature of the foreign exchange, but it is a question of policy. The Reserve Bank, in its report in *Currency and Finance* at page 73, gave some reasons for the difficulties in the import situation. It says—I shall not read much of it because it will take a long time and I shall give only a summary of it—that one of the reasons is, an "unexpectedly high tempo of industrial activity and the

absence of adequate phasing of imports, and secondly, some under-estimation in the import content of the Plan, particularly, in regard to iron and steel, the larger import of foodgrains and the cumulative effect—mark these words, 'cumulative effect'—of successive liberalisation of import policy in the past".

So, we cannot contend now with the thought that the difficulties arise because the foreign exchange regulations did not work. I wish to come to that immediately. My point is that when we consider making a permanent statute like this, we must necessarily also consider whether it is a result of any lacuna in the existing legislation or whether it is not due to a defective policy. I hold that it is the latter and now I shall come to the present policy.

Now, I do not know what the Minister proposes to do. I do not have the machinery to know it. If the hon. Minister were to ask me, I am prepared to agree with the hon. Minister and take adequate steps, provided he gives me an indication or exact information as to what can be done. As it is, I submit it is not possible for me for the simple reason that I do not happen to be in the Government. I do not have anything to do with the exchange banks nor do I have anything to do with the Reserve Bank. We can only throw some suggestions from our experience and also request the Minister to consider them, whether by using his machinery, or using the machinery at his disposal and the machinery at the disposal of the Reserve Bank, and take into account what suggestions we give and then find out remedies.

When we are asked to approve this Bill, the hon. Minister says in his Statement of Objects and Reasons:

"The experience gained in the working of the Foreign Exchange Regulation Act has brought to light certain lacunae which hamper proper administration of the Act...."

We do not just know what these lacunae are. We do not, as a matter of fact, know how many cases of infringement of these regulations have been taken up. We do not know, and there is no indication at all from any of the publications we have received, as regards the *modus operandi* of evasion. But we know, as a matter of fact, that foreign exchange rules, however rigid they are, however strict they are, are being evaded by a set of very crafty people not by hook undoubtedly but by crook. How is it done? I can give him some suggestions. I have referred to this previously also, and the hon. Minister gave the reply, in the case of one company, where the person imported the goods at the price prevailing in London from where he imported them. When I asked question about it, the hon. Minister readily confessed his inability to know what was the price prevailing in London. He said that he had no machinery. I remember that very well and I also appreciate his inability. But, now, take the case of one company. I can give him the *modus operandi* and I am positive that many people are evading the provisions, however, strict they are, by resorting to that method. Just imagine a case of a firm having an office in Calcutta. I am not referring to the case of the firm of integrity and honesty to which my comrade Shri Sadhan Gupta, referred to the other day. I am referring to a very simple case. There is a firm A in Calcutta, having its head office in Calcutta and an office in London. A sends from Calcutta, to its branch in London, a certain commodity, say, jute—one of the commodities which normally go from Calcutta port. In making an invoice, it is open to them to have the invoice rate slightly below the market rate in Calcutta. They may even go to the extent of saying that if it is really the first quality jute which they are sending, they might enter in the invoice that it is "second quality jute", "slightly damaged" or "not quite good to be exported" or something like that. They may quote even £25. There is nothing in law

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which prevents them from invoicing to their branch at the rate of £ 20. Imagine that if they send 5,000 tons, their invoice is only at the rate of 20, while in London, through their office, where they sell, there is nothing, so far as I understand, to prevent them from selling at £25 and keeping the balance of £5 per every ton in a separate account.

Then you know, Sir, these merchants can use codes,—Bentley's code, etc. There are ever so many codes. Is there any machinery with the Reserve Bank to decypher these codes in order to find out the veracity of the invoices. Certainly not to my knowledge.

Take the other case. There is a firm in London with its head office there and branch in India. There are many firms like that. They send their articles to India. Supposing they send some chemicals. The market rate of that particular chemical in London need not be the rate at which the invoice is sent to India. In this way, if at London the price is £28, there is nothing in law which prevents that particular firm sending a consignment of the same chemical to India and quote it at £30. We know there are several cases. Many big firms according to my knowledge have been hauled up also. Somehow they escape as always they do. In sending goods to India they over-invoice. If the *modus operandi* in respect of a firm having an agency in London is to under-invoice the goods in order to take away more of our sterling, the firm with its head office in London and branch in India is to over-invoice it. This is happening every day.

Let me get an assurance from the hon. Minister that everything possible has been done and no such thing happens. I am sure that it is not possible for him. He has his limitation in this particular respect. So, I am pointing out only one instance to show that with all these rules and regulation, it is not possible to be as clever as those who want to evade these rules. They

have all the skills and tools at their disposal to evade, whatever be the strictness of a particular rule which Government wants to impose. The result is that whether it is in our import or in our export, we happen to lose very valuable foreign exchange. We have been losing it all these years and we are going to continue losing, unless some step is taken. I cannot suggest any, but I am prepared if the hon. the Finance Minister will condescend to accept my suggestion to sit with him and find out the ways and means.

Then, Sir, there is another difficulty. I want to refer how exchange transactions are made. Sir, it will be surprising to most of the Members here to know that the exchange rate of different currencies in terms of Indian rupee is not a matter of stipulation by the Reserve Bank. The Reserve Bank has all the powers of the rules. But the exchange rates are specified by the Association, the Exchange Banks' Association, whose President gives a declaration that the dollar today shall have such and such value in rupees or the pound has such and such value in rupees. And to my amazement, I understand that even in one particular city it might vary from customer to customer and from day to day. If today I want so many pounds I will be quoted a particular rate; if my hon. friend wants so many pounds, he will have a different rate. If tomorrow I happen to go to the same bank the rate may be different. I thought that it may not be quite true, but I have evidence that this is what is being done.

I want to refer to the *Reserve Bank Exchange Control Manual*—Page 2 of—the introduction—where I find—this observation:

"Section 4(2) of the Foreign Exchange Regulation Act, 1947, lays down that all transactions of foreign exchange shall be done at rates authorised by the Reserve Bank of India. The rates of exchange which the Reserve Bank

has been pleased to authorise in this behalf are those published by the Exchange Banks' Association at Calcutta."

Why is it that it is not possible for Government even at this very critical hour, to fix a rate? We know that the entire foreign exchange business is a business of speculation. Nobody can deny it. The exchange bank takes money from their overseas head office and at a time when we can afford to pay a little more interest, they take all the interest. Even in transactions from party to party, even in transactions with the same party on the same day, two rates prevail for a particular currency.

These foreign exchange banks are completely dominated by foreign interests. I understand from my hon. friend Shri Prabhat Kar that about 80 per cent of the exchange business is in the hands of foreign banks. I do not find anybody from the other side championing the cause of the Indian banks in this respect. Eighty per cent of the foreign exchange transactions are controlled by a group of foreign financiers who operate through their banks in India, and create variations in the exchange rates.

And what is worse is that Government have no control even in asking them to limit sending their profits. Is there any regulation by which Government can prevent the remittance of profits abroad? This is a very important question. It is no good saying as the hon. the Commerce and Industry Minister does. The other day the hon. Commerce Minister went to Madras and said that the foreign exchange crisis is really God-send. It is bound to increase our production. I ask humbly: could anything be more ridiculous than that? On the one hand at Madras a prominent Minister of Government says that there is nothing to fear about the foreign exchange crisis; on the other hand it is going to improve production in the country. Here only two or three days back the

hon. the Finance Minister despite his very heavy works in this session has to come forward and introduces this Bill, stating that there is a crisis in foreign exchange. This is not the way in which the foreign exchange situation has to be tackled.

I know the usefulness of these rules. I would ask the Finance Minister: has he made all enquiries. The other day, Mr. Deputy-Speaker, you will remember that at the border there was a case of smuggling currency. Some foreign diplomat who comes here manages to get Rs. 20 lakhs of Indian currency. How? Is it possible for a man to come all the way from Africa or America or Cuba and then land in India with a ton of our notes? Does it not suggest even to ordinary commonsense that there is somebody in India behind it? It is all common knowledge, Sir. My hon. friend was yesterday telling me that even without the Reserve Bank's permission one of his esteemed friends in the Cabinet had a trip to London these days.

It is not necessary. If I want to go to London, I go to a particular house No. in Calcutta, pay 20 per cent. more than the exchange rate, get a small chit from him and I can afford to live in any hotel in London or United States, because in that chit there is an indication that they have received so much money in the Calcutta office, therefore, sterling or dollar of equivalent value should be released from private accounts of that particular company either in London or Washington. I can give the hon. Minister an example, a very glaring example of what has already been published in the *Mysteries of Birla House*, that famous publication. I am prepared to give Government any power which they want to control foreign exchange to prevent the racket in foreign exchange and also to punish the guilty to the maximum extent. In fact, I want the fine to be Rs. 50,000 and the imprisonment to be for three years, not one year. But he should take us into confidence and say: "Look here, this is the actual position." Where



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is the lacuna? It is almost the same as we had. For twelve years we have been working. The foreign exchange position is not happy today. It is in a crisis and we suggest some changes. But without taking anyone into his confidence and saying that this is the way in which a particular rule has been offended, or evaded, and the manner in which it should be made tighter, he wants to amend the law. We want the law to be made tight so far as the firms operating in Bombay or Calcutta are concerned, who have evaded and taken advantage of a particular lacuna in a section and cheated Government to the tune of so many thousands of pounds and dollars. So, I submit in all earnestness that the hon. Finance Minister may be pleased to give us details so that we may put our heads together in a situation of crisis. It is not an ordinary crisis which we see today.

The hon. Finance Minister himself was obliged to say the other day that in view of this crisis, it may be that we will have to give the go-by to any national project, which does not strictly come within what you call the core of the Plan. When such is the crisis, Government ought to have taken us into greater confidence and should have told us that "this is the particular lacuna; we admit that the policy has been wrong; let us all sit together and evolve means by which there will be foolproof rules." I may tell the hon. Finance Minister that those who want to evade these rules are very very clever people; they are not ordinary fools. They can outwit even my esteemed friend, the Finance Minister. He has made the rules in a clever way, but they will be more clever in evading the rules. He knows how they can evade or avoid the rules

I submit, therefore, that the Government ought to change its attitude. No doubt certain amendments which are here are welcome. As I said, we will always support the Government and give the Government even blanket

powers, if it comes to a question of preventing the misuse of foreign exchange, which our country cannot afford in the present context. So, I submit that the hon. Finance Minister should take an overall view of the situation and think of ways and means by which such offences can be prevented, without any exception. He should make not merely these rules, but rules which should make it impossible for any crafty traitor or crook to evade them. I am using that word, because anybody who commits the slightest offence in foreign exchange is now to be named as a traitor to the country. He should be given no chance at all.

If my hon. friend is interested in having more money, here is an example. Take the case of tea. I do not want to tire the House with figures, because you have been ringing the bell twice, though I have a lot of material. For India tea is perhaps the largest foreign exchange earner. We send tea to London after the Calcutta auctions or the Cochin auctions. From London the tea is sent to the continental countries. I understand that a pound of tea in West Germany will cost not less than Rs. 10. The London trader sends it to the continental countries, from where it goes to Iran and Egypt. We do not have a direct deal with those countries. When the crisis is so acute, when the foreign exchange resources position is so tight, why is it not possible for the Government which has the State Trading Corporation today definitely for this purpose, of taking over the foreign trade wherever it impinges on the economic activities of the country to the country's detriment, to take over the tea trade.

We are supposed to have friendly relations with many countries and tea is not a commodity which is seasonal. Whether it is winter, spring, summer or autumn, people have to take tea. So, if the Government wants to have some resources by way of foreign exchange, we can mop up that profit or at least

we could have sold it to other countries at a lesser profit and increased the potential of trade. We know what has resulted from American consumption of tea, after we had the propaganda there. We can have such a propaganda in Europe and other countries. But the point is those people who control the estates here, who control 95 per cent. of the auctions either in Cochin or in Calcutta, and who again control the auctions in London happen to be almost the same interests. The same interests control the entire circulation and in that process, they take more and more of profits away from our country much to the serious detriment of our foreign exchange position. If the Government are serious in improving the foreign exchange position, we have many suggestions like this. But I wonder whether the hon. Minister will pay any attention to this at all, because it comes from our side. They have been forced to accept many things which we on this side said in 1953. I would request the hon. Minister to consider this fact also, that, when he tries to have a set of fool-proof rules, he should also try to assess the situation from the year in which this Act was originally passed.

**Pandit Thakur Das Bhargava** (Hisar): I have heard with great interest my hon. friend who preceded me. He has given many examples of the manner in which this Act is contravened. Unfortunately I am not familiar with any of those matters which he has referred to. But I want to submit to the House that this is a matter of an absolutely different character. I was present in the House when the original Bill was passed and I have studied the Foreign Exchange Regulation Act. I have also seen the relevant provisions of the Sea Customs Act as also the Bill before us.

It has been stated in the Statement of Objects and Reasons as follows:

"The experience gained in the working of the Foreign Exchange Regulation Act has brought to

light certain lacunae which hamper proper administration of the Act and the investigations and the legal proceedings thereunder. This opportunity is, therefore, being taken to carry out certain other amendments in the Act with a view to remove these defects. The most important of these amendments is the one providing for departmental inquiry and adjudication of foreign exchange offences by an authority constituted by Government on the lines of the Sea Customs Act."

I propose to examine this question of the new authorities being constituted and compare them with what they are in the Sea Customs Act and how they are different in this Act, because as was complained by Mr. Nayar, I have also got this complaint that for the last ten years this Act has been in operation and we have not been told in how many cases these rules were contravened, how the authorities constituted under this Act worked and what has happened to justify the change in the entire structure of the authorities of investigation as well as the trying authorities.

My humble submission is—and I find this in many Acts brought before this House—that there is a tendency that the ordinary courts of this land are not allowed to work in the ordinary manner. So far as I understand, it is the essence of democracy that the courts in a country should decide the fate of all the matters relating to the rights, transactions and matters relating to the acts of the inhabitants of that country. In that matter also, special courts and special laws are generally taboo. The essence of democracy is that the law of the land should prevail in every matter, the ordinary courts in the country should function, unless there be special circumstances relating to any special matter. In all other cases, the ordinary courts in the country should have the power to decide all such matters.

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I find that so far as the offences under the Foreign Exchange Regulation Act are concerned whatever may be the complexity of the situation and the operations of those who control this law, so far as the courts are concerned, only very simple questions come before the courts. Kindly see sections 4, 5, 9 and 12 which are specially referred to in this amendment of section 23. They deal with very simple matters. Section 4 deals with the question of buying, selling, borrowing etc. The offence under section 4 is very simple, whether a person has bought or borrowed or exchanged or sold, etc. Section 5 only deals with payments outside the country and inside the country; nothing else. There is nothing technical about it, nothing very difficult or complicated about it. It is a very simple question which the courts are called upon to adjudicate.

Similarly, if you see section 9, it deals with acquisition by Central Government of foreign exchange. Any person who owns foreign exchange can be asked to sell it to the Government under section 9. Section 12 also relates to payment and it does not deal with any complicated cases. But still we find that, in regard to offences of contravention in these four cases, section 23 is going to be changed.

The new section 23D reads as follows:

"(1) For the purpose of adjudging under clause (a) of sub-section (1) of section 23, whether any person has committed a contravention, the Director of Enforcement shall hold an inquiry in the prescribed manner after giving that person a reasonable opportunity of being heard and if, on such inquiry, he is satisfied that the person has committed the contravention, he may impose such penalty as he thinks fit in accordance with the provisions of the said section 23;"

My humble submission is this. How we understand the general law in this land is, there is an agency called the police—call it by any name—which is charged with the duty of collection of evidence and sundry other matters. After they have gone through that process, they bring the case before the court. It is the court which adjudges the guilt of any person. This gentleman, the new officer Director of Enforcement is to adjudge here the guilt and not to collect evidence only. I call him new officer because he is nowhere else mentioned in the Act. I am not supposed to know what is not given in this Act. I do not know about any of the transactions here. It is said that this new officer, after an inquiry, would adjudicate on the guilt of a person and go so far as to punish him. This is mentioned in the section itself. It is said:

"(1) If any person contravenes the provisions of section 4, section 5, section 9 or sub-section (2) of section 12 or of any rule, direction or order made thereunder, he shall—

(a) be liable to such penalty not exceeding three times the value of the foreign exchange in respect of which the contravention has taken place, or five thousand rupees whichever is more, as may be adjudged by the Director of Enforcement in the manner hereinafter provided or

(b) upon conviction by a Court, be punishable with imprisonment for a term which may extend to two years, or with fine, or with both."

That is the alternative. If the Director of Enforcement punishes a person with a penalty of Rs. 5000, he shall be free from the consequence of his acts. The courts come into play in the alternative course. The case will be brought to the Court if the Director wants it. Otherwise, he can decide it. This means, any offence may be

committed and the Executive officer may decide the case provided the accused is able to pay Rs. 5000. This is commercialising crimes. I have found it in many other places. What happens under the Income-tax Act? The power to compound is given to certain officers. When we were discussing the Expenditure Tax Bill when it was sent to the Select Committee, I brought it to the notice of the hon. Finance Minister that, as a matter of fact, as long as we do not make imprisonment compulsory in cases of this nature when the Income-tax Act is contravened, you will never succeed in punishing crime. I find everywhere this tendency. If money could be got out of the accused, by some officer, well and good. He is let off. This kind of administering the laws is not the way of punishing people. You will never succeed if you go on like this. This is a device to mulct the people with money and let them off. He may get Rs. 5,000 and the matter may not be brought to court.

This is not all. There is a curious provision which is sought to be put in here on the alleged basis of Sea Customs Act. Section 23 F runs thus:

"If any person fails to pay the penalty imposed by the Director of Enforcement or the Appellate Board or fails to comply with any of their directions or orders, he shall, on conviction before a Court, be punishable with imprisonment for a term which may extend to two years or with fine, or with both."

This is unprecedented, unheard of. You make it a crime. The man does not pay the fine. You then place him before the court. This non-payment of fine is made an offence. He can be sentenced to two years for this new fangled offence. Then there is a special Board of appeal. We are fed up with Special courts. We do not want Special courts in this country. We want the ordinary courts to do this

work unhampered, unimpeded. Section 23E says:

"(1) The Central Government may, by notification in the Official Gazette, constitute an Appellate Board to be called the Foreign Exchange Regulation Appellate Board consisting of a Chairman and another member to be appointed by the Central Government for hearing appeals against the orders of the Director of Enforcement made under section 23."

There will be two kinds of courts: the ordinary courts before which these cases will be taken, the appellate court, the Sessions Court, High Court, etc., and the Director of Enforcement and Special Appellate Board before which appeals from the Orders of the Director of Enforcement will be heard. If either the Director of Enforcement or the Special Court give an order and that order is not complied with by the person against whom the order is made, he will have to be put up again before the court and convicted for two years, because he has not complied with the orders. This is unheard of. Even under the Sea Customs Act, what happens is this. This provision is alleged to have been taken from the Sea Customs Act. Section 193 of the Sea Customs Act says:

"When a penalty or increased rate of duty is adjudged against any person under this Act by any officer of Customs, such officer, if such penalty or increased rate be not paid, may levy the same by sale of any goods of the said person which may be in his charge or in the charge of any other officer of Customs.

"When any officer of Customs who has adjudged a penalty or increased rate of duty against any person under this Act is unable to realise the unpaid amount thereof from such goods, such officer may notify in writing to any Magistrate within the local limits of whose

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jurisdiction such person or any goods belonging to him may be, the name and residence of the said person and the amount of penalty or increased rate of duty unrecovered; and such Magistrate shall thereupon proceed to enforce payment of the said amount in like manner as if such penalty or increased rate has been a fine inflicted by himself."

I can understand this. Under the Criminal Procedure Code, in the law of the land, a machinery has been provided by which every criminal court realises fines. That machinery ought to be enough. When a person has been fined in any manner, the machinery is provided there and that machinery is fairly effective. To give him another two years' imprisonment because he does not pay the penalty is rather too much. I do not think it is justified by any rule of jurisprudence.

Let us see what are the crimes under the Sea Customs Act, and what are the crimes under this Act. As you know, under the Sea Customs Act, in section 167 a very large number of offences are described which are things of a technical nature and which from time immemorial have been treated as such, which deal with matters on the sea and all that. If you go through the section, you will find that they are certainly of a technical nature. As such, if an Executive officer decides them, he will do it in a manner which will be expeditious and at the same time, he will do the right justice. None of the matters which are mentioned in this Act are of this nature at all. For the last ten years, they have been decided by the courts. Unless my hon. friend makes out a case that these courts have failed and they are of such a nature that full justice has not been done, the House should be loath to have a special court and a special appellate court or a special Officer. You add to the number of officers of whom we have got too many

nowadays. We find that the cost of administration is rising. Another court like the Director of Enforcement is quite unnecessary.

Apart from that, I do not know if this Act has worked well. It was for the hon. Minister to bring to the notice of the House in what manner the courts have failed, and why he wants this to be done. The Sea Customs Act authorises certain of its officers to decide matters. The Collector or the Executive officer becomes the judge in his own case. These are the basic difficulties in my way. I for one have been brought up in traditions in which it is laid down that no person shall be a judge in his own case. Therefore, the police officer is not allowed to be the judge and the matter goes to the court. Even supposing a court is in charge of excise duty department etc., the rulings are that the officer has got a personal interest in the case and the matter is not taken before him. We must have a court which has absolutely got no interest in the matter, departmental or otherwise. If officers whose duty is to detect offences become judges there is an end of justice. Therefore, my humble submission is that unless by tradition or by long practice such a course is established, we cannot devise it in a day and say that in all future Acts and laws that we make here the person who adjudges the guilt is the officer himself

14 hrs.

As a matter of fact, there are so many checks and so many safeguards given in the Sea Customs Act and none of them we find here in this Bill. If you see section 182 you will be pleased to see that it practically provides what cases are to be decided and to what extent these powers are given. It reads:

"In every case, except the cases mentioned in section 167, Nos. 26, 72, and 74 to 76, both inclusive, in which, under this Act, anything is liable to confiscation or to increased rates of duty or to any penalty."

In section 167 a large number of offences are given. These are incidents of certain offences only. Then what happens?

"...such confiscation, increased rate of duty or penalty may be adjudged—

(a) without limit, by a Deputy Commissioner or Deputy Collector of Customs, or a Customs-collector;"

The words are "without limit". Then it reads:

"(b) up to confiscation of goods not exceeding two hundred and fifty rupees in value, and imposition of penalty or increased duty, not exceeding one hundred rupees, by an Assistant Commissioner or Assistant Collector of Customs;

(c) up to confiscation of goods not exceeding fifty rupees in value, and imposition of penalty or increased duty not exceeding ten rupees, by such other subordinate officers of Customs as the Chief Customs authority may, from time to time, empower in that behalf in virtue of their office."

That is not all. Even if the officer decides a matter like this. Then there are so many safeguards. Section 190 says:

"If upon consideration of the circumstances under which any penalty, increased rate of duty or confiscation has been adjudged under this Act by an officer of Customs, the Chief Customs-authority is of opinion that such penalty, increased rate or confiscation ought to be remitted in whole or in part, or commuted, such authority may remit the same or any portion thereof, or may, with the consent of the owner of any goods ordered to be confiscated, commute the order of confiscation to a penalty not exceeding the value of such goods."

This is a very simple provision. This is not in the nature of adjudging guilt and fining a person Rs. 5,000/- First of all an appeal is provided against the order under Section 158. Then Section 190 provides a curb. The next curb is under 190A which reads:

"(1) The Chief Customs-authority may of its own motion or otherwise call for and examine the record of any proceedings in which an officer of Customs has passed any decision or order under this Act for the purpose of satisfying itself as to the legality or propriety of any such decision or order and may pass such order thereon as it thinks fit;"

This is the revisional power. There is the appellate power. That is not all. Again, there is section 191, which reads:

"The Central Government may, on the application of any person aggrieved by any decision or order, passed under this Act by any officer of Customs or Chief Customs authority, and from which no appeal lies, reverse or modify such decision or order."

Therefore, I am submitting that very restricted powers are given under the Sea Customs Act to particular officers only and then the amount is restricted so far as confiscation etc. are concerned. Then there is appeal, revision and over revision, I should say. If it comes to the notice of any of those authorities, it can be rectified.

But here, under sections 4, 5 and 9 the director of enforcement can straightway fine Rs. 5,000/-. Therefore, my humble submission to the Finance Minister is that unless this Bill has failed to be effective and useful, or has not delivered the goods, as it was expected to do, and has not served any purpose then alone he can think of change. I am against the constitution of special tribunals when the ordinary courts are acquitting their work well. So, I am very much loath to give new powers to new kinds of officers and new kinds of courts. And the analogy that has

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been given in respect of the Sea Customs Act, I am sorry to say, is not applicable. The Sea Customs Act, as I pointed out, has been in the Statute Book for a very long time. I think that Act was passed in 1878. From that time, it is there. So, there is absolutely no comparison between the two. In the end, I would beg of the Finance Minister to reconsider section 23(f) which, to my mind, is very sweeping in its nature. Under this section, if a person who is fined does not pay the fine, he is brought before the court and is liable to be sent to jail for 2 years.

Shri Hajarnavis (Bhandara): Mr. Deputy-Speaker, I will confine my remarks to the main objection, which has been raised against the amendments by my hon. friend, Pandit Thakur Das Bhargava. The proposed amendments have incurred his wrath because a special procedure for trial before a special tribunal is being devised and the executive officer is now being armed with authority to impose a very large fine. He thinks that there is no justification for such a procedure. He thinks that the procedure under the Sea Customs Act is inapplicable and he is of opinion that this being an offence, ought to come before the ordinary courts to be tried in accordance with the ordinary procedure. I believe his objection is based upon what is called the Rule of Law.

But my hon. friend knows that much water has flown under the bridge since Professor Dicey lectured at Oxford some time after 1880 and even Dicey himself, sometime in 1912, partially recanted his earlier observations. The sole question is how the foreign exchange is to be successfully regulated. For this purpose, Government is entitled to arm themselves by certain powers by which fines will be imposed in order to deter people from committing breaches against the law. For this purpose, we might address ourselves to this question: are the ordinary courts, where the procedure is governed by the Criminal Procedure

Code, the best courts and is the procedure of the ordinary courts the appropriate procedure or, as Mr. Thakur Das Bhargava himself pointed out, the procedure which has been followed for a very long time under the Sea Customs Act the appropriate procedure? Here we might remember that we are not dealing with crimes which involve any moral turpitude. This becomes an offence because the law prohibits the commission of this act, in the sense, that though these transactions were perfectly legal transactions, normal trade transactions, in view of the economic relations of our country at this stage, law prohibits them. The law places certain restrictions upon what may be called perfectly legal normal trade relations in view of the economic circumstances in which this country finds itself. This is merely a case of *malum prohibitum*. This is not an act which in itself is a crime. Here the act that is being prohibited is being prohibited in the interest of revenue. Therefore, to these types of cases which deal merely with offences that are acts which are prohibited for the purpose of regulating the trade relations or for collecting revenue, we cannot apply the principles of criminal jurisprudence. In all the Acts, the taxing officers themselves are given power of imposing penalty which may be as large as or larger than the amount of tax itself.

Now, such a provision has not been so far attacked anywhere as contravening any of the principles on which criminal jurisprudence is founded. For instance, the Income-tax Act says that an income-tax officer may impose a penalty which may be 1½ times the tax itself.

So far as the Sea Customs Act itself is concerned, my hon. friend Pandit Thakur Das Bhargava probably knows that the matter went to the Privy Council in the Mask Company's case where they upheld the procedure which was being followed and the orders which were being passed under

the Sea Customs Act. Not only that. The Privy Council went further and said that these orders which were made by the officers were immune from any collateral challenge in the civil courts.

In the Supreme Court,—I am only quoting from memory—the Sea Customs Act was the subject of a decision by it, and probably the objection that was raised was exactly along the lines mentioned by Pandit Thakur Das Bhargava today. The Supreme Court in its judgement overruled these objections and said that though the words "offence" and "punishment" may have been used, these are not really offences, these are not punishments, but these are breaches of the regulatory enactment. The executive Government which is enforcing the regulations surely always has the power to overlook the breaches provided money compensation is paid. There is nothing wrong in it, and therefore, I submit that in bringing forward this Bill, the Government have not in any way transgressed any of the principles of jurisprudence.

So far as the proposed section 23F is concerned, it is absolutely necessary. If you take it out, where is the enforcement, where is the machinery, where is the sanction for enforcing any penalty which has been imposed by the Director of Enforcement? Pandit Thakur Das Bhargava will remember that there is a section—I am quoting again from memory—probably 24 of the General Clauses Act which says that wherever a fine has been imposed, the provisions of section 63 onwards of the Penal Code become applicable, and that it may be recovered in the same manner as if it was a penalty imposed by the Penal Code. In the absence of such a provision in this Act, a provision like 23F was absolutely necessary.

Therefore, I suggest that both these objections are not substantial and Government may proceed with this Bill.

**Shri P. E. Patel (Mehsana):** This Act was to expire on the 31st December, 1957 and so the amendment was

necessary. However, there are other amendments. I fail to understand why these amendments were not brought during the last ten years. The Act was passed in 1947 and then it was implemented and after ten years the Government is coming before us saying that there are loopholes and lacunae and so the amendments are necessary. However, I am happy that the Government, at least after ten years, is coming forward to cure the lacunae and loopholes.

My submission is that the Government should be very vigilant so far as the foreign exchange position is concerned. We are importing several goods which are not necessary for the country. I know so many things that are being imported. We must import only such goods without which we cannot do for our industries which will encourage other industries, but we are importing other things and so we are losing our foreign exchange. I would submit that the amendment will not help the country in any way. It is only proper administration that will help the country, and if Government is vigilant, I am sure we can have more foreign exchange and pass through the critical position we are in.

So far as the punishments are concerned, I am of the opinion that the persons who play with our foreign exchange are the first enemies of the country as our present difficulties are because of foreign exchange and our merchant community, in order to pocket some money for themselves, are playing with our exchange. When any such case is found, I think they should be punished sufficiently and well.

However, I take strong objection to the proposed section 23F which says:

"If any person fails to pay the penalty imposed by the Director of Enforcement... he shall... be punishable with imprisonment for a term which may extend to two years, or with fine, or with both."

Failure may be due to so many reasons. A man may not be able to pay the money; he may not be in a position to pay the money. Should we punish him for that? If a rich or well-



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to-do man does not pay, that is a different question, but we find that in business circles, a man may be worth crores today and tomorrow he may be poor and because of his poverty he may not be able to pay. Should he be sent to jail? I think this provision is not desirable.

Another objectionable thing is that if a man fails to comply with any of the directions or orders, then also he may be imprisoned for a period of two years. Should all directions and orders, whether legal or illegal, be followed? Whatever be the directions, should a man follow them? After all, the direction may be against the law. There is nothing in this section which says that a man is bound to follow only the legal directions or legal orders. It is a very general term, and any direction or any order to be followed means dictatorship. The dictator is there and his direction or order if not followed, the man has to go to jail. I think this is too much, and this provision is not necessary in law. It does not bring credit to our democracy.

Then I find that there is another tendency. I do not know why we are losing trust in our judiciary and wherever possible we try to, avoid our judiciary and have special courts, special tribunals and special things. This is not a good sign. This tendency may in the end harm our democracy. I think in a democracy the judiciary should be very strong and powerful, and wherever there is a dispute between the subjects and the Government, the judiciary should be the proper authority to decide the matter, and not a tribunal. So, I strongly object to these things in the amendments.

We have reached this critical position in regard to our foreign exchange because of so many reasons, among which food is an important one. Because we have to import food we are in this critical position and so we want to make some amendments in this law. Otherwise, if we are able to produce food that is sufficient for the country and if we are able to export

something outside, our exchange position would be better than what it is today. So, along with this, I think the Government should consider the question of improving production in food. It cannot be done by the Mehta Committee or by an enquiry regarding the prices. The Government should look to the obstacles coming in the way of more production, and remove them. Then we can be in a very sound position in regard to foreign exchange.

My last submission is about imports. I see in the market so many things without which the country will not die, and I am told by my friends that imports have been increased because of some persons who had some influence in the administration, and the persons in the administration wanted that these persons should make money by these imports. My submission is that the Government should be very careful. I think there is a section in the company law, and there is a long list of relatives of directors. So a long list of the relatives of Ministers and high officers in the State should be maintained, and when an import licence is asked for by any such relatives, some special inquiry should be held. Unless we do that, I think our position will not be improved.

Shri Jhunjunwala (Bhagalpur): Most of the points have already been made.

Mr. Deputy-Speaker: Therefore, he will be very brief.

Shri Jhunjunwala: I shall be very brief, unless you interrupt me.

Mr. Deputy-Speaker: I will only interrupt to stop the hon. Member.

Shri Jhunjunwala: The difficulty we have is that the Government comes forward with a Bill without stating any reason for doing so, except saying that there has been a lacuna and due to that the exchange position has got worsened, and therefore it should be rectified, by putting special provisions, which according to my hon. friend, Pandit Thakur Das Bhargava, may not be necessary and are not necessary and might entail more expenditure.

As such, I would like the Finance Minister to let us know how due to this lacuna the position has got worsened and in how many cases we have lost foreign exchange and to what extent.

Shri V. P. Nayar gave two instances which were also in my mind, namely, of over-valuing and under-valuing the invoices. I have gone through this Bill not very thoroughly, but I do not see how that lacuna is going to be filled, how he will get over the practice of over-valuing and under-valuing.

As I said in the very beginning, I have nothing much to say. But the Finance Minister should enlighten us as to what has happened in the past due to the lacuna so that we may be in a position to know. Whenever the Government brings in a measure providing for deterrent punishment, it does not fall on the real culprit but it falls on—I do not call them innocent—those people who might be doing something unconsciously. They are the people who are punished.

So I would like the Finance Minister to give us the grounds and cite the instances in the past on account of which the foreign exchange position has been affected due to this lacuna and how he is going to remove them, particularly the instances of over-valuing and under-valuing.

Shri Supakar (Sambalpur): Most of the points I wanted to make have been made out by the hon. Member for Hissar. Some points against his contention were made by another hon. Member, to which I wanted to reply in very brief terms.

So far as the Director of Enforcement is concerned, he cannot be compared to an administrative tribunal. He is, as a matter of fact, the officer who conducts the investigation and prosecution and gives judgment so far as the provision in section 23 of the principal Act, covered by clause 16 of the Bill, is concerned. Therefore, the analogy is not apt. We have reason to apprehend that justice will not be properly meted out if such large power is given to the Director of Enforcement. The provision in section 23

of the original Act is quite adequate and there is no justification whatsoever for amending it. Unless Government is able to convince us that there has been a large amount of evasion and offence, there is no reason why this should be done. If the hon. Minister says that there has been evasion on a large scale, I fail to understand how one officer, the Director of Enforcement, will be able to dispose of so many cases promptly and do justice in time. That is what intrigues me.

So far as the justification for extension of the Act for an indefinite period is concerned, I submit that it would have been better if it were extended for a further period of five years. A few days ago the Minister told us that our foreign exchange position was likely to improve by 1959 and we might turn the corner as days went by and within a year or two the foreign exchange difficulties might not be so acute as they were today. This foreign exchange difficulty is there for a very long time. It is not so much the evasion and offences by evaders that are responsible for our difficulties and depletion of foreign exchange as the failure of government policy in this regard. I think unless Government reorientates its policy in this matter, our position may not improve, in spite of stricter control in the matter of foreign exchange.

I would submit that the best course for Government is to divert the course of our commerce and have greater commercial relationship with those countries with which these foreign exchange difficulties are not likely to be acute. That may solve the problem to a greater extent than by other means. Therefore, may I submit, with due respect, that the Government instead of looking west, may look in the direction of east, south and other directions and try to develop our commerce with those countries with which our commerce is undeveloped?

Shri T. T. Krishnamachari: I am very sorry that I had not given a little more thought in regard to supplying background material to hon. Members in regard to this Bill. One point every hon. Member seems to have missed is

[Shri T. T. Krishnamachari]

that this is not a new measure. I think Shri Jhunjhunwala asked, why should this measure be brought before the House without even a justification. The main reason is, if I did not bring this measure before the House and if the House did not pass it, then on the 31st December, 1957, we shall not have any foreign exchange control regulation in operation in this country.

That is a point which is the primary provocation for my bringing this measure before this House.

The second point which I mentioned was the somewhat unsatisfactory nature of its working, because up to 1952 even the question of gold smuggling was being handled by the Reserve Bank, and thereafter the question of offences against Foreign Exchange Regulation was being largely handled by the Reserve Bank. The Reserve Bank itself felt that it is not possible for them to continue to handle this, and therefore we have opened a section in the Economic Affairs Department with a Director to deal with this particular matter whom we call the Director of Enforcement. That is the background about the administration.

Hon. Mehmers asked why, what is the difficulty that we have, how many prosecutions have we launched, how many ended in convictions and in how many cases action could not be taken. There is one point of view, namely, that where we knew the difficulty in meeting these cases, where the facts, normally facts of executive direction were clear enough, we had even people to agree that they had made a breach. But, so far as the prosecutions launched are concerned, 66 were launched, 60 ended in convictions with a varied fine from Rs. 100 to Rs. 25,000.

Shri Supakar: Is that the figure for one year?

Shri T. T. Krishnamachari: I am speaking of the entire period.

Shri V. P. Nayar: What was the total amount involved, can we have an idea?

Shri T. T. Krishnamachari: I am afraid I have not got that figure. The point is, it is rather difficult to give the total amount involved, because the amounts involved might be considerable but what we get to know and of which we can have even a modicum of proof happens to be a small amount. Oftentimes prosecutions have been launched, where prosecutions need not have been launched, they were of trivial nature, and where prosecutions could be launched and pushed through we find that there is no evidence. It is not quite so easy, as my friend Pandit Thakur Das Bhargava mentioned, for us to prove cases. I can tell you an instance where for a very severe offence the court gave a simple imprisonment punishment. We appealed against the court's sentence, but the court felt that there was no case for it. The offence was of an extremely severe nature. How the court will act is what we do not know. 140 cases which came up before us were not taken to court, because we were advised that proofs were not such as could be taken to court where they could be dealt with.

So—I will re-state the position again—I have to come before this House in order to keep the Act alive, and that is my main provocation. The second thing is that the administration itself has changed its character. Originally, up to 1952 the Reserve Bank dealt with all cases including gold smuggling. Later on they gave it up and said that they will only deal with cases in regard to Foreign Exchange offences. From April 1949 till last year, April 1956 they were handling it. Now, we had to take it over because the Reserve Bank felt it is not possible for them to carry on.

In actual operation we find that it is very difficult to operate unless certain powers are given to this Director of Enforcement, whom we have appointed. It is only a question of nomenclature. My friend Pandit Thakur Das Bhargava said that he does not want to have the name: Director of Enforcement. We can have some other name. I have no objection in accepting

an amendment to that effect. Call him a Controller or some other name. That is what has happened.

The second point, and that is why we have taken over this responsibility, is that we have to get into the matter and see how it works. We found, naturally, that the procedure, the precedent of the Sea-Customs Act did provide us a method by which we could operate this.

So far as the basic issue is concerned, whether these matters which are quasi-judicial should be dealt with by executive bodies or not, is a matter which should be considered. I myself am of the view that there must be judicially minded and judicially experienced persons to deal with this matter, but who could, at any rate, deal with cases summarily. My hon. colleague the Law Minister and I have been discussing about this question, the present set up of administrative tribunals and how they can be improved upon with a larger injection into the element that is now functioning of judicial talents. That, perhaps, will mean some circumscribing of the past course, and that might provoke a certain amount of opposition, because I have already seen leading articles about this particular matter. That is a matter which we may have to consider afresh, and not in this narrow aspect of foreign exchange control but over the wide sphere of governmental activity where we find that people are a sort of evading the law and sometimes summary justice has to be dealt with.

My hon. friend said that he believed in imprisonment where there has been an evasion of income tax. I am glad he does. I think we should be in a position to make some kind of alterations in the present sections of the Income Tax Act, sections 37 and 38 even, to see that a person could give a statement on oath which would normally be accepted, and if he gives a false statement he will attract penalty under the law. It might be possible for us, probably after a year or two, to put the entire matter before the House and

get judicially minded people to deal with this matter.

I am not perfectly satisfied with the way in which the penalty provisions are being dealt with under the Sea Customs Act I think we should have somebody more competent to deal with them than what we have at the present moment. But that does not mean that my hon. friend is quite right in taking a purely, shall I say, lawyer's point of view of the Sea Customs Act, taking certain provisions and saying that these provisions do not fit in.

I think, by and large, in general the Sea Customs Act and this particular measure have a large amount of relationship. Section 182 of the Sea Customs Act, which he mentioned, is certainly relevant, and that is the basic similarity between the two measures. Then there is section 191 which says: "If the Central Government could exercise powers of review..." We have those powers here. We have created an Appellate Tribunal for that purpose. Then he goes on to say that hon. Members should go into the provisions, various details of offences which are categorised under section 167. I would like to sit down with the hon. Member and I would be able to point out similarities between the type of offences contemplated under section 167 of the Sea Customs Act and also the type of offences contemplated here. Maybe, in some cases this is less heinous than what is being done in the Sea Customs Act.

But the point that my hon. friend forgets is—and sometimes it is quite possible for us to forget it when we think of a particular thing as being right—that under the Sea Customs Act normally in 99 cases out of 100 you have goods which you can seize and, at any rate, that provides enough cause. Confiscation itself is enough deterrent, and then there is a penalty possible in the case of a person who has some stake. Naturally, if he has no stake then if you refer the matter to court what would happen is that it probably ends in a term of imprisonment, which means nothing.

[Shri T. T. Krishnamachari]

In fact, the provision which we have got here—23(f)—to which he objected is the very thing that will help us to deal with the categories of persons enumerated by my hon. friend opposite, Shri V. P. Nayar. If 23(f) is not there the big fish would not mind it and I am not interested in small fish. In fact, the reason why I have suggested that the Director of Enforcement can deal with many of these matters is, if supposing somebody had borrowed £10 when he goes abroad from some friend who had money with him both the people have committed an offence, and in a case like this I think a very nominal fine is enough. The intention to defraud is not there, it is merely a matter of convenience. When I go abroad I, probably, have little money and if I get ill and some of my friend—if he is in London and he gives money there is no harm—from my party, who has saved a little money from his allowance, spends some money on me, technically both of us have committed a breach. That kind of technical offences which would normally come to light, and we know them, would perhaps be dealt with a very minor fine. And it would act as a deterrent even in regard to technical offences which could not be dealt with now merely because you say you have got to go to the court of law and we cannot deal with it administratively. That is one category, the category of big offenders; provided we are able to get at them and we get a certain amount of proof, it will not certainly stand the test of assaults by eminent lawyers like Pandit Thakur Das Bhargava. The point is we have put in the provision in section 23F. If that happens, if there is a *prima facie* enquiry and the Director of Enforcement feels that heavier punishment is needed or if they recommend that he may not take the decision, he can refer the matter to the court and let it take a chance.

But there is also this aspect. If the case is referred to, because the Director of Enforcement feels it is a serious one—there is a *prima facie* examination of the case—I do think, as a link

in a particular type of quasi-judicial process, that my hon. friend may perhaps commend what we have attempted to do rather than condemn it. And section 23F is a vehicle. You give a charter to the big fish to do as they like. When we go to the court, we find that this is a matter where there has been a flagrant violation of the normal rules and regulations, and therefore, it merits some severe punishment or, if the man is prepared to defraud and he transfers his property, we cannot get anything out of it. I think section 23F is a section of that nature and sections of that nature are necessary.

There was another point which, to my mind, is very important and about which I do not like to lay much stress upon, however, and perhaps that is one of the reasons why I wanted the House to consider it this session and not consider it next session which would have been adequate for my purpose, for the Act can be kept alive till 31st December, 1957. That is a matter in regard to enfaced securities being presented for payment. I do not want any advertisement about it; between now and the time that the Bill will become law, there may be another seven or eight days. Even then, that much mischief can come in, but that is a lacuna that we found. We found that these things have been presented from time to time and it is claimed by people who want to take advantage of it, and perhaps naturally. I do not say there is any fraud about it, but it does dispossess us of certain dues which we should get from another country and which we should normally get in the ordinary course by transfers and assets, not by transfer by the back-door of securities which we have enfaced for payment in that country, because of an agreement that we have had at the time of partition. These are the three points on which the whole matter is based.

I am very happy and grateful to my hon. friend Shri Hajarnavis for having explained the position as he understands it, and I suppose, he is a younger man and has not got the ex-

perience of my esteemed friend Pandit Thakur Das Bhargava, but he is also nonetheless, a lawyer with a large amount of practice and all that I can tell Pandit Thakur Das Bhargava is, "yes, when lawyers differ, what shall I do?"

Shri V. P. Nayar has made some points. He touched on a number of issues, and I shall not attempt to answer again this question of our restriction in regard to foreign exchange position. That has nothing whatever to do with this. If it is true that we do not have this control, no control can be exercised in regard to the transactions in respect of foreign exchange. But this is, as he himself stated, in regard to certain policies which are pursued deliberately undoubtedly, and I do not think I can agree with my hon. friend when he said that Rs. 11,47,73,83,452 worth of goods which have been imported should have been avoided over a period of five years. Even as, what are called, consumer goods, they are essential. In fact, there have been criticisms from various countries about this blanket ban on drugs, medicines, etc. which are important and which, at any rate, psychologically, are extremely important. These come under the category which might be considered not very essential but in a way, important. But that is not a point which I am going to deal with now. I cannot carry conviction to my hon. friend Shri V. P. Nayar, and he must have been convinced of that. I can leave it at that.

Shri V. P. Nayar: If I do not make any accusation, you provoke me.

Shri T. T. Krishnamachari: I have no intention of provoking the hon. Member. I shall not do it at all, but what I am saying is, I have dealt with that matter before, but the hon. Member might think that I have not dealt with it effectively. If that is so, the hon. Member cannot however deny that I have dealt with it both here and elsewhere.

Another point that arose was with regard to the control by Reserve Bank. My hon. friend quoted from the *Reserve Bank Manual*—section 4(2) of

the Foreign Exchange Regulations Act,—which, in section 12, says that all transactions in foreign exchange in India shall be done, as authorised by the Reserve Bank of India. I am afraid that Shri Prabhat Kar, who gave him this quotation, did not give the corrected version of para. 12 of the manual. I do not say it is any great variation of the previous one, but there is a slight difference. Section 1, para 12, of the manual says:

"12. Section 4(2) of the Foreign Exchange Regulations Act 1947 lays down that all transactions in foreign exchange shall be done at rates for the time being authorised by the Reserve Bank. In pursuance of the above provision, the Reserve Bank of India has authorised that (1) the rates of exchange governing transactions in or relating to U. S. dollars, Canadian dollars, sterling and Pakistan rupees, shall be those published by the Exchange Banks Association, Calcutta, in respect of such currencies..." etc.

The point really is this. It is not a blanket power given to the Exchange Banks Association. It is because the Exchange Banks Association had this function and they do it in consultation with the Reserve Bank and the Reserve Bank is able to approve of them. The reference made by the Member was to a particular publication which was a pre-publication occurrence of the recent Bill.

The point that my hon. friend must bear in mind is this. Any quotation given by a bank in regard to exchange, particularly in regard to sterling rupee ratio, has for the time being, to vary under the conditions. It can vary to an extent of one-eighth of a pence. It can be one-fifteenth or it can be one-sixteenth. If they look into the quotations, the hon. Members will generally find that it is often 1/31 or 1/32, either way. So far as these rates are concerned, there are different rates in different periods, depending on the term of contract. If it is forward contract, naturally, the rates

[Shri T. T. Krishnamachari]

vary according to the assessment of the particular bank. Undoubtedly, the exchange rates also vary in regard to the quantum of transaction. Supposing I ask a bank to give me a draft for £2 for sending the money for a magazine which I subscribe for, the rate that he will quote will be the highest and it will vary. If I have a business where the total transaction would be of the order of about £200,000, I get the very best rate possible, because the total amount of money that they would make in that exchange commission is a very vital factor for them to quote the rates. But it is quoted within a very narrow sphere and that kind of latitude is certainly given and it is given with the full knowledge, because, without that latitude no bank can make a forward contract and determine different rates for different kinds. Of course, it depends on the standing of the parties. One cannot say that one party gets it and the other gets less. It depends upon how much money the bank can give to the party, because, it is ultimately the relationship *inter se* which counts between the parties, and on the valuation that the bank makes, and on it depends the better terms that it may give. I do not think that is an infringement or even an attempt at evasion of the foreign exchange regulations.

The point that the hon. Member made in regard to the probable exporters in respect of whom there is the consignment sent and the residue is left in foreign countries is a thing which is not always known. It is a thing which, even though we know, we are not in a position to find out exactly. Perhaps in some cases we can get a certain amount of proof and we can deal with it departmentally. Suppose these things are conceded, I was told we will be putting an end to all that kind of transaction and that is a matter which runs practically all over the world.

Some hon. friend here, the other day, in asking a question, quoted

Pick. Pick is the expert in regard to what you call free currencies—~~to~~ put it in respectable language. It is really blackmarket currency, he makes, and shows how much of black-market money in each currency will be there and how this free market operates. So long as human beings are what they are, they know how to make money and they operate like this. I know some people in India. They go to Ceylon, and a man in Ceylon will be able to give a larger number of rupees and any money from Ceylon cannot come to India, and it goes to Hong Kong. From Hong Kong you can get any amount of sterling at a price, maybe Rs 15 in a pound, and people can live on that.

When I spent about eight weeks in Geneva one of the persons there told me—he is not an Indian he is a gentleman of the continent—that he just lived on changing Swiss francs into French francs and French francs into German marks. Human ingenuity is something which no law can ever beat. But the points that Mr Nayar mentioned are undoubtedly true. All that I can say is that they could not be wholly covered either by these amendments or by the provisions of the amending Bill that I have brought forward. We can perhaps see a little more light. As far sitting together and finding a way out, I am always prepared to sit together. So far as my hon. friend is concerned, he is a very agreeable person outside this House and I realise it. So, it is not a question of his opinion being ever discarded. The hon. Member also knows that as a matter of policy we must agree to differ, though it is quite right on the part of the hon. Member to condemn us in regard to our policy. But we have our policy and we go according to that policy.

So far as this Bill is concerned, we are taking a step in the direction indicated by Mr. Nayar, not in the reverse direction. So, I would like to tell the House that I am grateful for criticism, even the criticism of Pandit Thakur Das Bhargava. We may call it narrow, but he is always on the

side of what is called individual liberty. But unfortunately in our country and in many countries in the world individual liberty means licence, just to exploit the weakness of Government and weakness of other individuals. On that point, whether individual liberty should dominate or we should make the individual conform to what you call ordinary codes of citizenship, there may be much difference of opinion. I feel in a planned economy the risk we can take is not very great. He feels that individual liberty, planned economy or un-planned economy, has got to be given the pride of place. That is a matter on which we have to differ. But basically, I do not think that this measure is one which takes away individual liberty. It is just a slight variation on what it was before and the main provocation for my bringing it before the House is that it expires at the end of this year. There is one other provision in regard to enforcement of securities about which I wanted the House to change the law. And thirdly the organisation that I have created for the enforcement, consequent on the Reserve Bank not being willing to continue to handle this matter is more or less in the air and has to be given some support.

I hope I have attempted—at any rate my *bona fides* would be appreciated by my hon. friend—to answer the points to the extent I am capable of.

**Mr. Deputy-Speaker:** The question is:

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

The motion was adopted.  
Clauses 2 to 5 were added to the Bill.  
Clause 6.—(Amendment of Section 9)

**Mr. Deputy-Speaker:** Is Mr. Nayar moving his amendment?

**Shri V. P. Nayar:** I am not moving my amendment.

**Mr. Deputy-Speaker:** The question is:

“That clause 6 stand part of the Bill”.

Clause 6 was added to the Bill.

Clause 7.—(Amendment of Section 13)

**Shri V. P. Nayar:** Sir, I beg to move:

Page 3, lines 16 to 19—

Omit “unless such transfer is confirmed by the Reserve Bank on an application made to it in this behalf by the transferrer or the transferee.”

I do not want to speak on this.

**Mr. Deputy-Speaker:** Amendment moved:

Page 3, lines 16 to 19—

Omit “unless such transfer is confirmed by the Reserve Bank on an application made to it in this behalf by the transferrer or the transferee”

**Shri T. T. Krishnamachari:** I owe it to my hon. friend to explain that this will have the effect that a person resident outside India will not be able to transfer any share at all, because here we make him ask for the permission of the Reserve Bank. They might refuse it. And maybe that there are some small people who would like to sell and write to the Reserve Bank to obtain permission. That is why I am not accepting the amendment. I hope my hon. friend will not press it. The persons affected may not be very big people. They may even be small people.

**Shri V. P. Nayar:** How does it affect the question of transfer of shares of a company registered outside India to a company inside India? Will it be covered by it?

**Shri T. T. Krishnamachari:** That will be covered by the existing regulations. A company registered in India for that purpose is a resident. That will be a transaction between a resident and a non-resident. The Reserve Bank will have to know. Where today persons are non-resident and they transfer shares we will not know about it. All that we want is notice, and maybe in many cases it



[Shri T. T. Krishnamachari]

may be a small amount. For instance, a retired civil servant's wife may not be able to collect the amount and she might transfer it to somebody else. I do not think it is the intention of the hon. Member to prevent this.

**Shri V. P. Nayar:** I was not very certain about the other rule. I only want to prevent any transfer of interest in India held by outsiders to anybody either in India or outside without the consent of the Reserve Bank.

**Shri T. T. Krishnamachari:** If a person happens to be here we are covered; if both of them happen to be outside, then we want notice.

**Shri V. P. Nayar:** We are covered by which section.

**Shri T. T. Krishnamachari:** By the existing provisions. Any transaction between a person who is resident and a non-resident in regard to a matter which involves a question of capital which would mean ultimate transfer has to be done with the concurrence of the Reserve Bank.

**Shri V. P. Nayar:** I do not press it, though I have moved it.

**Shri T. T. Krishnamachari:** My hon. friend may say that vigilance is not exercised and that permission is given normally. That is possible. That happens in many cases. Sometimes even when we are not inclined to give permission we are compelled by various circumstances to give it.

**Shri V. P. Nayar:** I shall give my case when the particular clause comes.

**Mr. Deputy-Speaker:** I shall then put the hon. Member's amendment.

The question is:

Page 3, lines 16 to 19—

Omit "unless such transfer is confirmed by the Reserve Bank on an application made to it in this behalf by the transferrer or the transferee."

The motion was negatived.

**Mr. Deputy-Speaker:** The question is:

"That clause 7 stand part of the Bill."

The motion was adopted.

Clause 7 was added to the Bill.

Clauses 8 to 12 were added to the Bill.

**Shri Supakar:** There is no quorum.

**Mr. Deputy-Speaker:** The bell is being rung. Now there is quorum. 15 hrs.

Clause 13— (Amendment of section 18).

**Shri V. P. Nayar:** I beg to move:

(i) Page 4—

after line 25, add:

"Provided that no such transfer shall be confirmed by the Reserve Bank if such transfer involves any foreign exchange in the matter of such transfer."

(ii) Page 4, line 26—

Omit "general or".

This is a controversial question and again I want to pose this difficulty to the hon. Minister. This clause reads:

"(3A) Notwithstanding anything contained in any other law, no transfer of an interest in any business in India made by a person resident outside India to any person also resident outside India shall be valid unless such transfer is confirmed by the Reserve Bank on an application made to it in this behalf by the transferrer or the transferee."

That is the position. Even now I am unable to find out the particular provision which controls the transfer by a non-resident company of its interests in India to a resident company, which would involve foreign exchange. If a company A registered in London with sterling capital controls certain business in India and that business is to be sold to a company resident in India, with a

rupee capital, necessarily the company with the rupee capital has to pay to the company which sells the business an amount calculated in sterling. I could not find out from this Bill whether such a transaction can be controlled by any of these provisions.

I may point out a specific instance which has been agitated in the Press and also in this House on a previous occasion. Maybe it is not very strictly relevant to this clause, but I could not find out which particular section or rule controls it. For example, there was one company which was working in Salem on magnesite mines. That company in Salem was having the mines worked and that was a company registered in London with sterling capital. Its name is Magnesite Syndicate Limited. Under the mineral concession rules, the lease for mining has to be extended from time to time by the State Government concerned. It has come out in the Press that this particular company has sold its assets in India, has transferred its lease to another company, which is a resident company, by the name of Messrs Burn and Company Limited, Calcutta. It was reported in the Press that the consideration paid was in sterling to the extent of £100,000. I want to know whether in such a case, the Reserve Bank can have any control over the matter.

If you will permit me to point out one instance, because it will be helpful to the hon. Minister, it is a case where a decision taken by the Government of Madras at the Cabinet level has been interfered with by the Centre. I do not want to go into those details; I am only concerned with the foreign exchange aspect of it. If Magnesite Syndicate Limited in London operating certain mines in the district of Omalur in Salem can transfer the rights for leasehold to a company with a rupee capital in India and get the consideration in London without reference to the Reserve Bank, it means that this particular company which operates in India has a private sterling balance in London.

If the hon. Minister is keen on getting the details, I can read out an extract from a letter which has gone from the Secretary to the Ministry. It is in a public document, namely, the review petition filed by Messrs Burn and Company on the decisions of the Madras Government under the mineral concession rules. An appeal for review lies with the Government of India. I can give him the number of the letter.

**Mr. Deputy-Speaker:** He can pass it on.

**Shri T. T. Krishnamachari:** I will explain the position. The position is covered by an earlier section; not necessarily this particular section. Messrs Burn and Company or whatever the company's name may be, cannot transfer any fund in payment of the purchase except with the previous consent of the Reserve Bank. Secondly, if Burn and Company has got some money there, it must be in direct contravention of the Act, because the company's resources in London must be notified to the Reserve Bank and should be at the call of the Reserve Bank whenever they want. It is likely that the Reserve Bank has permitted Messrs Burn and Company to have some sterling account for the purpose of purchases; but if that money is being used for any purpose other than the purpose for which permission has been obtained or a clearance certificate is being given, they would have committed an offence.

It is not necessarily in this particular section. It is the general provision of the entire law that Burn and Company could not undertake any foreign transaction. Section 4 would be all right for this purpose. If they do anything, if what the hon. Member said is true that they did not obtain the permission of the Reserve Bank, they have committed an offence. Section 4 is adequate for this purpose.

**Shri V. P. Nayar:** I just wanted to know whether all such transactions would be covered, even if they hold certain private sterling balance in the name of somebody else. It need not necessarily be in the name of Messrs Burn and Company Limited.

[Shri V. P. Nayar]

It can be from the private account of one of the directors of the company who may happen to be there in London.

Shri T. T. Krishnamachari: That would be in contravention of the Act—if they have a private account which is not disclosed to the Reserve Bank. If actually these matters have come to light, there might be an enquiry and the company may be asked to explain wherefrom the money came; was it remitted from here with the knowledge of the Reserve Bank or were there balances in London used for this purpose with the knowledge of the Reserve Bank. If there was something without the knowledge of the Reserve Bank, they are open to prosecution.

Shri V. P. Nayar: The hon. Minister has not very correctly understood my doubt, I do not say that I am correct, but I have a very genuine doubt. The doubt is, Messrs Burn and Company or a Company X—I do not want to mention the name—has a director in Mr. Y who is residing in London. He has a private account and he pays from his private account in London. Later on, over a period of years, he can recoup the amount from the company in India.

Shri T. T. Krishnamachari: That is prevented by the amendment we are making because it is a case of one non-resident passing on to another non-resident in respect of an asset in India.

Shri V. P. Nayar rose—

Mr. Deputy-Speaker: Perhaps it will not be possible to convince the hon. Member.

Shri V. P. Nayar: It is a very serious matter involving Rs. 13 lakhs....

Mr. Deputy-Speaker: I do not minimise the seriousness or importance of it. But what to do?

Shri V. P. Nayar: If there is an enquiry, I am satisfied.

Mr. Deputy-Speaker: The hon. Minister has said that if an offence

has been committed, an enquiry would be made. The hon. Minister feels that we have sufficient provisions in the original Act by which we can catch any offender who commits such offences.

Shall I put his amendments Nos. 8 and 9 to the House?

Shri V. P. Nayar: It can be decided by a voice vote.

Mr. Deputy-Speaker: I am putting amendments Nos. 8 and 9 to the House. The question is:

Page 4—

after line 25, add:

“Provided that no such transfer shall be confirmed by the Reserve Bank if such transfer involves any foreign exchange in the matter of such transfer.”

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 4, line 26—

Omit “general or”.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

“That clause 13 stands part of the Bill”.

The motion was adopted.

Clause 13 was added to the Bill.

Clauses 14 and 15 were added to the Bill

Clause 16—(Amendment of Section 23).

Shri Hajarnavis: I have given notice of amendment No. 3, which I now withdraw because the provisions have been explained to me. Instead I seek your permission to move amendment No. 17.

I beg to move:

Page 6—

for lines 20 to 25, substitute:

“(IA) whoever contravenes—

(a) any of the provisions of this Act or of any rule, direction or order made thereunder, other than those referred to in sub-section (1) of this section and section 19, shall, upon conviction by a Court,

be punishable with imprisonment for a term which may extend to two years, or with fine, or with both;

(b) any direction or order made under section 19 shall, upon conviction by a Court, be punishable with fine which may extent to two thousand rupees."

I am asking the amendment to be made, so that section 19 may be separated from the rest of the offences mentioned in (IA), because, as was clear from the general discussion on the Bill, an alternative procedure is now being prescribed. Previously, as the Act stood, there was only one. Any one who contravened any of the provisions of the Act was liable to be prosecuted. Then came the amendment of 1952 by which certain offences which are mentioned in section 23A could be compounded. I had lost sight of that section when I had given notice of my previous amendment. Now, it is found that by this amendment in clause 16, nearly all the contraventions of this Act are to be covered by both the procedures. That is to say, Government have the option Under section 23D, the Director of Enforcement has the option to proceed under (a) or (b). Clause (b) is, according to section 23D a procedure to be followed where the procedure under (a) is inadequate. That is to say, prosecution, no doubt, is supposed to be a more severe punishment. I do not understand why for breach of section 19 which has been excluded ought to be proceeded against in the court. Because, he only offence that section 19 discloses is of a very minor or ancillary character: failure to make a return when required or failure to produce the account books. For that, to compel the Director of Enforcement to prosecute in the court and also make that offence punishable with fine or imprisonment extending to two years is somewhat unreasonable. Therefore, I have given notice of my amendment.

Shri V. P. Nayar: Two years is the maximum. It is not incumbent on the court to give it.

Mr. Deputy-Speaker: Yes. Two years is the maximum prescribed. The court can award any punishment.

Shri Hajarnavis: Therefore I have said that the maximum should be only Rs. 2,000.

Mr. Deputy-Speaker: Amendment moved.

Page 6—

for lines 20 to 25, substitute:

"(1A) Whoever contravenes—

(a) any of the provisions of this Act or of any rule, direction or order made thereunder, other than those referred to in sub-section (1) of this section and section 19 shall, upon conviction by a Court, be punishable with imprisonment for a term which may extend to two years, or with fine, or with both;

(b) any direction or order made under section 19 shall, upon conviction by a Court, be punishable with fine which may extent to two thousand rupees."

Shri V. P. Nayar: I beg to move amendments 10, 11, 12 and 13. Amendment No. 14 is that of my friend, Shri Hajarnavis.

(i) Page 6, line 14—

for "more" substitute "less".

(ii) Page 6, lines 18 and 19—

for "two years" substitute "five years".

(iii) Page 6, line 24—

for "two years" substitute "seven years".

(iv) Page 7, line 4—

for "two thousand" substitute "fifty thousand".

My idea is only to have more punishment than what is prescribed. I want only to have the upper limit. As you know, when you prescribe an upper limit, it is not incumbent on the court to award that punishment. The court always takes into account the gravity of the offence, the circumstances which might mitigate the

[Shri V. P. Nayar]

offence, etc. We can better leave it to the court. In our desire, in our anxiety to bring the offender to book and punish him, the court should have the adequate powers to inflict that punishment. Considering the gravity of the offence and the ultimate harm which such offence might create in the country, I think that the courts should be empowered to punish any serious offences at least to the extent which I have prescribed in my amendment.

In one amendment, I find myself in a very peculiar position. Certainly, the amendment was not given with a view to have that word incorporated. It was only given with a view to get a chance to focus my views. The section says: he shall

"be liable to such penalty not exceeding three times the value of the foreign exchange in respect of which the contravention has taken place or five thousand rupees whichever is more..."

My amendment says, whichever is less. Of course, in both the cases the effect is the same.

Shri Bimal Ghose: No. How can it be the same?

Mr. Deputy-Speaker: The effect is not the same.

Shri V. P. Nayar: If three times the value is more, only Rs. 5000 would apply if the wording is, whichever is less. That was not what I really intended. I only wanted to focus this point that in calculating this, there need not be any limit at Rs. 5000. If three times the value exceeds more than Rs. 5000, you must be able to impose that.

Mr. Deputy-Speaker: Amendment No. 14 is also moved? I do not think it has been moved.

Shri V. P. Nayar: I request the hon. Finance Minister to consider this matter. He thinks—he said so in his concluding remarks—that his object was to inflict punishment. If the punishment is to be of any use in preventing a person from continuing

an offence, I submit that Rs. 2000 will not be of any use. Nor will this term of two years be a deterrent for such professional evaders. It is a habit with them to prefer to go to jail and make Rs. 25,000. They do not worry about it. For such people, it is not deterrent at all if you prescribe simple imprisonment. He may walk into the jail for a month or two. When it becomes seven years, it will serve as a deterrent. The object of the hon. Minister is to inflict punishment. In order to serve as a deterrent and prevent him from repeating his crime, I request him to consider why it is not possible for him to raise the punishment.

Mr. Deputy-Speaker: Amendments moved:

(i) Page 6, line 14—

for "more substitute "less"

(ii) Page 6, lines 18 and 19—

for "two years" substitute "five years".

(iii) Page 6, line 24—

for "two years" substitute "seven years".

(iv) Page 7, line 4—

for "two thousand" substitute "fifty thousand".

Shri Supakar: May I say a word, Sir?

Mr. Deputy-Speaker: There is no time. We have already exceeded.

Shri Supakar: Regarding amendment No. 10, may I suggest that it is just the reverse of what the hon. Member...

Mr. Deputy-Speaker: The hon. Mover himself has realised it. He knows it. He says, it was given to focus the attention of the House.

Shri V. P. Nayar: There was no other possibility of bringing up the matter.

Mr. Deputy-Speaker: Is the hon. Minister prepared to accept any of these amendments?

**Shri T. T. Krishnamachari:** I will accept amendment No. 17. I think it is important.

**Pandit Thakur Das Bhargava:** May I say a word or two, Sir? On page 7, you will kindly see, clause (b) says:

'in sub-section (2) for the words "one thousand" the words "two thousands" shall be substituted;'

If you see the original section, you will find, the words are:

"(2) Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898, (Act V of 1898), it shall be lawful for any magistrate of the first class, specially empowered in this behalf by the State Government, and for any presidency magistrate to pass a sentence of fine exceeding one thousand rupees on any person convicted of an offence punishable under this section".

This section authorises the magistrate to inflict a punishment of more than Rs. 1000. I understand Rs. 2,000 is also more than Rs. 1,000. My humble submission is that this should not find a place and it should be omitted. Already the provision is there.

**Shri T. T. Krishnamachari:** If the hon. Member would have an amendment, to delete it, I will accept it.

**Pandit Thakur Das Bhargava:** There is no question of amendment. If you like you can do it.

**Shri T. T. Krishnamachari:** It serves no purpose. It is a case of omission.

**Pandit Thakur Das Bhargava:** The other point is—I have not much time—may I refer the Finance Minister to section 187 of the Sea Customs Act where his view finds support? In such cases, in a summary way, the thing should be decided. What I contend is this. Unfortunately, if you see the scheme of the Sea Customs Act, only certain kinds of breaches which are technically called offences, where

confiscation, increased rate of duty, are involved, are decided by these officers. The reason has been given by the Finance Minister himself. I could not think of that. He has given very good reasons. All the proof is there at hand and there is nothing to try. As soon as he comes across it, the concrete proof of the matter is obvious, everything is there. No court need pass any judgment. The thing is obvious from the nature of the offence. Any person without the assistance of a court can come to the conclusion that this man is guilty. I am very sorry, the Bill has been brought at such a time when I do not want the passage of it to be delayed by a minute. It is absolutely necessary. At the same time, I would request the hon. Finance Minister to see that such a kind of injustice is not perpetrated under this Act. He is a man who framed or was responsible for framing a part of the Constitution. If he says thus and wants to give these powers of dispensing justice to Public Prosecutors or persons in the position of public investigators, the Director of Enforcement will be just like a Public Prosecutor to bring cases before the court in respect of infractions of law. It is not a question of quoting Dicey which I do not quote. I am however thankful to the Hon. Member for his expounding the law. But the question involved is not of that nature alone. The question is this. You want to make the Investigating Officer the judge in his own case. It is entirely wrong; it is basically wrong. Whatever the hon. Member may say that I take interest in matters relating to the liberty of the individual, I should not expect him to ignore the point I made on this score. I am rather perturbed that our hon. Finance Minister, who is also responsible for the Constitution, and who is perhaps a better lawyer than myself or any other member of this House, thinks the principle of this provision to be right. If he can digest all these and yet tell us that he is right. I think it is too much. So, I would respectfully beg of him to kindly reconsider the position and bring an amending measure to the Bill soon.

[Pandit Thakur Das Bhargava]

Otherwise, we might land ourselves in difficulties. The Sea Customs Act applies to a different set of circumstances. Now you are making those very officers who are charged with investigating, the judges in those cases. This should never be taken as a precedent. My fear is that this will be taken as a precedent. He says that only 130 or 140 cases are brought to the court but we have no proof. My humble submission is that I am not satisfied with this provision in section 23(f).

**Shri T. T. Krishnamachari:** I would like to submit that my legal advisers tell me that the amendment has been made in tune with the amendment to the Criminal Procedure Code. Of course, I am not a lawyer. They say that the amount in the Criminal Procedure Code is Rs 2,000 and that is why they have made it here also. We have not done anything arbitrary. We have made it in tune with the Cr. P.C.

**Pandit Thakur Das Bhargava:** May I know the section or authority in the Cr. P. C. whereby an Investigating Officer is given the powers of the Judge.

**Mr. Deputy-Speaker:** That can be done leisurely. The hon. Member just now said that he might later on do it leisurely.

**Pandit Thakur Das Bhargava:** My request is that this amendment should not be taken as a precedent for the future.

**Shri V. P. Nayar:** May I suggest that all the other amendments may be put to the vote?

**Mr. Deputy-Speaker:** Do Government accept any of the amendments?

**Shri T. T. Krishnamachari:** I accept the amendment of Shri Hajarnavis, that is, amendment No. 17.

**Mr. Deputy-Speaker:** I will now put amendment No. 17 to the vote of the House.

The question is:

Page 6—

for lines 20 to 25, substitute:  
“(1A) “whoever contravenes—

(a) any of the provisions of this Act or of any rule, direction or order made thereunder, other than those referred to in sub-section (1) of this section and section 19 shall, upon conviction by a Court, be punishable with imprisonment for a term which may extend to two years, or with fine, or with both;

(b) any direction or order made under section 19 shall, upon conviction by a Court, be punishable with fine which may extend to two thousand rupees”

*The motion was adopted.*

**Mr. Deputy-Speaker:** We will now take up amendments Nos 11, 12, 13....

**Pandit Thakur Das Bhargava:** Has my amendment been accepted.

**Mr. Deputy-Speaker:** He has not accepted it. He said that this has been done to bring it in consonance with the amendment to the Criminal Procedure Code.

**Pandit Thakur Das Bhargava:** That is a different matter, if he is making the provision in view of the amendment of the Criminal Procedure Code. Here 32(1) says.....

**Shri T. T. Krishnamachari:** ...not exceeding Rs. 2,000

**Pandit Thakur Das Bhargava:** Then don't amend this.

**Mr. Deputy-Speaker:** I will now put amendments Nos 10, 11, 12 and 13 to the vote of the House. The question is:

Page 6, line 14—

for “more” substitute “less”.

*The motion was adopted.*

Mr. Deputy-Speaker: The question is:

Page 6, lines 18 and 19—

for "two years" substitute "five years".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 6, line 24—

for "two years" substitute "seven years".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 7, line 4—

for "two thousand" substitute "fifty thousand".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 16. as amended, stand part of the Bill".

The motion was adopted.

Clause 16 as amended, was added to the Bill.

Clause 17 was added to the Bill.

Clause 18.—(Amendment of section 24.)

Amendment made:

Page 9, line 35—

for lines 20 to 25, substitute:

"Sub-sections (1) and (2)".

—(Shri Hajarnavis)

Mr. Deputy-Speaker: The question is:

"That clause 18, as amended, stand part of the Bill"

The motion was adopted.

Clause 18 as amended, was added to the Bill.

Clause 19 —(Amendment of Section 27).

Shri Harish Chandra Mathur: I beg to move:

Page 9—

after line 43, add:

"(i) After sub-section (2) the following sub-section shall be added, namely,—

'(3) All rules made under this section shall be laid for not less than thirty days before both Houses of Parliament as soon as possible after they are made and shall be subject to such modifications as Parliament may make during the session in which they are so laid or the session immediately following.'

Shri T. T. Krishnamachari: I am prepared to accept this amendment, only with one variation, namely, for the word 'section' the word 'Act' may be substituted.

Shri Harish Chandra Mathur: That is perfectly all right with me.

Mr. Deputy-Speaker: I will now put amendment No. 16, in the modified form, to the vote of the House.

The question is:

Page 9, after line 43, add:

"(ii) After sub-section (2), the following sub-section shall be added, namely,—

'(3) All rules made under this Act shall be laid for not less than thirty days before both Houses of Parliament as soon as possible after they are made and shall be subject to such modifications as Parliament may make during the



[Mr. Deputy-Speaker]

session in which they are so laid or the session immediately following."

*The motion was adopted.*

**Mr. Deputy-Speaker:** The question is:

"That clause 19, as amended, stand part of the Bill".

*The motion was adopted.*

*Clause 19, as amended, was added to the Bill.*

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

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

"That the Bill, as amended, be passed".

**Mr. Deputy-Speaker:** Motion moved.

"That the Bill, as amended, be passed".

**Pandit Thakur, Das Bhargava:** On the last occasion when we were discussing the Wealth-tax Bill, we did not do justice to that Bill. On this occasion also the same thing has happened. We had discussed only six clauses of that Bill. When the Bill was brought forward we found that we were in a very great difficulty. This Bill must be passed today. Otherwise there would have been a proposal to send it to the Select Committee. I would respectfully ask Government to bring measures in such time that there may be time enough for the measures to be sent to the Select Committee. Now our hands are tied. We cannot do anything. I am very much dissatisfied with the manner in which this Bill has been rushed through, because enough attention has not been given, which was due to be given, to this Bill for want of time. If it had been referred to the Select Committee, they would have leisurely considered the various

provisions. So, I again request the Government to kindly go through this Bill again and bring an amending Bill when they consider it necessary. There is no use rushing through and passing Bills. We cannot do justice to these measures, if we rush them through like this.

**Mr. Deputy-Speaker:** He might suggest that there was no time for reference to the Select Committee. But so far as the other question is concerned, that it is being rushed through, that may not be justified because the hon. Member himself was a member of the Business Advisory Committee.

**Pandit Thakur Das Bhargava:** We always find that after the Business Advisory Committee has fixed the time than whenever more time is required to be devoted and the Chairman feels that it is necessary to put more time than necessary more time is devoted to it. If you guillotine Bills like this at the end of six clauses, I do not know whether justice can be done to those measures and the House can be said to have discharged its duty properly.

**Mr. Deputy-Speaker:** There was no guillotine today at least.

The question is:

"That the Bill, as amended, be passed"

*The motion was adopted.*

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#### EXPENDITURE-TAX BILL

**Mr. Deputy-Speaker:** The House will now take up the Expenditure-tax Bill, 1957 for which 10 hours have been allotted. As the House is aware, 4 hours have been allotted for the general discussion, 5 hours for clause by clause consideration and one hour for the third reading stage.