

619A of the Companies Act, 1956:—

(i) Review by the Government on the working of the Rehabilitation Industries Corporation Limited Calcutta, for the year 1978-79.

(ii) Annual Report of the Rehabilitation Industries Corporation Limited, Calcutta for the year 1978-79 along with the Audited Accounts and the comments of the Comptroller and Auditor General thereon.

(2) A statement (Hindi and English versions) showing reasons for delay in laying the papers mentioned at (1) above. [Placed in Library. See No. LT-1598/80].

(Interruptions)**

MR. SPEAKER: Nothing to go on record of spoken without my permission....

Mr. Mayathevar, I am looking into it. This is under active consideration. Whatever action is called for, I will take it. Please sit down.

COMMITTEE ON PUBLIC UNDERTAKINGS

THIRD REPORT

SHRI BANSI LAL (Bhiwani): I beg to present the Third Report (Hindi and English versions) of the Committee on Public Undertakings on Action Taken by Government on the recommendations contained in the Twenty-fourth Report of the Committee on Public Undertakings (Sixth Lok Sabha) on Expenditure on Hiring of Storage Space by Public Undertakings.

AN: HON. MEMBER: The land meant for ESI hospitals has been given away by the Delhi Administration to the Modi Mills...

MR. SPEAKER: Not allowed.

(Interruptions)

**not recorded.

*Published in Gazette of India Extraordinary Part II, Section 2 dated 16th December, 1980.

श्री सुरज भान (धम्बाला) : अध्यक्ष महोदय, मैं ने एजोर्नमेंट मोशन दिया है। प्रधान मंत्री जी ने बयान दिया है कि वे रिजर्वेशन खत्म करने को तैयार है अगर अपोजीशन इस बात के लिए तैयार हो। ... (व्यवधान) ... मेरे एजोर्नमेंट मोशन का जवाब दीजिए।

MR. SPEAKER: I have not admitted it.

12.10 hrs.

ADOPTION OF CHILDREN BILL*

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI P. SHIV SHANKAR): I beg to move for leave to introduce a Bill to provide for the adoption of children and matters connected therewith.

MR. SPEAKER: Motion moved:

"That leave be granted to introduce a Bill to provide for the adoption of children and matters connected therewith."
Shri Parulekar.

SHRI BAPUSAHEB PARULEKAR (Ratnagiri): I stand to oppose the introduction of this Bill. When we see the Objects, it is mentioned:

"The basis of this demand lies embedded in article 39 of the Constitution which provides *inter alia* that the State shall direct its policy towards securing that childhood and youth are protected against exploitation and against material and moral abandonment."

Sir, no reason has been given in the Statement of Objects and reasons as to why Government felt the need for legislating a provision like Section 8 in this particular Bill which exempts the muslims from adopting and muslim child being adopted under this particular Bill. In my respectful submission, Sir, this is directly in con-

[Shri Bapusaheb Parulekar]

tradiction of Article 44 of the Constitution about which day in and day out the government and the hon. Law Minister are saying that the Directive Principles override the Fundamental Rights. The Directive Principles are more important. Article 44 clearly mentions:

'The State shall endeavour to secure for the citizens a uniform Civil Code throughout the territory of India'.

Therefore, in a legislation like this, Clause 8 in this particular Bill is directly in contradiction of the Directive Principles embodied in Article 44 of the Constitution. Apart from this, under Art. 390, the protection has to be given to the destitute children and the children who are not looked after. I would like to know whether, when this was legislated in the Bill, the Government means that the children of Muslims are not destitute children and they are not poor children and are properly looked after. If not be so why are you making this distinction? Apart from Article 44, this is directly in violation of the spirit, letter and the intention of Articles 14 and 15 of the Constitution. Therefore, I say that this Bill is most improper and also unconstitutional. Apart from that, I do not understand the wisdom of the Government as to why they are not allowing the Muslims to adopt the child of any other community and why they do not allow the muslim child being adopted by any other person. If there are children, as I said, who are orphans and who are in orphanages but who are to be looked after, they can be looked after better if they are adopted.

I, therefore, submit, Sir, that this is directly in contradiction of Article 39, Article 44 and also against the principles of Art. 14 and 15 of the Constitution.

Therefore, Sir, I oppose the introduction of this Bill.

SHRI G. M. BANATWALLA (Ponnani): Allow me to oppose the Opposition.

SHRI BAPUSAHEB PARULEKAR: This is an unconstitutional law—not a personal law.

MR. SPEAKER: Shri Shiv Shankar.

SHRI P. SHIV SHANKAR: Sir, this legislation is meant to sub-serve the objective that has been engrafted in Art. 39. The argument that has been developed is that this particular legislation would be contrary to Article 44.

Sir, this morning itself I brought to the notice of my hon. friend that there is a vast difference between the language of Art. 44 and the language of the other Article which are engrafted in Part IV of the Constitution. For example, let me explain the position because you have raised constitutional and legal objections. For example, Article 42 mandates that:

'The State shall make provision for securing just and humane conditions of work and for maternity relief'.

That is mandatory so far as the State is concerned. But, when it comes to Article 44, what has been stated is:

'The State shall endeavour'.

It will make efforts. It is not in the mandatory term. When it uses the expression 'endeavour', it means that by stages, the States have got necessarily to act.

SHRI BAPUSAHEB PARULEKAR: This is my understanding.

SHRI P. SHIV SHANKAR: This is your understanding unfortunately. That cannot be helped. But, if you want to complement yourself for your understanding, then it is left to you.

Now, the point is this that so far as this Bill is concerned, no doubt, it excludes the muslim children from being adopted or the muslims adopting

the children because under the Shariat Law, adoption is inhibited. (Interruptions) When it is postulated under Article 25 which is a fundamental right and whereunder we have guaranteed the freedom of religion and when there had been an opposition from a large segment of the Muslim people that this Bill would run counter to their personal law and it would infringe their fundamental right as enshrined in Article 25 necessarily the Government had to take into consideration the religious sentiments of these people.

As I said, Sir, when it comes to the question of religion and the law what is more important is that those sections of the people who are likely to be affected, it is they who must come forward that a legislation is necessary in which case it becomes easier. But without their coming forward if the government has to proceed in violation of Article 25 in hurting the religious susceptibility of the people it would be unfair.

Therefore, so far as the government is concerned, in my submission, there is no question of violation of Article 44 and Clause 8 cannot be called as discriminatory. (Interruptions)

Sir, may I say that there is already a judgement of the Madras High Court which my hon'ble friends are perhaps aware of that when the Hindu Marriage Act was brought on the anvil of statute against monogamy they said this is a case of discrimination, because the Muslims are allowed to have four wives under the

Shariat. How could this law bring down the number and introduce monogamy.

SHRI RAM JETHMALANI (Bombay North West): The principle of the decision was that polygamy is the punishment and Muslims were not being deprived of any rights.

SHRI P. SHIV SHANKAR: Mr. Jethmalani, you have made fat money only on smugglers' cases. You have not understood Article 25.

SHRI RAM JETHMALANI: I defend more Congressmen than smugglers. I have got more money from Congressmen.

SHRI P. SHIV SHANKAR: From those who have turned to your side.

SHRI RAM JETHMALANI: All my smuggler clients have gone because they have joined the Congress Party.

SHRI P. SHIV SHANKAR: You have been unfortunately thriving at their expense. That is your position. You will have to understand the constitutional law.

The Madras judgement elaborately dealt with the discriminatory aspect of Article 14 and they said that it is not a case of discrimination at all. Therefore, Sir, I am confident that the exclusion of the Muslim from adoption or the children being adopted would not be a case of violation of Article 14 at all because this is already governed by the judgement of the courts. This is my submission.

MR. SPEAKER: The question is:

"That leave be granted to introduce a Bill to provide for the adop-

[Mr. Speaker]

tion of children and matters connected therewith."

The motion was adopted.

SHRI P. SHIV SHANKAR: Sir, I introduce the Bill.

12.30 hrs.

NATIONAL SECURITY BILL—
contd.

Clause 3—(Power to make orders detaining certain persons.)

MR. SPEAKER: The House will now take up further clause-by-clause consideration of the Bill to provide for preventive detention in certain cases and for matters connected therewith.

We take up Clause 3. Amendments for Clause 3 will now be moved

SHRI G. M. BANATWALLA: (Ponnani): I beg to move:

Pages 2 and 3,—

omit lines/28 to 46 and 1 to 5 respectively. (2)

Page 3, line 6,—

omit "or approved" (3)

Page 3 line 7,—

for "seven days" substitute "two days" (4)

Page 2,—

after line 27, insert—

"(2A) No order of detention shall be made under sub-section (2) unless, having regard to the circumstances prevailing or likely to prevail in an area, there is sufficient cause to believe that the person concerned is likely to act in any manner prejudicial to the maintenance of public order or in any manner prejudicial to the maintenance of supplies and services essential to the community." (80)

SHRI MOOL CHAND DAGA (Pali) I beg to move:

Page 2, line 32,—

for "or Commissioner of Police" substitute—"and Commissioner of Police or any other officer of equivalent rank or the Head of the Police Department of that district" (18)

Page 2, line 36,—

for "three months" substitute—"one month" (20)

Page 2, line 39,—

for "three months" substitute "one months" (21)

Page 2, line 44,—

for "twelve days" substitute "seven days" (2)

Page 3,—

omit lines 1 to 5. (23)

Page 3,—

for lines 6 to 10, substitute—

"(5) Notwithstanding anything contained in this Act, no order may be made by the State Government under this section unless the State Government has reported the facts to the Central Government together with the grounds on which the order is proposed to be made and such other particulars as, in the opinion of the State Government, have a bearing on the necessity for the order and the Central Government has consented for the passing of such an order." (24)

SHRI RAMAVATRA SHASTRI (Patna): I beg to move:

Page 2, lines 17 and 18—

omit "or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community" (35)