[H. N. Bahuguna]

ing the position in regard to an answer given on the 17th April, 1979 to a supplementary to Starred Question No. 752 relating to payment made by I.D.P.L. to its Italian collaborators for transfer of technology.

Statement

While answering a supplementary question put to me in relation to Starred Question No. 752 on 'Payment for Transfer of Technology to IDPL by Indian Collaborators' answered in the Lok Sabha on 17-4-1979, I stated that:

लेकिन इस सारे मामले में इस सरकार के आने से पहले आधे से ज्यादा पेमेंट तक हो चुका था ।

2. On this point, the exact position is as follows:

"By the time the present Government came to review the matter, more than 50 per cent of the amount due had been paid or had become due."

11.48 hrs.

INDIAN EVIDENCE (AMENDMENT) BILL*

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI SHANTI BHUSHAN): I beg to move for leave to introduce a Bill further to amend the Indian Evidence Act, 1872.

MR. SPEAKER: The question is:

"That leave be granted to introduce a Bill further to amend the Indian Evidence Act, 1872."

The motion was adopted.

SHRI SHANTI BHUSHAN: I introduce the Bill.

11.50 hrs.

SPECIAL COURTS BILL—*Contd.*

MR. SPEAKER: The House will now take up further consideration of the Special Courts Bill.

SHRI NARENDRA P. NATHWANI (Junagadh): Mr. Speaker, Sir, bebefore I deal with the nature and extent of the changes made by Rajya Sabha, may I deal with one observation made by my hon friend Shri Mishra yesterday. He severely criticised the form of the Bill. He said, it was ugly and it wore the appearance of patch work and so on. But may I tell the hon. House—and I speak from my long experience—I had been in this House between 1950 and 1962—I have noticed—that elegance is not considered a virtue by us, by the legislators so far as the drafting of any legislative measure is concerned, though we consider elegance to be a virtue for the tailors and cobblers. So, we need not unduly be concerned with its form.

PROF. P. G. MAVALANKAR (Gandhinagar): Why can't we improve now?

SHRI NARENDRA P. NATHWANI: You can, you try. I have no hope left. I have considerable experience. I wish you the joy of your conviction, if you say that it can be improved upon.

As regards the nature and extent of the changes made, the first change is regarding the constitution of the court. The right to nominate a judge is now conferred upon the Chief Justice of the High Court with the concurrence of the Chief Justice of India. It is a welcome suggestion and a good improvement, and I would tell a little later why we did not agree to it at an earlier stage.

*Published in Gazette of India Extra ordinary, Part II, section 2, dated 8-5-1979.

But far more important is the change that is made in Clause 5. Originally, clause 5 described both the offences and offenders; it dealt with a specific kind of offenders and with a specific kind of offences. But now, the Rajya Sabha has deleted the words 'during the period mentioned in the preamble'. Therefore, the first question arises whether it enlarges the scope of the Bill or not. My hon. frind Shri Kamath expressed some doubts as regards the effect of the proposed change, or the change made already by the Rajya Sabha; and he has suggested an amendment to make the position clear. Then hon. Law Minister gave his interpretation. He was quite frank; he conceded that there was a possibility, of the old position still being maintained even after the deletion of these words. He said that since claus 5 still retains a reference to the Preamble, and though the Preamble itself is amended, still it is possible that the scope of the Bill may remain as it is.

In other words, on a fair and proper construction, he took the view—he said it is possible; he did not say it categorically. No one can say what would be the final position: but he did concede this position that the change introduced by the Rajya Sabha may be, in substance, ineffective. Whether that position is retained or not I am not much concerned. Whether it has enlarged the scope or not, whether it is enlarged or it will remain confined to the old position, in my opinion it would serve the purpose so far as the original position of this House was concerned—and it is a different matter that originally, the Lok Sabha did not consider it fit to enlarge its scope.

But the more important question is wherher, after these amendments, changes made by Rajya Sabha, the whole Bill can be treated, can be considered, constitutionally to have become invalid or void. If you ask me this question, I would firmly say that it would not be so construed; but it would serve one purpose, namely, it would serve the purpose of the accused persons. I know the accused persons from the stand that some would be accused persons had taken long before there was a change in the Government in 1977. Some of you should hark back and recall the Constitution (Amendment) Bill that was introduced in the Rajya Sabha—and it was actually passed by the Rajya Sabha—conferring immunity, among others, on the Prime Minister against being prosecuted for any crime committed whether before, after or during her period of term of office. Why was it thought of at that time? Look at their conduct. It is not for me to go into details at this stage. The very refusal to take oath, the very refusal to appear before the Privileges Committee of this very House—what do they indicate? They betray only one thing, namely a sense of guilt. That is the only defence, and the only good defence available. That is the only available defence which seems o be open to the accused according to their thinking. They know what the real position is, what the defence is—*i.e.*, to delay the matter.

The Supreme Court said that the heart and soul of this Bill is speedy termination of prosecutions to be instituted under this Bill. Will not this change afford an opportunity, chance and excuse, however flimsy it may be, to approach the High Court with a writ petition? It is not for me to give advice here. I have not still ceased to be a practising advocate. If somebody comes and consults me, I could dwell further on this Let me answer the question at this stage, what will happen if they file a writ petition. It may ultimately fail; it is bound to fail. Look at clause 5. What does it say? Where is the discretion quested? Discretion is conferred on the Central Government and the question arises whether it is an arbitrary discretion or not—in other words whether and what guidelines are furnished? That is how we are thrown back to the Preamble; and there, you find the new paragraph added; and that paragraph does not specifically

[Shri Narendra P. Nathwani]

refer to Emergency, suppression of civil liberties, censorship or parliamentary democracy. Nothing of that sort. It is very wide. Therefore, arguments may be advanced. I do not say it will succeed. However, it is arguable. You cannot say that one cannot go to a court; and what happens if a writ petition is filed and also an appeal? There may be several precedents. Does it not give an opportunity to the accused persons, whose only defence, according to me and according to their behaviour—their behavious is evident—seems to delay the trial?

In the beginning, when the Bill came before us, these or similar changes were proposed—the changes which are now made in this Bill—and they were opposed by some of us here. The reason given was that Supreme Court has given its opinion. Whatever similar changes were proposed we fully subscribe to them. You can enlarge the scope, but kindly bring another Bill and bring it as early as possible but do not tinker with the language and form of this Bill, leart it may give an opportunity to some of the accused to approach the High Court or Supreme Court and delay the matter. So, while I support the changes, I do not welcome them. I thank you, Sir, for the opportunity given to me.

THE MINISTER OF HOME AFFRAIRS (SHRI H. M. PATEL): I have very little to say because in this Bill there are 3 amendments which the Rajya Sabha as made in the Bill as passed by this House. And those amendments have, as I have already explained, in a sense improved the position, because they rather accept some of the suggestions made by the Supreme Court, in the opinion that they has given viz, that if we accept them, it woul be better. But it was left to the Government to decide. The reason why we had not considered them at that time was that we felt that the Bill which we had sent for opinion to the Supreme Court, and on which they had expressed their opinion, should not be changed—if possible. That was the approach then. But the amendments that have beeen made in the Rajya Sabha are reallly in line with the expressions of opinion in the Supreme Court. So, I have really very little to add, except to commend that the amendments made by the Rajya suggestions were made here? (*Interruption*).

RROF. P. G. MAVALANKAR: why did you not accept them when those suggestions were made here? (*Interruption*).

MR. SPEAKER: Why cross words now?

SHRI H. M. PATEL: I do not know why I should tell you anything. If you want the satsfaction that there were Members here who also expressed this view.... (*Interruptions*).

PROF. P. G. MAVALANKAR: It is not a question of satisfaction. We had expresed our views.

SHRI H. M. PATEL: I agree I had to accept them. This is whyI I am saying if it satisfies you yes. (*Interruptions*). I express this again. We have stated clearly why and how it happened. (*Interruptions*). I think Mr. Mavalankar should be happy that the views that he expressed have in the end, been accepted by the Government. Mr. Mavalankar, would you at least like that formulation?

I think it is all right. I commend this Bill for consideration.

MR. SPEAKER: The question is:

"That the following amendments made by Rajya Sabha in the Bill to provide for the speedy trial of a certain class of offences be taken into consideration:

PREAMBLE

(1) That at page 1 after line 17, the following be inserted, namely:

"And whereas all powers being a trust, and holders of high public

or political offices are accountable for the exercise of their powers in all cases where Commissions of Inquiry appointed under the Commissions of Inquiry Act, 1952 or investigations conducted by Government through its agencies disclose offences committed by such holders;".

Clause 3

(2) That at page 2, for lines 27 to 29, the following be *substituted*, namely:—

"(2) A Special Court consist of a sitting Judge of a High Court nominated by the Chief Justice of the Hight Court within the local limits of whose jurisdiction the Special Court is situated, with the concurrence of the Chief Justice of India.

Explanation.—Any reference to a High Court or to the Chief Justice or Judge of a High Court shall, in relation to a Union territory having a court of the Judicial Commissioner, be construed as a reference to the said Court of the Judicial Commissioner or to the Judicial Commissioner or any additional Judicial Commissioner, as the case may be."

Clause 5

(3) That at page 2, line 34, the words "during the period mentioned in the Preamble here to be *deleted*.

Clause 11

(4) That at page 4.—

(i) in line 2, *for* the words "judgment or order" the words 'judgment sentence or order, not being inter locutory order" be subtituted;

(ii) in line 5, *for* the words 'judgment or order' the words "judgement, sentence or order" be substituted;

(iii) *after* sub-clause (2), the following sub-clause be inserted, namely:—

"(3) Every appeal under this section shall be preferred within period of thirty days from the date of any judgment, sentence or order of a Special Court:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days'

The motion was adopted.

MR. SPEAKER: Now we take the amendments made by the Rajya Sabha into consideration. We will take up the Preamble. There are two amendments, Mr. Faleiro is not here. Mr. Rajagopal Naidu, are you moving your amendment?

SHRI P. RAJAGOPAL NAIDU: (Chittoor): Yes, Sir, I move.

"That in Amendment No. 1 made by Rajya Sabha.—

add at the end—

"whether before or after the Proclamation of Emergency dated 25th June 1975." (5).

MR. SPEAKER: Do you want to speak on it?

SHRI P. RAJAGOPAL NAIDU: Our people have said already that we are not going to accept these things.

MR. SPEAKER: I shall now put Mr. Rajagopal Naidu's amendment No. 5 to the vote of the House.

Amendment No. 5 was put and negatived.

MR. SPEAKER: I shall now put the amendment made by Rajya Sabha in the preamble.

The question is:

That at page 1, after line -17, the following be *inserted*, namely:—

"And whereas all powers being a trust, and holders of high public or political offices are accountable for the exercise of their powers in all cases where Commissions of Inqui-

[Mr. Speaker]

ry appointed under the Commissions of Inquiry Act,, 1952 or investigations conducted by Government through its agencies disclose offiences committed by such holders:"

The motion was adopted

Clause 3

MR. SPEAKER: There is an amendment by Mr. Faleir. , but he is not here. The question is:

That at page 2, *for* lines 27 to 29 the following be *substituted*, namely:—

"(2) A Special Court shall consist of a sitting Judge of a High Court nominated by the Chief Justice of the High Court within the local limits of whose jurisdiction the Special Court is situated with the concurrence of the Chief Justice of India.

Explanations—Any reference to a High Court or to the Chief Justice or Judge of a High Court shall, in relation to a Union territory having a Court of the Judicial Commissioner, be construed as a reference to the said Court of the Judicial Commissioner or any Additional Judicial Commissioner as the case may be".

The motion was adopted.

Clause 5 ..

MR. SPEAKER: Mr. Falciro is not here.

SHRI HARI VISHNU KAMATH (Hoshangabad): I move:

"Before Amendment No. 3 made by Rajya Sabha, the following be inserted:—

'(i) That at page 2, line 33, after the word "offence" the words "referred to in the recitals stated in the Preamble" be inserted.' (4)

I shall speak briefly on my amendment, because I want to undo the jumble as far as I can and as far as it lies in human power. I referred to the jumble the other day when I spoke on the point of order.

MR. SPEAKER: It is not always within our powers.

SHRI HARI VISHNU KAMATH: That is why I said, as far as it lies in human power. The Divine is there to look after all of us.

SHRIMATI PARVATHI KRISHNAN (Coimbatore): What do you mean by 'Divine'? The Speaker himself?

MR. SPEAKER: Don't elevate me to that position;

SHRI HARI VISHNU KAMATH. Ensconced in that high-backed Chair and bathed in the lambent light of 'Dharma Chakra', what the hon. member Shrimati Parvathi Krishnan said may be appropriate. I do not wish to say more on that?

Sir, you were not in the Chair the other day when I raised the point of order. The Deputy Speaker was there, and he was inclined to agree with me that this was a bit of a jumble. How does clause 5 read, as this House, the more powerful of the two Houses, directly elected by 630 million people, the supreme forum of the largest democracy on earth, passed it? How does it read as it was passed by this House. It read:

"5. (1) If the Central Government is of opinion that there is *prima facie* evidence of the commission of an offience alleged to have been committed during the period mentioned in the preamble hereto"—

that, Sir, is the *summum bonum* of Bill—

"by a person who held high public or political office in India and that in accordance with the guidelines contained in the preamble hereto the said offence ought to be dealt with under this Act, the Central Government shall make a declaration to that effect in every case in which it is of the aforesaid opinion."

There are two phrases, identical phrases, repeated twice in this clause; one is "mentioned in the preamble hereto" in line 34 and the other is "contained in the preamble hereto" in line 36. One is "mentioned" and the other is "contained" but the phrase recurs twice. One page 34, the pharse "during the period mentioned in the preamble hereto" has been deleted by the Rajya Sabha, but the phase in line 36 is retained by the Rajya Sabha. Nothing happens to that. Therefore, how will it read now? If we, in our wisdom of otherwise, adopt the amendments suggested by the Rajya Sabha, how will it read? It will read:

> If the Central Government is of opinion that there is *prima facie* evidence of the commission of an offence alleged to have been committed"

—the words "during the period mentioned in the Preamble hereto" have been deleted by the Rajya Sabha—

> "by a person who held high public or political office in India and that in accordance with the guidelines contained in the preamble thereto the said offence ought to be dealt with under this Act, the Central Government shall make a declaration to that effect in every case in which it is of the aforesaid opinion."

Now let us go back to the Preamble and see how jumbled it all becomes. I wonder how the hon. Home Minister, with all his rich experience and background accepted this without any relevant amendment, consequential amendment to the Preamble also.

In the Preamble the first two paras are left intact. The first para refers to the period. But that period is deleted in clause 5. Yet, that period is retained in the preamble. The other day the Deputy-Speaker saw the force of my argument and he was also wondering where all this would lead to, what the interpretation of this would be. Please read the first para of the Preamble, where the period is mentioned. It says:

> "during the operation of the Proclamation of Emergency, dated the 25th June, 1975, issued under clause (1) of article 352 of the Constitution;"

Now under the Constitution (Forty-fourth Amendment) Act, clause (1) of article 352 will be amended. Now that amendment has been assented to by the President and it has become an Act. In cause "internal disturbance" has been amended to "armed rebellion". In 1975 the cause of the Proclamation was internal disturbance. So, I do not know whether you should add the word "the then" before "article 352". That might be a consequential amendment. That is a minor thing. I would not talk much about it.

But the period is retained in the Preamble. And the additional para added to the Preamble was an omnibus amendment by the Rajya Sabha without proper tense. They said "disclose"—please see the amendment adopted by Rajya Sabha. It says "disclose" and not have 'disclosed about the results of the Commissions of Inquiry. If you look at the Preamble, some high philosophical teneis have been laid down in the Rajya Sabha amendment. It reads:

> "And Whereas all powers being a trust, and holders of high public or political officer are accountable for the exercise of their powers in all cases where Comissions of Inquiry appointed under the Commissions of Inquiry Act, 1952 or investigations conducted by Government through its agencies disclose offences committed by such holders."

The term used is "disclose" offences, past, present and future.

MR. SPEAKER: All mixed up.

SHRI HARI VINSHNU KAMATH: All jumbled up. In the Preamble, as it was, as this wise House adopted, we have used the words "have disclosed" that is, in the past. Now that is retained in the Preamble. But this also has been smuggled in, or sneaked in by this amendment. So, is it not a

[Shri Hari Vishnu Kamath]

jumble? Don't you agree with the Deputy-Speaker that it is more or less a jumble?

MR. SPEAKER: Silence is a virtue.

SHRI HARI VISHNU KAMATH: Silence often means tacit agreement, as they say. So, I take it that your silence means tacit agreement.

I want to undo the jumble, and that is why my amendment has become relevant, if the Home Minister would ponder over this with the 'concentration of which he is capable I am sure.

My amendment reads as follows. In Clause 5, line 33 after the word "offence", before line 34 which has been sort of tampered with by the Rajya Sabha. I want to insert:

> "referred to in the recitals stated in the Preamble".

If my amendment is adopted by this House—and I wish to make it clear again that there is no obligation, constitutional or otherwise, for this House to accept all the amendments of the Rajya Sabha, as it was in the case of the Constitution (Amendment) Bill last year. If we do not accept, or if we make new amendments, we will have a joint sitting of the two Houses to pass the Bill . You agree with me, don't you?

If my amendment is adopted, it will read as follows:

> "If the Central Government is of opinion that there is *prima facie* evidence of the commission of an offence referred to in the recitals stated in the Preamble".

If we go back to the Preamble, the word "recitals" occurs in paragraph 3 of the Preamble, where it says:

> "And whereas the offences referred to in the recitals aforesaid. . .—i.e., in the first two paragraphs which cover or refer to the period.

Therefore, my amendment is adopted, it will undo the mischief committed by the Rajya Sabha, and therefore I would earnestly appeal to all my colleagues and friends here, right, left and centre, to consider this matter very seriously and accept it.

Otherwise, we will be nowhere. I do not know what the Supreme Court might do with this Act if somebody challenges it. They will also have to think a hundred times before they say that it is the Same Bill as was referred to them for their opinion. It is not at all the same Bill, it is going to be a new Bill, a different Bill. I would, therefore, in the interests of the expeditious setting up of Special Courts—that is what I am after; all my amendment and the point of order which I raised had one objective and one objective only not merely just the passing of this Bill, but the setting up of Special Courts as soon as possible. Otherwise, if somebody takes it into his head to go to the Supreme Court again and challenge the validity of this Act(saying that it is not the same Bill as was referred to the Supreme Court for its opinion, another six months will go on.

SHRI P. RAJAGOPAL NAIDU: Can you bar it?

SHRI HARI VISHNU KAMATH: We cannot prevent it, but if the Act is in the same form as it was referred to the Supreme Court and if somebody goes to the Supreme Court, the Supreme Court will say the Bill is not different from the one which was referred to them.

MR. SPEAKER: Somebody must quote your opinion in the Supreme Court, that is the difficulty.

SHRI HARI VISHNU KAMATH: I do not mind.

If the Act is not different from the one which was referred to the Supreme Court earlier, the Supreme Court will say that it is the same Bill and will dismiss it *in limine*. Otherwise, it will again go through the same process, and time will drag on. So, I do appeal to the Minister and all

my friends and colleagues to undo the mischief made by the Rajya Sabha. I hope my amendment will be acceptable to the House. I commend it for the wholehearted acceptance of the House.

SHRI H. M. PATEL: Sir, I appreciate the spirit in which the hon. Member has put forward his amendment and the long and lucid expression with which he comended it to us.

The Central Government is to make a declaration under sub-clause (1) of clause 5 only if it is of the opinion that in accordance with the guidelines contained in the Preamble of the Bill an offence committed by a person who held a high public or political office is an offence which ought to be tried under the provisions of this Bill In view of this, the amendment suggested by the hon. member appears to me to be unnecessary and I would really request him to withdraw it. Of course, it is open to him. But I do feel, though his intentions are very commendable because he wants speedy trial, so do I, so do we all—that is the reason for this Bill—I do not think there will be any danger of the kind that he apprehends.

In fact, I would tell him that some of the changes that we have made are in line with what the Supreme Court considered and gave its opinion. I quote P. 83-A of the Opinion:

> "Parliamentary democracy will see its halcyon days in India when law will provide for a speedy trial of all offenders who misuse the public offices held by them. Purity in public life is a desired goal at all times and in all situations, emergency or no emergency. But, we cannot sit as a super legislature and strike down the instant classification on the ground of under-inclusion

The hon. Member may take it that we appreciate his desire for speedy trial and to see that there will be no difficulty later so I feel fairly certain that the difficulty will not arise. Let him take this assurance of mine that it will not happen.

SHRI HARI VISHNU KAMATH: He has read out from P. 83-A something which is convenient to him. May I with your permission, Sir, read out from p. 109, para (2)? I quote:

> "The classification provided for in clause 4(1)—now, clause 5(1)—of the Bill is valid to the extent to which the Central Government is empowered to make a declaration in respect of the offences alleged to have been comitted during the period of Emergency by persons who held high public or political offices in India."

Please mark the words:

> Persons who are alleged to have committed offences prior to the declaration of Emergency—the amendment made by the Rajya Sabha—cannot—I repeat, cannot—validly be grouped along with those who are alleged to have committed offences during the period of Emergency. It is, therefore, not competent to the Central Government to make a declaration under clause 4(1)—now clause 5(1)—of the Bill in respect of persons who are alleged to have committed offences between February 27, 1975 and June, 1975.'

MR. SPEAKER: Now, I put the Amendment moved by Shri Hari Vishnu Kamath to the vote of the House.

Amendment No. 4 was put and negatived.

MR. SPEAKER: The question is:

> That at page 2, line 34, the words "during the period mentioned in the Preamble hereto" be *deleted*.

The motion was adopted.

Clause 11

MR. SPEAKER: Now, I take up Amendment No. 4 of the Rajya Sabha to Clause 11. There is no amendment proposed to that.

The question is:

> That at page 4,—
>
> (i) in line 2, *for* the words "judgment or order" the words

"judgment, sentence or order, not being interlocutory order" be substituted;

(ii) in line 5, *for* the words "judgment or order" the words "judgment, sentence or order" be substituted; and

(iii) *after* sub-clause (2), the following sub-clause be inserted, namely:—

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of any judgment, sentence or order of a Special Court:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty day."

The motion was adopted.

SHRI H. M. PATEL: Sir, I move:

"That the amendments made by Rajya Sabha in the Bill be agreed

MR. SPEAKER: The question is:

"That the amendments made by Rajya Sabha in the Bill be agreed to."

The motion was adopted.

12.21 hrs.

MATTERS UNDER RULE 377

(i) *Reported shortage of diesel and kerosene in Punjab*

MR. SPEAKER: Now we go to 'Matters under Rule 377'. I will come to the Constitution (Forty-Seventh Amendment) Bill immediately thereafter.

Mr. Bhagat Ram.

SHRI BHAGAT RAM (Phillaur): The Punjab State is facing acute shortage of diesel and kerosene oil since the middle of November. The supply of diesel was regulated against ration cards with effect from 21-12-1978 at prescribed scales. The shortage of diesel is still continuing. One can see everywhere long queues of people at the petrol pumps for hours waiting for diesel.

The threshing operations of wheat have started. It is estimated that, during the months of April, May and June, 1979, the requirement of diesel would be about 3,000 kilolitres per day or 90,000 kilolitres per month. The Government of India have indicated that the supplies of diesel would be maintained at last year's level. Increase in demand for diesel is on account of the following factors: —

(i) Wheat output at 70 lakh tonnes will be higher than the previous year by four lakh tonnes. This will increase the consumption of diesel for threshing|marketing.

(ii) Tractor population of the State has risen by 8,000 units since last y and now stands at about 32,000 Immediately after sowing, tilling etc., for the next crop is taken up.

(iii) Thereshers powered by diesel engines have increased from 210,000 last year to about 230,000 this year.

(iv) Due to opening of 765 purchase centres for purchase of surplus wheat, nearly 80 more than last year, demand for truck movement has risen.

(v) Shortfalls in railway movement of cement, coal and petroleum products has resulted in heavier movement of these items by trucks, resulting in higher demand for diesel.

The Government of India should hurry up to increase supply of diesel to Punjab State which is today contributing close to 65 per cent of wheat and rice purchased for the Central Pool each year.

In order to improve the supply position of H.S.D. in Punjab and as a remedial measure, the Ministry of Pet-