

16 39 hrs.

DIPLMATIC AND CONSULAR OFFI-  
CERS (OATHS AND FEES) (EXTEN-  
SION TO JAMMU AND KASHMIR)  
BILL

THE MINISTER OF STATE IN THE  
MINISTRY OF EXTERNAL AFFAIRS  
(SHRI SURENDRA PAI SINGH) Sir

I beg to move

"That the Bill to provide for the extension of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948, to the State of Jammu and Kashmir, as passed by Rajya Sabha be taken into consideration"

The Diplomatic and Consular Officers (Oaths and Fees) (Extension to Jammu and Kashmir) Bill 1972 seeks to extend the Diplomatic and Consular Officers (Oaths and Fees) Act 1948 to the State of Jammu and Kashmir This Act of 1948 empowers our Diplomatic and Consular Officers in any foreign country or at any other place within their jurisdiction, to administer any oath and take any affidavit and also do any notarial act which any notary may do within the States comprising the Union of India

Originally the scope of the 1948 Act was limited to the former provinces of India It was first amended by Adaptation Order, 1950, whereby the word 'provinces' was substituted by the words 'Part 'A' or Part 'C' States' Later, its operation was extended to the former Part 'B' States except the State of Jammu and Kashmir by the Adaptation of Law (No 3), Order, 1956

The subject matter of the Bill is relateable mainly to entries 2, 12 and 13 of the Concurrent List of the Seventh Schedule to the Constitution and incidentally to entry 11 of the Union List of the Seventh Schedule to the Constitution, which have been applied in August, 1972 with suitable amendments to the State of Jammu and Kashmir by an order of the President under Article 370 of the Constitution

The main object of this Bill is, therefore, to make legally valid the documents executed before our consular officers when produced in evidence in a court of law in the State of Jammu and Kashmir in the same manner as in other States as well as to make the Rules made under the 1948 Act applicable to that State as they apply to any other State in the Union of India

Section 8 of the 1948 Act confers on the Central Government powers to make Rules to carry out the purposes of the Act and spells out certain specific matters with reference to which Rules may be so made This section does not contain any provision regarding laying of the Rules before Parliament I also, therefore, take this opportunity to propose inclusion of clause 3 in the Bill, incorporating the standard provision laying of Rules before Parliament in Section 8 of the 1948 Act

With these words, I commend this Bill for the consideration of the House

MR CHAIRMAN Motion moved

"That the Bill to provide for the extension of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948, to the State of Jammu and Kashmir, as passed by Rajya Sabha, be taken into consideration"

SHRI SOMNATH CHATTERJEE (Burdwan) Mr Chairman, Sir, this is a simple Bill which has been brought to extend the provisions of 1948 Act to the State of Jammu and Kashmir and to provide for laying of rules before Parliament.

I take this occasion to remind the hon. Minister that the time has come when there should be a review of the working of the Act which was enacted as early as in 1948 I would like to know from the hon Minister as to on how many occasions, to the notice or knowledge of the Government, the recourse has been taken to the provisions of this Bill. It has re-

[Shri Somnath Chatterjee]

mained almost a dead-letter because of the simple reason that Indians in foreign countries try to avoid a particular place where there is an Embassy or a Consulate. Unless they are forced to go to these Embassies or Consulates, they avoid going to these places because of the most unsympathetic attitude that is adopted in these places specially towards Indians. There have been numerous complaints specially from student community that they do not get any assistance whatsoever from any of our Embassies and the Consulates. This is a very unfortunate state of affairs and it really requires that the Government should pay its attention to this important aspect.

Another aspect is—I do not know whether the hon. Minister has any knowledge of it—that so far as affidavits or documents are concerned, so far as affirmations before a Diplomatic or a Consular officer in a foreign country or any notarial act is concerned, how far these affidavits or documents in courts of this country have been given effect to. It is not done because of the simple reason that under the Civil Procedure Code, there are provisions as to how affidavits have to be affirmed and produced before courts of law. Without changing those provisions in the Civil Procedure Code which is a much earlier enactment dealing with provisions regarding filling of affidavits or affirming of affidavits, this law is being enacted which is not really taken recourse to because the courts in this country are not prone to accept such affidavits and, on the other hands, the courts are reluctant to accept such affidavits.

16.45 hrs.

[SHRI K. N. TIWARY *in the Chair.*]

There have been case laws also on this. Therefore, I would request the hon. Minister to ascertain the position, how far a provision like this has become an effective provision. Why should the time of Parliament be wasted, unnecessarily, in trying to enlarge operation of an Act which has no practical utility?

The other aspect which I would request the hon. Minister to take note of and to make suitable provisions at the appropriate time is based on the question of reciprocity. So far as affidavits are concerned, these which have been, let us say, affirmed before a competent authority, even a judicial authority, in foreign countries are not accepted by our court of law in judicial proceedings. There may be many cases where an Indian in a foreign country may have to file affidavits before courts in India. He gets an affidavit prepared, has it affirmed and sends it to India. Suppose he is at a particular place which is far away from our Embassy or Consular Office. Why should, for such routine matters, he be made to travel all the way to the Indian Embassy or Consular Office? Why can we not make a provision in these days of reciprocity and greater international intercourse, to accept affidavits or other documents which are affirmed before competent authorities in foreign countries whom we can accept? Why should restricted facilities be given to the Indians abroad that they should get the affidavits affirmed only from our Diplomatic or Consular Officers? If the intention is really to make it convenient for our citizens abroad so that they can participate in legal proceedings without much harassment, such a provision as I have just suggested may be incorporated. This is my submission for the hon. Minister to consider.

So far as Clause 2 of this Bill is concerned, it provides for the applicability of the provisions of the principal Act and the rules made thereunder to the State of Jammu and Kashmir. I would have been happier if a specific provision had been made to give retrospective operation so far as Jammu & Kashmir is concerned. There may be cases where in a court of law in the State of Jammu and Kashmir an affidavit may have to be used or some other document may have to be used in a court of law or before some authority which may have been affirmed and verified prior to this Act coming into force. The Act is not clear on this point and it

will give rise to unnecessary question of construction, whether this can be given retrospective effect or not. I would like to know from the hon. Minister whether according to him or his Ministry, an affidavit which has been affirmed before the coming into force of this Act will be acceptable to a court of law.

I now come to Clause 3 of the Bill—regarding rules made under this Act. The hon. Minister has himself said that in the present enactment of 1948 there is no provision for bringing these rules before Parliament and that, in keeping with the present trend of legislative form, a provision is now being made for laying the rules to be framed under this Act before Parliament. So far, so good. But I would like to request the hon. Minister, since the present, proposed provision in Clause 3 does not make it very clear, to lay on the Table all the rules which might have been framed under this Act so far—there cannot be very many rules—so that Parliament can exercise its power, if need be, in keeping with the intention that is now being incorporated under the proposed sub-section (3) of Section 8 of the Act. These are my suggestions to the hon. Minister for his consideration and I would request him to give thought to this matter. Although the present Bill may not be suitable for the purpose of covering all the points, but these are matters I would request him to take into consideration and at least to utilise the rule-making power for the purpose of making it more effective and not keeping it as it is.

MR. CHAIRMAN: Shri Bhogendra Jha—not here.

Shri J. Matha Gowder:

\*SHRI J. MATHA GOWDER (Nilgiris): Mr. Chairman, Sir, on the Diplomatic and Consular Officers (Oaths and Fees) (Extension to Jammu and Kashmir) Bill, 1972, I would like to say a few words on behalf of my party, the Dravida Munnetra Kazhagam.

Sir, this Bill provides for the extension of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 to the State of Jammu and Kashmir. I have no objection to the extension of the parent Act passed in 1948 to the State of Jammu and Kashmir. But, I take strong exception to the other provision through which the Government want to gloss over their lapse.

After 24 years of passing the parent Act, a provision has been made in this amending Bill for laying on the Table of both houses of Parliament the rules made under this Act. At the very outset I would like to ask of the hon. Minister of External Affairs piloting this Bill as to how this important parliamentary procedure escaped the attention of the Ministry for all these 24 years. I have no doubt that during this period of two and half decades the rules and regulations must have been formulated under the parent Act. So far the Parliament has not been given an opportunity to verify whether they have been formulated in consonance and in conformity with the provisions of the Act. I do not hesitate to say that the Government are guilty of bypassing the Parliament all these years.

I am sure, Sir, you will agree with me if I say that the Government's ignorance about parliamentary procedures cannot easily be condoned. Similarly, if the Government were aware of the procedures but had not cared to amend the parent Act for the purpose of placing the rules and regulations on the Table of the House, then their negligence of Parliament should be condemned forcefully. In either way the Government cannot get away from the wrath of the House.

Sir, the Ministry of External Affairs has got a plethora of highly-paid officials with all the attendant paraphernalia. I do not think that they should not be allowed to get away with this kind of serious lapse in not complying with the basic requirement of parliamentary legislation.

\*The original speech was delivered in Tamil.

Sir, I do not know whether, even after this Amendment is approved, the existing rules and regulations would be placed before the House or the rules and regulations that would be framed hereafter would be placed before the House. I request the hon. Minister to clarify this point

When I see such a lapse on the part of the Government, I begin to doubt that there might be many more such lapses which would have been swept under the carpet.

In the end, I would request the hon. Minister to ensure that, if there are any other such Acts having no provision for placing the rules and regulations before the House, suitable amending Bills should be brought before this House without further loss of time.

With these words, I conclude.

**श्री आर० बी० बड़ (खरगोन) :** मभा-पति महोदय, जो राजनयिक और कौंसिलीय आफिसर (शपथ और फीस) (जम्मू-काश्मीर पर विस्तार) विधेयक मंत्री जी सदन में लाये हैं मैं इस का समर्थन करता हूँ। इस के बारे में मुझे कुछ ज्यादा कहना नहीं है। अभी तक जो ऐफीडेविट्स अटैस्ट किए जाते थे वह कोर्ट के सामने वैलिड नहीं समझे जाते थे क्योंकि कि यह कानून नहीं था। इसलिए यह कानून अब लाया जा रहा है। मैं समझता हूँ कि आप ने इस बिल को ला कर हाई कोर्ट और कोर्ट्स के हाथ मजबूत कर दिए हैं क्योंकि ऐसा करने से पहले हाई कोर्ट ने यह ओपीनियन दी है कि इस प्रकार के डिप्लोमैटिक और कौंसलर आफिसेज में जो अधिकारी रहते हैं उन को शपथ लेने का और ऐफीडेविट अटैस्ट करने का अधिकार नहीं है। इसलिए आपने हाई कोर्ट के हाथ मजबूत कर दिए हैं और उसने जो टूटि बताई थी इस बिल को लाकर उसको आपने ठूट

कर दिया है। अब आप इसको जम्मू काश्मीर तक एक्स्टेंड कर रहे हैं। जनसंघ तो पहले से ही कहता आ रहा है कि आर्टिकल 370 जो कांस्टीट्यूशन का है, इसको ही आप एबालिस कर दे ताकि इस तरह के बिल बार बार लाने की जरूरत ही न पड़े और सदन का समय लेने की जरूरत ही न पड़े। यह ठीक नहीं है।

आपने लिखा है कि इट शोल कम इटो फॉर् एटवस। इसका मतलब यह है कि अभी तक जिनने एफिडेविट आदि एटेस्ट हो गए हैं उन पर यह बिल लागू नहीं होगा। इसको आपको रिट्रोस्पेक्टिव इफेक्ट देना चाहिए था। अभी तक जिनने एफिडेविट या शोथ एटेस्ट हो गए हैं उन सब पर यह लागू होना चाहिए। ऐसा आपने नहीं किया है। यह बहुत बड़ी गलती आपने की है। आपको भी आपको इस कानून के अन्तर्गत लाना चाहिए था और कहना चाहिए था कि वे भी वैलिड हैं।

मैं नहीं समझ पाया हू कि काश्मीर के बारे में आप इतने टची या नरवस क्यों हैं? क्यों नहीं आप आर्टिकल 370 को एबालिस कर देते हैं? शेख अब्दुल्ला के साथ परदे के पीछे क्या बात हो रही है, यह ऐसा नहीं है जिस पर इस बिल पर बहस के दौरान चर्चा की जाए। लेकिन इतना मैं अवश्य कहना चाहता हूँ कि यदि आर्टिकल 370 को एबालिस कर दिया जाता तो इस तरह के छोटे छोटे बिलों के लिए आपको सदन का बहुमूल्य समय लेने की जरूरत न पड़ती। हमारी गलती की वजह से ही हाई कोर्ट को यह निर्णय लेना पड़ा कि एम्बेसी को शोथ लेने का, डाकुमेंट एटेस्ट करने का या एफिडेविट एटेस्ट करने का अधिकार नहीं था। इन बास्तों आपको इसको पहले ही जम्मू काश्मीर पर एप्लाई कर देना चाहिए था। अब आपको इसको रिट्रोस्पेक्टिव इफेक्ट देना चाहिए।

श्री ठाकुरने है कि जो रूलज होंगे उसको सदन की मेज पर आप रखेंगे। 1948 में जो कानून बना था उसके अन्तर्गत जो रूल बने थे क्या वे इस पर लागू नहीं होंगे? अब धारा 113 में रूल बनायेंगे और मदन के सामने पेश करेंगे। जो पहले से बन गए हैं उनका ही लागू करने का आपने प्राविजन क्यों नहीं किया है? यह एक लैक्युना है एक बड़ी गलती है जो आपने की है? पहले वाले रूल आप लागू कर सकते थे।

देर अधिक दुरुस्त आयद। देर में ही सही आप सही नीर पर इसको काश्मीर पर लागू कर रहे हैं। लेकिन जो लैक्युने मैंने बनाए हैं वे भी आपसे दुरुस्त करने चाहिये एमेन्डमेंट ला कर या किसी और तरह में।

17 hrs.

श्री मूल बन्द डागा (धारी) सभापति महोदय: इस बिना के बिना में मुझे कुछ नहीं कहना है। मैं केवल यहाँ जानना चाहता हूँ कि जो पार्लियामेंट डेप्युटी करत है उन पावर्ज का एग्जैक्टिव एजेंसीज कितना लाभ उठाती है किन्तु दुरुपयोग उनका वे कर्ती है इसकी जांच कौन करता है? पार्लियामेंट के पास इतना समय नहीं होता है कि वह सारे नियमों की जांच कर सक। आप कितने ही कानून बनाते हैं और उनके अन्तर्गत नियम बनाते हैं—

श्री हुकम चन्द कलबय (मुरना) मैं आपकी व्यवस्था चाहता हूँ। सदन में गण-पुति नहीं है।

सभापति महोदय घटी बज रही है। कोरम हो गया है। आप अपना भाषण जारी रखें।

श्री मूल बन्द डागा रूलज आफ प्रोसीजर एंड कडक्ट आफ बिजिनेस के अन्तर्गत यह बकरी है कि सदन की मेज पर उनको रखा जाए। मेरी सपक्ष में नहीं आया है कि 1948 में जो एक बना था उसके अन्तर्गत आपने

जो रूल बनाए उनको आपने सदन की मेज पर क्यों नहीं रखा और अगर रखा तो उनको किन्तु एग्जैक्टिव किया? अगर उनको किसी ने एग्जैक्टिव नहीं किया तो तब मैं ल कर आज तक जो नियम बने उनको मदन की मेज पर नहीं रखा गया और वे नहीं काम चलता रहा। यहाँ यह लिखा हुआ है

Where a legislation rule, subrule bye law etc framed in pursuance of the Constitution or of the legislative functions delegated by Parliament to a subordinate authority is laid before the House, the period specified in the Constitution or the relevant Act for which it is required to be laid shall be completed before the House is adjourned sine die and later prorogued, unless otherwise provided in the Constitution of the relevant Act"

1948 में आपने बन्द बनाया। आज 1973 है। उस में अपने बजाज 3 में यह प्राविजन रखा कि मदन की मेज पर इन नियमों को रखा जायेगा। इनके साल गुजर गए हैं और मैं आपसे जानना चाहता हूँ कि

whether those rules which were framed by the executive agencies were ever examined by Parliament or by the Subordinate Legislation Committee

जो रूल बने वे कानून के अनुसार थे या नहीं थे इसका कुछ पता नहीं है। इसका मतलब यह हुआ है कि जो डेप्युटीज आफ पावर्ज आप करते हैं एग्जैक्टिव एजेंसीज को वे उनका दुरुपयोग करती हैं।

आपने कानून में यह भी रखा है।

"So, however, that such modification or annulment shall be without prejudice to the validity of anything previously under this rule."

[श्री भूल चन्द डागा]

कानून जब बन जाता है और उसके अन्तर्गत नियम जो बनते हैं वे बिना जांच किये हुये भी लागू हो सकते हैं, यह भाग आपने लिख दिया है। इस तरह से 1948 के कानून के अन्तर्गत जो रूल बने वे लागू हो गये। क्या इन रूलज की कोई कमेटी जांच नहीं करती है? इसके बारे में कानून में कोई प्राविजन आप क्यों नहीं करते हैं। क्यों नहीं आप कह देते कि :

The court can examine those rules and see whether those rules are in accordance with the Act or not

आप इस तरह का प्राविजन नहीं करते हैं। आप कहते हैं कि उनको आप सदन की मेज पर रखेंगे। अगर आप नहीं रखते हैं तब क्या होगा? 1948 वाले कानून के अन्तर्गत आपने रूल बना दिये और आपका काम हो गया। वे वायड थे, गलत थे, कानून के खिलाफ थे इसका पता कैसे लगे? यह एक बड़ा सवाल है। कभी कभी सदन में बिल पास हो जाता है और उसमें प्राविजन भी नहीं होता है कि रूल सदन की मेज पर रखे जायेंगे और यह जरूरी भी नहीं है। लेकिन यहाँ आप क्लोज़ 3 रख रहे हैं और कह रहे हैं कि नियम सदन की मेज पर रखे जायेंगे। पहले भी आपने कहा था कि सदन की मेज पर रखे जायेंगे। लेकिन वे रखे नहीं गये। जब आप डेलीगेशन कर रहे हैं तो जो डेलीगेटिड पावर्ज हैं या जो रूल बनने के बिना एग्जैमिन करवाये हुये क्या आप लागू कर सकते हैं? आप कहते हैं कि नहीं हम लागू कर सकते हैं ज्यों ही कोई नियम बन जायें। जब नियम लागू हो जाते हैं तो उनकी बिलिडिटी की जांच कौन करेगा? वे कानून के अनुसार बने हैं या नहीं बने हैं, इसकी जांच कौन करेगा। आप कहते हैं कि :

shall be without prejudice to the validity of anything previously done under this rule.

आपने रूल लागू कर दिये और आपका काम हो गया। वे बैलिड हैं या नहीं इसको कौन एग्जैमिन करेगा? या तो आप कोर्ट को पावर्ज दे नहीं तो पार्लियामेंट को दे। लेजिस्लेशन बनाने की पावर्ज जब आप एग्ज्यूटिव एजेंसीज को, ब्यूरोक्रेटिक मशीनरी को दे देते हैं तो उसको एग्जैमिन करने का अधिकार किसी को तो होना चाहिये। 1948 के कानून के तहत आपने जो रूल बनाये वे आज चल रहे हैं और आपका काम हो गया। लेकिन यह ठीक नहीं है। यहाँ आपने क्लोज़ तीन रखा है। मैं समझता हूँ कि आप चुप रहने और इसको न रखते तो अच्छा होता? क्लोज़ तीन की जरूरत क्यों पैदा हुई? इस क्लोज़ को रखने की क्या आवश्यकता है? सरकार का इस बिल को लाने का एक ही मकसद है कि इसको जम्मू-कश्मीर पर लागू कर दिया जाये। लेकिन साथ साथ वह यह भी चाहती है कि 1973 में यह बात भी पास करवा दी जाये कि जो नियम बनें, वे सदन के सामने रखे जायें। आखिर इसकी जरूरत क्यों पड़ी? और जो रूलज पहले बनाये गये हैं, उनका क्या हुमा?

SHRI INDER J. MALHOTRA (Jammu):  
Mr. Charman, I most heartily welcome this Bill. But here I would like to remind this august House that in every session this kind of Bills are being brought forward by Government for the extension of one legislation or the other to Jammu and Kashmir. On previous occasions also, I have advocated that whatever legal arrangement is required or procedures to be adopted, it should be seen by the Central Government that in no legislation from now onwards the words 'except the State of Jammu and Kashmir' should be there.

As Shri Badi did, I would not like to get into the controversy whether article 370 should be abrogated or some of the change be brought in the Constitution because that is a matter often discussed on the floor of this House. But in principle I am in agreement with him.

Why should we the people of Jammu and Kashmir State, suffer? The people of Jammu and Kashmir elect their representatives to this House; we voice their case here and people also expect that they should be benefited by their representatives being here. The hon. Minister will say that this is a wider question and he is not in a position to answer it. I am only trying to remind this House that on previous occasions only also we have tried to pin point the attention of Government and this House to this basic problem existing today.

I would only like to refer to one observation which my colleague, Shri Bade, made regarding the State of Jammu and Kashmir. He said that the Central Government is always nervous and touchy about the State. The fact is otherwise; it is not the Central Government or the State Government that is nervous and touchy, but it is the Jan Sangh which is touchy about the State of Jammu and Kashmir.

SHRI R. V. BADE: I have said that art. 370 should go

SHRI INDER J. MALHOTRA: He does not understand art. 370. That is my difficulty.

Sir, I would here like to say this; that whenever sincere and genuine efforts are being made by the Central Government and the Government of the State of Jammu and Kashmir to normalise the political situation there, the Jan Sangh party always opposes any kind of these efforts. So, let me once for all tell my hon. friend that the people of Jammu and Kashmir State know where their benefit lies and to which kind of leadership they should look upon to better their future. Sir, the people are also aware as to what role at the different junctures, when the crisis existed in the State of Jammu and Kashmir, the Jan Sangh or the RSS played there. I will be failing my duty.

SHRI R. V. BADE: We are not against the point that Jammu and Kashmir should be integrated with the rest of India.

हम तो चाहते हैं कि जम्मू काश्मीर पूरी तरह से हिन्दुस्तान का अंग बन जाये।

SHRI INDER J. MALHOTRA: Since Mr. Bade is interested to know what kind of dialogue has been going on between Sheikh Abdullah and the Central leadership or other leaders, I would like to mention, with your permission, that Sheikh Abdullah is as good an Indian citizen as Mr. Bade is. (Interruptions) It is only the Jan Sangh who do not accept that Sheikh Abdullah is an Indian citizen. If efforts are being made to normalise the political situation in the State and if the plebiscite front is coming forward to join the Congress party and reaffirm its faith in the accession, what objection have Mr. Bade and the Jan Sangh got? (Interruptions).

SHRI JAGANNATHRAO JOSHI: (Shajapur) Where was the affirmation first?

SHRI INDER J. MALHOTRA: This only proves the sinister design on their part to see that there should always be a political instability in the State of Jammu and Kashmir. But I would like to tell them that we the people of Jammu and Kashmir know how we can normalise our political situation and how we can better our relations with the rest of the country.

In the end I would again like to impress upon the hon. Minister that he may kindly once again convey our feelings to the Law Minister to see that whatever procedural things are required, they should be done, so that henceforth every kind of legislation which is passed in this House should automatically apply to the State Government of Jammu and Kashmir.

SHRI S. M. BANERJEE (Kanpur): Mr. Chairman, Sir, I rise to support the Bill but I also share the views expressed by my hon. friends that a decision should be taken in the House that any Bill which is passed in this House should also cover the Jammu and Kashmir State, because we have all accepted that Jammu and Kashmir is an integral part of our country. Hopes are given by my hon. friend Shri Inder J. Malhotra about which, if they come true, I shall be the happiest person, if the plebiscite front dissolves itself and merges

[Shri S M Banerjee]

with any progressive section or progressive political party

When we speak on this Bill, it really reminds me of the said plight in which the Indians are when they go abroad and of the behaviour meted out to them by our diplomats there. My hon friend Shri Somnath Chatterjee has mentioned this and I would like to go on record and I would like to get an assurance from the hon Minister to the effect, as to how the problem could be solved. I know in UP that when our Indian go abroad to England, especially to London they are not helped by our High Commissioner or his staff. Our India House is only famous for any thing for the Indians and that is, for good Indian food. They only go there for a cheap and good Indian food. Otherwise the behaviour meted out to them is really very sad and is a sad commentary on our diplomats in foreign countries.

I had the occasion to meet some of our diplomats when I went to Czechoslovakia. There I saw that most of our diplomats are as posh as the diplomats in those countries, but when it comes to the question of giving aid to the people they feel so helpless. I do not know whether they want to do anything or whether they are so helpless because of the lack of power or the lack of authority with them.

AN HON. MEMBER Lack of effort

SHRI S M. BANERJEE Lack of effort may also be there. The amount they spend is so fabulous. It is a fantastic amount which they spend. I am told that we have to prove before the world that India is a sovereign and independent country and we have to fall in line with other ambassadors. They say that we have to fall in line with them. As Ambassadors and representatives of a poor country whose leaders from the Prime Minister down to the Deputy Prime Minister talk of austerity day in and day out, should we behave in that fashion in the foreign country? It is a sad commentary that when there is a race going on between unemployment and starvation in our country, our Ambassadors

abroad should lead a luxurious life. I am referring to this matter knowing fully that this will not be answered. Still I would like this to go on record. The Indians who go abroad get a very bad impression about the functioning of our Embassies. There may be some exceptions but generally speaking, they do not help us. This is a general complaint which we receive from the students and Scientists who are abroad. Some qualified engineers abroad wanted to come back to India when a call was given here and when the hon Minister Mr Subramaniam said that jobs would be given to them. Their applications were not even sent here and they were treated shabbily. I have already forwarded two or three applications of that type.

My hon friend Shri Somnath Chatterjee raised the point about the affidavit. If anybody gets that duly authorised affidavit will that be valid here? The present Bill gives the impression that an oath or affidavit might be accepted in the country but not in Jammu and Kashmir. I want to know from the hon Minister if that is the intention and if any High Court has not accepted it. I am sure that the High Courts do not accept such a declaration or oath or affidavit.

Another very important problem was raised by Shri Daga. Clause 3 of the Bill says that every rule made under this Act shall be laid before both Houses of Parliament. I want to know whether the rules framed after the passage of the Bill in 1948 were laid before the House or not. I am told that they were not laid. That being so, you can imagine the fate of the rules framed under this. If the rules framed under the 1948 Act have not been laid on the Table of the House in 1973, we can imagine what will happen to the rules which are going to be framed under the present Bill. Am I to take it that the rules to be framed in 1973 will be laid on the table of this House only after my obituary reference? I want a clear assurance on this point that the rules will be laid on the Table of the House. That is exactly why Shri Somnath Chatterjee and I opposed an earlier Bill and as a result of that opposition certain rules and



regulations were kept in the Library of Parliament though they were not laid here. We want to read the 1948 rules before proceeding further with this Bill. I want a ruling from you on this point. I have not read those rules and I have been speaking from memory, from presumptions and assumptions. I would like to get at least one page of the rules before proceeding further.

MR CHAIRMAN: No ruling is required. The Minister.

SHRI S. M. BANERJEE: I am a new member, but you are here since 1952.

If you have read the rules, I accept it.

MR CHAIRMAN: You are a very old and intelligent member. The Minister.

SHRI SURENDRA PAL SINGH: Sir, I am thankful to hon. members for their participation in the debate. I found from their remarks that as far as the question of extending the Act to Jammu and Kashmir is concerned, all members have supported the measure. They have however taken this opportunity of making certain observations not in regard to this Bill but in regard to the 1948 Act. Mr Chatterjee said that the time has now come when we should review the 1948 Act to find out whether there are any flaws in it and some changes are necessary. That is a suggestion for action to which we will give the utmost consideration. He also asked whether affidavits made prior to the passing of this Bill will be accepted as admissible evidence or not. We do not envisage any difficulty, because even though this Act has not been extended to Jammu and Kashmir, the courts in Jammu and Kashmir have all along been accepting these oaths and affidavits made outside the country as admissible evidence.

SHRI SOMNATH CHATTERJEE: Are there any instances?

SHRI SURENDRA PAL SINGH: So far there has been no difficulty in the working of the Act, I am told, because in the Jammu and Kashmir Evidence Act there is a provision which says that oaths and affidavits authenticated by our

consular offices abroad may be accepted by the courts in Jammu and Kashmir. On that basis, they have been accepting them in the past. But I do agree that this is not a legally fool-proof arrangement. That is why we have come forward to plug this loophole. He also said something about our embassies abroad not being helpful. The same point was made by Mr Banerjee also. This is a completely different matter altogether.

SHRI SOMNATH CHATTERJEE: It is important because these are the officers before whom the affidavits will be sworn.

SHRI SURENDRA PAL SINGH: No officer of any embassy of India abroad is expected to create any difficulties for any of our nationals abroad. It is their duty to give the utmost help to our nationals abroad. If there are any stray cases where any officer has not acted properly, it can be brought to our notice and we will take action.

SHRI S. M. BANERJEE: Let our diplomats abroad first take an oath that they will behave then they can ask others to take oaths.

SHRI SURENDRA PAL SINGH: Mr Banerjee has made a sweeping remark about the functioning of our officers abroad. This is not the proper occasion for me to give a detailed reply but I am not inclined to agree with all that he said about the functioning of our embassies. By and large they have been functioning efficiently. In case there are any complaints we will certainly look into them. Mr Baid and Mr Inder J. Malhotra brought in a larger question of Jammu and Kashmir as such.

SHRI R. V. BADE: My question was: Why have you not made it with retrospective effect?

SHRI SURENDRA PAL SINGH: The main burden of his speech was why article 370 of the Constitution should not be done away with and why should not all Acts passed by the Parliament

[Shri Surendra Pal Singh]

automatically extend to Jammu and Kashmir. This is a much wider issue. Hon. Members know fully well the background of the Kashmir case and they also know that all the provisions of our Constitution do not apply to Jammu and Kashmir State but, gradually, by and by, more and more provisions of our Constitution are being made applicable to Jammu and Kashmir. This particular Bill is an example before us. We are enacting this law which will be extended to Jammu and Kashmir. To bring in the larger question of Jammu and Kashmir's integration at this stage is not really called for. All I can say is that Jammu and Kashmir State is as much an integral part of India as any other State even though it does enjoy a certain special position.

**SHRI R. V. BADE:** There is a provision in the Bill that this will come into force at once. Why have you not made it with retrospective effect?

**SHRI SURENDRA PAL SINGH:** There is no need to give any retrospective effect to this Bill. As I said earlier, we have had no difficulty in the past. It is only for the future. As I have said, there is a flaw in the present arrangement and we are rectifying it. It is not necessary to give it retrospective effect. As regards the Rules made under the 1948 Act, I am not in a position to say straightway whether they have been laid on the Table of the House or not. All I can say is...

**SHRI S. M. BANERJEE:** My point is: Do they exist or not? If they exist whether they have been laid on the Table or not?

**SHRI SURENDRA PAL SINGH:** The Rules certainly do exist. The Rules have been made under the 1948 Act and I am sure, we can make them available to hon. Members. I am not in a position to say whether they were actually laid on the Table of the House. The Rules which will be made from now onwards, under this Act, will be laid on the Table of the House. These Rules will be made available to hon. Members

and they can see. If there is anything wrong in them, they can make suggestions and alter them also.

Sur, I do not think there is any other point which requires any reply from me. With these words, I commenced that the Bill be taken into consideration.

**MR CHAIRMAN:** The question is

That the Bill to provide for the extension of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 to the State of Jammu and Kashmir as passed by Rajya Sabha, be taken into consideration."

*The motion was adopted.*

**MR CHAIRMAN:** Now we take up the clause-by-clause consideration of the Bill.

There is no amendment to clauses 2 and 3. So I will put them together to the vote of the House.

The question is

That Clauses 2 and 3 stand part of the Bill."

*The motion was adopted.*

*Clauses 2 and 3 were added to the Bill.*

*Clause 1—(Short title and commencement)*

**MR CHAIRMAN:** There is an amendment to clause 1 by Shri Surendra Pal Singh.

**SHRI SURENDRA PAL SINGH:** I move

Page 1, line 4,—

for "1972" substitute "1973" (2)

**MR CHAIRMAN:** The question is:

Page 1, line 4,—

for "1972" substitute "1973" (2)

*The motion was adopted.*

MR CHAIRMAN The question is

17 30 hrs.

"That clause 1, as amended, stand part of the Bill"

CINEMATOGRAPH (AMFNDMNT) BILL

*The motion was adopted*

Clause 1, as amended, was added to the Bill

THE DEPUTY MINISTER IN THE MINISTRY OF INFORMATION AND BROADCASTING (SHRI DHARAM BIR SINHA) Mr Chairman Sir, on behalf of Shri I K Gujral, I beg to move

MR CHAIRMAN Then, there is an amendment to Enacting Formula by Shri Surendra Pal Singh

"That the Bill further to amend the Cinematograph Act, 1952 as passed by Rajya Sabha, be taken into consideration"

Enacting Formula

SHRI SURENDRA PAL SINGH  
I move

\*This brief Bill which is before the House seeks to amend the Cinematographic Act mainly in one respect This is to bring the provisions of the Act in to force in the State of Jammu and Kashmir With this, the provision of the Cinematographic Act will be in force throughout the length and breadth of the country

Page 1, line 1,—

for "Twenty-third" substitute "Twenty-fourth" (1)

At present, the regulation of the cinematographic exhibition is carried out under an old Act of the State Government dating from 1933

MR CHAIRMAN The question is

Page 1, line 1,—

for "Twenty-third" substitute "Twenty-fourth" (1)

SHRI JYOTIRMOY BOSU (Diamond Harbour) On a point of order I was searching for the Act which they have mentioned in the Bill namely, the Jammu and Kashmir Cinematograph Act 1898 I could not get hold of this Therefore I was unable to study the Bill, the House is not prepared for this

*The motion was adopted*

MR CHAIRMAN The question is.

"That the enacting Formula, as amended, stand part of the Bill"

SHRI DHARAM BIR SINHA. That is how they use in Kashmir If it is translated into AD the year is 1933

*The motion was adopted*

The Enacting Formula, as amended, was added to the Bill.

*The Title was added to the Bill*

SHRI SURENDRA PAL SINGH. I beg to move

SHRI JYOTIRMOY BOSU I could not get it

"That the Bill, as amended, be passed"

MR CHAIRMAN Now you try to get it

MR. CHAIRMAN. The question is:

"That the Bill, as amended, be passed"

SHRI DHARAM BIR SINHA The Government has the active support of the State Government of Jammu and Kashmir in its effort to substitute this old law by one that is applicable to the rest of India and thereby bring uniformity all over the country Towards this end, a Presidential Order entitled the Constitution (Application to Jammu and Kashmir) Amendment Order 1972

*The motion was adopted*