

Mohanty, Shri Surendra
Pandey, Shri Sarjoo
Patel, Shri Bhaljibhai
Patel, Kumari Maniben
Patel, Shri H. M.
Ram Hedao, Shri
Sequeira, Shri Erasmo de
Shastri, Shri Shiv Kumar

MR. SPEAKER: The result* of the
division is: Ayes 127; Noes 27.

The motion was adopted.

SHRI F. H. MOHSIN: I introduce the
Bill.

12.17 hrs.

STATEMENT RE. MAINTENANCE
OF INTERNAL SECURITY
(AMENDMENT) ORDINANCES

THE DEPUTY MINISTER IN THE
MINISTRY OF HOME AFFAIRS
(SHRI F. H. MOHSIN): I beg to lay
on the Table an explanatory state-
ment (Hindi and English versions)
giving reasons for immediate legisla-
tion by the Maintenance of Internal
Security (Third Amendment) Ordi-
nance, 1975 and the Maintenance of
Internal Security (Fourth Amend-
ment) Ordinance, 1975, as required
under rule 71(1) of the Rules of Pro-
cedure and Conduct of Business in
Lok Sabha.

12.18 hrs.

STATUTORY RESOLUTION RE. DIS-
APPROVAL OF SMUGGLERS AND
FOREIGN EXCHANGE MANIPU-
LATORS (FORFEITURE OF PRO-
PERTY) ORDINANCE

and

SMUGGLERS AND FOREIGN EX-
CHANGE MANIPULATORS (FOR-
FEITURE OF PROPERTY) BILL.

MR. SPEAKER: Now we take up
the Statutory Resolution of Shri
Erasmo de Sequeira on the Smug-
glers and Foreign Exchange Manipu-
lators (Forfeiture of Property) Ordi-
nance, 1975.

THE MINISTER OF WORKS AND
HOUSING AND PARLIAMENTARY
AFFAIRS (SHRI K. RAGHU RAMA-
IAH): Sir, before you take up this
item, I would like to make a submis-
sion. The Business Advisory Commit-
tee takes into consideration all rele-
vant factors, and allot time for various
items. In the case of Voluntary Dis-
closure of Income and Wealth Bill
three hours were allotted but yester-
day we took five hours.

I would like to submit to you and
to the House through you that it
would be very difficult to finish the
work before us if we do not stick to
the schedule. In this case two hours
are allotted. May I suggest that you
may be good enough to say that the
Minister will reply at 14.45. That
will have 1½ hrs. Another half an hour
may be left for clause by clause dis-
cussion and the third reading.

MR. SPEAKER: That is all right.

*The following Members also recorded their votes:

Ayes: Saryshri Paripoornanand Painuli and C. C. Gohsia and Dr. G.S. Melkote ;
Noes : Shri S. A. Muruganatham.

SRI ERASMO de SEQUEIRA
 (Marmagao): I beg to move:

"This House disapproves of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Ordinance, 1975 (Ordinance No. 20 of 1975) promulgated by the President on the 5th November, 1975."

This Ordinance, I am sorry to say, is an example of the fascist manner in which this Government is functioning and I must say that it is a matter of great pain that recently we have had as many as 20 Ordinances, and this country is being ruled almost entirely by ordinances rather than by Parliamentary enactments.

May I ask, what was the reason for this ordinance having been issued on 5th of November? May I ask the Minister, how many hotels would have run away, how many cars and other assets would have drifted away, and how many notices he has served since this ordinance was passed or rubber stamped, call it whatever you may, and what was achieved by having the ordinance on 5th of November instead of coming forward before this House, when it assembled, with a law?

We have no quarrel with the principle that the property which has been acquired by smuggling or foreign exchange manipulations should be forfeited. In fact, I would like to remind the House that when COFEPOSA was being discussed, the demand that forfeiture should be included and forfeiture should be provided for property directly linked to gain from smuggling or foreign exchange manipulation, was made from this side of the House—from the Opposition—and it was, at that time, the Government which resisted it.

It is not a light matter and to my mind certainly, it was not a matter

for any kind of ordinance. It was a matter which should have come forward before the House and then gone before the Select Committee, because as the Government well knows such measures can be subject to considerable misuse.

It is not that we are coming forward before you and saying for the fun of saying it that these measures are going to be misused; we are saying it on the basis of experience that similar laws and similar powers before it is no secret which gave the Government absolute power (like MISA) have been misused to a very substantial extent. With your permission I will read out a letter which I have received from a detenu in Aligarh Jail—

"In Aligarh District, the Police have adopted a very tough attitude towards satyagrahis and during the satyagraha people are being beaten mercilessly. Here, in my barrack there are two or three college lecturers and one college principal. Even they were not spared by the police. Every time when a batch of satyagrahis came, most of them had to be admitted to the hospital. One Mr. Bali Singh, an old man, could not sustain the injuries and he died on the 26th of December."

This is the extent to which misuse goes. It is not only here. It is there even in the States. I will give you an example from Goa. Under preventive detention, without charge and without trial, the President and the Vice President of Panjim municipality were thrown into jail. That is not the end of the story. By the misuse of the provisions of the Municipal Act both of them were removed from office. Instead of people from the opposition being there all this is being manipulated and literally a nominee of the local ruling party is now the President of that municipality. The Lieut. Governor of Goa is supposed to be the representative of this Government, but he is behaving like some

[Shri Erasmo de Sequeira]

kind of ambassador to a foreign country. And my local Government in Goa is allowed to get away even with murder. And, I am not saying this lightly, Sir, I have some information. I am referring to a case where quite some time ago a rickshaw driver was brutally murdered, the police seem to know who did it, but they say that they know nothing about it. I am referring it to the Minister and he may ask the Home Ministry to get somebody there to have this case investigated. A lot of rot will come to light.

MR. SPEAKER Is he a Smuggler or a Foreign Exchange manipulator?

SHRI ERASMO de SEQUERIA: I am talking about the misuse of power.

MR. SPEAKER It must be related to this. It should not be general misuse. But it should be related to this item.

SHRI ERASMO de SEQUERIA: I am thankful to you, Sir for having allowed me to speak, and for this interruption only thereafter.

I would like the hon Minister to look at the objectives of the Bill. Here it says that it will apply to certain individuals only and that is a good thing. Then you will find for example section 2(2)(a) which says that it shall apply to every person who is convicted under the Sea Customs Act, 1878 or the Customs Act, 1962 of an offence in relation to goods of a value exceeding Rs 1 lakh. Sea Customs Act is a very large piece of legislation. Conviction under Sea Customs Act may be for a small matter or a serious matter. Suppose a person or a company has to pay some kind of fine in the course of being convicted with reference to a consignment of one lakh that should not be brought within the mischief of this law. So, the Minister should have a look at these provisions and he should ensure that whoever is operating this Bill when it becomes an Act, it can only be operated

with reference to people who are really smugglers or foreign exchange manipulators. It is by such wide provisions that we create powers and give them to people in Government who go on merrily to misuse them ad nauseam.

Take the tribunal, Sir. What tribunal is this? You have one judge and 3 joint secretaries of the Government. Can anybody expect some kind of real review or justice from the tribunal? We all know what happens. Departmental instructions will be issued and the review will be a mere formality. If Government is serious about forfeiting the properties of smugglers and foreign exchange manipulators, let them make sure that when a declaration is made it is made only with reference to those people who are really supposed to be contained, and that if a declaration is made, the person against whom it is made, has a change of getting a fair review.

I have an objection to the application of this Bill to those who have merely been given an order of preventive detention because if we wish to convince anybody either in this country or in the world that we are a democracy—I do not see Government trying very hard to do it—then we must accept that the persons are not guilty until proved otherwise. If Government says that it is operating a democratic society under the rule of law, why does it want to be the accuser jury and judge, all rolled into one? I feel that, unless we take this caution and unless we put a check to ensure that this Bill is not misused—not only that—but that it cannot possibly be misused, in my view, it will not be a measure of control or a measure of deterrence; it will only be a measure of harassment.

I would still appeal to the Government that we should go with this Bill before the Select Committee. In fact, I have moved a motion to that effect. Let us have a good look at this Bill. We all want deterrence to be there;

we all want smuggling and foreign exchange manipulation to be discouraged. Let us make it effective, let us make it pointed and let us ensure that there is no abuse.

MR. SPEAKER Resolution moved

"This House disapproves of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Ordinance, 1975 (Ordinance No. 20 of 1975), promulgated by the President on the 5th November, 1975."

THE MINISTER OF STATE IN-CHARGE OF THE DEPARTMENT OF REVENUE AND BANKING (SHRI PRANAB KUMAR MUKHERJEE)
Sir, I beg to move*

"That the Bill to provide for the forfeiture of illegally acquired properties of smugglers and foreign exchange manipulators and for matters connected therewith or incidental thereto, be taken into consideration"

Sir, this Bill seeks to replace, with some minor modifications, the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Ordinance, 1975 which was promulgated by the President on the 5th November, 1975

The circumstances which necessitated immediate legislation by the Ordinance have been explained in a statement placed on the Table of the House. I do not, therefore, propose to deal with this aspect and shall only explain briefly the provisions of the Bill

Like the Ordinance which it seeks to replace, the Bill provides for assumption of powers to deprive the smugglers and foreign exchange manipulators of their illegally acquired properties so as to effectively prevent their anti-social and clandestine activities. The provisions of the Bill will apply to persons convicted under the customs or foreign exchange laws and

those in respect of whom orders of detention under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 have been made. They will also apply to the relatives, associate and confidants of such persons. Under the Bill, it will be unlawful for any person to whom the Bill applies to hold any illegally acquired property, whether moveable or immovable, either by himself or through any other person on his behalf and such property will be liable to be forfeited to the Central Government. For this purpose, the expression "illegally acquired property" will broadly mean property which is acquired out of income, earnings or assets obtained from any activity prohibited by any law relating to any other matter within the legislative competence of the Parliament, or out of income, earnings or assets in respect of which any such law has been contravened. It will cover property acquired out of any income, earnings or assets the source of which cannot be proved, as also property held by any person which would have been illegally acquired property in relation to a previous holder unless it has been transferred in good faith for adequate consideration.

The proposed legislation will be administered by senior officers of the Central Government not below the rank of a Joint Secretary to the Government who will be designated as competent authorities. If, having regard to the value of properties held by a person, his known sources of income, earnings or assets and other relevant material the competent authority has reason to believe that any property is illegally acquired property, it will serve a notice upon the person concerned to show cause why such property should not be declared as illegally acquired property and forfeited to the Central Government. After considering objections, if any, to the show-cause notice and giving the person concerned a reasonable opportunity of being heard the competent authority will record a finding

*Moved with the recommendation of the President.

[Shri Pranab Kumar Mukherjee]

as to whether the property is illegally acquired property. The burden of proving that a property is not illegally acquired property will be on the person affected and where the property is held to be an illegally acquired property, it shall stand forfeited to the Central Government.

Provisions have been made to ensure that while small one-time offenders are not proceeded against, the big and habitual offenders do not escape the rigours of the law. It is also being provided that if the source of only less than one-half of the investment in a property remains unproved an option will be given to the person affected to pay a fine in lieu of confiscation. Such fine will be equal to one and one-fifth times the value of the unexplained investment.

Cases may arise where illegally acquired property may be held by a trust created by a person to whom the provisions of the Bill apply or it may be acquired by a trust out of contributions made by such person. The Bill accordingly contains a provision to take care of such cases. Where a person to whom the Bill applies is either the author or a substantial contributor of a trust and the competent authority has reason to believe that any property held by the trust is illegally acquired property, it will be open to the competent authority to serve a notice upon the author or the substantial contributor and the trustees, calling upon them to explain the source of investment in the property or the source of money or other assets contributed to the trust for acquiring such property. In the absence of a satisfactory explanation, the property will be liable to forfeiture to the Central Government. This provision will not, however, apply in relation to any property held by a trust or institution created or established wholly for public religious or charitable purposes if such property has been so held by it from a date prior to 5th November,

1975, that is, the date of commencement of the smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Ordinance, 1975, or if such property is wholly traceable to any property held by such trust or institution prior to that date.

The competent authority has been empowered to obtain information from various authorities and to require any officer of the Income Tax Department to conduct or cause to be conducted any enquiry, investigation or survey in respect of any person, property, documents, etc., for the purposes of any proceedings under the Bill or for initiating any such proceedings.

A provision is being made for setting up an Appellate Tribunal for Forfeited Property to which appeal will lie against the order of the competent authority. The Appellate Tribunal will consist of three members and its Chairman will be a person who is or has been or is qualified to be a judge of the Supreme Court or a High Court. The order of the Appellate Tribunal will be final.

Officers of police, customs, central excise and income-tax departments and officers of enforcement appointed under the Foreign Exchange Regulation Act, 1973 will be required to assist the competent authority and the Appellate Tribunal for the purposes of any proceedings under the Bill.

In respect of any matter which the Appellate Tribunal or the competent authority is empowered to determine under the Bill, the jurisdiction of courts has been barred and the provisions of the Bill will have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Sir, the provisions of the Bill will go a long way in checking the malaise of smuggling and foreign exchange manipulations which is having a deleterious effect on the national eco-

nomy. I am confident that the Bill will receive the unanimous support of the House

Sir, I move.

MR. SPEAKER Motion moved

"That the Bill to provide for the forfeiture of illegally acquired properties of smugglers and foreign exchange manipulators and for matters connected therewith or incidental thereto, be taken into consideration"

SHRI ERASMO DE SEQUEIRA I move

"That the Bill to provide for the forfeiture of illegally acquired properties of smugglers and foreign exchange manipulators and for matters connected therewith or incidental thereto be referred to a Joint Committee of the Houses consisting of 6 members, 4 from this House, namely—(1) Shri S M Banerjee, (2) Shri Dinen Bhattacharva, (3) Shri P G Mavalankar, (4) Shri Erasmo de Sequeira, and 2 from Rajya Sabha,

that in order to constitute a sitting of the Joint Committee, the quorum shall be one third of the total number of members of the Joint Committee;

that the Committee shall make a report to this House by the 18th March, 1976,

that in other respects the Rules of Procedure of this House relating to Parliamentary Committees shall apply with such variations and modifications as the Speaker may make and

that this House do recommend to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of 2 members to be appointed by Rajya Sabha to the Joint Committee" (1)

MR. SPEAKER. The Resolution, the main motion for consideration of

the Bill and the amendment are now before the House.

SHRI SOMNATH CHATTERJEE (Burdwan) The objectives of the Bill are welcome and in fact this Bill should have come much earlier I remember taking part in the proceedings of this House when COFEPOSA first came here and it was being discussed here. The only fear was about the abuse we have legitimate fears about the method and the seriousness of implementation Unless it is implemented with vigour it will be only a show piece legislation We have a number of such show-piece legislations for the weaker sections of our people When it is the question of the protection of the rights of the working class people, we find firstly that the laws are inadequate and secondly even those laws are not implemented properly Some people seem to be above the law in this country and I remember one case, it is a very pertinent example I am sure the hon Minister knows about that and he should give a specific answer to that case I am referring to a single case, that is Shiv Shankarlal Guptas case He made an effort about three years ago to take over Metro cinema, by means of foreign exchange manipulation and trafficking in foreign exchange The employees' union made great effort to make this Government wake up I had the privilege of appearing before the court for the cinema employees' union in the Calcutta High Court We obtained injunction against the take-over by this person Unfortunately, the Government in spite of repeated requests did not come forward in support of the workers in that case. The Government was a party to it. I wrote many letters to Shri Gujral, the then Union Broadcasting Minister. We took up the matter with the Law Ministry. Shri H. N Mukerjee was the President of the Union. He also took up the matter personally and saw the Minister on more than one occasion. But the Government did not

[Shri Somnath Chatterjee]

come forward in aid of the workers. But the Court issued an injunction restraining this manipulator, foreign exchange trafficker from taking over for about a year and half. Ultimately because of limited legal provisions in support of the working people, we could not succeed in this except to a very limited extent. Now, has this been taken over. Did you take any step to take over the Metro cinema? I am giving this as an example. I do not know which property has been acquired by which foreign exchange racketeer. Government must know this. This Ordinance was brought on 5th November 1975. Some of the legislations were made by-passing the Parliament initially. We could not help it. We do not mind. But we cannot keep quiet when it has been misused. I would like to know from the hon. Minister how many cases during this period, that is from 5th November 1975 to date—it is more than 2½ months—have been initiated. How many show-cause notices have you issued? How have you utilised the provisions of the Ordinance? If the provisions of the ordinance? If there was no immediate necessity or immediate requirement to take proceeding against these persons, then this Ordinance was not justified. Therefore, I would like to know from the hon. Minister—the country would like to know this from the hon. Minister—how many proceedings have been initiated under the ordinance. How many properties have been forfeited and whether this Metro cinema or any other known illegal property has been taken over by Government or not? Sir, we have been saying that the existing laws have been made with drastic provisions of confiscation of contraband goods. Why don't you take steps under those provisions? On principle, I am against the Preventive Detention Act because there is a possibility of abuse and misuse. Once you confer power on officers or the authorities, they do not always exercise those powers bona fide because of the ex-

traneous circumstances. This is bound to be misused. You have to use it against a particular section of people who are to be condemned because their activities are to be condemned. But why have you not been using considerable powers of prosecution, considerable powers of adjudication under Customs Act and Foreign Exchange Regulations Act? Even then by those proceedings you could have sent them to jail. Sir, a few days back I found a news item in a news paper that 11 smugglers had been convicted by the Bombay Magistrate and they had been sent to 18 months' rigorous imprisonment. That is much better than keeping a person in jail and arranging with the superintendent of the jail for giving all sorts of facilities. So, why not produce them before the magistrate's court with all the evidence you must have got and put them under rigorous imprisonment? The onus is on them. My only submission is, give them exemplary punishment, but after at least a semblance of trial. Apply not only this law but the other provisions of the general law Parliament has given those powers unhesitatingly. Whenever questions of economic offences have come up in this House can anybody say that we on this side of the House have stood in the way? Never. Our grievance is that you do not utilise those powers properly. The only utilisation you have made of the emergency powers is to take away bonus! We want this legislation to succeed. May I point out one or two lacunae in this which should be taken note of?

Firstly, the main Act—COFEPOSA—is applicable to Jammu & Kashmir, but this Act is not being made applicable to that State. Is there no illegally acquired property there? Persons earning money through illegal methods may go there and buy property. You may say that immoveable property cannot be acquired, but what about moveable property? I do not know; if there are any special provi-

sions in this regard, the House should be enlightened about them.

Under clause 2(2) (a), this Act is going to be made applicable to persons who have been convicted of some offence. There must be a determination by judicial proceedings of an offence under the Act and there must be a conviction upon a prosecution. Supposing in adjudication proceedings, somebody has been held guilty of illegal importation or smuggling of goods and with those proceeds they have acquired properties. Are they within the ambit of the Act or not? This will give rise to complications in the application of the Act. It may help me in my other capacity but I do not want to make money by that process. Then there are departmental proceedings and a personal penalty is imposed upon him. Will he come within this Act? This is a great lacuna which is open to interpretation either way. As it is, a large number of people may escape. In many cases I know that prosecutions are not launched. Only departmental proceedings are taken. Therefore, kindly consider whether those persons are within the net or not. Secondly, on principle I say, so far as the detenus are concerned, there must be some objective basis to find out whether they have participated in some illegal activity because now-a-days you are detaining a person as smuggler without telling him what are his illegal activities. So far as other persons are concerned, there are objective materials, but so far as these persons are concerned, there must be some objective material. These are points on which I request the Minister to consider.

SHRI VALAYAR RAVI (Chirayinkil): Can you tell any name of a person who was detained was not a smuggler?

SHRI SOMNATH CHATTERJEE: I do not know any smugglers. (Interruptions.) We are a sort of a class who are misunderstood.

May I know whether according to you property includes money? Does it include or does it not include? I am making these suggestions not with a view to criticise but when you are having it on the statute book, have it in a proper and foolproof form.

Kindly come to the Explanation 1 on page 3 of this Bill. Here you will know how you are keeping loopholes. Explanation I Says

'For the purposes of sub-clause (1) of clause (a), the value of any goods in relation to which a person has been convicted of an offence shall be the wholesale price of the goods in the ordinary course of trade in India as on the date of the commission of the offence.'

If some goods are imported into India illegally in contravention of the provisions of, say, the Import Control Order—such goods are not available at all in India; they have never been available in India; for the first time they are brought into India—these are matters which are being laughed out. I do not know for whom the hon. Member is laughing.

MR SPEAKER: You should not be diverted by these things.

SHRI SOMNATH CHATTERJEE: Now, there is the phrase 'in the ordinary course of trade'. There is no course of trade, far less an ordinary course of trade. How do you assess or make the valuation? Unless the valuation is done, the whole definition will not apply. It may be said that they will make an arbitrary valuation and try to put the other party to disprove it. That is not the proper way. Now about 'wholesale price'. There have been umpteen decisions of the law courts—including the Supreme Court as long as it remains—that that definition ought to prevail. Any authority in the country is bound to follow the decisions of the Supreme

[Shri Somnath Chatterjee]

Court—so long it remains. "Wholesale price" has been defined to be a price at which goods can be sold to whole sale traders. This has been defined by the Supreme Court. It has been further held that there must be an actual price for the goods at the time of the sale. Whether it includes the selling price or the manufacturing price, is different. How are you going to apply the Explanation? If this Explanation does not apply, the whole Act becomes inapplicable. I will not take much time. I am pointing out 1 or 2 things which are very important, according to me. Kindly see the definition of the word 'associate'. Don't make some provisions which will make the ordinary, simple person a victim of your abuse of these powers. "Associate" has been made to define persons even "keeping accounts of such person". An accounts clerk or just an ordinary clerk is given the job of making entries in the books. He will be treated as an "associate" of such persons.

Then about the collaborator. A collaborator of a smuggler does not come within the definition. He does not become an associate if he is not, in fact, a partner or a member of a private company. Therefore, don't make such laws which are open to abuse; and I submit that an ordinary, simple employee getting Rs. 100, who for the purpose of keeping his job, has to make some entries, does not and is not supposed to know the things. He is in; but the collaborator is out.

Next about the constitution of the tribunal. The hon. Minister had said that this Act will be implemented by officers of the level of Joint Secretaries who will be the competent authority—if I am not wrong. I take it that the object of constituting the tribunal is to give those people an opportunity to prove the bona fides

of the sources with regard to property. If that tribunal is going to consist again of Joint Secretaries, it does not inspire confidence. By merely associating a person who had held a judicial office, or may be holding a judicial office—he will be a minority —(Interruptions)

MR. SPEAKER: Will you take long, or will you finish just now?

SHRI SOMNATH CHATTERJEE: I will finish in two minutes.

MR. SPEAKER: You may continue after lunch. The House will now adjourn and meet again at 2 p.m.

13 hrs.

The Lok Sabha adjourned for Lunch till Fourteen of the Clock.

The Lok Sabha reassembled after Lunch at three minutes past Fourteen of the Clock.

[MR. DEPUTY-SPEAKER in the Chair]

STATUTORY RESOLUTION RE. DISAPPROVAL OF SMUGGLERS AND FOREIGN EXCHANGE MANIPULATORS (FORFEITURE OF PROPERTY) ORDINANCE SMUGGLERS AND FOREIGN EXCHANGE MANIPULATORS (FORFEITURE OF PROPERTY) BILL—contd.

MR. DEPUTY-SPEAKER: Shri Somnath Chatterjee will continue his speech.

SHRI SOMNATH CHATTERJEE: Mr. Deputy-Speaker, there is one more provision of the Bill to which I want to draw the attention of the hon. Minister, and that is clause 19 at page 9, which is bound to cause great hardship in some cases. It provides for taking possession of properties which are forfeited under this Act. There may be bona fide occupants of a property, even monthly tenants.

These are small people, occupying one or two rooms in a property. Once that property is acquired, whoever may be in possession will be forced to go out of the property, and the coercive machinery of the State can be used against him. It says that the competent authority may order a person affected, as well as any other person who may be in possession of the property, to surrender or deliver possession to the competent authority. Therefore, every person in that property, whether a *bona fide* occupant or *bona fide* tenant or not, whether a small tenant or not, will be forcibly ejected from that property, which is bound to cause great hardship to some people. Further no opportunity is given to those occupants of the property to make any submission or representation before the competent authority or tribunal. Therefore, this is a very rigorous provision which may not affect smugglers as such, but will affect very repressively *bona fide* occupants of property. If somebody takes up a tenancy of two rooms in a property for a rent of Rs. 100 and does not know that it is a smuggler's property, after staying there as a *bona fide* tenant or occupant for some time, he is suddenly one day asked to get out of the property without any hearing or opportunity to show his *bona fides*. That is bound to cause great injustice. These are some of the matters which I hope the hon. Minister will take note of.

Before I end, I only hope that this piece of legislation, like many others will not remain merely a gimmick but will be implemented properly. Let them be all implemented, not for the benefit of the financial operators, but let them be utilised vigorously against financial manipulators. Otherwise the whole purpose of the Bill will be defeated.

MR. DEPUTY-SPEAKER: I have a number of speakers from the Congress Party here. Obviously I cannot
2110 LS-5

accommodate all of them. I will call them in the order in which I have the names here, and in order to enable them to make a meaningful speech, I will allow them ten minutes each.

SHRI B. R. SHUKLA (Bahraich): The smugglers and foreign exchange racketeers are operating a parallel economy based on their ill-gotten wealth. In fact, they are in possession of fabulous wealth and are wallowing in luxury which even the grand Moghuls could not dream of. I welcome and appreciate the objective and the spirit behind this legislation. This is the first time during the last 27 years of freedom that a serious attempt is being made by the Government to curb the dens of the smugglers and foreign racketeers, but, as pointed out by my learned colleague, Shri Somnath Chatterjee, there are many deficiencies and inadequacies in the Act itself. Therefore, the Act is simply tinkering with the colossal problem of the illegally acquired property of the smugglers and racketeers.

The application of this Act is restricted to two classes of persons, although they have been categorised into four. This Act will apply to persons who have been convicted for an offence under the Sea Customs Act, the Customs Act or the Foreign Exchange Regulation Act for the first time and then only if the property in relation to which the offence under these Acts have been committed is of the value of Rs. 1 lakh or more. The second category consists of persons who have been convicted under any of these enactments more than once irrespective of the value of the property involved in the commission of the offence. So, it comes to this that if a person who has been convicted of an offence which involves property within the clutches of this law while within the clutches of this law while a person who has been convicted more than once but in relation to property valued only at Rs. 200 or Rs. 300 will

[Shri B. R. Shukla]

come within the purview of this legislation. I do not understand the rationale behind this sort of categorisation and the discrimination between these two sets of persons.

The third category of persons are those who have been detained under the conservation of Foreign Exchange and Prevention of Smuggling Activities Act if in their cases after review and after receipt of the Report of the Advisory Committee, if any, the orders have not been revoked. How we know that if a person is to be convicted, he is to be prosecuted in the First Instance Court, that is the Magistrate's Court, then he has the right of appeal. He will go to the session court. If he is aggrieved, he can agitate the matter up to the Supreme Court. This will take a very long time. Therefore, if the final conviction is upheld by the highest court in the country, only thereafter the question of the forfeiture of the property of such persons would arise.

Now, we are dealing with an emergent situation. The parallel economy is posing a threat to our economic stability. Therefore, my submission is that we should widen the ambit and the scope of this law so that the notorious smugglers and exchange racketeers are brought within the purview of this law. My suggestion is that there should be a clause in the Bill which shall apply to those persons who, by repute, are habitual smugglers and racketeers. The court may feel difficult in coming to the conclusion whether a person is guilty of these economic laws. Certainly, everybody and the Government fully know who are the notorious smugglers in this country. If they are so, a notice should go against those persons who are notorious smugglers. It is for them to say that the property, which they are in possession of, has been acquired by honest and innocent means. If they fail to do so, certainly

their property should be confiscated. Therefore, any half-way measure will only touch the fringe of the problem. It is only an attempt to touch the tip of the iceberg of the ill-gotten property of the smugglers. An apprehension has been voiced several Opposition Members that the Government will abuse the powers given under this Act. As a matter of fact, you have to trust the Government for certain measures. If you have no confidence, then nothing can proceed. After all, the Government has to function; the Government has enjoyed the confidence of the people. Since they are in continuous enjoyment of the confidence of the people, therefore, they are here.

We had come with a programme. All agreed that the gangs of smugglers and racketeers should be smashed. The property which they have acquired by their nefarious activities should be confiscated, and it should be used for the benefit of the people, because the property will vest in the Central Government.

An apprehension has been also voiced that the tribunals will consist of the persons who are of the status of the Additional Secretary. Even in the administration of Direct Taxation Laws, we find that the personnel consist of persons of like rank and status, but it cannot be said that they have abused their powers. Why should we always be obsessed with the idea that persons of only the status of a High Court Judge or a Supreme Court Judge can alone be trusted. We know that there have been criticisms and there will be criticisms even against the acts of the judges. Therefore, at some point or the other, we have to trust certain functionaries in the Government. Otherwise, the whole thing would end in a chaos.

There is a very redeeming feature in this Bill that the courts have been prohibited to issue injunctions or stay

orders in relation to the proceedings which will come up before the competent officer.

There is provision also for the appellate tribunal and, ultimately, the Supreme Court lawyers will always with their ingenuity, with their brain, find out some ground for interference in findings arrived at by the tribunals which are semi-judicial or partially judicial. Therefore, that judiciary function will remain there. The overall power of the Supreme Court will be there.

With these words, I extend my fullest support to the provisions of the Bill so far as they go. But I would request the Government that an amendment should be accepted and habitual offenders should also be brought within the mischief and the ambit of the Bill.

SHRI BHOGENDRA JHA (Jainagar): Mr. Deputy-Speaker, Sir, this Bill has been brought to replace the Ordinance issued a few months ago. With regard to the smuggling operations, we have all been facing this problem time and again.

MR. DEPUTY-SPEAKER: Crying hoarse against it or for it?

SHRI BHOGENDRA JHA: Against it. Those who are for it, need not cry.

Last year, the hon. Minister, Shri P. K. Mukherjee had stated that during 1974, about Rs. 88.31 crores worth of smuggled goods had been seized. During the debate, in this House, the Finance Minister, Shri C. Subramaniam, stated that in 1970, goods worth of Rs. 22 crores; in 1971, goods worth Rs. 30 crores; in 1972, goods worth Rs. 28 crores and in 1973, goods worth Rs. 35 crores were seized.

With regard to the foreign exchange, we have not been able to find out the exact amount or even the approximate amount which can be estimated to be manipulated by those manipulators. A Study Team appointed by the Government, the Finance Ministry, in its report in 1971 has stated:

"On an overall view, the total consumption of unauthorised foreign exchange for various purposes in a year would appear to be of the order of Rs. 240 crores or thereabout."

That was the estimate made in 1971. The figure must have gone up since then.

Then, we have been facing this problem in various other ways also. As was repeatedly stated by me in this House, last year, when the conservation of Foreign Exchange and Prevention of Smuggling Activities Bill had come before the House, we had a lengthy argument here and the Finance Minister, Shri C. Subramaniam stated on 6th December, 1974 as follows—

"Again, Mr. Bhogendra Jha made the point which was reinforced by Mr. Banerjee about dealing with the property. Any acquisition of property or wealth through the smuggling activities stands on a completely different footing altogether and, therefore, it will have to be dealt with in a different manner for the purpose of confiscation. I can assure the hon. Members that the matter is under investigation. We are trying to find out what sort of law we should have so that it may stand the test of judicial scrutiny also."

This was on 6th December, 1974. Then, I asked, "Will you bring it in this session?" Shri Subramaniam said, "I cannot say that because it depends

[Shri Bhogendra Jha]

on how soon they are able to formulate the proposals."

This shows that on 8th December, 1974, the Finance Minister formally gave a fore-warning to the smugglers and foreign exchange manipulators that, if they can, they should devise means and methods to see that they are not caught when any enactment of this kind comes into being.

I will come to the Bill later on....

MR. DEPUTY-SPEAKER: You have very limited time. You better come to the Bill.

The House had agreed to call the Minister at 2.45 p.m. I am giving ten minutes each and I am just giving you friendly advice, please come to the Bill now.

SHRI BHOGENDRA JHA: When this Bill was initiated, it was said it goes by the court interpretation in the matter. As you know, the Supreme Court itself had given a ruling on 12th February 1975 as follows:

"There is no connection between smuggling which is essentially a secret and clandestine operation and maintenance of public order in which the operative word is 'public.'"

The Delhi High Court, again, ordered the release of Sukar Narain Bakhia, Yusuf Patel and three others as one of the 'grounds' was non-existent. I know because I myself have been detained several times and several times grounds were non-existent, but the Supreme Court could not release me in 1950-51. But here our Supreme Court is too generous, in this situation, to the Executive Officers. I would like, through you, to urge the Minister, if he has the courage, to institute an enquiry in to it.

One Customs Inspector in Madhubani district was caught red-handed by the people while he was smuggling goods himself in a company. His face was blackened and he was paraded in Bihar before four District Magistrates. The District Magistrates of Madhubani, Dharbanga, Samastipur and Begu Sarai, the Commissioner and the Inspector of Police were all there. The people took him to the police station. But later a false case against these people was instituted and it is still lying unproved.

Another Block Development officer of Basopatti in Bihar was caught red-handed by the people while smuggling goods from Nepal. Afterwards, he was suspended from service, perhaps because he belonged to the State Cadre and not to the Central Cadre like the Inspector I am just citing these to show that smuggling comes to the cognizance of the people and persons like me try to help the administration to implement the laws. But such people are being prosecuted.

I will give you another instance. The Motihari Policemen's co-operative formally smuggled goods from Nepal—goods of Chinese and Japanese make—and they are being formally sold by the Policemen's Cooperative in Motihari. If the Minister has the courage to see the goods, they are still not totally disposed off.

After this, I am coming to the point that, with this background

MR. DEPUTY-SPEAKER: of the ten minutes, only two now remain.

SHRI BHOGENDRA JHA: I am not in the habit of always troubling you. If you want, I will try to remain out of the House.

MR. DEPUTY-SPEAKER: Please don't get excited, but a certain time has been allotted.

SHRI BHOGENDRA JHA: I understand that, but you can extend the time. If I am irrelevant, You can stop me.

SHRI H. N. MUKERJEE (Calcutta-North-East): Why is such a rigid time schedule fixed by the Chair?

MR. DEPUTY-SPEAKER: I am very, very conscious of this myself but, before Lunch, the Minister of Parliamentary Affairs drew the attention of the Speaker and the House to the fact that there is a lot of business pending and to the fact that yesterday, a Bill for which three hours had been allotted took five hours, resulting in the upsetting of the entire schedule. Now, he made a request to the Chair that the Minister should be called at 2.45 p.m. in order to minimise time.

The Speaker went on record that he had agreed to that. I am only trying to keep to that schedule. What else can I do? I understand that a Bill like this cannot be disposed of in two hours. I am not saying that what Mr. Bhogendra Jha says is not relevant; it is very very important. But he should realise my difficulties also.

SHRI ERASMO DE SEQUEIRA: Let us move a formal motion that the time be extended by one hour.

THE MINISTER OF WORKS AND HOUSING AND PARLIAMENTARY AFFAIRS (SHRI K. RAGHU RAMAIAH): This time has been fixed by the Business Advisory Committee in which all the Parties are represented. I am not objecting to a few more minutes being given. I seek the indulgence of the House so that we may complete it in time.

MR. DEPUTY-SPEAKER: You have to help me. Here, I have six Members from the Congress Party who want to speak. I will try to ac-

commodate them; I have told them that, in order to accommodate as many as possible, I will give them 10 minutes each, and they should try to co-operate. I will not call all of them; I will call them in the order in which I find them, and when the time is over, I will stop. I have given Mr. Bhogendra Jha ten minutes. I will give him a few minutes more. Please try to co-operate. That is all.

SHRI BHOGENDRA JHA: The objects and reasons of this Bill are to be objected to not. The objects are very clearly defined:

"Persons engaged in such mal-practices have been augmenting their ill-gotten gains by violation of laws relating to income-tax wealth-tax or of other laws..."

By reading the objects, one could presume that this Bill may, if not today, at least in future, cover wider areas; it may have wider nets to get the ill-gotten wealth; here, it is limited only to smuggling.

Last year, the Finance Minister had charged us that we were accusing the Government of half-heartedness. I wish to point out again that this Bill, which has come during the period of Emergency and after forewarning them more than a year ago, is coming half-heartedly and hesitatingly. This is a gift to the smugglers.

In the first place, I would like to point this out. The Government may get this Bill passed. But I want that the House and the Minister should give thought to it. Here, the property of any person who has been found guilty and has been convicted for an offence in relation to smuggling of goods worth Rs. 1 lakh on the basis of wholesale prices at that time, cannot be inquired into, cannot be touched. This is very strange. Does it mean that property worth Rs. 1

[Shri Bhogendra Jha]

lakh on the basis of wholesale prices of those persons who have been already convicted—all these things are very difficult and even after doing these—cannot be inquired into? This Bill provides for that. This is a shameful piece of legislation, and it will be a shame on us if we pass the Bill in this form.

Similarly, if an order of detention has been set aside by any court, in that case the property cannot be inquired into. Why can't it be done? In many cases, the courts have set aside orders of detention. So, those cases cannot be touched. Also, if the order is revoked, that case cannot be inquired into.

There are some more provisions. Here, in the 'Explanation 4', on page 4 of the Bill, it is said:

"For the avoidance of doubt, it is hereby provided that the question whether any person is a person to whom the provisions of this Act apply may be determined with reference to any facts, circumstances or events (including any conviction or detention) which occurred or took place before the commencement of this Act."

I want to know what will happen to those cases who have been found guilty of these offences after the commencement of this Act. This should be clarified. Will you wait for some court order to come again? Does it mean that this will apply only to the past?

One more exemption is with regard to trusts. This is a very serious thing. Many top smugglers have formed trusts, charitable trusts or other institutions and thus they have seen to it that their ill-gotten property is not touched. Here the Bill provides that such property as has been held by such trusts or institutions from a date prior to the commencement of this

Act shall not be touched. The Finance Minister gave the warning 15 months ago, and during this period many smugglers have formed trusts and thus their property will not be touched. So, this is not a Bill for netting those things; this is a Bill for exempting them. Only the objects and reasons are there in its favour, but there are a number of exemptions and exclusions. I think even now the Government should give consideration to this that during the phase of the Emergency after so much dilly dallying, these exemptions should not form part of it.

SHRI S. R. DAMANI (Sholapur): Mr. Deputy-Speaker, Sir, I rise to support this Bill. Many hon. Members have referred to some of the provisions of the Bill and I would not like to take the time of the House as also the time allotted to me again to repeat those provisions. While replying, the hon. Minister will deal with those points.

Sir, it is a fact that the evil of smuggling had upset the economy of our country for the last many years. Previously, the smuggling was of gold only, but now for the last some years, all the items of consumer goods are being smuggled, for example, fountain pens, ball point pens, terylene, wrist watches etc. All these items, which are being produced in the country are being smuggled. Thus, it has affected the growth of our industries to a great extent. It has also taken away the foreign exchange which the country would have received. Hundreds and thousands of our countrymen who are working in other countries remit their savings to their families in our country. If the foreign exchange would have come in the right way and through proper channels, it would have helped us a great deal. Our country is short of foreign exchange at present. If the country receives the foreign exchange earned by our various countrymen working abroad, our foreign exchange position would have

both strengthened. The foreign exchange was, however, being used for smuggling purposes. I am happy that during the last one year, the smuggling has very much reduced and by this Act and stronger action, it will be reduced considerably.

The question is whether by these strong measures, the evil of smuggling will stop completely or temporarily. What are the reasons for this smuggling and what should be done so that the smuggling of consumer goods is stopped automatically? In this connection, I would like to express my view. The main thing which has been giving incentive for smuggling these goods is the high rate of excise duty on certain items. There are many such items like terylene, and other cloth which are being used by the middle class people. There the excise duty is Rs 3 to Rs 4 per meter. Similarly, on other items, the excise duty is very high. The result is that it gives incentive to the smugglers to smuggle these items. If the excise duty is brought to reasonable levels, the demand of those goods will increase and the country can have more industries set up to produce those items. The revenue of the Government will not be affected, it will go up. And smuggling will be reduced automatically and Government will not have to resort to all these measures. Therefore, the excise duty which is so high and which is giving the incentive and helping smuggling activity should be brought down to a reasonable level so that smugglers have no margin and smuggling will automatically stop. This is my point and this will also help in setting up of many industries. Now, what is happening? On account of the high excise duty, many small industries which are manufacturing these items have come to difficulties. They are closing down and the Government is not getting the revenue. The point is this. The rate of excise duty requires to be adjusted so that the incentive for smuggling is automatically reduced.

The second and last point I want to make is that at present whatever goods are confiscated are being sold in the country either through co-operative societies or through other channels. That helps the smugglers to sell these smuggled goods under the guise of goods sold by government. That should also stop and these goods which have been seized should be re-exported. When I raised that point sometime ago, it was said that it was not possible and that no country would purchase the goods. These are mere lame arguments. But if government do not want to sell them but export them, there are markets for them. We may get less price but apparently it will be easier for the officials and it will be easier for government to dispose of the smuggled goods. Therefore, the sale of smuggled goods within the country should also stop and unless it is stopped, the incentive for smuggling will continue.

In the end my suggestions are (1) that the excise duty must be adjusted in such a way that neither it will affect the revenue nor will it act as a sort of incentive to smugglers and (2) that the smuggled goods should not be resold in the country.

With these suggestions, I support the Bill.

SHRI SHYAM SUNDER MOHAPATRA (Balasore): This Bill which provides for the forfeiture of illegally acquired properties of smugglers and foreign exchange racketeers is indeed a very ideal and timely Bill. Perhaps as has been outlined in the objective of this Bill, it is going to affect the very social fabric of our society. Among the various new legislations which have been brought during the past few months, this one strikes me the most because it is going to attack at the very root of smuggling practices in our country and also at the root of racketeering in foreign exchange.

[Shri Shyam Sunder Mohapatra]

As we all know, there has been a necessity for depriving persons who are engaged in such activities of their illegal and illegitimate gains. The smugglers have in fact built palaces in different parts of the country and live a style of life which probably, even a western tycoon would envy. They have properties not only in the names of their relations and associates but also in the names of their pet dogs and cats. All this has come out in the Press and the time has really come when the government become very strong, rather I would say, fanatically strong to see that smuggling and foreign exchange racketeering are eradicated for good from this land. Take foreign exchange racketeering.

We all somehow or other are involved in it. The students who go abroad for studies somehow or other manage the funds. Our leaders, in whatever social strata they are, when they go to foreign countries, want to bring many things foreign and they want foreign exchange. Indian residents who are abroad want to remit money to their relatives here and some of them get involved in this foreign exchange racketeering. This is a complicated affair. Somehow or other it goes to lure persons who have money there abroad and persons in our country at the receiving end. This complicated process, I am sure, will be checked by this Bill to a very large extent. Here, in this connection, I have to bring to your notice that the Foreign Exchange Directorate which is to attack it must be vigilant, active, tenacious and they should have perseverance to dispose of cases as quickly as possible. I know that a number of cases have been going on in the courts of law for a number of years here in India in regard to the persons who had been arrested for such racketeering. Months and months, years and years have passed but the cases have not been disposed of. These racketeers

being held up here, are again engaging themselves in the nefarious activities. One of such persons is Kalyan Bora. Three years ago this man was hauled up in this country as he wanted to cheat the Government, the industrialists and many other persons. He said, he has purchased many companies having base in England and he was arrested on November 23, 1972 under the provisions of Foreign Exchange Regulations Act, 1947 because he smuggled Rs. 3.24 crores and went on bail for Rs. 50,000. He is still in India and his cases have not been disposed of. He has been cheating people saying that he is a big man in Switzerland or in America. He wants to allure Indians for business in foreign countries but Government has not taken any action to put an end to all this.

I know the cases of so many other persons. Why does the Government not fix a target date for the disposal of such cases? Why not tell the Investigating Officer or the Director of Foreign Exchange that nobody can be here in our country for more than such and such a period? Otherwise, I must say that the Directorate is not very efficient.

Mr. Deputy Speaker, under this Act, the competent authority is an officer not below the rank of a Joint Secretary. Competent authority should be very very senior officer—Secretary or may be a little above that. Appellate authority is quite all right because the person must be of the rank of a Judge of a high Court or the Supreme Court.

In this connection, I must also bring to your notice that there are many old cases which are still to be disposed of. We know Hari Das Mundra, whose case was to rob Parliament and Late Feroz Gandhi became important by exposing this racket—Mundra 2 million pound

affair concerning five U.K. Banks and six registered companies. The cases are yet to be disposed of. There is also a case against Louis Dreyfus & Co., Calcutta, for under-invoicing to the tune of 2,70 crores foreign exchange, for which show cause notice was issued. Ten years have passed but the cases have not been disposed of. I know many persons who go to the Foreign Exchange Department with documents, photo stat copies and everything. Why do you not utilise their services for the good of the country? One such person is roaming round the corridors of the Secretariat of the Foreign Exchange Directorate, but the officers are telling him that the documents are missing. Why?

In any case, this Bill is an ideal one. The country which has been passing through the crisis has come to a position when we can visualise a new horizon. The process of socialism has been initiated with such bills one after another, with such changes in the Constitution. With bills to change the social order, I think we will reach a strata where it will be each according to his capacity and from each according to his means.

SHRI PRANAB KUMAR MUKHERJEE: Mr. Deputy Speaker, I am grateful to the hon. members for by and large supporting the Bill and almost every one has observed that the objective of the Bill is laudable, though some of the provisions according to some members are too stringent and Government officers/competent authorities have been provided with very wide powers and according to another section of the hon. members this is too lenient and Government just want to make an eye wash, that is why they have brought a Bill like this. While moving the disapproval motion, he wanted to know what was the urgency behind this ordinance, what steps we

have taken after promulgation of the ordinance etc. The provisions of the Bill in terms of this ordinance came in effect from 5th November, 1975. Instead of going into details I will place a few facts for the benefit of hon. Members. On many occasions we have said about this while answering questions relating to smuggling and bringing the legislation COFEPOSA. Many of them suggested suo motu that until and unless you take care of properties created by the smugglers out of the assets it would not be possible to do away with this menace merely by keeping them behind the bars for a particular period of time. At the same time it was pointed out by Minister of Finance and it has been quoted by Mr. Bhogendra Jha, of course, absolutely with different interpretations. At that time he said that we are contemplating to bring in suitable piece of legislation to confiscate properties of the smugglers out of assets earned illegally. Till today, since the days of Machiaville one can forgive the murderer of one's father but one cannot forgive the confiscator of his patrimony. Until and unless we hit at this thing, until and unless a situation is created whereby fear is put in the minds of smugglers and foreign exchange manipulators that the illegal wealth earned by him by contravening provisions of law will not be enjoyed by himself or his relatives or associates, perhaps, it would not be possible to do away with smuggling altogether. I am afraid I do not agree with Mr. Jha's observation that because it was pointed out by Finance Minister about one year back, these people just got the warning and so the entire object of the Bill will be frustrated. The entire object of the Bill will not be frustrated at all. Until and unless we are in a position to identify the culprits and locate them and prove that it is made out of smuggling activities and assets, it would not be easy for us to take action as per the provisions of the Bill and as soon as this Ordinance was

[Shri Prānab Kumar Mukherjee]

promulgated, we took certain steps in that very direction.

Now I would like to give some figures relating to Bombay Collectorate alone. It has been possible to collect the particulars of 968 persons who would be brought under 2(a)(i), convictions under Customs Act valued over Rs. 1 lakh, under the provisions of this Bill. In regard to clause 2(a), sub-clause 2—the number is 8 and in regard to clause 2(b), COFEPOSA,—it is 281. Similarly, in respect of Madras, it is 18, 11 and 43 respectively. In respect of Calcutta, it is 23, 59, 74 and 79. I would not like to repeat the figures. These particulars have been collected and these will be utilised when the Bill will be enacted and translated into a fullfledged piece of legislation. Therefore, it is not correct to say that we have not taken any action when the Ordinance was passed. Apart from creating psychological fear in the minds of smugglers and foreign exchange manipulators, it has also helped in our intensifying our anti-smuggling activities through various other means by intensifying searches and seizures, by intensifying raids, by arresting the people under COFEPOSA and putting them behind the bar, by issuing orders of attachment of properties in respect of absconders. In addition to that, this additional fear has created an atmosphere which has contributed to the reduction of smuggling and foreign exchange racketeering in the country.

I have no doubt that when it is actually translated into an Act, it would be possible for us to take measures as per the provisions of the Act. Of course, as the hon. members themselves have pointed out, it would not be very easy to confiscate the properties as per the whims of the competent authority whom we have appointed. After the Ordinance was promulgated, they have taken charge in certain

places and various other preliminary arrangements which were needed have either been completed or are under completion.

Now, Members, particularly, Shri Somnath Chatterjee, while making the observations, have suggested why we are keeping some deliberate flaw in the law itself. While making his observations, he tried to highlight that perhaps it is the offspring of COFEPOSA and his contention was that when the main act is extended to the State of Jammu and Kashmir, why this act is not extended to the State of Jammu and Kashmir. Originally, we had an idea of extending it to the state of Jammu and Kashmir but, because of certain reasons, it could not be brought in immediately. Hon. Members should have surely noticed the various provisions in the Bill that when there is a certain prohibitory act over which this Parliament has the legislative competence, the violation of those acts will attract the provisions and those violating the acts will be brought within the purview of this Bill. But, the legislative competence of this Parliament in all matters is not extended to the State of Jammu and Kashmir because of certain constitutional provisions. Therefore, it was found necessary that we shall have to consult the State Government as it is being done in other legislative measures also. And after that, it will be extended to the State of Jammu and Kashmir and, moreover, it has to be kept in mind that because of the very basic and special status of the State of Jammu and Kashmir, it would not be easy for the outsiders to create permanent assets—fixed assets—in that State. So far as that State is concerned, if we look at the figures of the preventive detention under COFEPOSA, at least, till now we do not find many notorious smugglers residing in that area.

Another question raised was whether cash would be created as property. We consulted the Law Ministry in this matter and as per their advice, it will be treated as property. Therefore, certain lacunae which he tried to highlight do not really exist. Now, the question comes whether by enhancing the definition of the word 'associate', innocent people will be brought within the purview of this Bill. Sir, I do not rule out the possibilities altogether. We have to keep in mind the very nature of the operation of this type of activities, particularly, the kingpins who are never seen in the stage but they are always behind the screen. and everything they manipulate through their agents and through other people, some of them merely the employees of those people. But if we want to keep them outside the purview of this Bill to my mind the major objective of the Bill will not be fulfilled.

Sir, the same argument could be given in respect of detentions. It is true those people who have been arrested under COFEPOSA have not been convicted in the court of law. Many a time it has been pointed out that those we know and even the hon. Members know—some of the very top smugglers of this country who have created assets by illegal means and their assets sometimes are fabulous—many of them are not convicted in the court of law. The very purpose of COFEPOSA was to put those kingpins behind the bar under the provisions of COFEPOSA who could not be prosecuted in the court of law under the ordinary provisions of the law. Therefore, if we want to exclude the people, those who are behind the bar under COFEPOSA apart from the number of 2008, quite a large number of the big fish will be out of the net which, I am afraid, the hon. Members would not like to happen.

Another hon. Member has mentioned as to why we are not using the words 'habitual offenders'. That has been provided, namely, 'multiple offences' under the Customs Act, that is, 2 A sub-section (2). But if we confine only to 'habitual offenders' the argument which I just made that the kingpins may never be convicted in the court of law and they may never be punished in the court of law for the violations of these acts will hold good because these people are mostly behind the screen.

Mr. Deputy Speaker, Sir, by and large the provisions of this Bill have been supported by the hon. Members and I would not like to take much of your time. I would just express my gratitude to the hon. Members and I would like to conclude by answering one point referred to by Mr. Bhogendra Jha. I do not know why he termed this piece of legislation, as shameful piece of 'legislation' when the objective of the Bill is laudable and when day in and day out he is accusing of the Government for not bringing very strong measures against the economic offenders. When a piece of legislation like this is brought for his approval and the approval of the House, I do not know, why it should be termed as 'shameful piece of legislation'. It may not be upto his expectation and it need not be because we have differences of opinion. We have differences of approach but because it is not upto his expectations, I am afraid, he should not have used such strong words.

SHRI ERASMO DE SEQUEIRA (Marmagao): Mr. Deputy Speaker, Sir, while moving statutory Resolution I had requested the Government to tell us in the House the reason as to why an Ordinance had to be moved and why they could not come forward with a straight-forward.

[Shri Erasmo De Sequeira]

Bill instead to get the some objective. In his reply the hon. Minister has been kind enough to give an answer in two parts: (i) that a climate of fear has been created by this Bill; and (ii) since the Ordinance was passed they had identified people who could be brought within the purview of the Ordinance.

15 hrs.

Sir, as far as part (i) of the reply is concerned, I am afraid, it does not convince me. Because, after the arrests under COFEPOSA, I am sure that sufficient fear had been created, making it unnecessary to have this legislation by ordinance. As far as the second part of the answer is concerned, that is precisely what I am saying, that there was no advantage at all in bringing forward an ordinance because all that the Government has done is to identify those people, and this identification could have been done without the ordinance. The Minister himself says that he will only begin to act after this Bill is passed into law. Therefore I come again to the painful conclusion that the only reason that an ordinance was put forward was because this government prefers to rule by edict, so that it can come to us and say that the ordinance is lapsing and we cannot even go to a select committee. This is a fascist way of working.

I was saying that very wide powers had been given in this Bill which were subject to considerable misuse. I was asking for safeguards and controls. To my mind they are essential. At the time when MISA was being extended to smugglers, speaking in this House—I believe you were in the Chair—I said that those provisions would be used against smugglers today, against political opponents of the government tomorrow and against political opponents of the

ruling clique in the ruling party the day after; it is on record. I was wrong only in the detail, because Mr. Atal Bihari Vajpayee of opposition, political opponent of the Government, and Mr. Chandrashekar of the Congress party, political opponent of the ruling clique in the ruling party were both arrested on the same day. It is not that we are voicing fears which are not real. These things are happening with this government, and that is why we say that when legislation is passed in this House due care should be taken that the provisions are not such as could be misused.

When the arrests were made under COFEPOSA, it became obvious from the arrests that the Government was already in possession of intimate knowledge on how smuggling was going on in this country and how foreign exchange was being manipulated. It is no secret that smuggling on the scale on which it exists in our country, foreign exchange manipulations to the extent they are here, are not possible without the involvement of the officialdom and without political involvement at the level of government. The hon. Minister in his reply just now said that perhaps one of the worst things was confiscation of patrimony. What I am talking of is matrimony of the smugglers and foreign exchange manipulators with certain levels of officialdom and certain levels of government. What are they doing about the spouse in the government the spouse in officialdom of the foreign exchange manipulator and smuggler? We are told stories of launches that are bought but fail, watch that is supposed to be kept and is not, and so on, and documents seized, and not acted upon. We also know how badly law can be misused and how many loopholes are there in this law which will be delightful for the courts, which will enable the big fish in smuggling, big fish in foreign exchange manipulation and their friends the big fish in the government to

slip through the lacuna that has been kept in the law. My hon. friend from that side was saying that Government should be fanatically strong in this matter. I find that Government is only fanatic in legislation, but not at all strong in implementation

This is only for white-wash, nothing beyond that. A few chaps will have their property confiscated, no doubt. But not the big fish. That is the story. We have seen you catching a little fellow and big fellow gets away.

Now, I would like to ask one thing. What happens to property which has been disclosed under the voluntary disclosure scheme? Will Government examine those cases and ensure that those cases which come within illegally begotten property are brought within the scope of this scheme? We have a fear that that will also be on escape hatch.

My friend Mr Shukla was saying that we must have confidence in the Government, and that Government should have the confidence of the people. That is what I precisely keep saying every day about having confidence in the Government. Judging by their performance, it is not just possible. Regarding the Government having the confidence of the people, they had it in 1971. They were supposed to find out again on the 18th March. They are trying to run away from that. They should not, for this is a democracy and we must on the 18th of March, forfeit the mandate of this Government to the people and let the people decide who has to run the country for the next five years, because beyond that date this Government will remain in office only by political manipulation, which in my books, is as bad as foreign exchange manipulation.

MR. DEPUTY-SPEAKER: The question is:

"This House disapproves of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Ordinance, 1975 (Ordinance No. 20 of 1975) promulgated by the President on the 5th November, 1975."

The motion was negatived.

MR. DEPUTY SPEAKER Now, will put the amendment to the vote of this House. The question is

"That the Bill to provide for the forfeiture of illegally acquired properties of smugglers and foreign exchange manipulators and for matters connected therewith or incidental thereto, be referred to a Joint Committee of the Houses consisting of 6 members, 4 from this House, namely—(1) Shri S. M. Banerjee, (2) Shri Dinen Bhattacharya, (3) Shri P. G. Mavalankar, (4) Shri Erasmo de Sequeira, and 2 from Rajya Sabha,

that in order to constitute a sitting of the Joint Committee, the quorum shall be one-third of the total number of members of the Joint Committee,

that the Committee shall make a report to this House by the 18th March, 1976,

that in other respects the Rules of Procedure of this House relating to Parliamentary Committee shall apply with such variations and modifications as the Speaker may make, and

that this House do recommend to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of 2 members to be appointed by Rajya Sabha to the Joint Committee.

The motion was negatived

MR. DEPUTY SPEAKER: The question is:

"That the Bill to provide for the forfeiture of illegally acquired properties of smugglers and foreign exchange manipulators and for matters connected therewith or incidental thereto, be taken into consideration."

The motion was adopted.

MR. DEPUTY SPEAKER: Now, we take up clause by clause.

Clause 2—(Application)

SHRI ERASMO DE SEQUEIRA: Sir, I am moving my amendment No. 2.

I beg to move:

Page 2, line 7—

for "in relation to" substitute—

"of smuggling". (2)

Page 2,—

omit lines 19 to 42. (3)

Sir, I was submitting a little earlier, a point. What I have mentioned was that the Customs Act and the Foreign Exchange Act are comprehensive pieces of legislation which cover all sorts of misdeeds, if I may put it that way, from very minor to very major, and the only objective I have in proposing this amendment No. 2 is that Clause 2, sub-clause 2(a) (i) will apply only to smuggling. I would like this restriction to be there because as you have seen, five minutes ago, every friendly advice from the Chair became restrictive, so much more so should it be with such a wide piece of legislation. I realise perhaps this is not the best way to amend it and there would be

a much better way. That is why I say a Bill of this kind cannot be passed in this way; it has to go to a committee. I myself am not satisfied with the amendments I have given, I am sure in consultation with your legal department, you will be able to do something much better. But if Government is bent upon steam-rolling things, this is what is going to happen. I would request the minister again to think over this.

The other amendment is for the deletion of sub-clause (2)(b) and the proviso. These refer to a person who has been detained under a law of preventive detention, i.e., COFEPOSA, under which the government can catch hold of any person in the country, throw him in jail without charge, without reason and without trial, and because of the mere fact that you have done this injustice to somebody, you can then bring him within the mischief of this Act and forfeit his property! What is there to stop this government from calling any of us foreign exchange manipulators, smugglers and what have you, taking action under this? There is no objective assessment at all. How is the controlling authority to record a *prima facie* finding about a person who has not been given the reason why he is in jail? What is the nexus? I have never seen such a provision in the legislation of any democratic country. This is purely a fascist measure.

SHRI PRANAB KUMAR MUKHERJEE: While we are suggesting that this Act should cover persons covered by the Customs Act, Sea Customs Act and the Foreign Exchange Regulation Act, the hon. member's amendment seeks to restrict the operation of the law only to smugglers.

SHRI ERASMO DE SEQUEIRA: I say, under the Sea Customs Act, apply it only to smugglers.

SHRI PRANAB KUMAR MUKHERJEE: There are a number of violations under the Sea Customs Act. Many times we have given the figures.

About persons detained under COFEPOSA, I have dealt with it in detail as to what is the idea of forfeiting the properties of those persons who are behind the bar. I do not agree with him that only innocent people are put behind the bar under COFEPOSA. I have explained it many times. If it were possible, we could have produced them before the court, but the big fish do not appear on the stage. They remain behind the screen. To catch the big fish, we want to extend these provisions to detenus under COFEPOSA.

MR. DEPUTY-SPEAKER: I shall now put amendments Nos. 2 and 3 to the House.

Amendments Nos. 2 and 3 were put and negatived.

MR. DEPUTY-SPEAKER: The question is:

"That Clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3— (Definitions)

SHRI ERASMO DE SEQUEIRA: I beg to move:

Page 4, line 31,—

after "such" insert "prohibitory" (4).

In clause 3(c)(1) it says: "any matter in respect of which Parliament has power to make laws." Before that it says: "any activity prohibited". In other words, it says that any activity prohibited under law in respect of which Parliament has power to make laws. Then clause (ii), you say: "in respect of which any such

law has been contravened." That can refer to either prohibitory law or any other law. Therefore, I am saying again that it should not be so wide, because then you might bring somebody under this law who has nothing to do with economic or economic offences. Therefore, I was requesting that you put 'prohibitory' in this law and then that makes it clear.

SHRI PRANAB KUMAR MUKHERJEE: I would like to give just one example. Certain items are prohibited to be brought and certain others are regulated. Therefore, we want to bring both prohibitory laws and regulatory laws within the purview of this Act. If I accept your amendment, then it is limited only to prohibitory provisions of the law.

MR. DEPUTY-SPEAKER: I now put Amendment No 4 to the House.

Amendment No. 4 was put and negatived.

MR. DEPUTY-SPEAKER: The question is:

"That Clause 3 stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill.

Clauses 4 to 6 were added to the Bill.

Clause 7— (Forfeiture of property in certain cases.)

SHRI ERASMO DE SEQUEIRA: I beg to move:

Page 6, lines 24 and 25,—

omit "free from all encumbrances" (5).

My reason for saying so is that here is a case of a property which Government comes to the conclusion that it has been illegally acquired and it

declares it to vest in the Central Government. According to the Bill the declaration is to be made free from all encumbrances. Supposing there is a smuggler who has a property on which he has borrowed money from the bank, against mortgage of that property. Once you operate this clause, that mortgage shall stand annulled, and the Bank will have no other ground to recover the money. Take another case. A building which is owned by a foreign exchange manipulator, has got 48 tenants. Once you make a declaration that the building vests in the Government, the right of tenancy goes. For this reason I am suggesting that when a declaration is made, the property should vest in the Government with encumbrances of third party. My point is that the encumbrances or third party should not be affected.

SHRI PRANAB KUMAR MUKHERJEE: If we do not accept it free from all encumbrances, then the smugglers and the persons whose properties will be confiscated will deliberately bring all sorts of encumbrances and then it will be very difficult for the Government to accept that property. So, that will be the biggest loophole.

MR DEPUTY-SPEAKER: Now, I put Amendment No. 5 to the House

Amendment No. 5 was put and 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.

Clause 8 was added to the Bill.

Clause 9—(Fine in lieu of forfeiture)

SHRI ERASMO DE SEQUEIRA:
I beg to move:

Page 6,—

for lines 34 to 41, substitute—

"(1) In any case where the source of only a part, being less than one-half, of the income, earnings or assets with which any illegally acquired property was acquired has not been proved to the satisfaction of the competent authority, such authority shall make an order giving an option to the person affected to pay, in lieu of forfeiture, a fine equal to one and one fifth times the value of such non-proved part."(6).

Page 7,—

for lines 3 to 6, substitute—

"(3) Where the person affected does not pay the fine imposed under sub-section (1), within such time as may be allowed, the competent authority shall, by making a declaration under section 7, declare that such property stands forfeited to the Central Government."(7).

The present scheme is that in a case where the source of only a part, being less than one-half of the income, earnings or assets of a property has not been proved to the satisfaction of the competent authority, it shall be acquired by the Government. It shall make an order giving an option to the person to pay a fine equal to one and one-fifth times the value of such part and if he pays fine, such property shall stand released. But what will happen in between? Who will look after the property? Who is responsible for the property? What is the point in all this? What I have suggested is that if such a case arises, you first make an order, giving the person an option to pay the fine. If he does not pay the fine, you forfeit the property, because you have already provided in the law that once

a notice is served, any transfer of property is invalid. Since the declaration cannot be valid without first serving the notice, you serve the notice; any transfer thereafter is invalid. If you serve a notice that a certain amount is to be paid and if he does not pay, the fine, you can acquire the property. This suggestion is a considerable improvement. I would like to really know why it cannot be accepted.

SHRI PRANAB KUMAR MUKHERJEE: This would not be an improvement in the sense that firstly, it would be difficult for us to go and realize the fine and other things. Secondly, because we have given them concessions because half of the investment is not illegal, we let the property be transferred first. Thereafter, the other transactions should not be held. In between, the scope will be limited for transfer.

MR. DEPUTY-SPEAKER: I will now put amendments Nos. 6 and 7 to the vote of the House.

Amendments Nos. 6 and 7 were put and negatived.

MR. DEPUTY-SPEAKER: The question is:

"That clause 9 stand part of the Bill."

The motion was adopted.

Clause 9 was added to the Bill.

Clause 10 and 11 were added to the Bill.

Clause 12— (Constitution of Appellate Tribunal.)

MR. DEPUTY-SPEAKER: Mr. Sequeira, are you moving all the three amendments to clause 12, or just two?

2110 LS-6.

SHRI ERASMO DE SEQUEIRA: I am moving all the 3 amendments viz., Nos. 8, 9 and 10: I beg to move:

Page 7, lines 41 and 42,—

omit "(being officers of the Central Government not below the rank of a Joint Secretary to the Government." (8).

Page 7, line 47,—

omit "or is qualified to be" (9).

Page 7, line 48,—

add at the end—

"and the members shall be persons who are or have been judges of a High Court" (10).

This is about the tribunal. The present constitution is that you have one person with the background of a court; and it says here also:

"if a person who is or is or has been or is qualified to be a judge of the Supreme Court or of a High Court."

I have requested that the words "is qualified to be", should be removed, because the qualification is very wide. This way, you can have a junior lawyer. My suggestion is that this being a case of confiscation, it is a serious matter; and you should give a person against whom you have made a declaration an opportunity. It is about forfeiting the property. I would suggest that whoever may be the person against whom you have made a declaration, you should give him a fair chance of getting a review with some sort of justice. The present provisions do not make for confidence. I am making a suggestion. What is the use of hoping that the Minister will accept it? He will not.

SHRI PRANAB KUMAR MUKHERJEE: The language used here, viz., "a person who is or has been or is

[**SHRI PRANAB KUMAR MUKHERJEE**]

qualified to be a Judge of the Supreme Court or of a High Court", is perhaps the most known legal phraseology which we use. And regarding the inclusion of the officers, I have already pointed out, while making my observations, that not only here, but even in the income-tax department you find that the income-tax executive officers, when they discharge their functions as quasi-judicial officers, are not subject to ordinary administrative instructions. Therefore, I don't think that he should mind the inclusion of the officers; and I feel that the phraseology which we usually use, should be accepted.

MR. DEPUTY-SPEAKER: I will now put amendments Nos 8, 9 and 10 to the vote of the House.

Amendment, Nos. 8, 9 and 10, were put and negatived.

MR. DEPUTY-SPEAKER. The question is:

"That clauses 12 and 13 stand part of the Bill."

The motion was adopted.

Clause 12 was added to the Bill

Clause 13 was added to the Bill.

MR. DEPUTY-SPEAKER: Clause 14.

Clause 14—(Bar of jurisdiction ,

SHRI ERASMO DE SEQUEIRA: I beg to move:

Page 8, line 27,—

add at the end—

"except in so far as such injunctions refer to the protection of rights of any third party"(11).

It refers to the same thing I was talking about a little while earlier.

There is no objection to what is being done to the smugglers and foreign exchange manipulators, or even to properties held by them in benami name. But some provision should be made to protect the rights of third parties who are honest citizens of this country against any kind of seizure which has nothing to do with them. There is a recent case we all know about, a hotel in Aurangabad, in which the Maharashtra financial institution has invested a considerable amount of money. If you forfeit that hotel free of all encumbrances and without a right of injunction, then the Maharashtra financial institution will lose several crores of rupees.

THE MINISTER OF WORKS AND HOUSING AND PARLIAMENTARY AFFAIRS (SHRI K. RAGHU RAMAIAH): Sir, on a point of order. I have been watching for the last 20 minutes. Whenever any amendment is put, neither the hon. Member, nor anybody, is saying "Ayes". In such a situation, I would like your guidance, is it necessary to put "Noes"?

MR. DEPUTY-SPEAKER: This is a point of order put in good humour.

SHRI PRANAB KUMAR MUKHERJEE: This provision is not for the purpose of taking away the jurisdiction of the courts. We want to finalise the cases expeditiously. It is known to us, and I would not like to repeat, that cases are dragged on in courts of law for years and even for tax evasion of a high quantum in this country the penalty given was imprisonment till the rising of the court. Therefore, it is better if it is taken out of the jurisdiction.

MR. DEPUTY-SPEAKER: I will now put amendment No. 11 to the vote.

Amendment No. 11 was put and negatived.

MR. DEPUTY-SPEAKER: The question is:

"That clause 14 stand part of the Bill."

The motion was adopted.

Clause 14 was added to the Bill.

Clauses 15, 16 and 17 were added to the Bill.

Clause 18—Power of competent authority to acquire certain officers to exercise certain powers.)

SHRI ERASMO DE SEQUEIRA: I beg to move:

Page 9, line 22,—

after "person" insert "specified in section 2 and" (12).

Page 9, line 23,—

add at the end "relevant to such person" (13).

know this is an exercise in futility, because nobody is listening; they only pretend to listen. Let me mention why I moved this. Under the scheme of the Act, it shall apply only to a certain kind of people; it will apply to those people who meet certain criteria—people who have been convicted or arrested under the Preventive Detention Act. But what you have done in clause 18 is to enable the competent authority to conduct inquiry, investigation or survey in respect of any person. That means that the competent authority under this law can go from the tip of the Himalayas to Kanyakumari and catch any citizen and, in between, a few foreigners also. That is why I have been suggesting within your own scheme you make it clear that the conduct of any investigation or survey is in respect of any person specified

in sub-section (2) who, according to you, are the people who are to be covered by this law. So, I am suggesting the addition at the end "relevant to such person". That will stop a considerable amount of abuse that I know, the hon. Minister knows and the entire House knows, is bound to take place.

SHRI PRANAB KUMAR MUKHERJEE: Regarding this wide power of making enquiry, in regard to property, their location, identification and so many other things are involved. Many of them may not be strictly within the purview of this. That is why there is necessity for taking wider power to make enquiry or investigation. But they will move on the basis of some information, certain facts. It is not that they will go from the tip of Himalayas to Kanyakumari and enquire into all sorts of things. They will use their discretion. I feel this provision is needed. I cannot accept the amendment.

MR. DEPUTY-SPEAKER: I will now put amendment Nos. 12 and 13 to the vote of the House.

Amendments No. 12 and 13 were put and negatived.

MR. DEPUTY-SPEAKER: The question is:

"That clause 18 stand part of the Bill."

The motion was adopted.

Clause 18 was added to the Bill.

Clauses 19 to 27, clause 1, the Enacting Formula, the Preamble and the Title were added to the Bill.

SHRI PRANAB KUMAR MUKHERJEE: I beg to move:

"That the Bill be passed."

MR. DEPUTY-SPEAKER: Motion moved:

"That the Bill be passed."

श्री रामावतार शास्त्री (पटना) :

माननीय उपाध्यक्ष जी, मुझे केवल एक बात कहनी है। सरकार, कानून बना रही है। यह ठीक है कि तस्करी को रोका जाय और ऐसे लोगों को सजा दी जाय जो देश के खिलाफ काम करते हैं। मैं पहले भी इस सदन में कह चुका हूँ और आज पुनः दोहराना चाहता हूँ कि हमारे सूत्रे बिहार में नेपाल का बाडर है। तस्कर लोग हिन्दुस्तान से नेपाल और नेपाल से हिन्दुस्तान आते जाते रहते हैं। यों आप के कार्यालय भी उस की रोकथाम करने के लिए पटना और मुजफ्फरनगर में है, लेकिन उस के बावजूद तस्करी बढ़ती जा रही है।

MR. DEPUTY-SPEAKER: This is not a Bill to stop smuggling, but to forfeit the property of the smugglers. I am only pointing out the scope of the Bill.

श्री रामावतार शास्त्री : मैं उसी बात पर आ रहा हूँ। ये चीजें हो रही हैं। हमारे सूत्रे में गांजा, कोकीन इत्यादि के सामान आदि सभी चीजों के बहुत बड़े स्मगलर एक हैं वेगुसराय जिले के कामदेव प्रसाद सिंह, ये बड़े नामी हैं। एक लाख रुपये का इनाम बिहार गवर्नमेंट की ओर से उन के ऊपर है, लेकिन वह शख्स आज तक पकड़ा नहीं गया है। पिछले चुनाव में संगठन कांग्रेस के नेता के बहुत बड़े समर्थक भी थे। मैं यहां पहले भी कह चुका हूँ कि उन्हीं की कृपा से 50 बूथ कैप्चर करके वह यहां पर जीत कर चले आए। आज वह हमारे बीच में नहीं हैं, जेल में हैं, अब श्री सिंह की कांग्रेस नेताओं से भी दोस्ती है और कुछ मंत्रियों में भी दोस्ती है।

MR. DEPUTY-SPEAKER: Please mention the property of Kamdeo Singh and ask the Minister to attach it.

श्री रामावतार शास्त्री: वही तो मैं वह

रहा हूँ। इतना बड़ा स्मगलर है जिस की लाखों की प्रापर्टी है। अब सुनाई पड़ता है कि वह कांग्रेस में शामिल हो गया है। इन वजह से उस की प्रापर्टी पकड़ी नहीं जाती है। अगर यही गोग्खधन्धा होता गहेगा कि स्मगलर लोक आप की तरफ आयेंगे और उन की तरफ जाएंगे तब उन की प्रापर्टी जब्त नहीं होगी। तो फिर यह कानून किताब में ही रह जाएगा।

उपाध्यक्ष महोदय : बिल के स्कोप पर बोलिए।

श्री रामावतार शास्त्री : उसी पर बोल रहा हूँ। वह स्मगलर है या नहीं? वह बहुत बड़ा स्मगलर है और उसकी लाखों की प्रापर्टी है। मैं जानना चाहता हूँ उस की प्रापर्टी जब्त की गई है या नहीं? अगर नहीं तो सरकार कोन सा कार्यवाही कर रही है कि उस की प्रापर्टी को जब्त किया जाये और साथ-साथ उस को जेल में डाला जाये।

SHRI N. K. P. SALVE (Betul): I shall confine myself strictly to the scope of the Bill and that precisely is my grievance with the Finance Minister. If one were to see the objectives of the Bill, one could not find anything more laudable. So far as this legislative measure is concerned, it concerns the largest legislative principle. According to the objectives, it will be found that the smuggling activities and foreign exchange manipulations are having deleterious effects on the national economy. And later on, it is stated that with the help of ill-begotten wealth, which these manipulators and the smugglers acquire, they even tend to confer social status and prestige, which is quite contrary to the healthy social cultural norms.

Sir, better late than never. If the Finance Minister is awake to these deleterious and pernicious effects, so much the better for us, and he deserves to be congratulated for bringing in this legislative measure. But my grievance is are the distortions in the economy only on account of the smugglers and only on account of those who are manipulating the foreign exchange? What about large number of economic offenders who are trafficking in drugs, who are indulging in making these drugs spurious.

MR. DEPUTY-SPEAKER: That is outside the scope of the Bill. (Interruptions).

SHRI N. K. P. SALVE: Not outside the scope. The Minister may kindly consider to add one more category. I am on sub-section 2. I am grateful to you for drawing my attention to this... (Interruptions)

MR. DEPUTY-SPEAKER: You are a very seasoned parliamentarian. You know the scope of the debate on the third reading. I do not have to remind you about the scope of the third reading. (Interruptions)

SHRI N. K. P. SALVE: The sub-section 2(1) takes in only those people who are guilty of offences under the Sea Customs Act, Foreign Exchange and Regulations Act or the Conservation of Foreign Exchange and Prevention of Smuggling Act. Merely confining to those persons who are guilty under these enactments, all these legislations will never be able to achieve the objective which the Bill has for its purpose. Therefore, my submission is what the Minister, should at least, while replying to the debate, consider those people who have ill-begotten wealth, not purely by a process of smuggling or by a process of manipulation of foreign exchange, but through other means. Today, you have read in the newspaper that people are adulterating human blood... (Interruptions)

MR. DEPUTY-SPEAKER: I am learning a new thing every day, and whenever, a member speaks, I will always learn a new thing from him.

SHRI N. K. P. SALVE: You are a good student. I am happy.

MR. DEPUTY-SPEAKER: I am a very good student I have been a good student, I am a good student and I shall continue to be a good student.

SHRI N. K. P. SALVE: That is the attribute of a very good professor which you are, Su.... (Interruptions) I am abusing the privilege that you have given me. I beg to submit that all those people who are guilty of adulterating human blood, if we cannot send them to gallows, the minimum we can do is to take away their property, which they are amassing as a result of these nefarious activities. These people, trading in human blood and flesh, are going to go scot free and have all the pretensions and all the trappings of an important man that is ruining the socio-economic structure of his country. Therefore, my submission is that I fully support this Bill, because this marks a beginning... (Interruptions)

SOME HON. MEMBER: Double standard.

SHRI N. K. P. SALVE: Double standard is by those who are not willing, in reality, to support it, but they are wanting to dilute it with the help of the amendments I have not liked those amendments at all.

MR. DEPUTY-SPEAKER: Please do not get into a controversy.

SHRI N. K. P. SALVE: My submission, therefore, is that let the Minister while replying on the debate, come out very frankly and submit that whatever objectives she has in mind, they will certainly not be achieved by this legislation, which is extremely, feeble, weak and inadequate.

MR. DEPUTY-SPEAKER: Before the Minister replies, I would advise him not to fall into the trap of taxation experts like Mr. Salve, because the scope of the third reading is confined to either speaking in support of the Bill or rejecting the Bill and nothing else. Nothing new can be brought in at this stage.

श्री मुखर्जि डागा (पाली) : उपाध्यक्ष महोदय, एक बात तो मैं यह कहना चाहता हूँ कि आप ने कोर्ट्स के दरवाजे बंद कर दिए ?

श्री बाबूराम अहिरवार (टीकम गढ़) : तो बंदी क्या करते ?

श्री मुखर्जि डागा : वकीलों का सवाल नहीं है। अगर किसी की प्रापर्टी है, उस ने सिविल कोर्ट में दावा कर दिया और वह स्टे आर्डर लाना चाहता है तो आप क्यों चाहते हैं कि सारे कोर्ट्स के दरवाजे बन्द कर दिए जायें ? यह आप का क्लॉज 14 है जिस के बारे में मैं कहना चाहता था।

दूसरी बात यह है कि तस्करो के पास मवेबल प्रापर्टी है, उस के पास खाने के बर्तन हैं, कपड़े हैं। तो आप 20 साल पहले की या 25 साल पहले की प्रापर्टी जन्त करोगे। मैंने पहले भी नोटिस की थी सेक्शन 2 में कि कौन सी मूवेबल प्रापर्टी आप्त स्टैच करना चाहते हैं, उस की डेफिनीशन क्या है ? सिविल प्रोसीजर में कुछ प्राविजन्स हैं ?

MR. DEPUTY-SPEAKER The hon. Member may conclude now.

SHRI M. C. DAGA: Kindly try to give the same time.

MR. DEPUTY-SPEAKER: Your Whip does not give you time.

SHRI M. C. DAGA: That is not the way. One minute is not over.

चाप में ही एक बंद बुनियाद। चाप के कलामेज के तन्त्र इस बात का जिक्र नहीं है कि आप कौन सी प्रापर्टी को स्टैच करना चाहते हैं और उसकी टाइम लिमिट क्या है। और किसी के पास 40 साल पहले या 50 साल पहले की कोई प्रापर्टी है तो क्या उस को भी स्टैच किया जायगा। जो प्रापर्टी काम में आती है, जिस का छोड़ा जाता है, क्या उसका भी लिया जाएगा, क्योंकि तस्करो के पास दूसरी सम्पत्ति नहीं होती है, उस का शरीर भी तस्करी सम्पत्ति पर बना हुआ है, क्या उसके कपड़े वगैर सब कुछ लिए जायेंगे।

SHRI PRANAB KUMAR MUKHERJEE. Sir, Mr. Ram Avtar Shastri has mentioned a particular case and, if he presses on the information about that man, I will look into it. Except that I cannot say anything.

Regarding Mr Salve's point, as you have directed me, I need not reply to that

As to why we have brought these provisions to take away the jurisdiction of the courts, in my reply to the amendment I have already touched that point. I would just like to point out that though we have taken away the jurisdiction of the civil courts, the constitutional rights are there. Nobody can prevent them from exercising these rights. It is only to finalise the cases expeditiously and to see that courts do not delay the whole procedure that we do not want the interference of the courts. Therefore, we want to take away the jurisdiction of the courts.

In regard to whether whole property of the smugglers should be confiscated, I have already replied in reference to one amendment about 50 per cent, the penalty and all that.

MR. DEPUTY-SPEAKER: The question is;

"That the Bill be passed.

The motion was adopted