

SHRI JYOTIRMOY BOSU: I was told by the Chairman yesterday that they are not going out. So that reason does not remain valid.

MR. SPEAKER: Is it correct?

SHRI P. G. MAVALANKAR: I have no information on that. But apart from that, we have received over 100 memoranda and we will take time to go into all of them. Whether it is in Delhi or out of it we require some more time.

MR. SPEAKER: The question is:

"That this House do extend upto the last day of the first week of the next Budget Session (1974), the time for the presentation of the Report of the Select Committee on the Bill further to amend the Income-tax Act, 1961, the Wealth-tax Act 1957, the Gift-tax Act, 1958 and the Companies (Profits) Surtax Act 1964".

The motion was adopted.

12.23 hrs.

SUPPLEMENTARY DEMANDS FOR GRANTS (ORISSA), 1973-74

THE MINISTER OF STATE IN THE MINISTRY OF FINANCE (SHRI K. R. GANESH): I present a statement showing Supplementary Demands for Grants in respect of the Budget for the the State of Orissa for 1973-74.

SUPPLEMENTARY DEMANDS FOR GRANTS (MANIPUR), 1973-74

THE MINISTER OF STATE IN THE MINISTRY OF FINANCE (SHRI K. R. GANESH): I present a statement showing Supplementary

Demands for Grants in respect of the Budget for the the State of Manipur for 1973-74.

12.24 hrs.

FOREIGN EXCHANGE REGULATION BILL

THE MINISTER OF FINANCE (SHRI YESHWANTRAO CHAVAN): I move:*

"That the Bill to consolidate and amend the law regulating certain payments, dealings in foreign exchange and securities, transactions indirectly affecting foreign exchange and the import and export of currency and bullion, for the conservation of the foreign exchange resources of the country and the proper utilisation thereof in the interests of the economic development of the country, as reported by the Joint Committee, be taken into consideration".

As hon. members are aware the Foreign Exchange Regulation Act which regulates the receipt and outgo of foreign exchange, securities and the import and export of currency and bullion was enacted in 1947. The measure was then adopted as it was felt expedient in the economic and financial interest of India to provide for the regulation of these activities. Mainly the existing Act provides, inter alia, for restrictions on dealing in foreign exchange, on import and export of certain currency and bullion, regulation of payment for goods exported etc. The Act also provides for the various authorities who are to enforce its provisions and for penalties both by way of adjudication and on prosecution before a court of law.

*Moved with the recommendation of the President.

Experience gained in the working of the Act for a quarter of a century has shown that while, by and large, it has served the objective for which it was enacted, there are certain inadequacies and lacunae which should be cured. These may broadly be classified in the following categories:

- (a) Entry of foreign capital in the form of branches and activities of resident foreigners and concerns with substantial non-resident interest in them;
- (b) Due and prompt realisation of export proceeds and eliminating possibility of larger outgo of foreign exchange against imports than required; and
- (c) Enforcement of the Act.

On the basis of a recommendation made by the Public Accounts Committee in its 56th Report of 1968-69, a study team had been appointed by the Government to examine the question of leakage of foreign exchange through invoice manipulation.

This team had made a comprehensive study of the problem and made several recommendations to the Government. In its 47th Report on the Control & Punishment of Social and Economic Offences the Law Commission has made various recommendations for the effective implementation of the material provisions of certain enactments, including this Act. The Law Commission has expressed the view that in the case of social and economic offences under this and certain other major Acts, a special approach is called for, particularly when the country is in the grip of an economic crisis and the fruits of hard-won freedom may be lost if the foundation is not laid for economic stability. The Commission has also emphasised that the nature of these offences is peculiar in so far as they are planned and executed in secrecy

by shrewd and dexterious persons with sophisticated means. In the case of these offences public welfare is gravely affected but detection is unusually difficult.

With a view to correcting the inadequacies and lacunae referred to above, and incorporating those recommendations of the Study Team and the Law Commission which had been accepted by the Government, I had introduced a Bill in this House on the 29th of August last year. With the concurrence of the Rajya Sabha the Bill was referred to a Joint Committee of the Houses. At its sittings at Delhi, Calcutta and Bombay the Committee heard the evidence of persons from various walks of life. In the light of the evidence tendered before it, and the subsequent discussions, the Joint Committee made several useful recommendations which are also reflected in the Bill as presented by the Committee to this House. I do not propose to take up the time of this House by discussing the various provisions of the Bill at length but would only refer briefly to the more important clauses.

The entry of foreign capital into India, where it takes the form of acquisition of share of companies, is already regulated by the present Act but foreign investment in the form of opening of branches in India by companies firms, individuals and associations of persons, resident abroad, has remained outside the purview of control. There has also been an increasing awareness during the last several years of the wide gulf between our selective policy towards new foreign investment and the ease with which the existing foreign enterprises primarily engaged in non-manufacturing activities have been able to carry on in fields and on terms that might not be approved today. Section 18A of the Foreign Exchange Regulation Act was introduced with effect from 1st April 1965, and has already brought within the purview of con-

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and acceptance by foreign controlled concerns, of appointment as agents in trading and commercial fields or as technical or management advisers. Even in this limited sphere, the provision is ineffective in dealing with appointments which existed before 1st April, 1965 as well as agency agreements which were made to appear like principal-to-principal transactions. The resident foreigners had also remained outside the purview of that Section. Clause 28 of the Bill as presently drafted cures these lacunae. Clause 29 of the Bill provides that Reserve Bank's permission should be obtained for the carrying on in India of any activity of a trading, commercial or industrial nature or the establishment of a branch office or other place of business for carrying on such activities or for the acquisition of the whole or any part of any undertaking in India by a non-resident, foreigner (even if he is resident in India); non-resident company and a company in which the non-resident interest is more than 40 per cent. Sub-clauses (2) and (4) of the clause ensure that in the case of categories of persons referred to in sub-clause (1) even the continuation of existing trading commercial or industrial activities carried on or set up by them in India or existing share holdings in India in companies carrying on such activities in India would require the permission of the Reserve Bank.

During the deliberations of the Joint Committee, it was felt that while cases of foreign investment in India which are presently functioning without any prior permission or in non-priority sectors will have to be reviewed on a case-by-case basis, it would not be necessary or desirable to review cases of recent approvals, especially in high priority sectors, involving highly sophisticated technology or export-oriented industries. An amendment was, therefore; accepted by the Joint Committee; empowering the Reserve Bank to

exempt certain companies and persons from the provisions of this clause, based on the nature of the activities carried on by them and the fact that such activity was being carried on with prior permission of the Government. It has, however, been made clear that the Reserve Bank cannot exercise this power of exemption where the activity is solely of a trading nature.

As a matter of general policy it has been felt that we should not allow foreign investment in landed property/buildings constructed by foreigners and foreign controlled companies as such investments offer scope for considerable amount of capital appreciation and consequently will increase our contingent liability by way of capital repatriation. While we may still require foreign investments in certain sophisticated branches of industry, there is no reason why we should allow foreigners and foreign companies to enter real estate business. Clause 31 of the Bill has been introduced with this purpose in view.

There was considerable discussion both in the Joint Committee and elsewhere about the policy in relation to the administration of clauses 28 and 29 of the Bill. Government is considering the details of administrative guidelines to be issued. I thought I should, however, briefly indicate to the House the broad policy consideration which would be taken into consideration while formulating the detailed guidelines. Needless to say the policy presently followed by Government in regard to the admission of foreign investment is highly selective and such new investment is not permitted in the fields of banking, commerce, finance; plantation and trading. As far as branches of foreign companies presently engaged in purely trading activities are concerned, they would have to convert into Indian companies. In the case

of companies engaged in manufacturing operations also, the policy would be to ensure that foreign capital participation except in case of these engaged in priority sectors of export-oriented industries is reduced to 40 per cent over a period of time and also by following in appropriate cases the formula of dilution of foreign equity when they come for expansion.

There have been repeated complaints and allegations of malpractices by importers/exporters with the aim of secreting foreign exchange abroad and building reserves in foreign currency. There has also been a general feeling that our importers/exporters often evade foreign exchange regulations. The major suspicion is that in the case of exports, the goods are under-invoiced and that in the case of imports, they are over-invoiced. The problem arising out of invoice manipulations was, as already mentioned by me earlier, examined by a Study Team and based on their recommendations, several new provisions have been introduced. Thus, for example, in a case where a person makes a remittance for importing any goods into India but does not import the goods or does not import goods of a value representing the foreign exchange remitted for such goods within a reasonable time, or imports goods of a kind, quality or quantity different from that specified by him he will be deemed, unless the contrary is proved, to have used the foreign exchange released to him for the purpose other than that for which it was released.

As far as exports are concerned, there are two main aspects:

- (1) realisation of full export proceeds; and
- (2) prompt realisation of such exports.

Section 12 of the Foreign Exchange Regulation Act which dealt with this aspect till now will be replaced by

clause 18 of the Bill with a view to achieving the twin objectives referred to above. This clause has been explained at considerable length in the notes on Clauses appended to the Bill and I would, therefore, refer only to certain salient features.

This clause provides for powers enabling the Central Government to issue directives to the exporters not to sell goods exported on a consignment basis without obtaining prior permission of the Reserve Bank at a price which is lower than the value declared in the prescribed form in respect of the commodities etc. notified in this behalf by the Central Government. In this clause, as originally drafted, there was a provision that where an exporter makes an application to the Reserve Bank for permission to sell the goods exported at a price which is lower than the value declared at the time of export, he can presume the Reserve Bank's permission where the Bank fails to communicate its refusal within a period of 60 days from the date of receipt of the application. It was felt by several members of the Joint Committee that the period of 60 days is too long and would adversely affect our exports. It was, therefore, decided to reduce this period from 60 days to 20 days. I would also like to take this opportunity to assure this House that the Reserve Bank will deal with all such applications with utmost expedition and that it would only be a rare case in which even the maximum period of 20 days allowed will be availed of. I cannot however accept the suggestion made by certain Members of the Joint Committee that it would be enough to provide that there should be a provision that the Reserve Bank should accord sanction to such short realisation on being satisfied that sufficient grounds existed. Such a provision goes against the very grain of this clause and will render it totally ineffective.

Further, the clause confers powers on the Reserve Bank to issue direc-

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tives to exporters on matters such as those relating to advance registration of contracts, certification of the value of the goods to be exported by a specified authority or organisation, submission of the prescribed declaration to the Reserve Bank for its prior approval, and for securing payments for exports by irrevocable Letters of Credit. These powers will be exercised by the Reserve Bank in appropriate cases to ensure that the full export value of the goods or the value which the exporter has declared is received without delay. It also empowers the Central Government to prohibit the export on consignment basis, of any goods or class of goods; or by class of exporters; or to any particular destination, if the Government is of the opinion that the full export value will not be brought to India in the prescribed manner and within the prescribed period. There is also a provision for drawing a rebuttable presumption regarding contravention of the provisions of the Act in cases of delay in repatriation of sale proceeds.

The Enforcement authorities had felt the need for more stringent punishment to act as a sufficient deterrent against violations of foreign exchange regulations. The Law Commission, as already indicated by me, had made various recommendations for the effective implementation of the material provisions of certain enactments, including this Act. Keeping in view the recommendations of the Law Commission, as well as the suggestions of the Enforcement Directorate, several measures have been introduced in the Bill.

(i) In Clause 50, which provided for adjudication for contravention of the provisions of the Act, it has now been provided that a penalty of Rs. 5,000 or an amount not exceeding five times the value involved in the contravention, which ever is more, can be levied instead of Rs. 5,000 or three

times the value of the contravention as could be levied under the existing Act.

(ii) In cases of prosecution, the maximum sentence that can be awarded under the present Act is imprisonment upto a period of two years or fine or both. Clause 56 of the Bill provides for enhancement of punishment to a period of three years or fine or both. In addition, it provides that for certain more serious offences where foreign exchange involved is rupees one lakh or more or in the case of second or subsequent conviction for an offence under the Act, imprisonment may be for a period which may extend to seven years. The clause also provides that the minimum sentence in such cases should be for a period of six months and provides further that a lesser sentence can be awarded by the Court only for special and adequate reasons to be recorded in the judgment. In the case of second and subsequent conviction, the clause empowers the Court convicting the person to direct that he shall not carry on for a period not exceeding three years such business as is likely to facilitate the Commission of the offence.

(iii) Clause 59 has been introduced with a view to raise a presumption of *mens rea* on the part of persons prosecuted for offences requiring a culpable mental state. The presumption, however, is rebuttable. The clause would shift the burden of proof as to *mens rea* but would at the same time provide an opportunity to the accused to prove the absence of such *mens rea*.

(iv) Clause 64 of the Bill further makes even preparation to contravene the provisions of the law and abetment of any such contravention an offence with a view to ensure prevention well before the commission of the offence.

(v) Clause 69 of the Bill empowers the Court to publish the name, place of business, etc. of companies convicted

ed for offences under the Act. The object of providing for such publicity is that the social stigma attached to it will act as a deterrent.

The need for definition of the term "person resident in India" and "person resident outside India" was also felt as the applicability of several provisions of the Bill depends upon the "resident" status of the person concerned. This has assumed even greater importance because of several stringent provisions which are now being introduced. An attempt has, therefore, been made to define these expressions in sub-clauses (p) and (q) clause 2 of the Bill.

With a view to avoid vexatious searches by officers of Enforcement, Clause 58 provides for the punishment of officers responsible for such vexatious searches.

Although the existing Act regulates the acquisition, holding and disposal of foreign currency and securities by residents, there is no provision for the regulation of such acquisition, holding and disposal of immovable property held abroad by them. This lacuna has come to the notice of the Government especially in the case of certain former rulers. Clause 25 of the Bill has been introduced with a view to cure this defect. The intention, at present, is only to get information regarding the immovable property held abroad with a view to ensuring repatriation of current income therefrom.

With the increasing trend of Indian companies setting up enterprises abroad in collaboration with the Business Houses in those countries, the need for exercising a certain amount of control over the formation and operation of such ventures, especially with a view to obtaining full information regarding their working and ensuring repatriation of dividends of the Indian participants has been felt for some time. Clause 26 of the Bill seeks to achieve this.

Apart from these major changes, several other amendments of miscellaneous or clarificatory nature have also been introduced in the Bill taking advantage of the opportunity to amend and consolidate the Act.

Sir, I move.

MR. SPEAKER: Motion moved:

"That the Bill to consolidate and amend the law regulating certain payments, dealings in foreign exchange and securities, transactions indirectly affecting foreign exchange and the import and export of currency and bullion, for the conservation of the foreign exchange resources of the country and the proper utilisation thereof in the interests of the economic development of the country, as reported by the joint Committee, be taken into consideration."

The time allotted is 6 hours.

SHRI INDRAJIT GUPTA (Allahabad): How much time for General Discussion?

MR. SPEAKER: How much time do you propose? I think, 4 hours for General Discussion and then for clause-by-clause consideration and third reading—one hour each. Of course, it is with marginal adjustment here and there.

Shri Jyotirmoy Bosu.

SHRI JYOTIRMOY BOSU (Diamond Harbour): Mr. Speaker, Sir, the foreign business interests in this country are like an "Octopus" and they control the multi-National Corporations. In the international business operations, unfortunately, my country is one of the worst victims. I feel, as long as this Government in power is with this class character, there is no remedy. It will continue to go on.

In four sectors along—there are many sectors—the foreign investment is to the tune of Rs. 466 crores. So

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serious a matter it has become that the United Nations has taken a decision—I quote:

“The United Nations is launching a year-long inquiry on multinational companies with the aim of devising some international form of monitoring system for their giant enterprises.”

why is it? It is because the problem has assumed such seriousness. But, as I said, we are one of the worst victims.

Are we concerned about it? Have we taken any real steps to prevent it? I will show by instances that the answer is “No”. It further says:

“Business multi-national corporations, unlike governments, are not directly responsible for their behaviour to any broadly based electorate.”

One suggestion is that “a code of conduct might be drawn up”, etc. etc. There is the United Nations panel to probe into giant firms. I want to ask Mr. Chavan: Have you sent a representative and, if so, who is he, is he an official member or a non-official member, and from which source? I want to have the details. It has been done by the Economic and Social Council. Then, the Government is hand in glove with these miscreants. I am very sorry to say, but past performance was this. Let us see how they are treating this man, Mr. Gupta, who is now taking over the Metro Cinema in Calcutta and the Matro Cinema in Bombay by paying black foreign exchange to the previous owners, Metro Goldwyn Mayers in Switzerland. We have been writing letters, seeking the Ministers, but nothing has stopped them. It is taking its own course.

13.44 hrs.

(Mr. Deputy-Speaker in the Chair.)

If you look at the latitude you have given to the foreign companies in the

matter of arrears of income-tax—there was a question on the 17th August, 1973, you will find that it runs into millions and billions of rupees; then, production for more than licensed capacity by foreign companies; then the report on the quantum of foreign equity participation in Indian companies—I do not want to go into details because the time is limited—all these show that this Government is least anxious to prevent this serious evil which, more or less, is eating into the vitals of the country.

The Bill is nothing but an eye-wash. I have said that from the very beginning. Otherwise, why have the foreign banks which are the kingpins of all foreign transactions and malpractices been kept outside? Mr. Chavan, kindly cover this in your reply. What is the reason? Why has Government kept the foreign banks outside the purview of this Bills? I consider that they are the principal criminals, they are your Reserve Bank's came to authorised dealers. If you keep them outside, how do you expect us to believe that you are serious about checking malpractices here?

Take, for example, the National and Grindlays Bank. They had an imported capital of Rs. 1.72 crores, and their Indian deposits are Rs. 291.51 crores. They are the bankers of Maruti. The Chairman has called on the high-ups here, including the Prime Minister. I have given a positive charge to Mr. Chavan that these bankers evaded income-tax to the tune of Rs. 75 crores in the course of the last two years. This has been going on for the last one year. But, so far, nothing has come out because the 75 crores evader cannot be touched; they will be after a small man who has an income of 7,000 a year. You cannot touch National and Grindlays because they are bankers to Maruti; they cannot be touched. To how many big chaps' sons they are providing jobs; Is it not a fact—you can find out. Mr. Chavan—that one of your Finance Secretaries' son is

provided there. They always go in for the off-springs of those who are in power so that they can continue to plunder the country unabated and unchecked.

This Bill does not reflect the different methods, the magnitude of the malpractice and the Government's anxiety. The Reserve Bank had wide powers by the 1947 Act. I have got a copy of the same—about 12 items. If they really wanted to apply they, they could have easily controlled and checked these malpractices which are now almost touching the sky. They seldom used that and Government never wanted it. I will show you the increase in the number of malpractices. The number of searches conducted by the Enforcement Directorate in the matter of violation of foreign exchange regulations; 1970—1112; 1971—1235. The number of searches proved to be infructuous is increasing. How kind the Government is to the white suckers. The number was 428 in 1970 and it is 459 in 1971. In 1970 the number of malpractices brought to their notice was 674 and it rose in 1971 to 776. Mr. Chavan, you had enough powers to check these malpractices, but you, with your class character, cannot do it, cannot touch them. Then, customs smuggling—the customs people themselves have confessed that they are able to detect only 10 per cent of the smuggling cases. Sir, this Act is a mere petty amendment and will fail to do anything which is basic and true. They have made no deep study of the evils. They have not identified the problems. The Law Commission Chairman, responsible for advising the Government for drafting—I do not know—confessed that they dealt with the legalistic aspect of the Bill, they never did any real study as to how these methods are practised and how much could be prevented, because this Government is subservient to the monopolists, both foreign and Indian and in this case, more to the foreign corrupt. This is a purposeless piece of document—

this report. I have never seen such gross understatement in my life and I thought they are more anxious to give a clearance to these criminals, the foreign tycoons and the foreign capitalists than to help the people who pay their salary cheques at the end of the month. They estimated these malpractices at Rs. 240 crores and who are the persons who were invited to appear before them? None of us. Two persons they found in the population of 55 crores. One was Mr. Palkhiwala and another, a spokesman of some Chamber of Commerce. That is all. They asked people who are guilty of these things to sit in judgment of the whole thing. It has now been universalised accepted that the minimum amount involved in these practices are to the tune of Rs. 1000 crores. The Economic and Political Weekly in a very useful article has said:

“It is surprising that there is no mention in the Report of the sizeable foreign exchange leakage taking place on account of import of worthless goods, granting of import licences to established exporters and actual users in excess of their entitlements or requirements, excess remittances by importers through manipulations of payments for freight and imports against forged licences or licences obtained by parties having no manufacturing unit or industry. Similarly there is also no mention of the leakages taking place on the export side through manipulation of export contracts, seeking of agency commissions or reduction of export values on various pretexts, disappearance of the GR forms in transit or....

Mr. Chavan, please hear:

“....in the customs or the RBI, non-realisation of export proceeds by the RBI due to its inadequate follow-up system and unsatisfactory procedures of matching the three sets, of the prescribed forms for exports....”

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Then it goes on to say:

"If foreign exchange leakages on all these counts are taken into account the magnitude of the loss would not be below Rs. 450-500 crores per annum. The estimate of demand for foreign exchange in the unauthorised channels in the Report is also much lower than what it would appear to be on realistic assumptions."

This is a most well-edited economic and political weekly of the country and they have very clearly said that this report is nothing but an eye-wash.

This report of the Reserve Bank—Sir, the Reserve Bank is not worth its salt. More about it later on, when we take up another Bill. They have enormous powers but they cannot use them. The Government cannot allow them to use. At the same time, the big tycoons sitting in the Bank would not let these to be applied. They not only failed to improve the economic condition of the country but they failed to arrest the deterioration in the same field. How has the Reserve Bank of India legalised or regularised the illegal remittances—I will show you in a minute. The scope of the permissible remittances is horrifying. The bank remittances are horrifying. How is it increasing? This National and Grindlays Bank—I take this out of 13 and there are 13 foreign banks—has remitted Rs. 50.78 lakhs towards Head Office expenses and Rs. 80.50 lakhs by way of profits in 1967 and in 1969, the remittances were Rs. 58.25 lakhs towards head office expenses. You see how it has been increasing. The profits were Rs. 74,97,000. Head office expenses in 1969 were of the order of 78-41,000. It jumped from the figure of 5,00,780 in 1967 to this figure in 1969. This is the position. Every year it is increasing. In 1970 the figure is Rs. 1,05,31,000. Every year it is jumping up by leaps and bounds. We have Mr. Chavan sitting here. We have Economic Affairs Department in the Ministry of Finance. We have the Reserve Bank; we have

the exchange control, we have everything. These people, with their capital of Rs. 1.72 crores and Indian deposit of Rs. 293 crores are being allowed to take away as much money as they can carry in their ships. I will tell you about certain other instances. This is about technical know-how, royalties and technical fees. This comes under Section 591 of the Companies Act. In 1968-69 this figure is Rs. 112.77 lakhs. Next year it is 1130 lakhs. In every year they are getting more and more. Regarding foreign airlines companies, the position is this. From 738 lakhs it rose to 1304 lakhs. The grand-total in 1968-69 is 38.67 crores. In next year it rose to 51.86 crores. The entire set up is in collaboration with these people to plunder this country.

MR. DEPUTY-SPEAKER: You are taking too much time.

SHRI JYOTIRMOY BOSU: In 1968-69 the assets were Rs. 12.3 crores, it rose to Rs. 14 crores next year and 14 1/2 crores in the succeeding year.

MR. DEPUTY-SPEAKER: It would have been better if you had bestowed more attention on the Bill and said in which way this Bill could plug the loopholes.

SHRI JYOTIRMOY BOSU: I am quoting because....

MR. DEPUTY-SPEAKER: Suppose we accept the figures. What do you want? It will be more relevant if you say what the Bill should provide for.

SHRI JYOTIRMOY BOSU: I am giving the diagnosis of the evil. They are taking more and more profits every year. Remittances are in excess of capital. There is no restriction at all. The foolish Indian capitalists and the Government ruling in the country have been subservient and that is why they have been taking out huge amounts by way of royalties, by way of capitalised value of trade marks,

head office expenses, administrative expenses, etc. etc. It will be an interesting thing to know about the Imperial Tobacco Company. They have now got a new name. That is, The Indian Tobacco Company. The capitalised value is Rs. 4.9 crores. Their remittances in one year had been Rs. 66.6 lakhs. This is what this Government allows.

MR. DEPUTY-SPEAKER: Please come to the Bill....

SHRI JYOTIRMOY BOSU: I am coming to the Bill. I am on the Bill, Sir....

MR. DEPUTY-SPEAKER: You have taken more time than you are allowed.

SHRI JYOTIRMOY BOSU: You have been teaching humanities as a teacher.

SHRI PILOO MODY (Godhra): Therefore, you should have a humanistic treatment of him.

SHRI JYOTIRMOY BOSU: That is right.

14 hrs.

On the products of international repute, British controlled tobacco almost tops the list. I shall give you the figures. I won't go into the matter.

MR. DEPUTY-SPEAKER: In what way can the Bill be improved?

SHRI JYOTIRMOY BOSU: Sir, I had been a Member of the Select Committee and I have given a note of dissent.

MR. DEPUTY-SPEAKER: These figures take too much time. You are giving figures after figures.

SHRI JYOTIRMOY BOSU: Then, Sir, take Coca Cola. I do not know how many bottles we want.

MR. DEPUTY-SPEAKER: I do not drink anything. I drink only pure water if that is available.

SHRI JYOTIRMOY BOSU: That is very good. They go in their name without entering into any manufacturing activities themselves. The products are largely owned internationally but they have been indigenously made and often marketed by them.

Your Bill does not talk about them. They should not be allowed to perform in non-priority sector. Your Bill also does not say that they should not be allowed to trade and make profit and remit money earned on the Indian products. That is why I am saying this. We do not want Coco Cola. It is only a combination of caffeine and phosphoric acid which decay your teeth. That is how Indian ventures have been killed. The authority assumed powers but they will never be used because nothing in the Bill is mandatory on the Government and on the Reserve Bank of India. Even the Kaul Committee which has recommended the establishment of an evaluation cell has not been accepted. But, the foreigners even take away the money on Indian products.

As usual, the well-established practice is that while you import you pay more but while you export you get less. There are exceptions. Now, what is happening? There is a big Report of the Industrial Licensing Policy Inquiry Committee from where you will see that the foreign companies are producing upto 900 per cent more than their registered installed capacity. Has Shri Chavan ever bothered to go and visit one of these factories in the company of Shri Subramaniam and find out how they are doing? They are doing it by underinvoicing the imports of machinery. I shall give you the names. They are:

British India Electric Construction Co.,	100	per cent
Indian Explosives Ltd. I.C.I.	54.93	per cent
Indian Explosives Ltd.	66.50	per cent

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Containers and

Closures Ltd. 112.58 per cent

Bata Shoe Co. 107.05 per cent

(Interruptions)

SHRI PILOO MODY: I think Mr. Bosu should be given 'Padma Bhushan'.

SHRI JYOTIRMOY BOSU: This is about their production in excess of licensed capacity or installed capacity and by importing the machinery by under-invoicing. As regards the other companies, the figures are:—

Guest Keen and

Williams Ltd. 248.59 per cent

Pfizer Ltd., Chandi—

garh. 286.67 per cent

Burroughs Wellcome
and Co. (India)

Ltd. 375 per cent

This firm tops the list of their registered installed licensing capacity. Have you seen their performance in the matter of underinvoicing and overinvoicing? They take about Rs. 240 crores.

In the P.A.C. Fifty-sixth Report of 1968-69 they say—after this, it has grown by leaps and bounds:

"An idea of the extent of over-valuation can be had from the fact that imported raw hides and skins, both cleared and uncleared, the value of which was estimated at Rs. 1,03,500, were invoiced at Rs. 1,54,32,438 (i.e., 149 times the assessed value).

* * *

"1.46. The Committee are concerned over the performance of the Customs Department in these cases. It appears to them surprising that the appraising staff of the Department, who were supported to keep (Interruptions).

MR. DEPUTY-SPEAKER: Mr. Bosu, what is the use of reading it?

SHRI JYOTIRMOY BOSU: I say this Bill does not contain anything at all. I am not going to touch the Bill because it is not worth being touched.

The Public Accounts Committee's report further says:

"It appears to have been surprising that the appraising staff of the Department who were supposed to keep in constant touch with the market and maintain registers showing the prices of commodities coming from various sources should not have been able to detect these cases, over-invoicing in some of which was as high as 228 times of the assessed values."

This is what Mr. Chavan's Department had been doing for long.

I have already referred to the question of over-production by under-invoicing of machinery. I have told you to what extent over-invoicing and under-invoicing is done, by quoting from the report of the Public Accounts Committee. But these are all acts of the friends of those who have been doing *Garibi Hatao*. So, you cannot blame them for this.

On top of this, we have unchecked importation of foreign executives at very highly paid wages, and sometimes they are tax-free. We want to know why it is that when Indian talents are sufficiently available in the country it should be done like this.

Then, take the question of foreign equity participation. My suggestion is that the Reserve Bank should not allow foreign banks to be authorised dealers and any company with more than 11 per cent foreign equity participation should be called a foreign company. Or it should also be taken into consideration as to who actually controls the company. A person may have just 10 per cent shares and yet

he may control the company. There have been many such instances. Financial collaboration under any circumstances should be banned. There is no need for financial collaboration. Of course, now that wheat is purchased from the private sector in America, there will be a flood-gate of investment which would be thrown open because the love-call has gone from India to Washington. So, we have got to be careful that we impose a ceiling on remittances, and that remittances should never exceed 10 per cent of the depreciated capital of the company. And banks or companies should not be allowed any borrowing from Indian sources. Neither should we allow diversification of Indian companies, as they have allowed the Indian Tobacco Co., to start hotels, as if Indians cannot start hotels, or to enter non-priority sectors.

As regards transfer of properties and assets of non-residents, they do a tremendous amount of under-valuation. If Government detect the under-valuation, they should please freeze them...

MR. DEPUTY-SPEAKER: Now, the hon. Member should conclude....

SHRI JYOTIRMOY BOSU: I do not want to say anything more. I have read the Bill thoroughly. It is no use wasting time on that.

MR. DEPUTY-SPEAKER: Then, let him conclude.

SHRI JYOTIRMOY BOSU: Then, I want to say one other thing.

They are talking about conservation of foreign exchange. But I had received a letter last night. This had been posted from London and bears the London stamp. If Mr. Chavan wants it, I can give it to him. It mentions the name of a Minister of the West Bengal Government who came to Rome with his wife in the first week of June under the plea to attend the meeting of the Tea Committee, FAO. It further says:

"Although he attended the meeting an hour or so in course of a week (Enquire from the attending officers). After that, he with his wife and an escort from London, toured the whole of Western Europe. All along, he stayed in five-star hotels, moved in chauffeur-driven cars. In all places, Indian Embassies gave him VIP treatment. The total expenditure of this trip was at least \$7000. Where did he get it from?"

SHRI PILOO MODY: There are no five-star hotels in Europe.

SHRI JYOTIRMOY BOSU: I do not want to mention the name of the Minister, but he is a Minister of the West Bengal Government who had gone to attend the FAO meeting. Mr. Chavan, when he replies to the debate, may kindly cover this point also. If he wants the letter, I can send it on to him, and when he replies, he may kindly cover this point also and say whether that is true or not. This is what I have got from London.

*SHRI C. CHITTIBABU (Chingleput): Mr. Deputy-Speaker, Sir, on behalf of my party, the Dravida Munnetra Kazhagam, I rise to express my views on the Foreign Exchange Regulation Bill, which has been introduced by the hon. Minister of Finance, Shri Chavan.

Sir, this Bill contains 81 clauses. Clauses 1 to 32 refer to the regulations that are being imposed by the Government on the use of foreign exchange. Clauses 33 to 81 detail the penalties and punishments that will be meted out to those offenders circumventing these regulations. At the very outset, I would like to point out that 57 clauses in this Bill have been taken verbatim from the existing Act.

The Public Accounts Committee of this House in its 56th Report in 1968 pointed out how through over-invoicing of imports the valuable foreign

*The original speech was delivered in Tamil.

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exchange is being drained out of the country. The Law Commission in its 47th Report on the "Trial and Punishment of Social and Economic Offences" made certain recommendations regarding the amendment of Foreign Exchange Act. In the light of the experience gained during the last several years, the Directorate of Enforcement expressed the need for re-regulating the flow of foreign exchange in and out of the country. The Reserve Bank of India also felt similarly and made some recommendations in this regard to that the leakage of foreign exchange can be stopped. The hon. Minister of Finance in his introductory speech stated that this Bill has been drafted on the basis of these recommendations.

Sir, the foreign exchange reserves of a country denote its economic strength. Nobody can dispute this economic truth. But, not only the prominent dailies of this country but also many renowned dailies of the world have repeatedly pointed out that the present economic ills of our country are due to the wrong and ineffective policies pursued by the Central Government. If you go through the Economic Review, 1972-73, of the Central Government, you will find the following observation:

"Unlike last year, the current financial year may end up with a significant fall in the level of foreign exchange reserves".

This is the observation of the Ministry of Finance of the Government of India. Having realised this, I wonder how the hon. Minister of Finance has piloted this semi-baked and half-hearted measure for the purpose of conserving foreign exchange. The Kaul Committee appointed by the Government of India pointed out that annual leakage of foreign exchange would be of the order of Rs. 240 crores. But the economic experts who tendered their evidence before the Joint Committee expressed the view that it would be of the order of Rs. 1000 crores per annum. They have also categorically stated before

the Joint Committee that this Bill will not be of much use in the matter of preventing this huge drain of foreign exchange.

Sir, here I have to express my heart-felt sympathy for the hon. Minister of Finance. The Minister of Finance may have the prerogative of piloting this halting legislation intended to revitalise the ailing economy of our country. But, unfortunately, though he has put the old wine in the new bottle by incorporating verbatim as many as 57 clauses in this Bill from the existing Act, I would like to know from him whether he has got the power to implement the provisions of this Bill. When he is just to play the role of a Post Office, when he is just to be the stamping pad of somebody else I fail to understand why he should have taken so much trouble in getting this Bill scrutinised by the Joint Committee comprising of the Members of both the Houses of Parliament and later in getting this Bill passed by both the Houses. After this Bill becomes a law, he is stamped out. The power of implementing the provisions of this Bill vests with the Personnel Department of the Cabinet Secretariat functioning under the Prime Minister. It would have been befitting if the Prime Minister had piloted this legislation. That would have given an opportunity for the people of the country to appreciate the efforts of the Prime Minister in setting right the economic disarray.

I want to know from the hon. Finance Minister how many of our countrymen are in a position to understand the efficacy of this Bill. Out of 56 crores of people, even 5000 may not be aware of the consequences of violating this law. You may be able to count on your finger-tips the number of people conversant with the provisions of this law. In our country there is the vast number of gullible people who can be hoodwinked easily and that is why political chicanery abounds in our country. That is why politics has become a profession in

our country. When you talk about foreign exchange to the people traversing in bullock-carts, they can only be silent spectators and never active participants. The common people of our country have not been educated by the Government to the extent of understanding the use of foreign exchange. Only a handful coterie enjoys the benefits that flow from the use of foreign exchange. The Government have enacted the M.R. T.P. Act to prevent the growth of monopolies, which act as a stumbling block in the way of establishing socialism in the country. While the enactment of this law is being bragged about by the Government of India as the first step in bringing socialism to the country, for all these years the Government have not cared to prevent the leakage of foreign exchange running to several hundreds of crores. Now, this half-hearted legislation has been brought before this House. If the Government were serious to help the poor, they should have come forward with the proposal for nationalising the entire import and export trade of the country. No, the Government would not offend the susceptibilities of those who are the milch cows of the ruling party for election purposes.

Do the poor people get the import and export licences? Can the Government deny that all the import and export licences are issued to monopolists like Birla, Tata and Bajaj who are holding the economy of the country to ransom? Who are the beneficiaries of the blanket permits given by the Government—not the poor people of the country. I would like to know from the hon. Minister of finance whose party's catchword is socialism, what are the concessions and facilities that have been given to Oberoi Hotel, and to Coco-Cola organisation, which has repatriated to a foreign country Rs. 40 crores in foreign exchange on an investment of just Rs. 4 crores. The administrative inefficiency of the Central Government has been exploited by the vested interests of the country in the form of over-invoicing the ex-

ports and under-invoicing the imports. Can you say that Tata, who is sanctioned foreign exchange just 40 pounds, is able to maintain himself in London or New York or in other western capitals? He has got behind-the-screen agreements with his foreign counterparts who take care of him lavishly when he is abroad. The consequence is that the nation is deprived of valuable foreign exchange.

In these circumstances, can you appreciate the hesitation on the part of the Government to nationalise the import and export trade of the country?

I would like to give another example of how the foreign exchange is being looted. An actor from Tamil Nadu approached the Finance Ministry for permission to picturise his film abroad and he also wanted foreign exchange. Without a thorough scrutiny of the arguments advanced by him for going abroad to shoot his film, the Finance Ministry accorded its sanction on the ground of some technical features and recommended the sanction of foreign exchange to him. If the Ministry were to be compelled to give an explanation of their action, I am sure, Sir, the cat will be out of the bag. I am referring to the picture of ULAGUM SUTRUM VALI-BHAN which was picturised abroad, the actor-producer of which was sanctioned Rs. 75,000 in foreign exchange for this purpose. Can the Central Government explain how he was able to get a Bank guarantee running to 4, 5 lakhs before the foreign exchange of Rs. 75,000 was sanctioned to him? One of the conditions for sanctioning this foreign exchange was that he should remit Rs. 4.5 lakhs in foreign exchange before the said film was released in India. Could the Minister tell the House whether he gave that much money in foreign exchange? He could not have given that much money in foreign exchange because the said film was not exhibited in any foreign country to earn that much money. This actor-producer gave back to the Central Gov-

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ernment this money in Indian rupee and not in foreign exchange as per the stipulated condition. Without the knowledge of Reserve Bank, he would not have been able to bring about 4.5 lakhs in foreign exchange.

Another condition was that the actor-producer should submit to the Government a statement of expenditure to the Government in regard to the foreign exchange sanctioned to him. I am given to understand that that also has not been complied with by him. Yet another condition was that no foreign actor or actress should act in the concerned film. But it is common knowledge now that a foreign actress has played an important role in this film. Did she act in this film without receiving any remuneration from him? If he has given the statement of expenditure to the Government, can the hon. Minister of Finance tell the house whether this foreign actress has been paid remuneration in foreign exchange or not? Either way, it is a contravention of the stipulation laid down by the Government. What action has been taken against this actor-producer for violating the foreign exchange rules and regulations?

In reply to a point raised by Shri Lakshmanan of Dravida Munnetra Kazhagam, the hon. Minister Shri Ganesh stated on the floor of this House that the actor-producer has deposited about Rs. 4.5 lakhs in the Treasury. Before he replied, did Shri Ganesh pause for a moment and think as to how he could have paid this money, when he is not in a position to pay the income tax arrears running to Rs. 13.5 lakhs? When the picture had not been released in foreign countries, he could definitely not have paid the dues of the Government in foreign exchange.

MR. DEPUTY-SPEAKER: I think the hon. Member is aware of the rules. No accusation of a defamatory character can be made unless he is in a position to prove it.

SHRI G. VISWANATHAN (Wandiwash): He is referring to the answers given by the Minister previously in this House.

MR. DEPUTY-SPEAKER: Please do not mention any names.

SHRI G. VISWANATHAN: He is not mentioning any names.

SHRI C. CHITTIBABU: The time has come for making the people of the country know about the nefarious political games being played by the members of the party in power. On August 8, 1972 this actor in cinematic overtones announced in the Madurai Conference of D.M.K. that he would face the Indian Army on the issue of State autonomy. The ruling party at the Centre, agitated by such violent utterances, threatened him that action would be taken against him under Section 19(ii) of the Foreign Exchange Act and issued a notice to him containing 31 questions. When the actor-producer got this notice, he got panicky as was anticipated by the ruling party at the Centre. The ruling party at the Centre did not lose this golden opportunity. There was a meeting in Mysore at Madras in which the late lamented Central Minister advised him to save himself by coming out of the D.M.K. with 100 M.L.As which will ensure of the fall of the popularly elected State Government. The same Officer of the Department who sent to him this notice was deputed to help him in drafting answers to the questions.

I had raised myself questions on the floor of this House in regard to this issue in November last year and April and August this year. The hon. Minister. Shri Ganesh has replied that the matter is under investigation and any divulgence of information would hamper investigation. In reply to Unstarred Question No. 3813 raised by Shri Madhu Limaye on 22.8-1973, the hon. Minister of State in the Ministry of Home Affairs. Shri Ram Niwas Mirdha has replied as follows:

"The Directorate of Enforcement are inquiring into the alleged violation of the provisions of the Foreign Exchange Regulation Act, 1947 by M/s Emgeeyar Pictures P. Ltd. and its Managing Director, Shri M. G. Ramachandran. It will not be expedient to disclose further details as it may hamper investigation. Based on the results of the investigation, appropriate action in accordance with the law will be taken.

This is the stand of one Minister in the Council of Ministers of the Government of India. Here, I would read out the answer given to Unstarred Question No. 1942 raised by me on 3-8-1973, which has been answered by Shri K. R. Ganesh:

Details regarding the expenditure of the sum of Rs. 75,000 released to the producer for the location shooting abroad have since been furnished by the Party to the Reserve Bsnk. *Prima facie*, the detailed explanation furnished appears to be satisfactory.

It is beyond my comprehension how one Minister expresses his subjective satisfaction about the explanation given by the actor-producer, while his own colleague in the Council of Ministers says that the investigation in this case is on and appropriate action in accordance with the law will be taken. I do not know which Minister is in complicity with the actor-producer. At least the people of the country have got a right to know about this.

Even today, I would like to know from the Minister whether the Government have received satisfactory replies to 31 questions from the actor-producer. According to my information, the replies have not yet been furnished by this actor-producer to the Government of India. Will the hon. Minister of Finance agree to appoint a committee for a thorough investigation into this scandal? When this is the situation, I wonder how

this very same actor-producer has been sent to Soviet Russia. In a similar case, one Mr. Nagappa Chettisr of Tamil Nadu, who has also been served with a notice under Section 19(ii), has been legally stopped from going abroad.

MR. DEPUTY-SPEAKER: I told you that names cannot be mentioned without giving prior notice under the rules. Again you are mentioning certain names.

SHRI C. CHITTIBABU: As I had mentioned earlier, these names have figured in the questions that have been raised on the floor of this House.

MR. DEPUTY-SPEAKER: You may refer to them. But, please do not bring in new allegations.

SHRI C. CHITTIBABU: I am only repeating the same allegation of violation of Foreign Exchange Regulation Act. As I mentioned earlier, from the answers to questions I have quoted, it is clear that Shri Ganesh is shielding this actor-producer who stabbed in the back of the political party which has formed a stable Government in the State after obtaining a massive mandate from the people. I need not emphasise the fact that this drama is being enacted under the cover of statutory powers to topple a democratically elected popular Government in the State. It is also strange that, when the State Governments are not permitted to enter into agreement with foreign governments, this very same actor-producer has signed an agreement—I do not know whether the Central Government have permitted this private individual to do so far producing a film as a joint Indo-Soviet effort. I would like the hon. Minister of Finance to clarify whether in this agreement there is the question of foreign exchange involvement or not.

Besides the leakage of foreign exchange, we have got the problem of black money and red money. Recently, when Shri Raghunatha Reddy, the

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Minister of Labour, addressed a meeting of the Bank Employees Association at Madras, he exhorted to them that they must extend their full co-operation to the Government in tackling the problem of black money. He expressed the view that the powers vested with the Government are alone not adequate to tackle this problem. But, the Joint Committee on the Foreign Exchange Regulation Bill of which the hon. Minister of Finance, Shri Chavan, was also a Member, had not cared to incorporate the suggestions made before it by the Reserve Bank Employees' Association for the purpose of effectively stopping the leakage of foreign exchange. On the one hand, the Bank employees are asked to assist the Government in this respect, and on the other, the suggestions of the employees of the premier Bank are brushed aside.

I have narrated these things to show to you, Sir, that the laws of the land have become instruments for political profiteering and for subjugating political enemies. From the instances I have given, it will be clear to you that the laws have not become potent weapons for economic emancipation. Instead of implementing the laws objectively for the welfare of the people, the provisions of the laws are being used for perpetuating the power of the ruling party. As I am sure that this Bill is also going to help the rich and vested interests behind the screen and it is not going to contribute anything to the economic rejuvenation which alone can help the poor, I oppose this Bill.

With these words, I conclude.

SHRI INDRAJIT GUPTA (Alipore): Sir, this Bill has been introduced with a very laudable objective, namely conservation of the foreign exchange resources of the country and proper utilisation thereof in the interests of the economic development

of the country. That is a polite way of expressing the concern not only of the Government but of the entire country at the tremendous illegal drainage of foreign exchange which has been taking place over the last many years and which is an open secret known to everybody.

Therefore, we have to test this bill by the criterion of its capacity, or the seriousness or the intention behind it to plug the major loopholes in so far as these loopholes are discerning. In one word I would say that to my mind this Bill indulges more in a great deal of window-dressing than on anything else. I do not deny that in some of the provisions there has been an attempt to plug some of the minor loopholes, but many of the major loopholes have been left standing wide open, and the reason for that as I was able to understand as a member of the Joint Committee has been the concentrated pressure of many Chambers of Commerce, many big business houses and import and export houses, which took an active part in making their representations to which they are naturally entitled to. There was concentrated pressure by them and the result has been that the whole thing has been diluted and watered down to an extent which, to my mind, will not make this Act an effective weapon in the hands of the Government if the Government really wants to conserve our foreign exchange resources.

Let me give an example. As Shri Jyotirmoy Basu also mentioned, the Reserve Bank of India was given a lot of powers in the past. There is no doubt about it that they have been armed with considerable powers, even in the past. But, despite that, we were not able to check this illegal leakage of foreign exchange on a massive scale. Now, we find that the

Chambers of Commerce the big business houses, expert and import houses, their representatives and counsels have concentrated their argument on this point that there is too much of power given to the Reserve Bank, that there is undue concentration of powers in the hands of the Reserve Bank, that there is excessive powers of control given to the Reserve Bank and that, therefore, these must be reduced. Shri Chavan was just now taking great pains to recount a number of new responsibilities which have no doubt been added to the functions of the Reserve Bank. The field has been widened so that in many more cases the prior permission and prior approval of the Reserve Bank may be required. But, may I humbly submit that these things by themselves do not ensure that the powers of the Reserve Bank will in any way be more effectively utilized than they were in the past? In the context of these people complaining in the name of excessive control undue concentration of powers by the Reserve Bank let us see what clause 74 says. It reads:—

“The Reserve Bank may, with the previous approval of the Central Government, by order, delegate any of its powers or functions,—

- (i) under section 8, 9, 10 or 11 or sub-clause (b) of clause (A) of sub-section (2) of section 17 or sub-section (7) of section 17 to any authorised dealer; or
- (ii) under section 8 or 9 to any money-changer....”

The authorised dealers or money changers are generally the foreign banks in our country. Now much more power is being delegated to them by this clause. I think this clause will be welcomed by the chambers of commerce and big business houses because this is precisely what they were wanting.

May I ask another question? Has the Government considered the desirability of giving retrospective effect to any part of this Bill? For instance, clause 26(4) reads as follows:—

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

I welcome this clause. But it is rather like locking the stable-door after the horse has run away.

I have in mind—Mr Ganesh knows it very well—the affairs of the Metro Cinema. It was raised so many times in this House. He himself admitted here in a statement that he made in the House, that the Government has got ample grounds to suspect that there was some shady deal behind it. The word used by him was “shady” deal. But what happened ultimately? The Law Ministry was consulted, the Company Affairs people were consulted and then Mr. Ganesh came forward with the answer that under the Act as it exists, it there is a transfer of business in India by one foreign party to another foreign party, then that is valid and nothing can be done about it.

Now, they have come forward with this new clause which is very good. But unless it is given some retrospective effect, all these deals, like, the Metro transfer or so many others which have taken place will be absolutely outside the ambit of this Act.

Then about the question of 40 per cent ownership of shares by a non-resident, if it is more than 40 per cent, it will be considered to be a capital of a non-resident, otherwise not. I suggest this is a fantastic figure. Now-a-days, it is well known

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to anybody that even with a block of 20 per cent shares, a whole company can be controlled. Here, what is stated is that if shares are held by foreign parties not beyond 40 per cent, then that will not be treated as the capital of a non-resident. I think, this is a fantastic figure that has been prescribed. This is itself opening a loophole very wide open. I would suggest to him that this 40 per cent should be reduced to 15 per cent or 10 per cent. With 40 per cent shares in the hands of foreigners, you try to pretend that that company cannot be controlled by foreigners! Who is being taken for a ride?

Another point that I would like to make is this. About the Indian big business houses which are being allowed increasingly to start business, to set up manufacturing units, and so on, abroad, I do not find in this Bill anything very effective to keep a close watch and scrutiny on them and to check any illegal or improper foreign exchange dealings which they are liable to indulge in. I find their number is going up.

In a reply given in a statement only this morning I find that between January—June, this year, only the first six months, there is a list of these joint ventures which have been sanctioned by the Government abroad. We find the people who are participating in these joint ventures abroad from our side are the same sort of people—Mahindra & Mahindra in Indonesia; Tatas Export Ltd. also in Indonesia; Century Spinning and Manufacturing Co., also in Indonesia; Sarabhai Chemicals, Singhania, etc. The Oberoi Hotels Ltd. have been allowed to start a five-star hotel in Sri Lanka. Altogether 163 such proposals for joint ventures abroad have been sanctioned. I know, the figures will go up. The export of Indian capital abroad is now an established thing which this Government is encouraging. I want to know from him what is there in the Bill which

really provides for any close watch and scrutiny on the foreign exchange dealings of those big business houses in this country which are going on in joint ventures abroad. I do not find anything here.

About under-invoicing and over-invoicing of course, all those clauses have been referred to by Mr. Chavan, that all attempts are being made to keep them within some sort of control. But I would suggest that nothing can be done effectively about it. The whole machinery of this under-invoicing and over-invoicing has been perfected so much in a million dubious ways by these people over the years. Why not certified copies of at least those contracts and the bills of lading be deposited compulsorily with the Reserve Bank of India? You must know the thing is done through the bills of lading which you have to compare and check up with the contracts and certified copies of these documents should be registered compulsorily with the Reserve Bank of India but there is no provision of this kind of a thing here.

About the ceiling on the repatriation of profits by the foreign companies, I do not want to add anything. A huge drain is going on. This was mentioned by Mr. Jyotirmoy Bosu. But I would say also that it is interesting to see the ways these foreign companies here operate. He has referred to the National and Grindlays Bank. I also wish to make of brief reference to it because that is the biggest and oldest foreign bank operating in this country. The point is that in 1969 the First National City Bank of New York has obtained 40 per cent beneficial interest in the equity capital of the Grindlays. That is known and after that, every year in the name of paying technical fees—the technical fees paid by the National and Grindlays Bank to the First National City Bank of New York because they hold 40 per cent of their equity capital—they have come to some agreement among themselves that technical fees will be paid year after year. In the name of technical

fees they are remitting Rs. 28.80 lakhs in 1970-71 and Rs. 29.70 lakhs in 1971-72. This has become another outlet through which huge amounts of foreign exchange are being taken away. It is absurd to imagine that a foreign bank which has a 110 years standing in this country, the Grindlays Bank, now at this late stage are required to pay these huge amounts as technical fees to the First National City Bank of New York. Also what have they done? Buildings acquired or constructed or which are owned by the National Grindlays Bank in India—out of Indian profits naturally—have been transferred to their head office. Their ownership has been transferred to the Head Office in London and the Branches of the National and Grindlays Bank in this country have become the rent-paying tenants of their own head office and on that score, they are paying for depreciation, for repairs, for renovations and for maintenance of these buildings and on all these accounts another big amount is going out of the country. What are we going to do about all this? These loopholes cannot be plugged, I think, by the Bill as it stands.

I might also mention in passing that the so-called technical advice for which they are paying fees is now being exercised in a way that all small depositors are being driven away from the Grindlays Bank. They have imposed new restrictions putting minimum limits of balance to be maintained in their bank and already since 1972, 60,000 small depositors have been driven out of this bank because they no longer come within the minimum permissible limit they have laid down. This is the kind of technical advice which has been given by the First National City Bank of New York for which they are being paid huge technical fees. This is the kind of thing which is going on.

To my mind, the central corpus of this Bill lies in clauses 26, 27 and 28, the central corpus by which we have to test the sincerity or otherwise of the Government to make a really seri-

ous effort to plug this foreign exchange leakage. Now, as far as clause 28 is concerned, I find that the Minister himself has come forward with some amendments which will be taken up in due course. I think he had circulated those amendments. This clause 28 as it stood meant that any Indian company or any Indian firm here would directly buy the goods from the branch of a foreign company or a foreign company in this country, buy their goods and sell them directly in the market through the retail distributors on the condition that they may utilise the brand name or trade mark if you like to call it that way, the brand name of the foreign company so that it may sell it elsewhere. There is nothing to plug that loophole. I have no time to study the details of Mr. Chavan's amendment.

SHRI YESHWANTRAO CHAVAN: I have accepted Mr Madhu Limaye's amendment.

SHRI INDRAJIT GUPTA: We will come to the amendment stage later. All I can say is, till Mr. Madhu Limaye's amendment was brought to your notice or attention there was a dangerous gap. These foreign companies get something manufactured here locally and they put their brand name or trade mark or foreign name and market it as such. There is a big gap. No other bigger fraud or conspiracy can there be. They show these amounts as profits of the foreign company and in this way they repatriate huge amounts out of the country.

PROF. MADHU DANDAVATE (Rajapur): Mr. Madhu Limaye's amendment will plug such loopholes.

SHRI INDRAJIT GUPTA: Here it is the other way where they circumvent it by showing that they have no direct connection with that company because they buy the goods and sell them independently. They have to

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use the trade mark of that company. That may be plugged. Now, by this new amendment I hope it will be done, and I hope the House also will be vigilant to see to that.

Clause 26 is a controversial thing because this refers to branches of foreign companies operating here. Foreign companies are registered under Indian Companies Act. Those branches which are here of foreign companies operating here, are not registered under our Indian Companies Act. They are not required to register themselves uptill now as the law stands. Who are these? Mr. Jyotir-noy Bosu referred to them as multi-national corporations, about which countries more vigilant than us have been expressing grave concern. Over the last few months and years the activities of these multi-national and multi-pronged corporations have penetrated in to the economy of so many countries. These people have got branches operating in our country and those branches are not registered under our Act. They are therefore not amenable to our discipline, our legislations in the matter of Company regulations. And, in this way some wishy-washy things are done. In actual practice, what we find is that these companies take double advantage. It is not as though they are such types of companies who are very weak in the matter of competition with our Indian firms. Not at all. They are the people representing multinational corporations, having multi-national ramifications. They are stronger than our own people, and by our own people, I am not referring to Birlas and Tatas. I am referring to tens and thousands of entrepreneurs and industrialists and small-scale, medium-scale people and so on in this country, who do not have either the desire or the capacity to gain for joint collaboration with foreigners. They are small people and they are medium people. They are people who want to develop this country on the basis of selfreliance. But what happens? These particular branches are operating in this

country more and more; they cannot be brought within the control of our Companies Act; they are not registered under it. They have the double advantage. They enjoy their own potential power of competition by virtue of their enormous resources which are backing them. Secondly, they are free to operate here, in our country, outside the ambit of our Companies Act.

This is a major loophole which is sticking up this Bill as a big nose of anybody else is sticking up. I am surprised that Shri Chavan cannot see it. Therefore I say that—I see more amendments have been tabled—he will give some consideration to this effect only. Let us at least put those branches of these foreign companies—this is what we are asking for—on the same footing as those foreign companies which are registered in India. Nobody is demanding through this clause some nationalisation or some such terrific radical sounding thing which scares our Government so much. There are foreign companies registered in this country. At least should not the branches of these foreign companies which operate in this country be put on the same footing? Make it obligatory for them to register themselves under the Indian Companies Act or, otherwise, you prohibit them from carrying on their business here. I do not know whether these ventures which have been started by the Indians in other countries are also subjected to any of their own laws or financial discipline or whether there is any pre-condition existing there under which these countries should not make them subjected to any of their own laws or financial discipline. I am not aware of what happens in other countries. But, certainly, this plays havoc in our country. Therefore, this clause 26, I think, must be amended—amended only to this extent which is enough for the present. I do not say it will plug all the loopholes. But, at least, they must be compelled to register under the Indian Companies Act.

Clause 27, I think, is the one which leaves a loophole for the Indian big business houses operating abroad for opening manufacturing and commercial ventures in the foreign countries and doing all kinds of malpractices without being checked.

As regards clause 28, I have already referred to it, it has perhaps caught the attention of the Minister now. He will try to do something about that. I could not follow in his opening remarks how exactly he was commending this new provision, which has been put in as a safeguard, I suppose, against what you call 'vexatious search'. This is a clear example of the pressure of Shri Piloo Mody and his friends. I say this is a victory for them.

SHRI PILOO MODY: Victory will be always ours.

SHRI INDRAJIT GUPTA: I would like to know this from him. That means you are opening the door for a prolonged litigation because, who is going to judge what is the vexatious search. Am I to take it that when a vexatious search is carried out with all the *bona fide* intentions and when it results in catching something, it will immediately be challenged? Will the officers, who have carried out that search with all good faith be subjected to penalties? Will that be because the court will hold that in this vexatious search nothing has been found?

SHRI PILOO MODY: That is what 'vexatious search' means.

SHRI INDRAJIT GUPTA: You will please tell that when you participate. I do not want you to do that now.

SHRI PILOO MODY: You said you wanted to know that from me.

SHRI INDRAJIT GUPTA: Not out of turn.

Sir I say that this kind of provision is going to demoralise your entire enforcement directorate. This is a very dangerous thing. Everytime

we know big raids or big searches were carried out in some big business houses; in Calcutta years ago when big searches were made in regard to jute exports and all that, a big commotion was picked up in the big business circles. Since that time they have all been saying that they must not be subject to harassment. I say why you put in the term like 'vexatious search' in the draft statute? If you put it, then you must tell us what do you mean by vexatious search? Who is going to decide this? And how is it going to be defined? Does it mean that when a search is carried out and when it does not produce any results, you will say that the aggrieved party will go to the court? Suppose the courts being what they are say that it is not a vexatious search. Does it mean that even the officers must be penalised for that? If that is done, then what would happen to the morale of the officers? I do not think this is the way of strengthening the enforcement directorate at all. This is a way of weakening them and demoralising their officers. Then, Sir, I wanted to bring to the notice of the House some more points. There are many things. But, there is no time for that.

I would only say that this amending Bill has come up before the House after many many years. Please try to see that you do not leave any loose ends and loopholes. But, please try to make it effective because we are in the midst of a terrific economic crisis, foreign exchange crisis and a political crisis. The nation cannot afford this kind of malpractices; in this illegal manner, there is drain in our foreign exchange. We cannot afford this drain and theft of foreign exchange to go on like this. I am sure the Minister realises that and the entire Government also is perturbed over this question and they should not in any way succumb to any undue pressures of these circles which have been indulging in these things. I want that they should not be allowed to go in the same way.

MR. DEPUTY-SPEAKER: Shri Jagannath Rao.

SHRI PILOO MODY: Let him not make a vexatious speech. I am going away.

SHRI JAGANNATH RAO (Chatrapur): I wish to make a few observations in regard to this Bill. It is a consolidating and amending Bill which seeks to replace the Foreign Exchange Regulation Act, 1947. The working of the 1947 Act has shown that there are several loopholes which need to be plugged, so that the measure could be made more stringent and the leakage of foreign exchange may be stopped. But as I went through the Bill I began to have many fears that the objective with which the amending Bill had been brought forward perhaps would not be achieved.

In the Statement of Objects and Reasons appended to the Bill it has been said:

"There is need for regulating, among other matters, the entry of foreign capital in the form of branches and concerns with substantial non-resident interests in them, and the employment of foreigners etc..".

I would like to know how this Bill has tried to regulate the entry of foreign capital in the form of branches and concerns with substantial non-resident interests in them.

If you look at clause 26 you will find that it is nothing but a reproduction of section 18 of the old Act and Explanation I thereto. Perhaps, section 18 was more stringent than Clause 26. If you look at the Explanation to section 18 of the old Act, you will find that it reads thus:

"The companies referred to in sub-section (1) are companies not incorporated under any law in force in India in the case of which any of the following conditions is fulfilled:—

(a) that the company is by any means controlled directly or indirectly by persons resident in India; or

(b) that more than half the sums which, on a liquidation, thereof, would be receivable by holders of share or loan capital, would be receivable directly or indirectly by, or for the benefit of, persons resident in India."

Clause (a) of this Explanation refers to control. But control is nowhere defined in the Companies Act. A person need not have 51 per cent shareholding or 40 per cent shareholding or even 33-1/3 per cent or even 25 per cent shareholding for this purpose. Control is a question of fact. A person owning 10 per cent of the shares may also be able to control a company, and there are instances where he can control the functioning of a company. Therefore, control has been cleverly and purposefully not defined in the Companies Act. By omitting this provision contained in Explanation I of section 18 of the old Act, this provision is being made more innocuous. Under the old Act, any company with 10 per cent shareholding or any person having 10 per cent of the shares or interest in the shareholding to the extent of 10 per cent who controls, would be covered by the Act, but now that is taken away and we are limited to 49 per cent or 40 per cent. Why should there be 40 per cent for this purpose?

Why should a foreign company not register itself in India? It should be subject to the discipline of the country in which it operates. I have no objection if Indian industrialists who are starting companies elsewhere are also made subject to the financial discipline of the countries in which they operate. That is but natural. Why should we exclude these people? The present provision means that only if it is 40 per cent or more, this Act would apply. But where the capital of a foreign company or a

foreign non-resident is 40 per cent or less he is not bound by the conditions given in the Act. What is the idea behind this? Therefore, I am not able to appreciate this. Perhaps, section 18 of the Old Act was perhaps more stringent than the enlarged clause 26 which runs into several pages.

As pointed out by my friend, Shri Indrajit Gupta, why not the branches of foreign firms also register themselves in our country so that they come under the discipline of the company law and the Foreign Exchange Regulation Act? I doubt whether the Finance Ministry consulted the company law department before bringing in this amendment. These are inter-related things. The functioning of these companies, firms and associates is going to be affected. That department knows the lapses, abuses and distortions committed in the operation of companies. I do not know whether they have been consulted.

As regards repatriation, as the previous speaker said, there is no limit to it. The repatriate their profits under different heads, dividends, commissions, head office expenses and so on. In reply to a question, it was stated that crores and crores of rupees are being taken away every year. Therefore, there should be a ceiling on foreign capital in our country. There is no dearth of capital in the country. There is enough money. People who are in a position to invest are investing. So there should be a limit of 20 or 25 per cent.

Then why should any foreigner or non-resident be allowed to trade in our country? I can understand it if he is engaged in production, manufacture or processing which are all defined in the Bill. But for trading, we should not have any foreigner in the country. Even the Central Government or RBI should not have the power to permit any foreigner, even

a technical man, when talents are available in the country in various fields of industrial activity. Let us give opportunities to our own talented people to play their part.

I would add that foreign banks should not be appointed as dealers or money changers. The RBI and the nationalised banks should discharge this function.

The study team has said that nearly one-fourth of the leakage in foreign exchange every year is through over-invoicing of imports and under-invoicing of exports. This is done by big business houses and big businessmen. They all belong to a group of companies which is defined in the MRTTP Act and Companies Act. They operate within themselves. It is difficult to catch them. I do not think even the enlarged cl. 28 would go a long way unless officers of the RBI are posted in several places in foreign countries to check at the time of the deposit of documents, agreements, bills of lading etc. All these things are deposited there. I think a careful personal watch is necessary to see that these malpractices are not committed. Mere enactment of law would not serve the purpose.

I am glad that cl. 28 is now being sought to be amended by the inclusion of (c). Otherwise, there would have been a great lacuna which I myself felt would be a source of continued evil.

This Bill, as introduced, tries to define offences and also imposes severe penalties. When we read the first part of the clause, it is severe, but when we read the second part, power is given to the court to give a lesser punishment. The first part may please MPs; the second part will please businessmen. This need not have been put in there. It is open to the court if the circumstances of the case deserved to give a lesser sentence. For commission of a second offence, you have provided a severe-

[Shri Jagannath Rao]
penalty, but even in such cases power is given to the court to award a sentence of imprisonment of less than six months. I cannot understand this. I have been in the profession for more than 25 years.

15.00 hrs.

SHRI YESHWANTRAO CHAVAN:
He is out of touch with the profession.

SHRI JAGANNATH RAO: I am in touch with it. Please point out to me any Act where such a provision is there. Even for second offence, discretion is given to the court by the statute to award a lesser sentence. I have not come across such a thing; I shall be happy if you could advocate me.

MR. DEPUTY-SPEAKER: Would you like to continue on Monday?

SHRI JAGANNATH RAO: Yes, Sir.

MR. DEPUTY-SPEAKER: All right then; we take up Private Members' business now.

15.01 hrs.

ERADICATION OF POVERTY SCHEME BILL*

श्री यमुना प्रसाद मंडल (समस्तीपूर) :
मैं प्रस्ताव करता हूँ

“कि देश से गरीबी का उन्मूलन करने की योजना का उपबन्ध करने वाले विधेयक को पुरःस्थापित करने की अनुमति दी जाये।”

MR. DEPUTY SPEAKER: The question is:

“That leave be granted to introduce a Bill to provide for a scheme for eradication of poverty from the country.”

The motion was adopted.

श्री यमुना प्रसाद मंडल : मैं विधेयक को पुरःस्थापित करता हूँ :

CONSTITUTION (AMENDMENT) BILL*

(Insertion of new articles 125A and 221A)

श्री मधु लिमये (वांका) : मैं प्रस्तावित करता हूँ “कि भारत के संविधान का और संशोधन करने वाले विधेयक को पुरःस्थापित करने की अनुमति दी जाये।”

Mr. Deputy-Speaker: The question is:

“That leave be granted to introduce a Bill further to amend the constitution of India.”

The motion was adopted.

श्री मधु लिमये : मैं विधेयक को पुरःस्थापित करता हूँ।

UNIVERSITY GRANTS COMMISSION (AMENDMENT) BILL*

Insertation of new section 12B and amendment of section 14)

श्री मधु लिमये (वांका) : मैं प्रस्ताव करता हूँ “कि विश्वविद्यालय अनुदान आयोग अधिनियम, 1956 का और संशोधन करने वाले विधेयक को पुरःस्थापित करने की अनुमति दी जाये।”

MR. DEPUTY-SPEAKER: The question is:

“That leave be granted to introduce a Bill further to amend the University Grants Commission Act, 1956.”

The motion was adopted.

श्री मधु लिमये : मैं विधेयक को पुरःस्थापित करता हूँ।