

Mr. Speaker: We will discuss it when the Railway Budget comes.

Shrimati Yashoda Reddy (Kurnool): Is the Waltair terminus included in the new zone?

Shri S. K. Patil: It is not because it is in the S. E. Railway.

श्री तुलशीदास जाधव : अध्यक्ष महोदय,

अध्यक्ष महोदय : माननीय सदस्य नवाब पृष्ठ चुके हैं ।

श्री तुलशीदास जाधव : एक ग्राम प्रश्न है ।

अध्यक्ष महोदय : ग्राम नहीं ।

Shri D. C. Sharma (Gurdaspur): I welcome this decision. I want to ask whether the efficiency bureau is directing all its attention to south, west, and east and whether it is also directing its attention to the north and if so what are the results?

Shri S. K. Patil: The whole of the Railways is under their review.

Mr. Speaker: He may come to the north when the Budget is discussed.

13.18 hrs.

GOLD (CONTROL) BILL—contd.

Mr. Speaker: We shall take up further clause-by-clause consideration of the Gold (Control) Bill. Of the 4 hours allotted, 45 minutes have been taken and 3 hours and 15 minutes remain. We should proceed with some speed so that we may conclude the clause-by-clause consideration in two hours and 15 minutes and one hour might be left for the third reading. **Shri Dandeker.**

Shri N. Dandeker (Gonda): In view of amendments Nos. 238 and 239 filed by the Finance Minister, I am not pressing my amendment No. 79.

Shri Hem Raj (Kangra): Sir, I have got an amendment No. 227 to clause 5. This clause deals with the restrictions on possession and sale of gold. In clause 1 gold has been defined certain persons are specified in clause 2 (a), (b) and (c). According to clause 5 there is this difficulty. Supposing a person has got about 7 or 8 tolas of gold. Will he be required to apply to the Administrator and only after getting his sanction he will be in a position to sell his gold? A person in a village may be compelled to sell or pledge the gold that he has. Will he apply to the gold administrator. By the time permission comes, he will not be in a position to sell it or his necessity might have gone. So, I want that he may be allowed to sell it without the prior permission.

The Minister of Finance (Shri T. T. Krishnamachari): In regard to the last amendment, I think Government amendment No. 239 partly covers that situation. It would not be possible to make the disposal of undeclared gold easy.

There is one other point which I would like to mention in regard to amendment No. 239. There seems to be a mistake in printing. It says: "... but the person to or with whom such gold is sold or otherwise transferred or hypothecated, pledged, mortgaged or charged....." It should be 'charged' and not 'changed'. I think that amendment meets the position raised by Mr. Hem Raj. There is the provision in clause 4(3) also which has been passed already:

"Notwithstanding anything contained in sub-section (1) or sub-section (2), the Administrator may by or general or special order permit any person to make, manufacture....."

There is that provision. I do not think it is necessary to enlarge it any further.

Shri Hem Raj: I do not press my amendment, Sir.

Mr. Speaker: Have the hon. Members leave of the House to withdraw their amendments?

Amendments Nos. 79 and 227 were, by leave, withdrawn.

Mr. Speaker: I shall put amendments Nos. 107 and 28 to the vote of the House.

Amendments Nos. 107 and 28 were put and negatived.

Mr. Speaker: I shall put Government amendments Nos. 238 and 239 to the vote of the House.

The question is:

(i) Page 6, line 13,—

for “a permit has been obtained under sub-section (3)” substitute—

“the dealer complies with the provisions of sub-section (3)”. (238).

(ii) Page 7, lines 3 and 4,—

for “under and in accordance with a permit granted by the Administrator in this behalf”, substitute—

“but the person to or with whom such gold is sold or otherwise transferred or hypothecated, pledged, mortgaged or charged shall give to such officer as may be authorised by the Administrator in this behalf, intimation thereof in such form and manner and within such period as may be prescribed.” (239).

The motions were adopted.

Mr. Speaker: The question is:

That clause 5, as amended, stand part of the Bill.

The motion was adopted.

Clause 5, as amended, was added to the Bill.

1986 (Ai) LSD—6

Clause 6— (Prohibition of loans on by pothecation of gold)

Mr. Speaker: We take up clause 6.

Shri T. T. Krishnamachari: Sir, I move my amendment No. 240.

Page 7, lines 7 and 8,—

for “unless a permit has been obtained under sub-section (3) of sections 5” substitute—

“unless the person making, advancing or granting the loan gives intimation thereof in accordance with sub-section (3) of section 5”. (240).

Shri N. Dandeker: Sir, I have tabled four amendments Nos. 80, 81, 82 and 83. I am withdrawing No. 80 in view of Finance Minister's amendment No. 240 and I am therefore moving Nos. 81, 82 and 83.

(i) Page 7,—

omit lines 13 to 16. (81).

(ii) Page 7, line 19,—

omit “whether before or”, (82).

(iii) Page 7, line 27,—

after “him” insert—

“after the 10th day of January, 1963”. (83).

Amendment No. 81 is concerned with omitting lines 13 to 16 on page 7. Sub-clause (a) of sub-clause (2) of clause 6 reads as follows:

“No person who is a dealer whether licensed or not, shall carry on business as a dealer in the same premises in which he or any other person carries on business as a money-lender or banker involving the hypothecation, pledge, mortgage or charge of any gold.”

My proposal is that this sub-clause (a) ought to be completely deleted, because I think this is entirely impracticable and also quite unnecessary. I do not see any reason at all why in the same premises a person who is a dealer may not himself carry on the business of money-lending or banking involving the hypothecation, pledge,

[Shri N. Dandekar]

mortgage or charge of any gold. So far as this matter is concerned, he is already controlled by several other provisions of the Bill. Moreover, the provision is to the effect that no dealer can carry on the business in the same premises in which "he or any other person" carries on business of money-lending or banking involving hypothecation, pledge, mortgage and so on. In large towns, in the same building, you can have one shop that is concerned with dealing in whatever is mentioned in this provision, and also another adjoining shop belonging to somebody else who is doing hypothecation and money-lending and so on and so forth. With this obligation which is thrown on the dealer under this Bill, it will compel the dealer to leave that place and find another place. I believe this is unnecessary and impracticable and therefore I move that lines 13 to 16 be deleted altogether.

Then, about amendment No. 82, my suggestion is that the words "whether before or" in line 19, page 7, should be deleted and about amendment No. 83, my suggestion is that the words, "after the 10th day of January, 1963" should be inserted after the word "him" on line 27, page 7. The only object of these two amendments is that there should be no retrospective effect beyond the 10th day of January, 1963 to the prohibitions that are contained in these particular sub-clauses. I would like to take the liberty of just saying a couple of words on them. Sub-clause (b) of clause 6(2) reads as follows:

"sell or otherwise transfer to any person any gold on the hypothecation, pledge, mortgage or charge of which he has advanced any loan, whether before or after the 10th day of January, 1963, or"

I am suggesting that this ante-dating of this prohibition to a period earlier than 10th January, 1963 should go.

Similarly, amendment No. 83 concerning line 27, at page 7, is in respect

of sub-clause (3) of clause 6. Sub-clause (3) reads as follows:

"No pawnee who is not a dealer shall sell any gold pledged with him, on the failure of the pawnor to redeem such gold, except in accordance with such conditions as may be prescribed."

My amendment is to limit the prohibition where the pledge was made with him after the 10th day of January, 1963, the object again being not to have retrospective effect to this proposal.

Shri T. T. Krishnamachari: In regard to the first amendment, amendment No. 81, the position is that the dealer cannot be a pawn-broker. That is not our intention. The pawn-broker has certain advantages which have been conceded by the amendment that I have moved before, to clause 5. Therefore, the Government cannot have the business in the same premises; otherwise, what the pawn-broker does get mixed up with the dealer's work. That is one of the ways of evasion.

In regard to the question of retrospective effect, the position is the regulation of a particular type of business. If anybody feels that on the ground he had accepted and pledged or mortgaged earlier he is free from this regulation, it is not possible. So, whether the retrospective effect affects the person adversely or not, he has to fall in line with the law as it would be after a particular date, that is, when the Gold Control Order came into being.

Mr. Speaker: I shall put amendment Nos. 81, 82 and 83 to the vote.

Amendments Nos. 81, 82 and 83 were put and negatived.

Mr. Speaker: The question is:

Page 7, lines 7 and 8,—

for "unless a permit has been obtained under sub-section (3) of section 5" substitute—

"unless the person making, advancing or granting the loan gives intimation thereof in accordance with sub-section (3) of section 5". (240).

The motion was adopted.

Mr. Speaker: The question is:

"That clause 6, as amended, stand part of the Bill."

The motion was adopted.

Clause 6, as amended, was added to the Bill.

Clause 7— (*Licensing of dealers*).

Shri Dinen Bhattacharya (Serampore): I beg to move:

(i) Page 7,—

For lines 35 to 38, substitute—

"(2) A licence under this section, shall be subject to such conditions and restrictions, not inconsistent with or repugnant to any provision of this Act, as may be prescribed." (29)

(ii) Page 8, line 3,—

for "thirty days" substitute—

for "thirty days". (30)

(iii) Page 8,—

after line 5, insert—

"Explanation.—'Registered under any law with respect to sales tax' as appearing in this sub-section refer to such registration in respect of any trade or business in gold and article made of gold only, and no person who is a dealer and is registered under any law with respect to sales tax for any other trade or business, shall, because of such registration, be required to make an application for issue of a licence under this sub-section." (31)

(iv) Page 9,—

after line 2, insert—

"(7A) Any person aggrieved by an order of the Administrator rejecting an application for issue of a licence under this section or cancelling a licence under section 9 may, within thirty days from the date on which the said order is communicated to him, prefer an appeal to such Appellate Authority, as may be prescribed, and such Authority, shall dispose of such appeal after giving the parties concerned an opportunity of being heard, and after taking such evidence as may be necessary in cases where the Authority considers taking of evidence to be necessary for the ends of justice." (32).

Shri N. Dandeker: I beg to move:

(i) Page 8, line 29,—

omit "incorrect or". (84).

Shri Hem Raj: I beg to move:

Page 7, lines 37 and 28,—

omit "different conditions and restrictions may be imposed for different classes of dealers". (229)

Shri Narendra Singh Mahida (Anand): I want to move amendment Nos. 109, 110, 111 and 112.

Mr. Speaker: Earlier, identical amendments have already been moved. So, they are barred.

Shri Dinen Bhattacharya: Sir, my amendments are very simply. They are in respect of some appeal. I have suggested the insertion of the following words but for—lack of time—but I am not repeating them. The insertion of these lines is very important. I am referring to the lines to be inserted after line 2, page 9. There is no provision for appeal if any petition or application for a licence is rejected by the administrator. So, I have suggested this amendment.

Shri T. T. Krishnamachari: May friend is arguing. But if he wants the number of days to be extended from 30 to 60, I am prepared to agree.

Mr. Speaker: He agrees; so, the hon. Member has achieved his point.

Shri Dinen Bhattacharya: That is in regard to amendment No. 30. I am thankful to him for accepting it, but I am now speaking on amendment No. 32. Here, I think the Minister should consider about the provision for appeals. Where will the person go, if the petition is rejected? He must get a chance to put in some appeal before some appellate authority. There is no such provision in this Bill.

Mr. Speaker: That is all right. Shri Dandekar:

Shri N. Dandekar: Sir, mine is a simple amendment. It is to omit the words "incorrect or", in the proviso in line 29, page 8. This proviso is concerned with the point that no application for the issue of a licence made by a dealer registered under any law, etc., shall be rejected unless the administrator is satisfied that any statements made in the application for the issue of the licence are incorrect or false in material particulars and so on. Errors of all sorts or kinds and nature can creep in. I agree that if the statements made by the applicant are false in material particulars or the applicant for the licence is contravening any of the provisions of the Bill or of other enactments, the application can be rejected, but the presence of an error, a mere error, ought not to be the ground, for the application to be rejected. I am, therefore, suggesting that the words "incorrect or" should be deleted so that it is only in respect of serious lapses on the part of the person applying for a licence that the application is liable to be rejected.

Shri Hem Raj: My amendment is to sub-clause (2) of clause 7 and it seeks to omit the words "and different conditions and restrictions may be imposed for different clauses of dealers". This leads to a grave suspicion and some corruption also. Therefore, I want that the restrictions

must be the same for everybody, and no discrimination should be made and should be left with anybody. I therefore want that these words should be deleted.

Shri Nambiar (Tiruchirapalli): I support amendment Nos. 29, 30, 31 and 32.

Mr. Speaker: He does not know that amendment Nos. 30 has been accepted already.

Shri Nambiar: Then, I am very thankful. In my absence it was accepted.

Mr. Speaker: He might not know about other things also.

Shri Nambiar: That was accepted in my absence. He does not want to accept any amendment in my presence!

Mr. Speaker: Would it not serve his purpose if he goes out again?

Shri Nambiar: I am prepared to go out, Sir. The Minister has not accepted amendment No. 32. I want that an aggrieved person should have the opportunity to go on appeal.

Shri N. C. Chatterjee (Burdwan): I rise to support amendment No. 32, Sir. The Administrator is given very wide powers, almost dictatorial powers and they are likely to be abused. Therefore, it is only proper that if a person is genuinely aggrieved, he should have a chance of making an appeal to an appellate authority. The appellate authority will have to function under the Government and under this Act. It is only fair that when you vest the Administrator with very wide discretion, the citizen must have a chance of preferring one appeal to the appellate authority. The amendment says:

"Any person aggrieved by an order of the Administrator rejecting an application for issue of a licence or cancelling a licence

—it may practically deprive him dealers". This leads to a grave of the means of his livelihood—

"may, within thirty days from the date on which the said order is communicated to him, prefer an appeal to such Appellate Authority as may be prescribed...." etc.

Therefore,, I wish to appeal to the Minister to consider this suggestion sympathetically. Let the man have one chance at least to have his say before a higher authority against any refusal to grant a licence or still more drastic, cancellation of a licence.

श्री बाल्मीकी (खुर्जा) : अध्यक्ष महोदय, धारा 7 पर जो अमेंडमेंट 29, 30 और 31 हैं उन में मेरा नाम भी है। मैं कहना चाहता हूँ कि उन में यह है . . .

अध्यक्ष महोदय : अमेंडमेंट को पढ़ने की आवश्यकता नहीं है।

श्री बाल्मीकी : धारा 7 में जहाँ पर लाइसेंस का शब्द आता है वहाँ कुछ न कुछ भ्रष्टाचार की सम्भावना होती है, अधिकारियों की ओर से भी और दूसरी तरफ से भी। इसलिये यह शब्द मुझे खटकते हैं जो लिखा हुआ है कि "मे थिक"। "मे थिक" का मतलब है कि उस अधिकारी की इच्छा पर है कि वह अपनी शक्ति का उपयोग करे या दुरुपयोग करे। मैं माननीय मंत्री जी का ध्यान आकर्षित करना चाहता हूँ कि ऐसा अधिकारी ईमानदार और अच्छे ढंग का होना चाहिये, यह एक अलग बात है। यहाँ यह बात जरूर है कि इस धारा से सम्बन्धित रूल बनाये जायेंगे, और तगड़े ढंग से निश्चय-पूर्वक उस रूल को निर्धारित किया जायेगा ताकि अधिकारी जो है वह अपनी शक्ति का दुरुपयोग न करे, बल्कि उस की शक्ति को सीमित किया जायेगा।

जहाँ तक 30 दिन की बात है, मैं उसे 60 दिन चाहता हूँ और यह भी चाहता हूँ कि अपील का अधिकार रहे।

Shri Narendra Singh Mahida: I also request the Minister to provide for the provision of an appeal, because the powers of the Administrator are very wide.

Shri T. T. Krishnamachari: With regard to amendment No. 229 moved by Shri Hem Raj, I cannot accept it, because there are different rules which may be prescribed for different conditions. I do not think there is any question of any discrimination in this matter.

Regarding amendment No. 84 seeking omission of the word 'incorrect', this has been thrashed out at considerable length. In fact, what is incorrect must be incorrect in material particulars. A casual mistake will not bring a person within the mischief of the law. Therefore, it is not necessary to have that amendment.

In regard to amendment Nos. 32 and 112, about which several hon. Members spoke, I would like them to refer to clause 30(2)(b) which provides for the Administrator delegating the power. I do not think, in view of that, it is necessary to accept the amendment, even for the purpose of safeguarding the position envisaged by the hon. Members.

Mr. Speaker: I shall now put amendment No. 30 by Shri Dinen Bhattacharya to the House.

The question is:

Page 8, line 3,

for "thirty days" substitute—
"sixty days". (30)

The motion was adopted.

Mr. Deputy-Speaker: I shall now put amendments Nos. 31, 32, 229, 84 and 29.

Amendments 29, 31, 32, 84 and 229 were put and negatived.

Shri Hari Vishnu Kamath (Hoshangabad): On a point of order, Sir. As the debate on the Gold Control Bill is progressing towards its inevitable denouement, I am sure you will agree there should be quorum in the House.

Mr. Speaker: What an introduction and what a result! The bell is being rung. Now there is quorum.

Dr. M. S. Aney (Nagpur): On a point of order, Sir. Amendment No. 32 will have to be put separately after clause 7 is voted, because it seeks to introduce a new clause 7A.

Mr. Speaker: He will realise that the House has rejected the amendment. Therefore, there is no change or modification.

The question is:

"That clause 7, as amended, stand part of the Bill."

The motion was adopted.

Clause 7, as amended, was added to the Bill.

13:39 hours.

[MR. DEPUTY-SPEAKER in the Chair]

Clause 8— (Licensing of refiners).

Shri N. Dandekar: I beg to move:

Page 9, omit lines 21 to 25. (85).

The Sub-clause, here is very similar but little worse than the earlier one.

The sub-clause which I am seeking to omit reads thus:

"A person to whom a licence to carry on business as a refiner is issued under sub-section (1) shall not carry on business as such refiner in the same premises in which he or any other person carries on business as a dealer or business as a money-lender or

banker involving the hypothecation, pledge, mortgage or charge of any gold."

I would not like to repeat the arguments, but we are getting deeper into this. What does 'same premises' mean? In Bombay, Sir, you get all sorts of people carrying on all kinds of businesses in one building. Will that whole building be considered as one premises or will a particular portion of that premises occupied by a particular tenant be considered as one premises for this purpose, so that if I am carrying on the business of refining there is no objection if next door in the same building there is another sub-tenant carrying on a dealer's business and yet another one, next door to him, carrying on the business of hypothecation, pledge, mortgage or charge of gold? I think Sir, this provision, that people should not be living in the same building or carrying on business in the same building, if accepted, will make it impracticable in a place like Bombay. If, on the other hand, same premises mean the same man or some physical area, so to speak, for doing the business of refining and also doing pawn-broker work etc., one would have less objection to this. But the provision here seems to be both impracticable and unnecessary.

Shri T. T. Krishnamachari: Sir, I have made my position very clear that it is not possible for a person who is licensed for a particular purpose, as refiner or any other work, to do any other business.

Shri N. Dandekar: In the same premises, not the same person.

Mr. Deputy-Speaker: The question is:

Page 9, omit lines 21 to 25. (85).

The motion was negatived.

"That clause 8 stand part of the Bill."

The motion was adopted.

Clause 8 was added to the Bill.

Clause 9— (Cancellation of licences)
by Administrator

Shri N. Dandekar: Sir, I beg to move:

Page 10, line 38,—

omit "incorrect or". (86).

Sir, this is again in line with the amendment I moved earlier. The clause reads like this:

"A licence granted under section 7 or section 8 may be cancelled by the Administrator if he is satisfied that any statements made in the application for the issue of the licence or in relation to the licence are incorrect or false in material particulars . . ."

Again, I think, if we are to leave it to the judgment of the Administrator whether anything said in the application was incorrect or false and whether it was material or not, anything can be said to be incorrect and material. Therefore, I suggest that the words "incorrect or" may be deleted, so that only false material particulars would be relevant for cancellation of a licence.

Shri T. T. Krishnamachari: I have already stated my reasons. It has been canvassed before.

Mr. Deputy-Speaker: The question is:

Page 10, line 38,—

omit "incorrect or". (86).

The motion was 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.

Clauses 10, 11 and 12 were added to the Bill.

Clause 13— (Certified goldsmiths)

Shri T. T. Krishnamachari: Sir, I beg to move:

Page 13, line 13,—

for "one hundred grammes",
substitute "one hundred and fifty grammes". (241).

Shri Nambiar: Sir, I beg to move:

(i) Page 13, line 13,—

for "one hundred grammes"
substitute—

"three hundred grammes".
(10).

(ii) Page 11, line 36,—

"for "hired labour" substitute—

"hired labourers exceeding
two in number". (33).

(iii) Page 11, line 39,—

for "10th day of January,
1963" substitute—

"commencement of this Act,
or if he has undergone training
with a certified goldsmith,
or in any Government institute,
or any institute maintained
for the purpose of such training
for a period of one year or more". (34).

(iv) Page 11, lines 40 and 41—

omit "or a certified goldsmith
or other dealer". (35).

(v) Page 12,—omit lines 5 and 6. (36).

(vi) Page 13, line 8,—

after "or" insert "purifying
or". (37).

[Shri Nambiar]

(vii) Page 13, line 13,—

after “grammes” insert
“above the quantity”. (38).

(viii) Page 13,—

after line 14, insert—

“(7A) Any person aggrieved by an order rejecting an application for grant of a certificate made under sub-section (3) or by order cancelling a certificate under sub-section (5) may within thirty days from the date, on which the said order is communicated to him, appeal to such Appellate Authority as may be prescribed and such Authority shall dispose of such appeal in the manner laid down in sub-section (7A) of section 7.” (39).

(ix) page 13, line 21,—

after “polishing” insert “and the like”. (40).

Shri Solanki (Klara): Sir, I beg to move:

Page 13, line 13,—

for “one hundred grammes”
substitute—
“gold”. (89).

Shri Nambiar: Sir, my amendment No. 10 says that on page 13, line 13,— for “one hundred grammes” substitute “three hundred grammes”. The proviso here reads like this:

“Provided that a certified goldsmith shall not have at any time in his possession, custody or control any quantity of such primary gold in excess of one hundred grammes obtained in the process of making, manufacturing, or preparing new ornament or ornaments.”

The hon. Minister has agreed to raise it up to 150 grammes. My amendment seeks to raise it to 300 grammes. The reason why the hon. Minister has

himself raised it from 100 grammer to 150 grammes applies to my claim for raising it from 150 grammes to 300 grammes. The provision is that if any dealer or any goldsmith is in possession of gold more than this quantity he will be hauled up under the law. He is not allowed to keep more than this quantity. Sir, it is not practically possible for anybody to have only 150 grammes and do some work. After all, gold weighs much. 150 grammes will be too small a quantity that he cannot do anything with it. Therefore, if at all he is to be allowed to use it for the purpose of making an ornament or ornaments, he must have at least 300 grammes. If people are allowed to have only less than 300 grammes, they will find it very difficult to do any work. Whatever law we pass must be practicable to be implemented. Supposing a person keeps a small piece of gold under his teeth or tongue nobody can know it. Therefore, the limit must be of some value, some dimension and some weight. The hon. Minister realised the mistake or the futility of allowing only 100 grammes and therefore he raised to 150 grammes. If it is a question of cotton or some such thing a rise of 50 grammes in weight will show a big difference. But gold weighs much. With 150 grammes a dealer cannot be anything. I would, therefore, request the hon. Minister to accept my amendment.

My amendment No. 36 is also very important. By this I seek to omit lines 5 and 6 on page 12. This has been introduced by the Joint Committee. Instead of giving some benefit to the people the Joint Committee has put some restrictions. Sub-clause (b) reads like this:

“(b) make, manufacture or prepare, new ornament or ornaments from that ornament or these ornaments subject to such restrictions relating to the purity and weight of gold contained in the new ornament or ornaments as may be prescribed.”

My amendment seeks to delete the last two lines:

"subject to such restrictions relating to the purity and weight of gold contained in the new ornament or ornaments as may be prescribed."

Then the clause will read like this:

"(b) make, manufacture or prepare, new ornament or ornaments from that ornament or those ornaments."

This omission is required because when you melt gold the purity may change, it may change in weight, it may lose some weight or some other thing may be added and it may gain some weight. Therefore, if you put this restriction that it should be exactly of the same purity, weight etc., it will not be practicable. After all, we are not preparing a rocket to the moon or to the stars where the timing must be so exact as to work correctly. There we have got to comply with all sorts of procedure. But here it is not a thing like that. So, let us not make ourselves a laughing stock by the law that we enact. He can without any difficulty delete them. If the quantity of gold in the ornament is not exceeded, there is no reason why the customer should not be permitted to convert it to a higher purity; if it is made of inferior quality gold, he should be permitted to convert it to superior quality gold. Similarly, in relation to weight, as I have pointed out, the artisans have to follow many processes like melting, filing, boring, polishing etc. In the process, there may be change in the quantity of gold because some alloy may be added to it. As the hon. Minister has stated that it is not his intention to harass the goldsmiths or the dealers or users to the extent possible I see no reason why such unnecessary restrictions should not be removed.

Though I have given notice of and moved many amendments, I would specially request the Finance Minister

to accept my two amendments, namely, No. 10 and 36. Amendment No. 10 says that the minimum may be raised from 150 grams to 300 grams.

Shri Solanki: I have moved my amendment No. 89, My hon. friend has just now stressed the difficulties that people will have to face if they make new ornaments out of old one and wanted the limit raised to 300 grams. I would like to go a little farther and say that there should be no quantity restrictions at all. Because, at the time of making new ornaments out of old ones, suppose it is felt by the craftsman or the people who are working on it that some more gold should be added to it, it is very difficult to do so now because of this restriction. Therefore, I would request the hon. Finance Minister to consider this suggestion of doing away with the restriction completely.

Shri N. C. Chatterjee: I think the hon. Finance Minister has appreciated the point that even the self-styled goldsmiths require something more than the prescribed minimum of 100 grams. I am happy to hear that he is raising it to 150 grams. If he allow a little more than 150 grams, I think it will alleviate much distress. But I am more concerned with the favourable consideration of amendment No. 33. It is a very vital amendment which should receive the attention of the House. The clause, as it stands, completely bans every self-employed goldsmith from employing any hired labour. I may point out this is an inhibition which is not in the interest of business; a total prohibition against the employment of any hired labour is likely to lead to many complications and unwanted hardship. In the complete manufacture of an ornament a particular worker or goldsmith may not be completely able to do full justice to it. Suppose a certain type of polishing or a certain type of other technical quality is required he has to get it done through some other worker. Therefore, it is absolutely

[Shri N. C. Chatterjee]

essential that he should have at least one or two hired labour. Not only will this not go against the spirit of the clause but it will make the clause more effective and more businesslike. Suppose a goldsmith falls ill and cannot attend to his business; under the present law it will mean the closure of his business because it is one man's business and you do not allow any hired labour. Now you are not allowing any large-scale manufacture; you want to encourage only self-styled goldsmiths. Suppose such a goldsmith dies; his son cannot carry on the business unless he applies for a certificate and gets it. In the mean time, his business would come to a complete standstill. In my part of the country, and possibly in other parts too, the traditional system is to have one or two men fully trained in that particular shop or that particular line, and that system has been very useful. This is a specialised art which requires special training; not merely training in a school or a college; it entails training in actual manufacture in a shop. That traditional system should be allowed to continue. If you completely ban even the apprentices or hired labour, even one or two people, then the whole traditional system would break down and that will lead to a paralysis of the trade and not lead to continuity or efficiency. I submit the Finance Minister's object will be completely achieved if he allows only one or two hired workers. Therefore, I am suggesting, do not throw the whole trade into jeopardy; give them some latitude. They will be functioning under the Administrator, functioning under the surveillance, functioning under very strict control and so this provision will be for the good of the trade and for making this Bill effective and for making the self-styled goldsmiths work properly and to the advantage of the community.

Dr. M. S. Aney: I support this amendment, particularly the one about hired labour, because we have

seen that goldsmiths generally have one or two persons as apprentices to work with them. The old goldsmith cannot execute any order without the help of these apprentices. Now, the object of the Finance Minister is not to do away with the goldsmiths. In fact, he says he wants to give them as much help as possible within the framework of the law. If the clause stands as it is, it is very likely that in the case of several goldsmiths it would be impossible to carry on or undertake any work at all. Though the term hired labour may look sinister, as every goldsmith can carry on his work only with the help of apprentices, it should be allowed as a matter of course. You may impose some conditions for their employment but in one form or other it should be allowed. So far as the first part is concerned, I also feel that it is a reasonable amendment which the Finance Minister should accept.

Shri Hem Raj: Under sub-clause (b) of clause 13, authority has been given to the Administrator to impose certain restrictions. On the one hand, we are giving freedom to any person to go to any self-styled goldsmith and get his ornaments changed into a different pattern of the same purity. But the actual words in the clause are:

"new ornament or ornaments from that ornaments or those ornaments subject to such restrictions relating to the purity and weight of gold contained in the new ornament or ornaments as may be prescribed".

This means that the Administrator will have the power to get these gold ornaments turned into ornaments of a lower purity, which is an anomalous position. Therefore, I want the hon. Minister to clarify whether these restrictions which the Administrator will impose on the goldsmiths while granting the licences will not compel them to make ornaments only of a lower

purity rather than of the purity which the customer wants.

Secondly, as my learned friends on the other side, including the great lawyer, have put it, on single individual can do this business. It requires the assistance of at least one or two more people. Even to use the hammer, another person is required.

Shri Ranga (Chittoor): Generally his wife would be helping him.

Shri T. T. Krishnamachari: Wife or members of the family are not covered by the term "hired labour".

Shri Hem Raj: So, I would request that every goldsmith may be allowed to have, say, two apprentices with him so that he may be able to carry on the business.

14 hrs.

Shri Narendra Singh Mahida: Sir, though my amendment is barred, I support Shri N. C. Chatterjee. Clause 13 mainly relates to self-employed goldsmiths. Of course, whether it includes wives and relatives or not is for the hon. Minister to explain. But I will submit to the hon. Minister that a very great industry, the muslin cloth industry in Bengal, has disappeared from this country. The whole sheet used to pass through a ring. Now that art is gone and this art will go too if the hon. Minister is not careful about the goldsmiths. If he wants to drive away the goldsmiths from their trade, he can have all the credit for it or for killing it. But if he wants the goldsmiths to be employed, to develop their art and keep it alive, I would request him to include "hired labourers" in this clause, that is, include over, and above himself, his relatives and apprentices.

श्री बाल्मीकी : उपाध्यक्ष महोदय, इस धारा के अनुसार स्वर्णकारों को स्वतंत्र रूप से काम करने का जो अधिकार दिया जा रहा है, वह अच्छी बात है। मैं चाहता हूँ कि उनको इस

विधेयक से, गोल्ड कंट्रोल एक्ट से प्रभावित न होना पड़े और स्वतंत्र रूप से उनको कार्य करने की छूट मिले। जो बड़े बड़े सराफ सोने का काम करने वाले हैं तथा जो रिफाइनरीज हैं उनके शोषण से भी अगर उनको मुक्ति मिल सके तो वह वांछनीय ही होगा। बंश परम्परा से इस काम को करते आ रहे हैं। इस वास्ते यह जो कला है, इसको मिटने नहीं देना चाहिये। जिस कलापूर्ण ढंग से यह काम चलता है और कितने व्यक्तियों को इस काम को करना पड़ता है, उस तरफ आपका ध्यान जाना चाहिये। एक ही कर्मचारी इस सारे काम को नहीं कर सकता है, एक कर्मचारी ही सारे काम को नहीं चला सकता है। इस वास्ते मैं चाहता हूँ कि जहाँ पर "हायर्ड लेबर" शब्द आये हैं वहाँ पर हायर्ड लेबर रज कर दिये जायें ताकि दो या दो से अधिक व्यक्ति इस में आ जायें। इसका कारण यह है कि बीमारी की हालत में या किसी दूसरी दशा में जब उसे छुट्टी लेनी पड़ती है तो उसको दूसरे आदमियों की दो से अधिक आदमियों की आवश्यकता पड़ सकती है। इस वास्ते उसको अधिकार मिलना चाहिये कि वह अधिक आदमी रख सके और काम सिखा भी सके।

आप यह भी देखें कि जो सोने का बड़ा काम करने वाले हैं वे भी आ कर छोटे काम करने वाले स्वर्णकारों से हो काम कराते हैं और ये स्वतंत्र रूप से और उनके अधीन हो कर भी काम करते हैं। चाहे पुराना जेवर हाँ या नया, अगर उसके पास सोना होता है तभी वह उस जेवर को बना सकता है। लेकिन प्योरिफाई वर्ड यहाँ पर नहीं है। वह भी होना चाहिये। उसे शुद्धिकरण का अधिकार भी मिलना चाहिये। साथ ही जो अधिकारी स्वर्णकारों की देखरेख करने के लिए नियुक्त किये जायें वे स्वर्णकारों की कठिनाइयों को समझने वाले हों, इस धातु का जो भी काम होता है उसको वे समझते हों। यह अच्छी बात है कि आपने उसके पास जो सोने की मात्रा रहती है, उसको

[श्री बल्मीकी]

बढ़ा दिया है। अगर उसको आधे तोले की अंगूठी बनाने के लिए दी जाए तो उसको उस अंगूठी को बनाने के लिए एक तोला या उससे भी अधिक सोना काम में लाना पड़ता है। जहाँ आप सौ के बजाय डेढ़ सौ ग्राम कर रहे हैं वहाँ मेरा मुझाव यह है कि "एव दो क्वांटिटी शब्द" इउ में इंसर्ट कर दिये जायें। यह बहुत आवश्यक है।

शुद्धीकरण का अधिकार भी उसको दिया जाना चाहिये और वह शब्द भी इस में आना चाहिये।

Shri T. T. Krishnamachari: Sir, with regard to the quantity of primary gold, we have increased it from 100 to 150 grammes and I am unable to go beyond it.

One particular point that has been made by hon. Members and by my respected friend, Dr. Aney, I am prepared to accept a variation of amendment No. 33. Of course, I do not say the language is very felicitous. If the amendment is altered to say, instead of the words "hired labour", "more than one hired labourer", perhaps it would be alright. Of course, I do not like the language, but that seems to be the only thing that can fit in. It will then read: "sub-section (4) of that section and who does not employ more than one hired labourer in actually making". I could accept that.

Shri Nambiar: I accept it.

Shri T. T. Krishnamachari: So far as other points made by hon. Members are concerned, that is, the question of purity, what can be done in regard to purification otherwise than by the normal process? That does not effect anyone. But if it is a question of using any particular processes beyond what a goldsmith does, that is what will attract this. I can assure hon. Members that I do not think we have any intention to put any

goldsmith to any embarrassing position at all.

Shri Hem Raj: It should be made clear in the rules at least.

Shri T. T. Krishnamachari: We will place the rules on the Table of the House. If any hon. Member wants to make any suggestion, it would be considered.

So far as going back on anything that the Joint Committee has done, I have not got the courage to do so.

Shri Nambiar: As regards my amendment No. 36, that insertion which has been made is not practically necessary.

Shri T. T. Krishnamachari: To omit lines 5 and 6?

Shri Nambiar: Yes.

Shri T. T. Krishnamachari: I am not prepared to go back on what the Joint Committee has said.

Mr. Deputy-Speaker: The question is:

Page 13, line 13,—

for "one hundred grammes",
substitute "one hundred and
fifty grammes". (241).

The motion was adopted.

Mr. Deputy-Speaker: Now I will put to the vote of the House amendment No. 33, as amended by the hon. Minister. The question is:

Page 11, line 36,—

for "hired labour" substitute—
"more than one hired labourer".
(33).

The motion was adopted.

Mr. Deputy-Speaker: I shall now put all the other amendments to the vote of the House.

The Amendments Nos 10,34 to 40 and 89 were put and negatived.

Mr. Deputy-Speaker: The question is:

"That clause 13, as amended, stand part of the Bill."

The motion was adopted.

Clause 13, as amended, was added to the Bill.

Clause 14 was added to the Bill.

Clause 15—(Special provision regarding public religious institutions).

Shri Solanki: Sir, I beg to move:—

Page 14,—

(i) line 32,—

for "fourteen" substitute—

"twenty-two";

(ii) line 34,—

for "fourteen" substitute—

"twenty-two"; and

(iii) line 39,—

for "fourteen" substitute—

"twenty-two". (90).

Yesterday I had pressed for an identical amendment saying that 14 carat is of less utility and is not very practical.

Mr. Deputy-Speaker: That was lost. The House voted it down.

Shri Solanki: That was to another clause.

Mr. Deputy-Speaker: All right.

Shri Solanki: In the same way I would request the hon. Minister to consider this and increase 14 carat to 22 carat. Even in the Report of the Joint Committee it has been stated emphatically:—

"I have failed to understand which is more basic to the declared objective of Gold Control Policy—a reduction in the internal demand for gold for the making of ornaments or the 14 carat rule."

I was reading from Shri Tridib Kumar Chaudhuri's minute of dissent to the Joint Committee's Report. This is felt by a large section of the people outside also. I hope, the hon. Minister will consider this amendment.

Shri Nambiar: I have only this to add to what he has said. I also pleaded with him yesterday and was suggesting, as a *via media* between 14 carat and 22 carat, 18 carat. I stood for 18 carat yesterday and still stand for 18 carat. I do not know how many times more I will have to stand for 18 carat. If 22 carat is not practical, at least he might change it and accept it 18 carat; otherwise, as I said yesterday, it is not at all good. Let us not put it at 14 carat. It is no gold. If there is 14 carat paper gold, that will be good. The hon. Minister must also realise the practical difficulties of the people and the actual feeling of the entire country behind 14 carat and see that the 14 carat is thrown out. During the days of rationing when we had six ounces of ration, the Government was called "Six ounce government"; hereafter the Government may be called "14 carat government". That is not going to be a good thing. Therefore, let them not unnecessarily get a bad name and do nothing good to the country. Therefore, at least let them do good to the country and remove that bad name. It is only an appeal, for we have no other go. If he accepts it well and good, otherwise let the House decide.

Shri H. N. Mukerjee (Calcutta Central): Sir I would not have intervened in this, but I feel that perhaps Government might conceivably make a gesture. After all, the objective of gold control is something which should not be identified with this

(Shri H. N. Mukerjee.)

pushing out of the 22 carat idea and introduction of the 14 carat. I do not know much about these things, but it does seem to be the case that the artistic side of the manufacture of ornaments, which has a very special importance—it might even help us to earn some foreign exchange if we really set about the business in the right direction—the artistic side is vitiated by our goldsmiths having to operate on this 14 carat proposition. I do not quite know. Some Members have gone even so far as to say that the marriages in the present day are being celebrated where 22 carat gold ornaments are being presented. I do not know. I hope that the law is observed and that in the jewellery shops we get 14 carat gold ornaments and not the other variety. But if it is necessary for aesthetic purposes to use 22 carat, or perhaps even the 18 carat, gold we should reconsider this matter.

Then again, in relation to this mangal sutram or something, after all the sentiments of the people should be respected. If our basic objectives are that we try to prevent smuggling and try to bring down the price of gold or prevent erosion into our foreign-exchange resources and all the rest of it, those objectives can be very well satisfied without having this controversy between 14 carat and 22 carat and all the rest of that sort of thing.

So I do feel that if Government has got the line-clear from the aesthetic point of view, namely that with 14 carat gold, whatever it is, we can manufacture the right kind of thing, I have nothing to say. But if Government has got from people who are in the know that Indian goldsmiths with their traditional ability cannot manipulate and manufacture the right kind of stuff with 14 carat gold, then he has got to consider that something ought to be done.

Therefore, keeping in view the basic objectives of gold control, with which we are all in agreement, he should make a concession which is in the aesthetic interests of manufacture and also in the interests of foreign exchange earnings.

Shri Nambiar: At least for mangal sutram.

Shri T. T. Krishnamachari: Sir, the position is, if my hon. friend will permit me....

Shri H. N. Mukerjee: I do.

Shri T. T. Krishnamachari: ... clause 15 applies only to religious institutions. This is a special provision in regard to religious institutions, and this has also been framed with the knowledge and consent of the managers of these institutions. What is provided is, they can receive any offering in any purity and they can convert the ornaments into ornaments, for the purpose of use in the religious institution, with permission, of any purity. But once they want to sell it, they have to go to the refinery. And this is only in regard to what is received as offering in the temple or church or any other religious institution. Once they want to sell it and convert it into money, they have to go to the refinery. And once it goes to the refinery it cannot be sold except as 14 carat gold.

I quit realise what my hon. friend has said in regard to the aesthetic susceptibilities of people in regard to existing ornaments. That is a different thing. This clause does not apply to that.

For exports we are safeguarding; exports are needed in a particular purity, and people work under a bond, under scrutiny. There is no difficulty about that.

But this particular clause, if I may humbly point out to my hon. friend, relates only to religious institutions.

And we have given them the maximum freedom to use that ornament in the same purity; if they want to make another jewel for the idol and so on, they may do so. But once they want to sell it and convert it into cash, it has to go to the refinery and then converted into 14 carat. That is all that this clause 15 relates to.

Shri Nambiar: May I seek a clarification? You know, throughout India in Hindu temples marriages are performed. At least on marriage occasions in the temples, will the temple authorities be permitted to give gold of the purity of 22 carat, at least for mangal sutram? That is the purpose.

Mr. Deputy-Speaker: For the marriages of the idols they could use.

Shri T. T. Krishnamachari: This concerns only the property of the temple.

Shri Nambiar: Just like the purohit does the marriage ceremony, let him also give the mangal sutram, for which the parties will pay to the temple. From the temples it may be given. Let that be allowed as a permitted thing.

Shri Narendra Singh Mahida: May I put a question. There is the temple of Ambaji in Gujarat, where people have donated various ornaments to the goddess, and there is a system there that the temple authorities give the ornament in return as prasadam. How do we use those ornaments?

Shri T. T. Krishnamachari: They cannot give. I am afraid to that extent there is a restriction on the religious custom. They cannot give the gold away. You may probably offer the prasad and take it away; they can keep the plate and take it back. Some such thing may be done, without its being construed as a property of the temple. But once it becomes the property of the temple, clause 15 will apply.

Shri Nambiar: The mangal sutram may be sold by the temple.

Shri T. T. Krishnamachari: Temples have not got anything to do with mangal sutram.

Mr. Deputy-Speaker: I will now put amendment No. 90 to the vote of the House.

The Amendment No. 90 was put and negatived

Mr. Deputy-Speaker: The question is:

"That clause 15 stand part of the Bill".

The motion was adopted.

Clause 15 was added to the Bill.

Clause 16— (Declaration as to possession of Gold other than ornaments.)

Shri N. Dandekar: I beg to move:

Page 17,—

after line 38, insert—

"(6A) In computing the exemption limits for the members of one family comprising of husband, wife and children the total weight of the available gold shall be taken into account irrespective of whether there are separate piece or pieces within the exempted limit for each member of the family."
(91).

This amendment is concerned with inserting a very important additional sub-clause after line 38, as I have drafted in the amendment. To understand this, sub-clause 6 has to be seen. Sub-sub-clause (a) of sub-clause (6) permits minors to own 20 grammes without making a declaration. Sub-sub-clause (b) permits other individuals, that is to say, individuals other than minors, without making a declaration to hold up to 50 grammes. Then there is a proviso which refers to gold owned by a family. Here I must point out that according to law, in a Hindu family, individuals (including minors) can own properties as such, and the family

(Shri N. Dandekar.)

as such can also own property. Here sub-sub-clause (a) refers to minors owning only as individuals, and sub-sub-clause (b) refers to majors owning as individuals, and the proviso says that gold owned by a family could be up to 100 grammes.

The object of the new sub-clause I am suggesting is this. There might well be, even in respect of a family as defined here—the husband, the wife and one or more minor children—that they could have gold within the limits stated in their individual ownership, and the family as such could also own gold up to 100 grammes. In order to make it clear that these several rights are safeguarded, what I am suggesting is that in computing the exemption limits for the members of one family comprising of husband, wife and two minor children, the aggregate weight of the available gold that can be owned without declaration shall be taken into account irrespective of whether there are separate piece or pieces within the exempted limit for each member of the family. I hope that that is the intention, because that clearly is the consequence of the previous provisions. When I was discussing this, I was informed that possibly it may not be construed that way, and, therefore, I am merely putting in a sub-clause that makes it quite clear that family ownership is distinct from individual ownership in these cases.

Shri T. T. Krishnamachari: This particular provision has been put in after it has been looked into by the Joint Committee. I really cannot quite comprehend what the hon. Member intends to do about it. In fact, I cannot quite visualise it. My legal advisers cannot visualise what is intended by the hon. Members. If he had said that the quantity specified was not adequate or something like that, then that would be understandable. But the point is that I really cannot understand what is sought to be served by this amendment.

Shri N. Dandekar: If I may give an example of a well-known position in the income-tax law, with which I am sure the hon. Finance Minister is familiar, the members of a family can own property as individuals; in addition to that, the family also *qua* family can own property as a distinct person in law. In fact, the provision here does talk about the gold owned by a family, whereas sub-clause (6) (a) refers to gold owned by a minor, for sub-clause (6) (b) refers to gold owned by the individuals. All that I am trying to do—my draftsmanship may not be so good because I have not got the assistance of expert draftsmen—is this, namely, to make it clear that these ownerships are distinct.

In other words, just to take a concrete example, if there is a husband and wife with two minor children, the husband can have 50 gms without making a declaration as his ownership, the wife can have 50 gms as her ownership without the necessity of having to make a declaration, and the two minors can own, as is provided here, 20 gms each without making a declaration; and in addition the family as a whole, as a separate legal entity, can have 100 gms without the family as such making a declaration. That seems to be clearly the consequence of the provisions, but because of the confusion that exists—and frankly I cannot say that the confusion does not exist—I am suggesting this particular sub-clause.

Mr. Deputy-Speaker: Is the hon. Minister agreeable to this?

Shri T. T. Krishnamachari: As a matter of fact, I labour under the same difficulty as the hon. Member opposition not being a competent enough draftsman. I have read along with my draftsmen the provisos that have been put in by the Joint Committee and I think that they cover the position. I really cannot see how the position can be improved by any alteration. In fact, I am told that there is

no contradiction in law as it is, because it only requires a declaration. It is not a question of any surrender they are not being asked to surrender. It is only a matter of declaration.

Shri M. R. Masani (Rajkot): If I may be of some little help to Shri Dandekar and the hon. Minister I think the effect of the present proviso in the Bill as it has emerged from the Joint Committee is that the family as a whole can have 100 gms. between its members; it does not matter how it is divided. But if Shri Dandekar's amendment is accepted they can have 140 gms. that is 50 gms. for the husband, 50 gms. for the wife and 20 gms. for each of the two minor children, so that the total would be 140 gms.

Shri T. T. Krishnamachari: If my hon. friend wants the limit to be 140 gms. let him say so. If he says that it should be 140 gms I am quite prepared to make the necessary change . . .

Shri N. Dandekar: No, Sir, May I explain the position by taking a concrete example? The husband can have 50 gms. on his own right and the wife can have 50 gms. on her own right, both under sub-clause 6 (b), and the two minor children can have 20 gms. each in their own right under sub-clause (6) (a). That makes a total of 140 gms. in individual rights. Then, 100 gms. is the quantity permitted under the proviso specifically which can be owned by the family as such, as a separate entity. That would be another 100 gms. I want to make it clear that the aggregate would be 240 gms., for the whole group. That is the effect of this amendment.

Shri T. T. Krishnamachari: The fact must be specifically stated that there must be some limit beyond which a person should declare. If my hon. friend thinks that the figure given in the proviso is small let him say so; if he says that the figure mentioned in the first proviso should be some specified figure, I can understand it. But I do not want to leave it vague,

because it will lead to administrative difficulties and harassment also. It is better to fix a particular figure.

Shri N. C. Chatterjee: It is allowed under the income-tax law as well as the wealth tax law. A coparcenary is a separate legal person, and it is almost a body-corporate, and it has a separate existence. Therefore, that personality should be respected in this law also.

Shri T. T. Krishnamachari: There is no question here of a person having to surrender anything. As regards the law which my hon. friend is referring to—and I think he is certainly an expert while I am completely a layman—the position is that there are certain penalties attached to something, which are not included here. Here, it is only a question of declaration. Nobody is being asked to surrender.

Shri Ranga: It is not so simple as that.

Shri T. T. Krishnamachari: I find it difficult to agree to this proposition which does not put a limit. If my hon. friend thinks that the quantity mentioned in the first proviso is wrong or too niggardly . . .

Shri N. Dandekar: In the case which I have described, is a declaration necessary?

Shri T. T. Krishnamachari: I quite agree with the point about it; it is a question of putting it in proper form. There must be an upper limit even for purposes of doing so.

Shri N. Dandekar: I would like to have a specific answer. In the case described by me, namely where a husband specifically owns 50 gms. the wife owns specifically 50 gms., and the two minor children own 20 gms. each, and 100 gms. are owned by the family as such, is a declaration required by any of the four members of the family or by the family as a whole?

Shri T. T. Krishnamachari: According to the proviso, it would be required....

Shri Kapur Singh (Ludhiana): It should not be required.

Shri T. T. Krishnamachari: ...because the proviso specifically says:

"whether contained in one or more pieces and whether owned by a member of the family severally or by all the members jointly or partly in the one way and partly in the other, does not exceed one hundred grammes:"

If my hon. friend says that let this not be 100 gms. but let it be 150 gms. I am prepared to consider it, but to say that there should be no limit.

Shri Nambiar: It could be raised to 240 gms.?

Shri T. T. Krishnamachari: There are people who know more than I do who are speaking about it, and, therefore, I find myself in a little difficulty. The question is this. There should be a limit. It may be that a person may have thirteen children and that is not unknown.

Shri Ranga: Can you not make it 240 gms.?

Shri T. T. Krishnamachari: I do not know; I do not think that the law will be altered, if they want to make it a little more, I am prepared to agree, but not to some indefinite figure. It should be a definite limit.

I quite appreciate the point made. I am beginning to see light now. But what I am saying is that I am unable to accept any figure which is unlimited. There must be a limit ever then.

Shri N. Dandekar: I would say taking only the sort of family that I have mentioned, it could be raised to 240 gms., because that is the ordinary family that we have in view.

Shri Muthiah (Tirunelveli): The hon. Minister may make it 200 gms.

Shri T. T. Krishnamachari: As I have said, we have permitted 150 gms. in the case of goldsmiths. If my hon. friends want to make it 150 gms. here also, I am prepared to agree.

Shri Nambiar: Please make it 240 gms.

Shri T. T. Krishnamachari: Let us not bargain. We accepted a particular figure before, and let us be consistent and accept 150 gms. here also. If my hon. friend moves an amendment and says that in the proviso at page 17 in line 24, instead of 'hundred grammes' the wording should be '150 grammes' I shall agree.

Shri Ranga: Small mercies also have to be accepted.

Shri T. T. Krishnamachari: It is not a mercy at all. My hon. friend is making a mistake. It is not something which is a mercy. I have no desire to give anything *ex-gratia*, nor am I permitted to do so. It is merely a question of solving a difficulty.

Shri Ranga: Let it be raised to 150 gms.

Shri T. T. Krishnamachari: I am prepared to accept it.

Mr. Deputy-Speaker: The hon. Minister may move an official amendment on those lines.

Shri T. T. Krishnamachari: I beg to move:

Page 17, line 24, for "one hundred grammes" substitute "one hundred and fifty grammes". (242).

Mr. Deputy-Speaker: Is Shri Dandekar pressing his amendment?

Shri Dandekar: I would like to withdraw my amendment No. 91.

Mr. Deputy-Speaker: Has the hon. Member leave of the House to withdraw his amendment?

Several Hon. Members: Yes.

Amendment No. 91 was, by leave, withdrawn.

Mr. Deputy-Speaker: The question is:

Page 17, line 24, for "one hundred grammes" substitute "one hundred and fifty grammes". (42).

The motion was adopted.

Mr. Deputy-Speaker: The question is:

"That clause 16, as amended, stand part of the Bill".

The motion was adopted.

Clause 16, as amended, was added to the Bill.

Clause 17— (Declaration as to possession of ornaments)

Mr. Deputy-Speaker: There is no amendment to this clause.

Shri Subbaraman (Madurai): I would like to ask for one clarification in regard to this clause. In sub-clause 17 (1), in the proviso we find that under (a), it has been stated that:

"where such ornaments are owned by a person, twenty-five thousand rupees",

and under (b), we find:

"where such ornaments are owned by a family, fifty thousand rupees".

I would like to know whether the value of the gold in the ornaments is to be considered for the purpose of valuation or whether the value of the stones is also to be taken into consideration in the evaluation.

Shri T. T. Krishnamachari: It would be only gold, because I do not think that legally this particular Bill will permit anybody to touch ornaments as such; so, really it will only be the gold content.

Mr. Deputy-Speaker: It has been made clear in the previous clause.

Shri Ranga: Why not make it clear here also?

Shri T. T. Krishnamachari: Legally, we cannot prescribe anything under this Bill in respect of diamonds and rubies etc. So, it is only the gold content of the ornaments which is meant by this.

Shri Subbaraman: Does it mean the value of the gold content or the value of the whole ornament including the stones etc.?

Shri Ranga: The lawyers or the courts will only go by what they consider to be ornaments and not by the gold content of the ornament only.

Shri T. T. Krishnamachari: I do not think it would be the case. My hon. friend Mr. Chatterjee will come and say: you have not enacted in regard to diamonds or rubies and anything like that. I do not think that it can really mean the total value of the ornament. (*Interruptions.*) I am completely with the hon. Member; I think it should be the gold content. Anyway, it is not being brought into effect now. This law allows us to deal only with gold. If Government have a different view, they must bring an amendment.

Shri Ranga: Why leave it to the lawyers and the courts?

Shri T. T. Krishnamachari: The Leader of the Opposition will agree that this is the interpretation; if somebody wants to interpret it otherwise, let them bring an amendment.

Shri Narendra Singh Mahida: Sir, the hon. Minister says that it is his personal view and that Government may bring in an amendment or anybody else may do so.

Shri Ranga: I would like the Government to clarify it.

Shri T. T. Krishnamachari: I can clarify it in the rules. I cannot tell you that we cannot under this Act regulate the possession of diamonds or rubies. Anyway, as I said earlier, it is not being brought into effect; it does not apply now and I will also make it clear in the rules.

Mr. Deputy-Speaker: The question is:

"That clause 17 stands part of the Bill."

The motion was adopted.

Clause 17 was added to the Bill.

Mr. Deputy-Speaker: We go to clause 18.

Clause 18—(Appointment and functions of Administrator)

Shri Nambiar: I have an amendment No. 41. I move:

Page 19, omit lines 17 to 19. (41).

Clause 18 speaks about appeals also and the proviso to clause 18 (3) reads:

"Provided that no officer below the rank of Collector of Customs or Central Excise or Collector of a district shall be authorised to hear appeals under sub-section (2) of section 30".

We have not yet dealt with clause 30 which deals with adjudication, appeals and revision. It will contradict with that clause and the amendments there if we accept this proviso here. We can proceed with this clause if my amendment is accepted. So, we can at least postpone discussion of this

clause till we finish clause 30 so that one will not contradict with the other. Or, my amendment may be accepted.

Besides, the central excise authorities and collectors are the persons who are supposed to find out hidden gold and if they are themselves to hear appeals arising out of their own action, there is no necessity for provision of appeals at all. Some other officer should hear those appeals; these officers should not be asked to hear appeals, if this provision for appeals has any meaning.

Shri N. C. Chatterjee: May I suggest that consideration of this clause be deferred till we finished clause 30?

Shri Narendra Singh Mahida: My amendment is also to the same effect; but it is barred. I support the contention of Mr. Nambiar. We are giving powers to hear appeal it is just like giving powers to the police to hear appeals from arrested persons. Hon. Minister should consider this and postpone the consideration till we come to clause 30.

Shri T. T. Krishnamachari: I am afraid there is some misconception about the proviso. It is a protective proviso. While naming a person to hear appeals, the Administrator should not name a person below the particular rank mentioned here. If the House really makes drastic amendments in clause 30, we will have to amend this section also suitably. If clause 30(2) goes, this will fall into destitute and we will have to amend it in the third reading stage. But this proviso only says that only an officer of a particular rank and above can hear appeals. This is a proviso which is particularly valuable from the point of view of the layman because appeals would not be heard by anybody below the rank of the collector. While the Administrator can delegate his powers to anybody else for any purpose, he cannot delegate

his powers in regard to this matter to anybody below that rank. Hon. Members will appreciate that there is no catch in this matter at all: it is plain sailing. When clause 30 comes we can discuss this matter, if an amendment affecting this provision is made there. Supposing we say that appeals can only be heard by the Administrator himself, naturally this will need modification and we will in the third reading stage see what should be done but I do not think that that contingency need be envisaged at the moment.

Shri Nambiar: My contention is that even the customs collectors are a party to the haul.

Shri T. T. Krishnamachari: If the proviso is not there, it would mean somebody even below that rank.

Shri N. C. Chatterjee: I think the hon. Minister is quite right; deletion of the proviso would make matters worse for the assessee. It is really protective; it says somebody higher up in the hierarchy can only hear appeals. We suggest that in clause 30 some independent tribunal should be there; therefore, I am suggesting; let that be taken up first and this will automatically follow.

Shri T. T. Krishnamachari: Any consequential amendments that are necessary can always be made even afterwards.

Shri Nambiar: If the hon. Minister says that this will again be taken up after the consideration of that clause, I am prepared to withdraw my amendment.

Mr. Deputy-Speaker: Has the hon. Member leave of the House to withdraw his amendment?

Amendment No. 41 was, by leave, withdrawn.

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.

Mr. Deputy-Speaker: We go to clause 19.

Clause 19— (*Returns as to gold*)

Shri Nambiar: I move my amendments No. 13 and 42.

(i) Page 19, line 27,—

omit "(including certified goldsmiths)". (13)

(ii) Page 19, line 27,—

for "including" substitute "other than". (42).

Clause 19 deals with the submission of returns; the whole chapter is about that. Clause 19 says that dealers (including certified goldsmiths) and refiners shall furnish to the Administrator such returns as to the quantity. So, a goldsmith is also included in this; a self employed goldsmith is also asked to submit returns. He may not have the facilities for having a number of returns prepared nicely and signing them and submitting them and so on. I have talked to some of these goldsmiths. They say if the procedure of preparing and submitting the returns is also given to us—

Shri T. T. Krishnamachari: May I interrupt the hon. Member? I give here the assurance that so far as the rules are concerned, though the power is there, we shall not ask the certified goldsmith to send his returns. We will merely ask them to keep an account of the things and of the per-

[Shri T. T. Krishnamachari]

son who gives the gold. Beyond that, I will not ask the certified goldsmiths to send a return.

Shri Ranga: The clause says "dealers (including certified goldsmiths)...." Why not you drop those words?

Shri T. T. Krishnamachari: The hon. Member will have the rules. The rules will be laid on the Table. I am giving the assurance that the rules will certainly say it. May be that a certified goldsmith may be of a big character, but normally we will say that no return should be furnished except that he should keep an account of the particulars as to who gives the gold to him and so on. The rules will be placed on the Table. The assurance is there. That assurance binds the Government.

Shri Nambiar: Then I do not press the amendment.

Amendments Nos. 13 and 42 were, by leave, withdrawn.

Mr. Deputy-Speaker: The question is:

"That clause 19 stand part of the Bill."

The motion was adopted.

Clause 19 was added to the Bill.

Clause 20— (Accounts)

Shri Nambiar: I beg to move:

Page 19, line 33, omit "(including certified goldsmiths)", (14).

This is only a consequential amendment. The words "including certified goldsmiths" is repeated everywhere. It should be removed.

Shri T. T. Krishnamachari: We will ask him just to keep some kind of accounts. The returns will be asked.

Shri Nambiar: Will it be included in the law?

Shri T. T. Krishnamachari: The rules will be there.

Shri Nambiar: Then I will not press it.

Amendment No. 14 was, by leave, withdrawn.

Mr. Deputy-Speaker: The question is:

"That clause 20 stand part of the Bill."

The motion was adopted.

Clause 20 was added to the Bill.

Clause 21 and 22 were also added to the Bill.

Clause 23—(Prohibition of use of buildings for carrying on unlicensed refinery)

Shri Solanki: I beg to move:

Pages 20 and 21, omit lines 39 and 40, and 1 and 2 respectively. (92)

In this amendment, I am drawing the attention of the hon. Minister to the question that this provision relates to the letting of premises. They want the landlord to have the knowledge of the licence which is possessed by a goldsmith or the craftsmen and to know whether a refinery work or some sort of work concerning gold is going on. In both these cases. I think it is difficult for the person who owns the House to find out these facts. I think that the responsibility should not lie with the landlord. It is a responsibility that is vicarious which is unnecessarily attached to the landlord of the premises. This is the responsibility of the officers, or of the persons who take the house or the premises for this work. They should furnish the information. Otherwise, it will be very difficult to find out what sort of work is being carried on and

whether the person concerned has got a licence or if he is an authorised person or an unauthorised person and so on. All these difficulties will arise and create unnecessary trouble for the person who is not at all concerned with gold control.

Shri T. T. Krishnamachari: This only applies to refiners. They must be fairly well-equipped persons. I do not think any landlord can be ignorant of the fact that the man is doing such and such work. I think it is very necessary.

Shri Ranga: These certificates are given for a period and they are renewable from time to time. How is the landlord expected to know when and for what period a particular licence is valid, whether it is revalidated or not, whether the man has been remiss in his duty in getting the certificate renewed, etc., and how is he expected to know that the person has got into trouble at all with the administrator and therefore his licence has come to be cancelled, etc.? All these complications will be created for the landlord. I want to know whether these aspects have been kept in mind by the Government when they were formulating this clause, and whether it is possible for them now to give some fresh consideration to this matter?

Shri T. T. Krishnamachari: There are two factors. One thing is this. The wording is "wilfully allow any person....." Secondly, we have only got 100 refiners. I beg of the hon. friend opposite to recognise the fact that there are only 100 refiners. These 100 refiners are big people. So, it is only a question of a protective measure, so far as the Government is concerned. The number being so small, I do not think any person who lets the house, unless he acts wilfully, will be affected. I think that the number of people who are likely to be effected is so small; it is only a protective measure rather than one which may cause any harassment.

Shri Solanki: Just one clarification. If it is for the refiners, what about the licence? The landlord is supposed to know that the person possesses a licence or not. How is he to know?

Shri Ranga: Whether it was renewed or not, or lapsed or not?

Shri T. T. Krishnamachari: Please read the clause. The number is very small. We are only trying to protect somebody who is probably non-existent. There must be an intention so far as the landlord is concerned. If there is no intention, he will not be prosecuted.

Shri Ranga: Please read the clause.

Shri T. T. Krishnamachari: Anyway the number is so small.

Shri Ranga: Why keep it then?

Shri Solanki: The responsibility is shifted to somebody else who has no concern with the Bill.

Mr. Deputy-Speaker: I shall put amendment No. 92 to the vote.

Amendment No. 92 was put and negatived.

Mr. Deputy-Speaker: The question is:

"That clause 23 stand part of the Bill."

The motions were adopted.

Clause 23 was added to the Bill.

Clause 24—(Transfer or transmission of business)

Shri Solanki: I beg to move:

Page 21, line 8, for "thirty" substitute "ninety". (93).

This is for an extension of the time-limit, in case the person dies and the heir or the transferee or the licensee has to apply for a new licence. In this matter, I would only plead with

[Shri Solanki]

the Minister on a social point. Suppose a person dies,—

Shri T. T. Krishnamachari: Before the hon. Member argues, if he makes it "sixty", I will accept it.

Shri Solanki: All right.

Shri T. T. Krishnamachari: I beg to move:

Page 21, line 8, for "thirty" substitute "sixty".

Mr. Chairman: The question is:

Page 21, line 8, for "thirty" substitute "sixty".

The motion was adopted.

Mr. Chairman: The question is:

"That clause 24, as amended, stand part of the Bill."

The motion was adopted.

Clause 24, as amended, was added to the Bill.

Clause 25— (Secrecy and fidelity)

Shri Nambiar: I beg to move:

Page 22, line 8, add at the end:—
"of enforcing a civil right through a competent court of law, or". (45)

This clause deals with secrecy and fidelity. Sub-clause 25(3) of this clause reads as follows:

"The Administrator or any gazetted officer authorised by him in this behalf may request any officer of Government to furnish any information relating to any particulars contained in any return or declaration made...." etc.

These are to be furnished by the officials for the purpose of prosecution.

Now, sub-clause (4) at page 22 reads as follows:

"Nothing in this section shall apply to and in relation to the disclosure of any of the particulars referred to in sub-section (1) or sub-section (2)—

(a) for the purposes of any prosecution for any offences, or"

There, I want to add, "of enforcing a civil right through a competent court of law, or". It should be like that, so that it may be clear. Otherwise, these particulars may be used for various other purposes. This amendment is only to confine the activity to this issue. It is very clear and I hope he will accept it.

Shri T. T. Krishnamachari: No, Sir; I do not want the Administrator to be involved in matters of civil litigation.

Mr. Deputy-Speaker: I shall now put the amendment to the House.

Amendment No. 45 was put and negatived.

Mr. Deputy-Speaker: The question is:

"That clause 25 stand part of the Bill".

The motion was adopted.

Clause 25 was added to the Bill.

Clause 26— (Power to enter, search and seize, to obtain information and to take samples)

Shri Nambiar: I beg to move:

(i) Page 22, line 12,—
after "Any" insert "Gazetted". (15)

(ii) Page 22, line 24,—
after "Any" insert "Gazetted". (16)

(iii) Page 22, lines 30 and 31,—
omit "or is about to be". (17)

(iv) Page 22, line 35,—
omit "or is about to be". (18)

(v) Page 23, line 5,—

omit "or is about to be". (19)

(vi) Page 22, lines 17 and 18,—

for "being, or is about to be, contravened", substitute—

"being contravened or an attempt to commit such contravention is being made". (46)

(vii) Page 22, lines 22 and 23,—

for "being or is about to be, contravened", substitute—

"being contravened or an attempt to commit such contravention is being made". (47)

(viii) Page 22, line 29,—

for "suspects" read "has reason to believe". (48)

(ix) Page 22, lines 30 and 31,—

for "being, or is about be, contravened", substitute—

"being contravened or an attempt to commit such contravention is being made". (49)

(x) Page 22, lines 35 and 36,—

for "being, or is about to be, contravened" substitute—

"being contravened or an attempt to commit such contravention is being made". (50)

(xi) Page 23, lines 5 and 6,—

for "being, or is about to be, contravened", substitute—

"being contravened or an attempt to commit such contravention is being made". (51)

(xii) Page 23, line 8,—

omit "gold or". (52)

(xiii) Page 23, line 14,—

for "suspects" substitute—

"has reason to believe". (53)

(xiv) Page 23, line 15,—

for "about" substitute—

"making attempts". (54)

(xv) Page 23, line 18,—

omit "gold or". (15)

(xvi) Page 23, line 25,—

for "about" substitute—

"making attempts". (56)

Shri N. Dandekar: I beg to move:

Page 24,—

for lines 31 to 35, substitute—

"(13) When anything is seized or any person is arrested or any statement is recorded under this Act, the officer concerned shall on demand of the person in charge of the thing so seized or of the person so arrested or of the person whose statement has been recorded furnish such person with copies of the seizure memo, reasons of seizure or arrest and copies of the statements recorded from such persons." (94)

Shri Nambiar: Clause 26 is a very important clause dealing with the power to enter, search and seize, to obtain information and to take samples. The clause gives all sorts of sweeping powers to the officers to enter into premises, search, seize anything, take documents and do all that that particular officer feels necessary. My amendment seeks to add the word 'gazetted' before the word 'officer'. As it is, the clause reads:

"Any officer authorised by the Administrator in this behalf may . . ." What I want is, "Any gazetted officer authorised by the Administrator . . ."

[Shri Nambiar]

Sir, any officer may mean that an ordinary inspector of customs or excise is authorised to do so.

Shri N. Dandekar: Even peons.

Shri Nambiar: Yes, even peons may enter into the premises and search anything. The only condition is that he should be authorised by the Administrator. It is a very sweeping power, which has been misused already even under the Gold Control Order. In my town when certain persons who were formerly goldsmiths went to the bazaar to purchase vegetables with their bags in hand, they were stopped on the road by the excise inspectors and smaller officials. Their handbags were searched and without any reason, sometimes they were taken into custody and so many things were done. We know how the prohibition law is being widely abused. When the police want to put behind the bar certain persons whom they do not want to be free, they use to put some alcohol or arrack bottles in their houses, take them as confiscated goods and arrest those persons. During the working of the Gold Control order in the last 18 months, there were instances when officials of lower rank have misbehaved like this and harassed the goldsmiths, as well as the other dealers. So, we cannot give such sweeping powers to ordinary officials of lower rank. Only gazetted officers must be given this power.

The Minister may say that in a district, there are very few gazetted officers and so whenever somebody's premises have to be searched, it may not be possible to contact a gazetted officer. But I submit that when raids are to take place, there is previous preparation. They must have got some information that somebody is dealing in gold at a particular place. So, when this advance information is available, they can contact a gazetted officer of that particular locality who may be available. There are many gazetted officers—police officials, re-

venue officials and so on. With their help, these searches could be done. So, such sweeping powers should not be given to officers of lower ranks. The purpose of the Bill is not to harass the common man who deals with gold or who once dealt with gold. The purpose is to stop smuggling at airports, ports, etc., and not in the by-lanes of Tiruchi or Delhi or Calcutta. So, these powers must be given only to gazetted officers and not to lower officials.

Shri Ranga: Sir, I am in favour of Mr. Nambiar's amendment. It is true that there are not many gazetted officers. But nowadays their number has grown very large. For various reasons, in various departments, people have been recruited as gazetted officers. Even in the police department, people who were not gazetted officers at one time have now come to be accepted as gazetted officers. In Andhra ordinary tehsildars in every taluk have come to be classified as gazetted officers. Their salaries and status have been raised suitably. So, it would not be such an impossible thing to find out a gazetted officer when the need arises. After, all, that need is not going to arise suddenly without notice. As Mr. Nambiar said, for these searches, they have to plan a little in advance. So, they can secure the presence of the necessary gazetted officer or gazetted officers. Here power is given to enter into the premises. As you know, this is a very wide power to enter and seize people's property—jewellery, gold, various instruments and implements of refineries, etc. So, such wide powers must be made exerciseable only by people with sufficient authority and responsibility. They cannot be exercised by non-gazetted officers. I, therefore, suggest that this amendment may be accepted.

Shri N. C. Chatterjee: If you look at clause (2) (b), it says that any officer authorised by the Central Government in this behalf may "seize any

gold", not gold in respect of which contravention has taken place, but "in respect of which he suspects that any provision of this Act has been, or is being, or is about to be contravened". On mere suspicion, it can be seized. This despotic, uncanalised, uncharted power should not be given to any officer. Eminent judges have said that suspicion should not be made a ground for effecting preventive detention or for arrogating to the officer such extraordinary powers which will completely deprive a man of his fundamental basic rights to property.

Sub-clause (c) reads like this:

"(c) seize any books of account, return or any other document relating to any gold in respect of which he suspects that any provision of this Act has been, or is being, or is about to be, contravened."

15.00 hrs.

Sir, about these words "about to be contravened", eminent judges, as you know, have always deprecated the language used like that. One can know contravention or attempt to contravene. It has been put here: "any provision of this Act". There are elaborate provisions. Even if you do not file the accounts in time, it will be a contravention. Supposing there is a rival goldsmith and he says that a man has manufactured gold ornaments of 15 ct. and not 14 ct., on suspicion you can go and seize his books, you can seize his instruments, you can seize all his books of account and other documents. This, Sir, is an engine of tyranny, oppression and it should not be tolerated. Once you take this power, you should give it to more responsible officers. Though it is not a very great safeguard, at least it should not be left to the tender mercy of any and every officer in the department.

Shri N. Dandekar: Sir, I have moved amendment No. 94 to clause 26. It seeks to substitute the new sub-clause

(13) for the existing sub-clause (13). Sub-clause 13 is designed to give some measure of protection to the person who has been dealt with in accordance with the previous sub-clauses. The protection, however, is very limited. The existing sub-clause (13) reads:

"Where at the time of arrest of any person or seizure of any gold, document or other goods in the possession of any person, such person makes a statement to the officer making such arrest or seizure, that officer shall on demand by such person furnish him with a copy of the statement."

It says nothing else. In view of the extraordinarily wide and sweeping powers—I am not now criticising the powers as such nor the various circumstances which may impel this department to exercise those powers—I think the minimum protection for the person concerned ought to be extended in the way I have suggested in my amendment which reads as follows:

"(13) When anything is seized or any person is arrested or any statement is recorded under this Act, the officer concerned shall on demand of the person in charge of the thing so seized or of the person so arrested or of the person whose statement has been recorded furnish such person with copies of the seizure memo, reasons of seizure or arrest and copies of the statements recorded from such person".

I submit it is very, very necessary that the person arrested should have some statement of reasons for his arrest. If goods have been seized, he should at that very time be given some memo of what has been seized and the reasons for such seizure. If he has himself made any statement at that time, he ought to have copies of that statement. I do not think the

[Shri N. Dandekar]

Finance Minister should have any objection in view of, as I said, the extraordinary and sweeping powers and the remarkably wide and sweeping circumstances in which these powers can be exercised. I think at least this measure of protection ought to be accorded to the poor fellow who gets pushed around.

Shri T. T. Krishnamachari: Sir, with regard to the demand for a gazetted officer, I understand that this is the pattern of provision in the other enactments—the Customs, Excise and so on. The Government do not empower anybody below the rank of a Sub-Inspector for this purpose. It is not possible for the Government to authorise a gazetted officer to go and do this work. It will have to come down to the level of a sub-inspector and it does not go below that. As I said, the provision is something which my hon. friend is familiar with. This is the usual provision. It may be that it is all completely superfluous, but the laws are framed that way.

So far as the particular amendment of my hon. friend, Shri Dandekar is concerned, this matter was discussed by the Joint Committee. Of course, the idea of giving reasons for the seizure is almost impossible. That is why the Joint Committee has framed sub-clause (13) in the form in which it has been framed. Hon. Members would please realise that this is something which has been looked into by the Joint Committee—the side-line shows it. Beyond that, Sir, I am not in a position to go.

Shri Nambiar: Sir, about amendments Nos. 17, 18 and 19 where I have suggested the deletion of the words “or is about to be”, I hope the hon. Minister will accept them. My hon. friend Shri Chatterjee also gave the reasons why these words have to be deleted. If he wants to allow the sub-inspectors to do this work, at least the words “or is about to be” may be deleted.

Shri T. T. Krishnamachari: As I said, Sir, this is the pattern followed in other enactments.

Shri Nambiar: This is not like any other enactment. Gold is there in the village in every home. If these people are allowed to go and search, if there is some slight suspicion in my absence some inspectors can go and search my house. What is the remedy? What will the womenfolk do? The hon. Minister must understand the difference between this and other legislative measures.

Mr. Deputy-Speaker: He is not acceding to your request.

Shri N. C. Chatterjee: Sir, I would like to make a constructive suggestion for the consideration of the hon. Minister. I would suggest that instead of this word “about”, he may put in a legal phraseology “attempted to be contravened”. The objective remains.

Mr. Deputy-Speaker: There is no amendment.

Shri Nambiar: If the hon. Minister agrees, I will move such an amendment.

Mr. Deputy-Speaker: He is not accepting.

Shri Nambiar: He may accept. He is in the process of thinking.

Mr. Deputy-Speaker: Is the hon. Minister accepting that amendment?

Shri T. T. Krishnamachari: Sir, my difficulty is that I am advised that this cannot be done. The hon. Member has made a suggestion. I am advised that this cannot be done because this follows a particular pattern which is already in existence.

Mr. Deputy-Speaker: I shall put all the amendments moved to this clause to the vote of the House together.

Amendments Nos. 15 to 19, 46 to 56 and 94 were put and negatived.

Mr. Deputy-Speaker: The question is:

"That clause 26 stand part of the Bill."

The motion was adopted.

Clause 26 was added to the Bill.

Clause 27 was added to the Bill.

Mr. Deputy-Speaker: Then we take up clause 28.

Clause 28.— (*Confiscation of conveyances*)

Shri Solanki: Sir, I beg to move:

Page 25,—(i) lines 37 and 38,—

omit "his agent, if any, and the person in charge of the conveyance or animal"; and

(ii) line 38,—

for "each of them", substitute "he". (95).

Sir, again, this is a case where the responsibility is shifted to the owner of the vehicle who is supposed to have given it on loan to somebody. If that person is caught in the transaction, the owner is not to be blamed. In the previous case the owner of the premises was sought to be blamed and here the owner of the vehicle is sought to be blamed. Of course, they have provided certain safeguards, but still I fail to understand why the owner of the vehicle is to be made to undergo all these enquiries and the real culprit allowed to go away without explaining anything. That amounts to unnecessary harassment to the owner of the vehicle.

Mr. Deputy-Speaker: Does Government accept that amendment?

Shri T. T. Krishnamachari: No, Sir.

Mr. Deputy-Speaker: I will now put that amendment to the vote of the House.

Amendment No. 95 was put and negatived.

Mr. Deputy-Speaker: The question is:

"That clause 28 stand part of the Bill".

The motion was adopted.

Clause 29 was added to the Bill.

Clause 29.—(*Confiscation of gold seized and imposition of penalty*)

Shri N. Dandekar: I beg to move:

(i) Page 26, line 11,—

after "gold" insert "knowingly or wilfully". (96)

(ii) Page 26, line 13,—

after "or", insert "knowingly or wilfully". (97)

Shri Nambiar: I beg to move:

(i) Page 26, line 10,—add at the end—

"upon conviction of the person in whose custody the article was seized, for any offence under this Act with respect to the said article". (57)

(ii) Page 26,—

omit lines 11 to 17. (58).

Coming to my first amendment, clause 29 deals with confiscation of gold seized and imposition of penalty. Sub-clause (1) says:

"Any gold seized under section 26 together with the package, covering or receptacle, if any, in which such gold is found shall be liable to confiscation".

That sub-clause does not correctly give out what the Minister wants. If you do not add the words "upon conviction of the person in whose custody the article was seized, for any offence under this Act with respect to the said article", the seizure has no meaning.

[Shri Nambiar]

The addition of these words will make the meaning very clear. I hope he will not take an obstinate view in this matter, that because no hon. Member from the other side has moved this amendment, so he will not accept it. Now, what happens is, hon. Members from the other side, speak with us, support us but when the actual division comes, vote against us, because it will be recorded and they are afraid. With all respect to them, I must say that most of the Members on the other side are also with us, so far as this Bill is concerned. So, the Finance Minister should not be so obstinate in this matter. The Lady Members of the other side should remember that even mangalsutra is refused to them under this Bill. When Shrimati Yashoda Reddy wants to get her daughter married, she will find it difficult to get a mangalsutra.

Shri U. M. Trivedi (Mandsaur): Has she got a daughter?

Shri Nambiar: If no daughter, her son must get a girl for marrying him.

Shrimati Yashoda Reddy (Kurnool): I have got a daughter.

Shri Nambiar: Suppose my son or daughter wants to get married, it is impossible to get a mangalsutra, except a 14 carat one. And the moment I suggest that it will be a 14-carat mangalsutra, they refuse to solemnise the marriage.

An hon. Member: You are a Communist.

Shri Nambiar: I may be a Communist but not my sons and daughters. Therefore, the Finance Minister should show us these small mercies instead of being very obstinate.

Shri N. C. Chatterjee: If you look at clause 29(1), it says:

"Any gold seized under section 26 together with the package, covering

or receptacle, if any, in which such gold is found shall be liable to confiscation."

If you turn to section 26, gold may be seized on conviction or any contravention or on mere suspicion. Contravention may include attempted contravention also. Therefore, if clause 29(1) stands as it is, gold can be confiscated even if it is seized merely on suspicion of a particular offence. That cannot be the law because that will be against article 31; that will be against the basic rights guaranteed to our citizens under Part III of the Constitution. We cannot deprive a man of his property merely on the suspicion of some officer who is authorised either to enter and search and seize gold. Therefore, the confiscation order must follow adjudication as to the guilt. Therefore, unless and until there is a conviction for an offence under this Act, you cannot authorise the confiscation of gold. So, I am submitting for the consideration of the hon. Finance Minister that this amendment should be accepted. Here, the words are "shall be liable to confiscation". Nobody objects to confiscation but the condition precedent to the confiscation must be made clear and that must be the guilt of the person proving that there is a clear contravention of the Act, the commission of an offence which will invite punishment. So, it should not be linked up with the mere suspicion of an offence.

Shri N. Dandekar: I am concerned with amendments Nos. 96 and 97, relating to sub-clause (2). Just now my learned friend has explained that under sub-section (1) anything seized on suspicion is likely to be confiscated. When you start off from there, sub-clause (2) reads:

"any person who in relation to any gold does or omits to do any act which act or omission would render such gold liable to confiscation under sub-section (1)...."

I submit this goes so deep that, really, I imagine anything can be done to any property anywhere at any time and, therefore, I have suggested by my amendment No. 96 to insert the words "knowingly or wilfully" so that it will read "any person who in relation to any gold knowingly or wilfully does or omits to do any act....".

Similarly, in line 13, the words are "or abets the doing or omission of such an act". I do not know how one abets the omission of an act. There again, in view of the consequential situation which starts in clause 26, suspicion of somebody doing or contravening something, I have suggested the insertion of the words "knowingly or wilfully" after the word "or".

Shri U. M. Trivedi: Clause 29 is the clause to which I drew pointed attention during the consideration stage. It is linked up with clauses 26 and 30. It creates trouble to the administration and it goes against the fundamental principles of jurisprudence. You are saying in clause 29:

"Any gold seized under section 26, together with the package, covering or receptacle, if any, in which such gold is found shall be liable to confiscation."

Clause 30 says:

"The confiscation, fine or penalty under section 28, section 29, proviso to sub-section (3) of section 31 of sub-section (8) of this section or under any rule made under this Act may be adjudged—

- (a) without limit, by an officer not below the rank of Deputy Collector of Customs or Central Excise;...

This adjudication is not to be done by a law officer or judicial officer but by an executive officer who is interested in carrying out seizures. Probably he is interested in such

seizures. For, as far as I know, the administration of the Customs Act is such that you always get a prize for the seizure or confiscation of any goods. So, he will be enamoured of confiscating things. He will be goaded into it; he will unconsciously do it without limit, since the law wills it. It is more or less a blank cheque. I would suggest that this confiscation should be on adjudication by a court of law after prosecution.

If he is not prosecuted it should not be confiscated. Confiscation should not be an absolute provision in the law saying that a thing can be confiscated if it is suspected. It might be a very wise thing, but then it offends against the provision of law. The process of law is not there. The absolute power is given to an officer and that officer will be acting in his own cause. That itself offends against the principles of justice, namely, that no man shall be a judge in his own cause. Here, this is the man who will accuse a person and he is the man who will discharge this duty of confiscation; that is to say, he accuses and he decides. These two things must not go together. Therefore, I would suggest that this amendment that has been suggested in this case may be accepted.

Then, I come to sub-clause (2) of clause 29. I have not yet understood the implication why it is said here "or abets the doing or omission of such an act". Omission is always of a duty cast upon a particular person to do a particular act as provided in the Act. What is the duty cast upon a man whom we are going to accuse of smuggling? I do not think any duty is cast upon such a person. Unless the duty is defined of each one of us, of every citizen—there is no such duty defined in it—what type of omission is there? Is it a duty cast upon me that any time I see that one of my neighbours sitting by my side has some kind of gold, I should go before the officer and say, "Here, he has gold in his bag; catch hold of him"? If a duty is cast upon me to-

[Shri U. M. Trivedi]

do so, it may be an act of omission if I do not do that; but there is no duty cast upon me. In the law of offences as taught to beginners we are taught that however big or small the offence may be, it may look callous or immoral, yet, it is not an offence, however immoral it may be, if it is not an offence. In law an offence is that which is defined in the Act as an offence. If I omit to do that, I can be convicted. I do not know how the word "omission" has crept in here. It might be explained by the Finance Minister. I have not understood the implication of the word "omission" as put in here. Therefore, I will suggest that this word "omission" should be taken away from here.

Then, coming to the provision "liable... to a penalty not exceeding five times the value of the gold or one thousand rupees, whichever is more, irrespective of whether such gold has been confiscated", here also, the same position is to be considered. This sub-clause (2) also gives wide powers which cannot be used by the person who makes the accusation. The man who prosecutes should not be the judge in his own cause. Therefore, I should say that some additions should be made as have been suggested, namely, "on being found guilty" or "on being convicted by a magistrate before whom the case goes", confiscation may be carried out. That is the ordinary law which should be followed.

Shri Narendra Singh Mahida: I wish to speak on my amendment which has been barred. I am supporting Shri N. C. Chatterjee, Shri Trivedi and Shri Nambiar also. About the seizure of gold, who seizes the gold? Who has the power to seize the gold? Is it a minor official, a peon or a sepoy, or an inspector or a customs officer?

Mr. Deputy-Speaker: It is said here "not less than the rank of a sub-inspector".

Shri U. M. Trivedi: That is in clause 30.

Shri Nambiar: This clause does not say that.

Shri Solanki: It is very vague.

Shri Narendra Singh Mahida: Now, the onus is on the possessor of gold. Suppose, I possess gold and I am caught. The hon. Minister wants me to prove that this is genuine. Then, I have to go to various persons, who were actually responsible for the possession of the gold. I have not got a way out of it. I am an honest person and I may be arrested. Therefore, the onus must be there and the authority also must be very aptly settled. Could the hon. Minister explain this?

Shri T. T. Krishnamachari: Sir, this clause has to be read with clauses 26 and 30. It can only follow as a consequence of clause 30. Of course, the process of adjudication outlined in clause 30 may be a subject of discussion, but the hon. Member mentioned about article 19 of the Constitution. I think, article 19 would apply to whatever is being done under clause 30. Unless clause 30 operates, clause 29 does not operate excepting under one particular circumstance. There may be somebody who completely disowns it. A person is accused and asked, "Have you got gold?"; he says, "No; I have nothing to do with it; it is not mine". Then, what happens? Then, the gold is liable to be confiscated. It does not say "automatically confiscated"; it says that it is liable to be confiscated. It is in circumstances of that nature, which is not covered by the process of adjudication under clause 30, which is sought to be covered by sub-clause (1) of clause 29.

Dr. M. S. Aney: How does it end in confiscation? Confiscation is ordered by a court.

Shri T. T. Krishnamachari: As a matter of fact, here it is not covered by the process of adjudication and what follows thereafter, whatever that might be. The provisions of clause 30 may be passed by the House or not. Therefore, as I said, it is a circumstance here that nobody claims it. He says, "No; it is not mine; I do not know who has left it". Then, what happens? It may be that the other person may be punishable for something else but he says that you cannot prove that, that man has gold.

Dr. M. S. Aney: Who confiscates?

Shri T. T. Krishnamachari: The Government confiscates. The person authorised to do so, does it. What I say is that it may apply to a case where it is disowned. But in any event this particular clause cannot operate excepting when the process mentioned in clause 30 is followed.

Then, the other thing that was mentioned was about "knowingly or wilfully". This had been gone into at considerable length in the Joint Committee and it was ultimately felt that it would not be necessary. The question of proving whether he has done it knowing or wilfully is a thing which is really beyond what the law could state in this matter. I quite agree that the whole matter could be discussed again, the manner of adjudication and so on; but so far as this is concerned; it can operate only in cases as I mentioned, there not being anybody in which case it is likely to be confiscated.

Dr. M. S. Aney: Unclaimed property.

Shri T. T. Krishnamachari: It may be of that nature. It may be that people do not want to own it, because ownership itself might attract a penalty.

Mr. Deputy-Speaker: Now, I shall put all the amendments to the vote of the House together.

1986 (Ai) LS—8.

Amendments Nos. 96, 97, 57 and 58 were put and negatived.

Mr. Deputy-Speaker: The question is:

"That clause 29 stand part of the Bill".

The motion was adopted.

Clause 29 was added to the Bill.

Clause 30.—(Adjudication, appeal and revision)

Shri Nambiar: Sir, I wish to move my amendments Nos. 59 to 64.

Shri Chandak: I wish to move my amendment No. 20.

Shri N. Dandeker: I wish to move my amendments Nos. 98 and 99.

Mr. Deputy-Speaker: Amendment No. 98 is the same as amendment No. 61. Therefore, it is barred. The rest of the amendments will be treated as moved.

Shri Narendra Singh Mahida: My amendments are all barred. I suppose.

Shri Nambiar: I beg to move:

(i) Page 26, line 22,—

for "without limit", substitute—

"upto the maximum provided by law". (59).

(ii) Page 27, line 14—

for "Administrator", substitute—

"Appellate Tribunal to be constituted for the particular area by the Central Government consisting of three members, one of whom, to be designated as the chairman, shall be a person who has held the post of a Judge or an Additional Judge in any High Court of India". (60)

(iii) Page 27,—

omit lines 21 to 29. (61)

[Shri Nambiar]

(iv) Page 28, lines 3 and 4,—

for “and the Administrator”, substitute—

“or”. (62)

(v) Page 28,—

omit lines 7 to 21. (63)

(vi) Page 28,—

(i) line 30,

add at the end—

“an appeal in respect of”.

(ii) for line 40, substitute—

“may be preferred to such Appellate Authority as may be prescribed”. (64)

Shri Chandak (Chhindwara): I beg to move:

Page 28, line 40,—

(i) omit “shall be final and”;

(ii) add at the end—

“without giving notice to the Central Government under section 80 of the Code of Civil Procedure, 1908”. (20)

Shri N. Dandekar: I beg to move:

Page 28, line 40,—

omit “and shall not be called in question in any court”. (99)

Shri Nambiar: My first amendment is about the time limit. This clause 30 is the much-disputed clause which, as I have already said, deals with adjudication, appeal and revision. Now that the hon. Minister has not accepted the major amendments required, at least let him think that at the appeal stage the poor accused may have the chance of getting the appeal well heard. Here, clause 30, sub-clause (1) says:

“The confiscation, fine or penalty under section 28, section 29, proviso to sub-section (3) of

section 31 or sub-section (8) of this section or under any rule made under this Act may be adjudged—

(a) without limit, by an officer not below the rank of Deputy Collector of Customs or Central Excise;”.

There I have moved an amendment that there must be some limit; it must be up to the maximum provided by law. This is a limit which has some meaning. Otherwise, ‘without limit’ means that even after twenty-five years or fifty years the question can be raked up. Therefore, what I say is that there must be a limit.

Another thing is, you will find there “officer not below the rank of Assistant Collector of Customs or Central Excise or by any other officer of the Central Government or a State Government etc.” It is the Central Excise collectors and deputy collectors who are doing the thing, they are confiscating, they are “unearthing” the gold, and what happens is that they can also sit in judgment as an appellate tribunal for these purposes. I say it is not proper. When the case is coming from the Customs department, some other department should look into the question.

Then, coming to the next amendment, in page 27 you will find sub-clause (2) which says that an appeal shall lie to the Administrator. We have no grouse against the Administrator. The Administrator is the final authority in this matter; he is the person to appoint the officers for the purpose of enforcing the law. And that Administrator cannot be deemed to be a person other than the prosecutor. Under the Administrator's orders all these things are happening, and the appeal is only to the Administrator. After the Administrator I think the next person in this matter is the Government and the hon. Minister—and that appeal does not go to him. Therefore, if the Administrator gives the final verdict, the accused

has no other go. My submission is, let the appeal lie to an appellate tribunal. In my amendment No. 60 I have said that in page 27, line 14, for "Administrator", substitute—

"Appellate Tribunal to be constituted for the particular area by the Central Government consisting of three members, one of whom, to be designated as the chairman, shall be a person who has held the post of a Judge or an Additional Judge in any High Court of India".

The purpose of my amendment is very clear, that after the case having gone to the appellate stage, the final appellate authority sitting in judgment should be someone who is far away from the administration of the process of the arrest, etc. It must be a tribunal consisting of two or three persons. And there must be a person with some judicial mind or judicial thinking. So far as the Administrator is concerned, with all respect to the person who is going to be the Administrator when this legislation comes into force—I have no quarrel with that particular gentleman—we cannot give all sorts of powers to that person to be the appellate authority as well. Therefore, in all fairness, if the Minister does not want to harass the common man who is going to be affected, my amendment should be accepted. The hon. Minister may be thinking that only the big gold dealers, and bullion dealers with millions and crores of rupees are going to be hauled up. There may be that confusion in his mind that he is fighting a big demon of a bullion dealer. But there is the poor fly of a goldsmith also in this. But that goldsmith cannot go to the extent of going through such a big process and getting mercy at the hands of the Administrator. At least let him go to an impartial tribunal and seek its help and get a remedy.

The hon. Minister may please accept this thing and see to it that this official

hierarchy is kept out of it and that justice is rendered at the last stage when the man is to be punished under the law.

Shrimati Gayatri Devi (Jaipur): Sir, I am speaking on amendment No. 98 which seeks to omit lines 21 to 29 on page 27.

The reason for my asking for this amendment to be considered is that it says here that any person caught under this Act must immediately pay a fine even before the appeal is made to the Administrator. But in the common court we know that if the accused appeals, he is also allowed bail, and while there is an appeal there is no form of punishment. Therefore, in cases like this it seems rather unnecessary that the accused should have to pay the fine while he is appealing. And I hope that the hon. Minister will consider the amendment.

Shri T. T. Krishnamachari: Is the hon. lady Member suggesting the deletion of the two provisos to sub-clause (2)?

Shrimati Gayatri Devi: That is right.

Shri T. T. Krishnamachari: Surely, Sir, I cannot refuse what the hon. lady Member wants; I will certainly accept the deletion of the two provisos.

Shri C. K. Bhattacharyya (Raiganj): Sir, the hon. the Finance Minister is discriminating between Member and Members!

श्री चांडक : मेरा अमेंडमेंट जो नं० २० है, मैं समझता हूँ उस को माननीय मंत्री महोदय स्वीकार कर लेंगे, इसलिये कि सारे ऐक्ट का निचोड़ कि गोल्ड पालिसी और कंट्रोल के संचालन के लिये एडमिनिस्ट्रेटर को अमर्यादित अधिकार दिये जा रहे हैं इस सुधार से उन में थोड़ा सा चेक आता है। लोगों को इस से आश्वासन मिलेगा कि एडमिनिस्ट्रेटर के फैसले के बाद भी वे न्याय की मांग कर सकते हैं। मैं समझता हूँ कि यह एक छोटा सा अमेंडमेंट है और इसे मान लिया जाना चाहिये

[श्री चांडक]

क्योंकि एक ऐडमिनिस्ट्रेटर को जनतंत्र में इतने अमर्यादित अधिकार देना आवश्यक और उचित नहीं है। उन पर जरूर कुछ चेक हाना चाहिये। मेरे अमेंडमेंट से लोगों को आश्वासन मिलेगा। आखिर हमारे ऐडमिनिस्ट्रेटर भले आदमी हैं और अच्छी बात करेंगे, इस में कोई सन्देह नहीं, लेकिन हैं तो वे मनुष्य ही, और मनुष्य गलती कर सकते हैं। इसलिये इतने अमर्यादित अधिकार देना जिस तरह कोई बन्धन न रहे और उसे फाइनल समझा जाये यह उचित नहीं होगा। इसलिये मेरा निवेदन है कि मेरे अमेंडमेंट को स्वीकार कर लेना चाहिये।

Shri N. C. Chatterjee: I want to support the amendment of Mr. Nambiar. What I wish to submit is this. An appeal to the Administrator is against the cardinal principles of justice. After all, the Administrator is an executive officer. He is there as the head of the prosecuting machinery. Therefore, to combine the role of the chief prosecutor and judge and make him the appellate authority is against the cardinal rule of law. It is not consistent with the principles of administration of justice. You should not try to combine the two offices into one. If you are really convinced that there should be an appellate authority, make it a genuine, *bona fide* appellate authority and do not make it a limb of the prosecuting machinery. And combining the functions of the prosecutor and judge is really repulsive to all juridical process.

We have consciously guaranteed to our citizens that we shall give them justice. And I submit it is not justice to have this kind of provision. Established principles governing the dispensation of justice should also be adhered to. There is no difficulty in having an appellate tribunal consisting of people who have nothing to do with the prosecution, who have nothing to do with the execution of this.

When we were struggling under a slavish regime, it was an annual feature of the deliberations of the Indian National Congress to pass a resolution that there should be no combination of the executive and the judiciary. You know, Sir, this has resulted in gross miscarriage of justice in Punjab and other States where scandalous things have taken place. It is therefore vital that there should be separation of the functions of the judiciary and the executive, especially when you are giving such wide and sweeping powers for confiscating property, for seizure and for interfering with people's liberty and avocation of life.

I am, therefore, submitting that it is essential in the interests of justice that if we want to give them an honest appellate tribunal, we must make it a real adjudicating machinery and not merely pick out the head of the prosecuting agency or machinery or the investigating machinery and make him the appellate authority under this enactment.

Shri N. Dandekar: I wish to speak and support both the amendment proposed by my hon. friend Shri Nambiar and of amendment No. 99 which I have proposed. The two really in many ways go together.

15.41 hrs.

[SHRI SONAVANE in the Chair]

The only point that I would like to add the argument of my hon. friend is this.

At page 28, line 40 reads thus:

"...and shall not be called in question in any court."

My amendment seeks to omit these words. The amendment of Shri Nambiar about having a tribunal instead of a departmental adjudicating agency and the one which I have suggested are somewhat interconnected, and, therefore, I would like to add a word in support of Shri Nambiar's amendment.

I remember that when the Estate Bill came in 1953, I happened to have the privilege of giving evidence before the Joint Committee on that Bill and I said then—because there was a similar provision there that the Central Board of Revenue would have the powers both of directing operations of the Estate Duty Department as well as of hearing appeals—that this was rather like an appeal from Philip drunk to Philip sober, and this is very much the same way, here I am glad to be able to say that subsequently, I think, in 1958, the Estate Duty Act was amended, and the appellate powers of the Central Board of Revenue on Estate Duty were taken away and given, I think, to some appellate tribunal; I am not sure what particular authority it is called now. I would like to say only so much in support of the suggestion that, instead of the Administrator, there should be an appellate tribunal for dealing with appeals.

My own amendment is concerned with omitting the following words namely:

"And shall not be called in question in any court".

at page 28 in line 40. I think that having regard to the arguments that have just been advanced, this is the minimum that ought to be accepted in the interests of justice. We have been talking all the time about the progress made in the States in the matter of separation of judiciary from the executive, but, of late, I have been seeing legislation here in which we are really taking decisive steps in the opposite direction, where not only are we combining the executive and the judiciary, as is the case here, by the administrator being made the appellate authority, but we are also in effect saying that we do not trust our courts any more, and so there should be no appeal from the administrator to a court of law.....

Mr. Chairman: I think that such general remarks against the court are not justified.

Shri N. Dandekar: I am saying that it is the other way about. I am not saying so. I am saying that Government seem to have no confidence in the courts; I personally have implicit confidence in them. That is why I am attempting to remove the words 'shall not be called in question in any court'. In other words, I am submitting that the Administrator's decision should be capable of being called in question, if anybody wants to call it in question, and it should be capable of being called in question in a court of law.

श्री बाबूजी : सभापति महोदय. इन संशोधनों से मेरा नाम भी सम्बन्धित है इसलिए मैं कहना चाहता हूँ कि प्रशासक को बहुत अधिक अधिक अधिकार देना अच्छा नहीं है। यूँ तो जहाँ पर भी ऐसी वस्तुएँ हैं और विशेष कर सोना, जहाँ पर आकर्षण है, एक लालच है, वहाँ पर उससे सम्बन्धित जो एक्साइज और कस्टम विभाग है उनके अफसरों को बहुत अधिकार देना आवश्यक नहीं है।

मैं यह मानता हूँ और मेरी यह धारणा है कि कस्टम और एक्साइज के विभाग में भ्रष्टाचार है, अधिकारियों में विशेष कर है। इस तरीके की शिकायतें भी आती हैं कि जो तलाशियाँ ली जाती हैं और जिस तरीके की चीजें निकलती हैं वह लिस्ट में वैसे न दिखा कर बहुत सी गायब भी हो जाती हैं, चाहे वह सोना हो, घड़ियाँ हों और अन्य कीमती रत्नादि हों। इसलिए मैं चाहूँगा कि उधर विशेष ध्यान दिया जाय। निश्चय ही यह एक बड़ा गम्भीर प्रश्न है। एक ही अधिकारी दोनों कामों को करने के लिए, कार्यपालिका और न्यायपालिका का, वह एक अच्छी और स्वस्थ बात नहीं है। इसलिए जैसे कि यह विचार चल रहा है देश में कि कार्यपालिका और न्यायपालिका में अन्तर होना चाहिए, कोई तारतम्य नहीं होना चाहिए और उन को अलग अलग होना चाहिए, वही बात यहाँ भी व्यवहार में बरती जानी चाहिए। इसीलिए मैं चाहता हूँ कि पेज 27 पर जहाँ पर कि ऐडमिनिस्ट्रेटर का शब्द लिखा

[श्री वात्सीकी]

हुआ है मैं चाहता हूँ कि ऐडमिनिस्ट्रेटर के स्थान पर ऐपेलेंट ट्रिब्यूनल यह शब्द जोड़ देना चाहिए।

My amendment reads thus:

Page 27, line 14, for 'Administrator' substitute—

"Appellate Tribunal to be constituted for the particular area by the Central Government consisting of three members, one of whom, to be designated as the chairman, shall be a person who has held the post of a Judge or an Additional Judge in any High Court of India".

जाहिर है कि जहाँ पर जज का शब्द आता है वहाँ पर कुछ न्यायसंगत बात भी आती है। इसलिए यह आवश्यक ही है कि ऐडमिनिस्ट्रेटर के फैसले के विरुद्ध अपील की जानी चाहिए। यह मानना ही चाहिए कि जब अपील का यह अधिकार इसमें दिया जा रहा है तो इस तरह की अपीलों बहुत चलेगी और अगर उनकी सुनवाई साधारण तौर पर होगी तो न्याय मिलने में बहुत ज्यादा देर लगेगी। इसलिए इस काम के लिए ऐपेलेंट ट्रिब्यूनल बनाया ही जाना चाहिए।

मैं अधिक कुछ निवेदन नहीं करना चाहता हूँ। ऐडमिनिस्ट्रेटर के अधिकारों को सीमित किया जाय। उन को नियंत्रित किया जाय और मैं चाहूँगा कि इसके लिए जब आप नियम और रूल आदि बनायें तो उन नियमों में इस का विशेष तौर पर ध्यान रख कर बनाइयेगा। ऐडमिनिस्ट्रेटर के अधिकार सीमित रहे क्योंकि यह बात जरूर है कि जब यह मामला सारा ही साने का है तो उस के लिए एक आकर्षण होता है, लालच होता है और उस कारण अन्दरखाने बहुत सी बातें और अवांछनीय बातें चल सकती हैं। विशेष कर जब हम भ्रष्टाचार को दूर करने की बात कर रहे हैं तो यह बात जरूर है कि जो बहुत से

अधिकारी उधर लगेगे वह उस भ्रष्टाचार में फसंगे। मैं इस बात को मानता हूँ कि जो इस तरह का विचार चल रहा है कि इन तलाशियों आदि में भी जो सब इंस्पेक्टर पुलिस के या ऐक्साइज के सब इंस्पेक्टरों को अगर ज्यादा अधिकार दिया जाएगा तो उधर ज्यादा गड़बड़ होने की सम्भावना है। इसलिए उधर आपको ध्यान देना आवश्यक है। इसीलिए यह अपील का अधिकार देना ठीक ही है और इस तरह का ऐपेलेंट ट्रिब्यूनल लायम किया जाना चाहिए। समरी ट्राइल का इस विधेयक में समावेश नहीं होना चाहिए।

Shri Narendra Singh Mahida: Since my amendments to this clause, namely amendments Nos. 157 and 137 to 143 are barred, I would like to speak in support of Shri Nambiar and Shri N. C. Chatterjee. I have already stated, that Government should not sit both as the police and as the judge. Even a murderer has got the right to go in appeal to various courts. This kind of absolute power which is sought to be given under this Bill is not good in the hands of Government. Even a convict has all the chances of getting a fair trial from different judges and from not merely one authority. Therefore, I plead that the provision for such appeal should be there.

Dr. M. S. Aney: I support the amendment which has been suggested.

Recently we have been finding that there is a tendency growing among all non-judicial departments to keep their doings or performances away from the supervision of the judiciary. I thought that the hon. Finance Minister would try to rise above that tendency. But I find that the provision here is only the result of that tendency and it has been allowed to remain. In many other Acts also recently we have found that the matter should not be open to a decision by the courts at all. Since powers have been given to the lower officers for confiscation seizure etc., the matter

has to be adjudicated, and, therefore, it is certainly necessary that the adjudication should come from an officer who is entirely unconnected with that department. For that purpose, a man with a legal training, and a person capable of being appointed as a High Court Judge is necessary. Then alone justice can be done to the people, and the people will be satisfied that the decision that is given is just.

Shrimati Yashoda Reddy: I would also like to appeal to the hon. Minister to accept this amendment, because when the prosecutor and the judge are the same person, there may be a feeling, however good that person may be, that justice is not being done. Even in those cases where the department is the ultimate authority, we have been pleading with Government that the courts should come in and justice should be done. Therefore, I support the amendment of Shri Nambiar and I feel that Government would do well by accepting it, because I feel that it is necessary in the interests of justice. Of course, I do know that there may be some delay on account of this, but we cannot dispense with justice just to avoid delay.

Even in those cases where the officers are punished as a result of any departmental inquiry, we have often demanded from this House that the ultimate authority should not be the department itself but it should be a judge or somebody from the judiciary or somebody different from the agency that prosecutes the officer. Here the customs authorities and the Administrator are not only the prosecuting authority; the Administrator is the final authority because he hears the appeal also. I request the hon. Minister to accept this amendment to dispel the feeling that justice is denied to the people.

Shri T. T. Krishnaamachari: Mr. Chairman, the position is that it is not always that the Administrator is the man who does the investigation. In fact in regard to customs and other

similar Acts like the Foreign Exchange Act, etc. the adjudicator is not the person who is actually investigating the case. This follows the pattern of the customs law, Foreign Exchange Act and so on. I could recognise what my esteemed friend, Mr. Chatterjee mentioned—that there should perhaps be some kind of administrative tribunal set up. I suggest that it is a matter to be taken up. So far as I am concerned, purely as an individual—not as a Minister—a system of administrative tribunal set up perhaps with some kind of supervisory powers by the judiciary is a thing which I would welcome. But I cannot go and accept an amendment which is contrary to the present practice existing at the moment. I should like to assure the House that the investigator is not a person who is going to be the adjudicator. A pattern has to be set in regard to the whole picture: it cannot be done by this particular measure. I would certainly say, so far as I am concerned, as a single man, my support would be for any such move of setting up administrative tribunals under proper judicial supervision.

Shri Nambiar: Then my amendment is there; it can be accepted.

Shri T. T. Krishnamachari: It is a matter which has been discussed in the Select Committee; it is not something new which we have not discussed. The pattern that is now being observed has been incorporated here. It will be difficult for me to just accept an *ad hoc* amendment of providing a whole gamut of administrative tribunals, creation of them, appointment of them, vesting powers in them, question of supervision of them—all in the shape of this amendment.

So far as this question is concerned, whether they are the final authorities—they are not. My hon. friend Mr. Chatterjee will bear me out, The Supreme Court is also there. It is only in regard to subordinate judiciary that you may take away the jurisdiction. The jurisdiction of the High Court and the Supreme Court is a

[Shri T. T. Krishnamachari]

thing which cannot be questioned because they are there as part of our Constitution. 226 is there; we cannot take it away. The amendment that I would accept is the one which is proposed by the hon. Member from Jaipur, namely, deletion of two provisos to sub clause (2). Otherwise, I am not in a position to accept any other amendments.

Shri K. N. Tiwary (Bagaha): May I put a question? Has the Minister got the feeling of the House so far as the question of appeal is concerned, about the tribunal? Will he please do the needful in the matter?

Shri T. T. Krishnamachari: It is a question of constitution of the tribunal. It has been discussed. It cannot be brought into force at this stage by means of an amendment. It has got to be as a whole, for customs, for foreign exchange and for gold and everything. If such a thing is constituted, then all the Acts will come under it (*Interruptions.*) As I said before, Sir, it applies only to subordinate courts; it does not apply to the Supreme Court or the High Court.

Shri Sinhasan Singh (Gorakhpur): The Customs Act, the Income-tax Act and all the revenue Acts are there; the purpose of the Government is to get revenue.

Shri T. T. Krishnamachari: This is not a revenue Act.

Shri Sinhasan Singh: So, the process of objection, etc. is gone through. Now, let us take an instance; some offence is committed. The Administrator will ask any gazetted officer to go into the facts, whether the concerned has contravened the provisions of the Act. If the officer confirms the findings, he will order for the confiscation. Thereafter an appeal would lie to the Administrator. My submission is that the confiscation order is

carried out under the orders of the Administrator himself. He appoints the officer for doing something; then he appoints a subordinate to go into the enquiry and if an appeal is filed on the findings from that enquiry, he is the appellate authority also; instead of going against the findings of that enquiry, he would like to support it and convict him and confirm the order. In such a case, if the judiciary is there, if an order is there and an offence is committed and the man is fined, there will be an independent authority to review the whole matter. Then man who fines, that very officer who convicts should not decide for the appeal also. You have accepted this theory in principle. What is the harm in finding a way out and saying that in such a case the appeal could go to the District Court or the High Court.

Shri Nambiar: We are prepared to amend our amendment any way he wants.

Mr. Chairman: I think the hon. Minister is not prepared to accept the amendment.

Shri Narendra Singh Mahida: No, no. Let him amend it in a suitable way. It says here that it shall be final.

Shri T. T. Krishnamachari: They are only subordinate courts.

Shri Narendra Singh Mahida: Why not say so in the Bill itself?

Mr. Chairman: I shall put the clause to the vote now.

Shri N. Dandekar: On a point of clarification, Sir. Am I to understand that appeals on questions of law will lie to the High Court just as in the income-tax law.

Shri T. T. Krishnamachari: Question of law—we need not prevent them.

Shri N. Dandeker: There is very specific provision there. I imagine that the same is necessary here. Otherwise all that is left is writ powers of the High Court and not the powers of appeal. (*Interruptions.*) With great respect, as the matter now stands, it can only go to the High Court under article 226, not as a matter of right on a question of law as in the case of Income-tax, Wealth-tax and the other tax laws.

Shri T. T. Krishnamachari: But has he any amendment? What is the amendment on which he is speaking?

Shri N. Dandeker: Amendment No. 99, where I suggest that the words 'shall not be called in question' should be deleted.

Shri T. T. Krishnamachari: The point is that if he really wants to make a distinction between the question of fact and the question of law, there is no amendment before the House. Amendment No. 99 only wants the deletion of the clause. That includes the question of fact also. The normal writ procedure is there. Hon. Member mentions that in income-tax matters questions of fact cannot go but questions of law can. There is no amendment here to distinguish between the question of fact and question of law? I will ask; I will probably be able to move an amendment myself.

16 hrs.

Mr. Chairman: Does Shri Chandak press his amendment?

Shri Chandak: I press.

Shri T. T. Krishnamachari: I would like to have the assistance of the hon. Member, Shri N. C. Chatterjee. I would like to know whether it will be all right if I move an amendment saying that it shall not be called in question in any court except on a question of law.

Shri N. C. Chatterjee: I think that is acceptable.

Shri T. T. Krishnamachari: Would the hon. Member say that that is correct—"except on a question of law"?

Shri N. C. Chatterjee: Yes.

Mr. Chairman: I will come to his amendment in a minute.

Shri T. T. Krishnamachari: I want to make it quite clear that the Government accepts two amendments: one is the deletion of the two provisos to sub-clause (2) and the other is the addition of the words "except on a question of law."

Mr. Chairman: I will first put amendment No. 61 to the vote. That is acceptable to the Government.

The question is:

Page 27,—

Omit lines 21 to 29. (61).

The motion was adopted.

Mr. Chairman: Now, amendment No. 99, as amended, will read thus: The hon. Minister.

Shri T. T. Krishnamachari: I beg to move:

Page 28, line 40, *after* "and shall not be called in question in any court" insert,

"except on a question of law".

Mr. Chairman: The question is:

Page 28, line 40, *after* "and shall not be called in question in any court" insert, "except on a question of law".

The motion was adopted.

Mr. Chairman: I shall now put the other amendments to vote.

Amendments Nos. 59, 60, 62, 63, 64 and 20 were put and negatived.

Mr. Chairman: The question is:

"That Clause 30 as amended stand part of the Bill".

The motion was adopted.

Clause 30, as amended, was added to the Bill.

Clause 31— (Penalties)

Shri Nambiar: I beg to move:

(i) Page 30, line 4,—

omit "Certified". (65)

(ii) Page 30,—

omit lines 18 to 20 (66)

(iii) Page 30,—

omit lines 33 to 35. (67).

Shri N. Dandekar: My amendments are Nos. 100 and 101.

Mr. Chairman: 100 is the same as 66 and 101 is the same as 67. So, they are barred.

Shri Nambiar: My amendments are to clause 31, which deals with penalties.

Shri T. T. Krishnamachari: If it would help the hon. Member, I am prepared to accept the deletion of sub-clause (4) at page 30, amendment No. 67.

Shri Nambiar: I am very glad. I begin my remarks with thanks to the hon. Minister for this kind mercy. I must congratulate him, but even with the congratulations, we are now entering the jails. This is a clause for penalties and so we enter the jail with good news.

Mr. Chairman: Going to jails is frequent.

Shri Nambiar: Frequent for me particularly. He has accepted amendment No. 67, which means the proviso goes.

Shri T. T. Krishnamachari: Sub-clause (4) goes.

Shri Nambiar: Then it is not 66 but 67.

Shri T. T. Krishnamachari: The amendment is No. 67.

Shri Nambiar: Summary trial has gone. We shall go into the jails without summary trial, but by the normal trial. Anyhow we have to enter into the jail.

Shri T. T. Krishnamachari: Amendment No. 67,—sub-clause (4).

Shri Nambiar: The person enters the jail without a summary trial but with normal trial. That is what he has conceded. What about amendment No. 66 which relates to the proviso to sub-clause (2) which also should go? The point is this; sub-clause (xi) of clause 31(2) at page 30 reads as follows:

"makes or counterfeits any stamp intending that the same shall be used for the purpose of stamping any primary gold...." etc. and then—

"shall be punishable with imprisonment for a term which may extend to two years and also with fine."

Then there comes the proviso:

"Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than six months."

That is why I said we enter the jail. Here the minimum punishment seems to be not less than six months. And the court is to be directed that even if they want to give lesser punishment, they cannot give it. They can give only six months or fine. That is my objection.

Shri T. T. Krishnamachari: For reasons to be recorded.

Shri Nambiar: Yes, but can the poor judge say? He can say: I am feeling that this is a case in which

the punishment must be three months imprisonment, but unfortunately my hands are tied by this measure and I have to award six months." So, the person has to stay in the jail for three more months under the head of the hon. Minister! What can a poor judge do? Therefore, my submission is this. Our intention is not to utilise these powers to harass the people. Let us not bring in this provision. This proviso must be deleted, just as the House has been informed of the deletion of sub-clause (4) about summary trial. If the judge feels that he has to be convicted for less than six months, let the poor judge do what he likes to do according to his conscience. Let us not tie his hands. Therefore, without much more explanation, I think the hon. Minister, ably assisted by the Deputy Minister of Law who is there nicely nodding his head and supporting my amendment, would accept this amendment.

Shri N. Dandekar: I sought to move my amendments to the same effect which have been barred. I urge that this proviso mandatorily to impose this punishment of six month's imprisonment should be deleted. I have been saying in connection with several Bills that have been brought before this House during this session that the Government are getting into the extraordinary habit of mistrusting the judiciary to impose "judicial sentences" with the result that what they wish to have is mandatory imprisonment for six months, both for grave and trifling offences, as in this case. The offences concerned range from trifling to extraordinary and serious offences. But instead of leaving it to the judge or the magistrate to decide what shall be the term of imprisonment he should award, he has now to award, if the person is guilty, six months imprisonment without recording any reasons. But if he wishes to award anything less, he has got to make special pleadings for he accused. I cannot imagine a judge being put in such a situation, under which whatever his conscience may say, he has got to correct himself into a pleader

for the accused and put down special and adequate reasons for awarding less than six months' imprisonment. His reason may be special, but not adequate it may be adequate but not special. But under this clause, it has to be both special and adequate. The poor judge or magistrate has got to be in the position of having to record reasons even if his conscience tells him that a smaller sentence would be adequate. He has got to act as a pleader for the accused and record reasons not merely special reasons, not merely adequate reasons, but reasons both special and adequate to award a lesser sentence. I think the Finance Minister has been so good this afternoon in accepting a whole range of reasonable amendments that I am tempted to say: Let us have a quick answer from him that he accepts these amendments also.

Shri T. T. Krishnamachari: All right Sir; I have been asked to be quick. I accept amendments 66 and 67. We are also getting a little tired. Let us get through the Bill.

Shri Hari Vishnu Kamath: This is indeed a golden opportunity!

Mr. Chairman: I shall now put amendments Nos. 66 and 67.

The question is:

Page 30, omit lines 18 to 20. (66)

The motion was adopted.

Mr. Chairman: The question is:

Page 30, omit lines 33 to 65. (67)

The motion was adopted.

Shri Nambiar: I withdraw amendment No. 65.

Mr. Chairman: Has the hon. Member the leave of the House to withdraw?

Some hon. Members: Yes.

Amendment No. 65 was, by leave, withdrawn.

Mr. Chairman: The question is:

"That clause 31, as amended, stand part of the Bill".

The motion was adopted.

Clause 31, as amended, was added to the Bill.

Clause 32 was added to the Bill.

Clause 33 (*Limitations of prosecutions*)

Shri Nambiar: I move my amendments Nos. 68 and 69.

Shri Narendra Singh Mahida: What about my amendments Nos. 147 and 148? Are they barred?

Mr. Chairman: Yes.

Shri Nambiar: I beg to move:

(i) Page 31, line 17, for "consent" substitute—

"sanction in writing" (68).

(ii) Page 31, line 19, add at the end—

"by notification in the Official Gazette". (69).

I hope in the spirit in which the hon. Minister has accepted the earlier amendments, he will accept these amendments also. The clause says:

"No prosecution for any offence punishable under this Act shall be instituted against any person except by, or with the consent of, the Administrator...."

I want that instead of "consent", it should be "sanction in writing."

Shri T. T. Krishnamachari: It has to be in writing. Nobody can give an oral sanction.

Shri Nambiar: Then, my second amendment is for adding the words "by notification in the Official Gazette" at the end, because otherwise certain action will be taken prior to this and when they are found, they will regularise it by the administrative orders. We want that it should be publicised in the Gazette, so that afterwards they cannot manipulate the records.

Shri T. T. Krishnamachari: It is purely technical drafting. I do not think it is proper to accept this amendment.

Mr. Chairman: Shall I put his amendments to the House?

Shri Nambiar: Amendment No. 68, I withdraw.

Mr. Chairman: Has he the leave of the House to withdraw it?

Some hon. Members: Yes.

Amendment No. 68 was, by leave, withdrawn.

Mr. Chairman: I shall put Amendment No. 69 to the House.

Amendment No. 69 was put and negatived.

Mr. Chairman: The question is:

"That clause 33 stand part of the Bill".

The motion was adopted.

Clause 33 was added to the Bill.

Clause 34 to 43, Clause 1, the Enacting Formula and the Title were added to the Bill.

Shri T. T. Krishnamachari: I beg to move:

"That the Bill, as amended, be passed."

Mr. Chairman: Motion moved:

"That the Bill, as amended, be passed."

Shri Ranga: I am afraid as in many other cases, an evil star is presiding over this country in this case also. From the very beginning, ever since this evil order was placed before the country, from every corner, from every political and social group, protests arose spontaneously, all over India. In spite of the efforts made by the then Finance Minister to underestimate their numbers, more than 5 million goldsmiths raised their voice

in horror and said that their whole traditional profession was being jeopardised by the gold control order.

For a time the country was under the impression that once the earlier Finance Minister made way and the new Minister was coming in, better counsels would prevail with the Government and Government would be wise enough to drop the much-hated gold control order. But unfortunately it has only come back in another shape. I cannot congratulate the Government nor can I adequately sympathise with the country for the plight which now faces the country, the people, the goldsmiths, the dealers, the shroffs and others who have been interested in the trade and industry of gold. More than that, it is wrong to think that ordinary people are not interested in it. Many people have already told us how even the poorest of the poor among the Hindus have got to go in for gold so far as the *mangal sutra* is concerned. Our people are not in the habit of having *mangala-sutra* in nickel or something like that. Therefore, those people are also affected by this. Then, for ages our people have been investing their wealth, however small it may be individually, in gold. All that has now more or less become demonetized, so much so they are not really able to carry on the usual transactions that they were carrying on on the basis of their possession of gold.

Why is it that the Government wanted to bring this forward? There was first the Ordinance and then this Bill. They said that it was for preventing gold smuggling. They have been obliged to confess that gold smuggling has not been stopped and it cannot be stopped for some time to come. At the same time, the Finance Minister, only yesterday, was able to take the House into confidence and assure us that within the not distant future, if only sufficient number of frigates of speed can come to be possessed and operated on our seas it should be possible to prevent not less than 70 per cent, and quite possibly very much more than that, of the smuggling.

and to that extent this Bill would not be necessary, all these coercive powers that the Government is now taking would not be necessary at all. Therefore, gold smuggling has not been stopped. The primary purpose has been frustrated. There are other ways of preventing gold smuggling. It could have been stopped and it could be stopped even now. Therefore, there is no need at all for the Government to have resorted to this Bill, to have forced this Bill down the throat of our people and this House.

What are the powers that they want to take? Whom are they going to affect? It is going to affect, as I told you, the ordinary people who possess gold. It is going to affect our women folk who have some jewels. These are the people who are going to be troubled in their mind as to whether what they possess comes within the mischief of this Bill or not. They have got to consult various people. They may consult the right people or they may consult the wrong people also. It is very well known that in very many of our villages when jewels are lent to some other people for marriage purposes and they are returned later on it is not the real gold jewels that are returned but false jewels. Therefore, they may be given wrong advice by others. In that way millions of our people are likely to be troubled.

Then there are the self-employed goldsmiths. My hon. friend wanted to assure us that the self-employed goldsmiths are sought to be protected by this Bill. Anyone who goes through the provisions of this Bill carefully, even the provisions as they are amended, would be able to see that the goldsmiths would be placed at the tender mercy of the local police, the local officers and various other people who have been given authority over these poor people. Therefore, these self-employed people who have been independently carrying on this profession or trade in spite of the mischief or failure not only of this Government but also several governments in the

[Shri Ranga]

past will now be placed under the evil eyes of the police and various other officers.

So, Sir, on their behalf I protest against this Bill. We protest also on behalf of all other people who have been engaged in this profession, in this trade and in this commerce of gold. Finally, I wish to say that though the hon. Minister has been good enough to accept a few small amendments today in order to make the face of this Bill look a little less ugly than what it is, the Bill as such would be a desecration on our statute-book. It ought not to be placed on it at all, and I am extremely unhappy that this Government has made our Parliament to go through this Bill in this manner.

Some hon. Members rose—

Mr. Chairman: I have to put this Bill to the vote of the House at 4.60. I will allow two minutes to Shrimati Lakshmikanthamma if she can confine her remarks to that time.

Shrimati Lakshmi Kanthamma (Khammam): Mr. Chairman, Sir, it is not an evil day as Shri Ranga thinks, but it is a good day for the country, especially for the women of this country. There was a time when men were also wearing ear-rings, necklaces and things like that. Now we do not see any of them wearing these jewels. Today the women in this country want education, knowledge and participation in the progress and development of this country. Sir, this measure is not, as some hon. Members think, because of the Chinese invasion or something like that. Even when the previous Finance Minister was there, in the consultative committees for years together people were asking him what steps he had taken to stop smuggling of gold. According to the International Monetary Fund's Report, smuggling has stopped to some extent, the demand for gold has fallen and the price has been controlled. The Minister has been very considerate in the

Joint Committee. Even now he has accepted several of the amendments. Sir, the Minister needs congratulations and I wish him all success in the correct implementation of this Act.

Shri H. N. Mukerjee: Sir, my grouse against the Finance Minister is of a very different character from that which was expressed by my hon. friend Professor Ranga. If the Finance Minister was really and truly pursuing a programme of socio-economic reformation and in that process had brought in this piece of legislation it would have been a very different picture. But, as a matter of fact, what has happened is that the Government has failed to tackle the problems thrown up by this yellow metal against which Shakespeare had inveighed so eloquently so long ago, and Government has not been able to punish those people who by their pranks practised every kind of deceit, smuggling and all that kind of thing, and have tried to make scapegoats of the poor goldsmiths. I do not, of course, say that there are as many as five million goldsmiths who have been in trouble. If our country had five million goldsmiths who live by selling gold ornaments we would have been a great deal richer than we are. As a matter of fact, there are so many goldsmiths, their number is so very large and they have suffered so much that even suicides have taken place. There have been so much feeling in the country that the Government should have taken the matter a great deal more into consideration.

The Finance Minister, of course, has had the grace, handsome but late, to acknowledge some of the defects in his legislation and accept some of the amendments offered. But he could have gone a great deal further. I would like to know what he is doing about the basic job? Why does not he get hold of the gold hoards? Why is he leaving the export and import trade in the hands of the paladins of free enterprise, which means gold

smuggling could go on and the problems of gold would never be solved?

In regard to what Shrimati Lakshmi-kanthamma said, I think, while it is a good thing that women are coming forward to support socio-economic reforms it would be rather a sordid day when our women, either voluntarily or involuntarily, have to go about without the kind of decoration which ornaments provide (*Interruptions*). I wish, Sir, for a kind of society where people would have at least that kind of comfort, that kind of standard and at least can afford a few good things which are good to see and which will add to their comfort (*Interruption*).

Shri Ranga: Sir, I want to tell my hon. friend one thing. Yesterday he was good enough to say that the goldsmiths had agreed and more or less accepted this Bill. May I remind him that in the memorandum which they made it perfectly clear that they do not accept this Bill at all.

Shri T. T. Krishnamachari: Sir, probably, we have been meeting different types of goldsmiths. I do not want at this stage of the Bill to enter into any argument. I think, by and large, whatever harsh words we might have said on both sides, all hon. Members have co-operated in getting this Bill through. I do not want to enter into any polemic argument. But one fact I would like to say is that I yield to none in this House, whether of the Opposition or the other, that any measure we are bringing forward should not affect either the people who work, the self-employed goldsmiths, or even the individuals who perhaps in the process of education might give up any large use of gold.

I quite agree with my hon. friend, Shri H. N. Mukerjee. Maybe, sometimes we probably like some dangling ears of a person of the other sex; it is something good to see, specially the way they shake up with a little shine in the ear. However harsh I might

appear to be, I do not want our women folk to be completely devoid of this element which adds to their grace. But the basic question, as he himself mentioned is this, that there are certain difficulties in our getting gold in any large quantity and smuggling takes place. The hoards are undoubtedly there, very large hoards according to the information that I possess. How soon that could be unearthed, I do not know, but the Bill, if it is passed by the other House and becomes an Act, it can only be applied against those people who are anti-social. The individual liberties should be preserved. The rules should be so made that even if there is going to be, maybe, a deviation from law, the poorman, the self-employed goldsmith should not be harassed. And it will take time. I am not saying that after two or three years we will see the millennium. It will take 7, 8 or 9 years. Then, there are other friends like Shrimati Lakshmi-kanthamma who feel that it is better to have some other amenities rather than gold.

I can only give this assurance that so long as I am in charge of this department I will impress upon the officers that this enactment should be worked without any harassment to the people. While we should watch and put down the evil, if it happens in a big way, so far as the individual is concerned, be he a goldsmith or a person owning gold, he should not feel that here is an enactment which restricts his liberty or unduly puts him in a straight jacket. I can give that assurance.

Mr. Chairman: The question is . . .

Shri M. R. Masani: Sir, on a point of order. There is another business before the House to be taken at 4:30 P.M. So, further consideration of this motion will have to be postponed till tomorrow.

Mr. Chairman: There is no point of order.

Shri M. R. Masani: It is a point of order.

Mr. Chairman: It is a matter of convenience to take up that item.....

Shri M. R. Masani: We cannot allow any deviation from procedure.....

Mr. Chairman: It is a question of convenience.

Shri Ranga: It is not a question of convenience.

Mr. Chairman: The question is . . . (Interruptions) Order, order. The question is:

"That the Bill, as amended, be passed."

Those in favour of the Bill may say "Aye".

Several Hon. Members: Aye.

Mr. Chairman: Those against it may say "No."

Some Hon. Members: No.

Mr. Chairman: The Ayes have it; the Ayes have it. The motion is adopted. Now we will take up the next item.

Shri Ranga: You cannot do this. What is this you are doing? You have to follow the procedure.

Mr. Chairman: We will now take up the next business.

Shri Ranga: You cannot go like this . . . (Interruptions).

Mr. Chairman: Order, order. Shri Shri T. N. Singh.

The Minister of Industry and Heavy Engineering in the Ministry of Industry and Supply (Shri T. N. Singh): Mr. Chairman, this question of small cars

Shri M. R. Masani: Sir, we want to divide the House on this tomorrow morning. There has to be a division tomorrow.

Mr. Chairman: Now that the Bill has been passed . . .

Shri M. R. Masani: It is not passed . . . (Interruptions).

Shri Ranga: It has not been passed. No, it will not be passed without a division. We are challenging it for a division. This is not the way of conducting the business of the House.

Mr. Chairman: The Bill has been passed. At that time, Professor Ranga could have raised the question of division . . . (Interruptions).

Shri Ranga: Let me tell you it has not been passed. We were never given an opportunity to oppose it.

Mr. Chairman: I think an experienced parliamentarian like Shri Ranga should not behave . . .

Shri Ranga: When you are in the Chair, you have got to discharge your primary responsibility. I am calling for a division . . . (Interruptions)

Mr. Chairman: It was not challenging for a division then.

Shri Ranga: No, no. We have asked for a division. You cannot do it in this fashion.

Mr. Chairman: I have already called the Minister, Shri T. N. Singh.

Shri M. R. Masani: It is utterly illegal and against the rules . . .

Shri Ranga: You have to follow the rules. You have no right to behave in this manner. We want a division. (Interruptions).

Shri M. R. Masani: We want the Speaker to give a ruling on my point of order.

Mr. Chairman: There is no point of order. Prof. Ranga raised another point of order.

Shri Ranga: I did not raise any point of order. Shri Masani raised a

point of order and I was supporting it. Sir, you cannot go ahead according to your own wishes. You have no right to do it.

Mr. Chairman: I have given my ruling.

Shri M. R. Masani: No, you have not given any ruling . . . (Interruptions).

Shri Kapur Singh: You cannot go beyond the ambit of the Rules of Procedure.

Mr. Chairman: Before putting the motion to vote, I have looked at the Opposition Benches.

Shri M. R. Masani: No, it was never put to the vote.

Mr. Chairman: Now the Minister.

Shri T. N. Singh rose—

Shri Ranga: You please sit down. You have no right to stand up now.

Mr. Chairman: It can be raised at the appropriate time.

Shri Ranga: After you have done a wrong thing, you are now saying that it should be raised at the appropriate time.

Mr. Chairman: I still say it was not challenged.

Shri M. R. Masani: I will ask for a division tomorrow morning.

Mr. Chairman: Shri Masani raised a point of order on a different ground. . . . (Interruptions).

Shri M. R. Masani: No no.

Shri Ranga: You cannot function in this way.

Shri N. Dandekar: We asked for a division, but you did not allow it. Let us request the Speaker to be here.

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Shri Kapur Singh: You are playing ducks and drakes with the Rules of Procedure (Interruptions).

Shri Ranga: You have done it in a surreptitious manner. We cannot allow this. (Interruptions).

Shri M. R. Masani: The best thing is to keep it pending till to-morrow morning and await the decision of the Speaker . . . (Interruptions).

The Minister of State in the Ministry of Home Affairs (Shri Hathi): I think sufficient heat has been generated by the point of order raised by Shri Masani. The question was, of course, put to the vote but he had raised a certain point of order .

An Hon. Member: Because the time is up, it cannot be proceeded with.

Shri Hathi: That is what I meant to say. I think the best thing would be to keep it pending. We will inform the Speaker what has transpired and then whatever decision he takes will be followed by us.

Shri M. R. Masani: Only tomorrow morning.

Mr. Chairman: Generally, whenever a decision is challenged, it is immediately granted. But this time when I was putting it to vote, I looked at the opposition benches. But they wanted to raise a point of order regarding the time. Therefore, I said it is a matter of convenience. However, taking the wishes of the House into consideration, we will hold over or defer the decision on the division.

Shri Narendra Singh Mahida: On a point of order, Sir. No vote was taken.

Mr. Chairman: I decided that no division was called for.

Shri Ranga: No vote was taken . . . (Interruptions).

Mr. Chairman: I have given my ruling.

Shri Ranga: We do not accept your ruling.

Mr. Chairman: The question of division will be decided tomorrow.

Shri Ranga: You are in the Chair and you behave in this manner.

Mr. Chairman: Do not cast aspersions on the Chair.

Shri Nambiar: We are always proud that one of our Members sits there as Chairman. When one of our Members sits there as Chairman, we always abide by his ruling because we feel that he is one of our Members who is not experienced. When you suggested that it was put to the vote, I, with my voice, said, "The Noes have it", but it was not heard. Finally, in your wisdom you have decided to postpone it for tomorrow. We thank you for the same.

Mr. Chairman: As Shri Hathi has placed before the House, the question of division will be placed before the Speaker for his decision.

Some Hon. Members: Tomorrow morning.

श्री रामसहस्रक यादव (बाराबंकी): मेरा व्यवस्था का प्रश्न है।

Mr. Chairman: Now there is no point of order. We are going to the next item.

Shri M. E. Masani: Do I understand Shri Hathi's suggestion to be that this matter will be on the agenda tomorrow carried over from today, and then the Speaker will rule whether there should be a division or not? That is what I understand and that is what we want.

Shri Ranga: We want a division. We want a record.

Shri M. E. Masani: We want the Bill on the agenda paper tomorrow. I hope it is clearly understood.

Mr. Chairman: The question of division will be placed before the Speaker.

Some Hon. Members: No, no.

Mr. Chairman: If hon. Members desire a division just now, I am prepared to have it.

Some Hon. Members: No; we cannot have it now.

Shri M. E. Masani: The time has passed. You cannot have it now. Let it be clearly understood that the Bill will be placed on the agenda tomorrow and then the Speaker will give a decision.

Mr. Chairman: It will be placed on the agenda tomorrow and the decision will be given by the Speaker.

Shri Radhela Vyas (Ujjain): Mr. Chairman, I have to make one submission. In this heat that was generated, some remarks were passed by the hon. Leader of the Swatantra Party against the Chair. I request you that those remarks should be expunged from the proceedings.

Some Hon. Members: Yes.

Shri Ranga: I agree. I withdraw. Whatever has passed between the Chair and myself, let it be treated as not having taken place.

Mr. Chairman: An experienced Member should have behaved with more discretion.

Shri Kapur Singh: Before you proceed to the next item, may I be permitted to say a word about certain observations which you were pleased to make about our conduct?

Some Hon. Members: No, no.

16:45 hrs.

DISCUSSION RE. MANUFACTURE, CONSUMPTION AND PRICE OF CARS—Contd.

Mr. Chairman: The hon. Minister.

Shri Dinen Bhattacharya (Serampore): I want to ask some questions of the Minister before he replies.