

**Shri V. P. Nayar (Quilon):** We have a discussion at 3.00 P.M.

**Mr. Speaker:** I find from the Agenda that the House will take up some other work at 3.00 p.m. So we have only about three hours. The time originally allotted for the Forward Contracts (Regulation) Amendment Bill was two hours under the impression that the hon. Minister was going to move for reference of the Bill to a Joint Committee. He now wants to proceed with the consideration of the Bill. Therefore, the hon. Members feel that more time will be required for this. Hon. Members say that they have come prepared only for the debate on this Bill thinking that the time available today will be taken up fully by this Bill. Therefore, I am afraid, the hon. Minister, Dr. Subbarayan, will have to wait for some other day. I do not want to take any hon. Member by surprise when they have come prepared to speak only on one particular motion. We will take up the Forward Contracts (Regulation) Amendment Bill.

What is the time that the House would like to have for this Bill?

**Some Hon. Members:** Five hours.

**Mr. Speaker:** We can go on only till 3.00 today.

**An Hon. Member:** It can be continued on some other day.

**Mr. Speaker:** Would you like to have the whole thing tomorrow? In that case I can accommodate the hon. Minister.

**Shri V. P. Nayar:** No, Sir. The difficulty is that the Members who want to participate in that debate are not ready because they never expected that this would come up today.

**Mr. Speaker:** I can suggest one thing. I can accommodate both. This Bill will go on till 3.00 p.m. At 3.00 p.m. we will take up the Indian Post Office (Amendment) Bill and take up the other matter at 4.00 p.m. and carry on till 8.00 p.m. I understand that the hon. Minister wants to go.

There cannot be any inflexibility about this. There are certain occasions when the hon. Ministers come and say that they have some other work. Therefore, we will take up the Indian Post Office (Amendment) Bill at 3.00 p.m. We will carry on till 4.00 with that Bill and thereafter take up the other item. The Forward Contract (Regulation) Amendment Bill cannot be finished today.

**Shri D. C. Sharma (Gurdaspur):** Sir, we have a more important meeting today after 5.00 p.m.

**Mr. Speaker:** The Indian Post Office (Amendment) Bill will be taken up at 3.00. The Forward Contracts (Regulation) Amendment Bill will go on up to 3.00 p.m. and will stand over to some other day.

—  
12.14 hrs.

#### FORWARD CONTRACTS (REGULATION) AMENDMENT BILL

**The Minister of Commerce (Shri Kanungo):** Mr. Speaker, Sir, I beg to move:

"That the Bill further to amend the Forward Contract (Regulation) Act, 1952, be taken into consideration."

Sir, the Bill was introduced in the Lok Sabha on 18th November, 1960 and has been before the House and the public for about three weeks. The regulatory powers of the Act have been found insufficient to curb these tendencies and unless deterrent punishment is provided under law, it will be difficult to keep these tendencies under check.

**Shri V. P. Nayar (Quilon):** A little louder, if you don't mind.

**Shri Kanungo:** All right.

\*Moved with the recommendation of the President.

12.15. hrs.

[MR. DEPUTY-SPEAKER in the Chair]

**Shri Kanungo:** Sir, the Bill was introduced in the Lok Sabha on 18th November, 1960 and has been before the House and the public for about three weeks. There has been lately speculative pressure in commodity markets, particularly jute and oilseeds as also jute goods, which is likely to affect the export trade by pushing up prices. It is true that due to weather conditions, the supply position is short but this situation seems to have attracted speculative elements into the trade. The regulatory powers of the Act have been found insufficient to curb these tendencies and unless deterrent punishment is provided under law, it will be difficult to keep these tendencies under check. Also, the present provisions of law do not permit the collection of information regarding transactions in non-transferable delivery contracts which are lately being used for other than legitimate purposes. It has therefore been deemed necessary to strengthen the provisions of law so that there could be more effective control and regulation in trade.

Sir, I may recall here that during the discussion in the Rajya Sabha on a short Bill for amending the Forward Contracts (Regulation) Act on the 10th September 1957 in order to provide for penalwise elections in recognised associations, stress was laid on the need to make further amendments to the Act so as to make regulation of forward contracts more effective. I had at that time promised that I would be bringing forward a further amending Bill for this purpose. The Commerce and Industry Minister had also given a similar indication in the Lok Sabha on the 31st March 1960, during the discussion on a cut motion on the working of the Forward Markets Commission. The amending Bill introduced by me on 18th November, 1960 has been drafted keeping in mind this objective.

The Statement of Objects and Reasons accompanying the Forward Contracts (Regulation) Amendment Bill 1960 and the Notes on Clauses thereto set out briefly the manner in which the provisions of the Principal Act require to be modified to make regulation of forward contracts more effective. These provisions are being put in in the light of experience of regulation of forward contracts gained by the Forward Markets Commission and the Central Government since 1953 when the principal Act was given effect to.

Before I pass on to the purpose and the content of the provisions proposed in the amending Bill, I would like to make certain preliminary observations.

The Forward Contracts (Regulation) Act was placed on the statute-book on the 26th December 1952. Under section 3 of the Act, the Forward Markets Commission, consisting of a Chairman and a Member was established on the 2nd September 1953, and an additional Member was appointed later. The functions and duties of the Commission are set out in section 4 of the Act. Principally, they are: (i) to advise the Central Government in respect of the recognition of associations; (ii) to keep forward markets under observation and to draw the attention of the Governments to the important developments relating to such markets, where the Commission thinks it necessary; (iii) to make recommendations so as to improve the organisation and working of forward markets; (iv) to undertake periodical inspection of the accounts and other records of recognised associations; and (v) to collect data regarding supply, demand and prices of commodities to which the provisions of the Act have been made applicable and to submit to the Government periodical reports on the working of recognised forward markets. In order to enable the Commission to function with a fair degree of autonomy, and to act promptly and

effectively in situations calling for remedial action, the Central Government has delegated, under Section 26 of the Act, powers to the Commission to (i) approve amendments to the rules of recognised associations (Memorandum and Articles of Association), (ii) direct rules to be made or amended, (iii) make or amend bye-laws of recognised associations; (v) call upon a recognised association to furnish proper explanation relating to its affairs, including the affairs of its members; (v) suspend the business of a recognised association.

Under Rule 7(2) of the Forward Contracts (Regulation) Rules, 1954, the power to issue directions to recognised associations has also been conferred upon the Commission. During the past seven years, the Commission has performed a difficult task in a creditable manner and though armed with the powers just mentioned, it has resorted only to a few of them and that, too, only when there was no alternative left but to use them. The Commission has discharged the functions and duties laid down in section 4 of the Act to the satisfaction of Government.

Since the Commission was set up in 1953, definite progress has been made in several directions. Recognition has been granted on the recommendation of the Forward Markets Commission to 28 associations all over the country from Amritsar in the North to Alleppey in the South and from Rajkot in the West to Calcutta in the East, covering 15 commodities and spread over 44 markets. The recognised forward markets are in respect of a fair cross section of the country's agricultural economy, viz., jute, cotton, groundnut, castorseed, cottonseed, linseed, rape and mustard-seed, groundnut oil, coconut oil, pepper, turmeric and gur. Forward trading in respect of commodities like shellac, foodgrains, etc., has been banned in the public interest. Besides regulating trading in recognised associations, the Commission has also kept other forward markets under its close

observation and drawn the attention of the Central Government to important developments wherever necessary.

It is one of the conditions of recognition of an association engaged in forward trading that its activity should be not only in the interest of the trade but also in the public interest. Government have, therefore, been assisting the recognised forward markets to fulfil their duty to the trade and in the process, guidance has been given by the Commission in matters which have a direct bearing on efficient functioning such as having proper constitution and trading bye-laws. The constitution is generally drafted with a view to obtaining a broad-based and representative character of the associations, with adequate representation and checks for interests like growers, processors, dealers, exporters, consumers and brokers. The trading bye-laws are designed to ensure that the prices of the commodities are stable as far as possible and no one section of the commercial community is able to acquire a dominant character in the day-to-day operations.

During the past seven years, what may be called a "flexible approach" has been developed with regard to the regulation of forward markets. This was natural, for the Commission had to break new ground and formulate its own policies and procedures bearing in mind the interests of the trade and the country. It was felt that the growth of a sense of responsibility in the trade to adjust its policies, not to sectional interests but to the public interest at large, would take time and, therefore, there has been on the whole very little intervention of a drastic character by the Government in the past, though occasions of major intervention have been there, for example, the closing out of the cotton and gur markets in 1956 and 1959 respectively. By and large, the policy has been to throw the primary responsibility of regulation on the Boards of Directors of the recognised associations, to correct them whenever

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they tended to be misguided and to pull them up only when they were definitely on a wrong track. Through the four directors nominated by the Central Government on the boards of recognised associations, it has been possible to pursue this policy with some success.

The scheme of the present Forward Contracts (Regulation) Act, 1952 is based on the proposition that forward trading is an essential requirement of the normal trade in commodities, and that controls may be imposed only in so far as such forward trading in any commodity results in jeopardy to the interest of a particular trade or the public interest. Hence it is that section 15 of the Act, which is the substantive provision bringing a commodity within the operation of the Act, has been applied only to certain commodities, in which recognised forward markets are functioning today. At the same time, there are even today a number of commodities in which forward trading is free, namely, in oil-cakes, art silk yarn, etc. whatever may be the interaction of such trading on the regulated commodities. In the third category may be grouped the commodities in which forward trading is actually banned under section 17 of the Act. The ban, for instance, operates in respect of all foodgrains.

Broadly speaking, regulation under the present Act is only in respect of hedge contracts, while non-transferable specific delivery contracts in respect of such commodities are permitted freely and the associations conducting them are also immune under section 18(1) of the Act. In the circumstances of today in which various interests, namely, the primary producer, the dealer, the processor, the consumer and the exporter have to make quick decisions in the light of rapidly shifting economic trends, the need for hedging facility is a self-evident proposition. Without it, it would be almost impossible for producers to market their produce within a period of weeks or months

without loss to themselves. Nor would it be possible for industry, which draws its raw material from such producers, to obtain its requirements throughout the year at economic rates.

I do not claim that our hedge markets are functioning always in the best interest of the trade or the public but the failures are ascribable to specific reasons to which I shall refer presently, but, in the present stage of development of our agricultural economy, hedge markets are an essential appurtenance of marketing.

Trading in futures is a practice which may be considered to be a rational development of what is called a market economy. In the highly developed countries of the world where market economy is still the rule, a good deal of importance is attached to this type of trading and the effects that flow therefrom for the purpose of smoothening and minimising fluctuation in prices. The principal objectives of our regulation are to prevent excessive speculation in forward markets and to introduce a measure of check on wild and unhealthy fluctuations in futures prices when they ignore the requirements in the matter of long-term stability of prices. The prices registered in forward markets are taken to be a guide to price levels and they are also taken to be a true reflection of supply and demand conditions in so far as they can be visualised at a point of time. In practice, however, it often happens that future prices are influenced by factors other than the supply and demand, such as sentiment, speculative psychology and the size of speculative operations. During periods of shortage, the prices in the forward markets are apt to be pushed up by large scale operations of speculators and result in a bullish psychology all around, with repercussions also on the spot prices, which strictly speaking, should reflect the relation between the supply and demand only. The shortage may be sometimes only relative and yet the

operations of speculators set up a chain reaction process with far-reaching effects on the economy as a whole. The forward markets sometimes tend to function as a residuary investment channel for funds which cannot be deployed with ease elsewhere.

There would be no need for a forward market to ensure against large price fluctuations in the marketing process, if a completely socialistic economy is established, in which prices at every stage in the marketing process are fixed by Government and the distribution of supplies conforms to allocations decided upon in advance by the State. Although the emphasis upon co-operative societies in the third Plan is evident and development of co-operative marketing will be given a boost, I doubt whether, in the near future, the existing set-up for marketing the principal agricultural commodities, with tier upon tier of producers, *arhati*, dealers, processors, exporters and consumers, would be replaced by a strait-jacket arrangement in which commodities change hands at every stage according to a preordained price pattern. I consider that it would be a safe and valid assumption to make that the price mechanism would continue to function as at present to a large extent for many years. And as long as fluctuations in prices occur in response to changes in supply and demand in howsoever narrow a range, there would remain some uncertainty and risk against which the buyers and sellers and the various interests would be bound to insure themselves by utilising hedge markets.

Let me take the case of cotton, to illustrate my point. Even now, as you all are aware, there are many Government restrictions limiting the movement of prices, directly through the statutory floors and ceilings and indirectly through licensing, import and export control. While these restrictions no doubt reduce the uncertainty to some extent, there is still some amount of uncertainty arising

out of the possibility of changes in such restrictions and controls. It is precisely for this reason that the existence of restrictions has not deterred the different trading interests in cotton from pressing for permission to trade in hedge contracts. In my opinion, therefore, the point when the socialisation of our economy would reach the stage when a forward market would become absolutely redundant, is still far off. In the meantime, it is incumbent on us to amend the Act in the directions which I shall explain presently.

In the situation that may arise in the wake of the measures adopted to finance the third Plan, it becomes all the more necessary to take steps to hold the price line. The functioning of forward markets will be an effective weapon in our armoury and not at all a handicap in that task. Experience shows that when prices are rising, complaints pour in attributing the price rise to the operations on the forward market and demanding its closure on that ground. When such complaints are carefully investigated, however, it is usually found that they are made by interested parties, many of whom are not manufacturers or exporters but speculators whose market operations are in jeopardy. Whether a forward market exists or not, a rise in prices is inevitable when supply is scarce and demand is very strong. It is a fallacy to imagine that the closure of the forward market would give any relief in such circumstances. On the other hand, such action may conceivably reinforce the price rise. The price of a commodity has to be viewed in the context of the prices of relative commodities and a reasonable relationship has to be maintained between the prices of agricultural commodities and those of manufactured articles.

When prices are rising steadily over a period both in the forward and spot markets, it has been the experience of Government that the existence of regulated hedge markets has imparted a measure of check with regard to the price rise in the ready sector. Forward

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prices in markets like cotton, jute and oilseeds have generally ruled below the spot prices, as a result of the measures taken by the Forward Markets Commission to control speculation in the forward market. The imposition of special margins, the fixation of ceilings, the commencement of trading in distant deliveries are steps which could be taken in the forward markets and which have actually demonstrated their value in damping down the momentum of the rise in spot prices. The same steps have also proved fruitful in times of severe price declines, for example, in 1958, when there was a large jute crop and ready prices declined precipitately, but action taken in the jute futures market by the imposition of margins on sellers had the desired effect in mitigating the extent and the severity of the fall. The functioning of forward markets, therefore, imparts a degree of stability at the later stages of a boom or of a slump. The forward markets under regulation play an important part in reducing seasonal fluctuations, which in a country like ours, where 60 per cent of the national income is derived from agriculture and agricultural prices are the key to the general level, becomes a very important consideration.

I now turn to a consideration of the measures by which recognised associations generally curb excessive speculation. The most important of these measures is the imposition of special margins. When prices are high, buyers are prevented from buying more unless they pay a special deposit. The bye-laws of the associations confer powers on the Boards to impose this special margin, while the Commission also has concurrent powers. In fact, there have been occasions when the Boards of Directors, composed as they are of different interests having a vital stake in the market, have found it difficult to take appropriate action to curb abnormal price trends. The Commission has, therefore, been compelled to impose special margins under its

own powers and from time to time effect adjustments according to the market situation. One advantage of such a procedure is the uniformity that results in the margin rates all over the country in respect of a commodity, which would not have been the case if each association was to decide on the quantum of special margin it would impose.

Special margins are imposed as a temporary check to halt the rising spiral of prices and were enforced in almost all the major commodities in which recognised markets are functioning. Although it is aimed at the big speculator, who accumulates large open positions which may result in a squeeze, the special margin system is adapted to afford relief to the small traders and to exporters. These two classes of traders are permitted free limits for trading corresponding to a certain maximum or to their export commitments. As a result of these measures of amelioration, majority of the small members of associations of forward markets have obtained relief from the payment of special margins, as also many exporters.

The other measures adopted by the Commission to curb excessive speculation are fixation of a maximum limit on the open position of a member of a recognised association, withholding permission to start trading in a new contract when short supply conditions render it difficult for a running contract to be traded upon and conditions are not likely to improve in the near future, closing out contracts under the Forward Contracts (Regulation) Act. These measures have also met with a degree of success.

The only other aspect of the functioning of the Commission which is important in the context of the amending Bill before the House is the penal action against illegal trading of various forms including trading in options. I will deal with this a little later.

The present Act has on the whole worked well and there has been nothing in our experience so far which indicates either that it was completely out of line with the needs of time or that its fundamental basis is wrong. Its essential scheme has stood the test of experience well and it has proved itself flexible enough to meet most of the requirements. The object of the amending Bill is to improve the scheme of the Act and to extend it in some directions in the light of past experience. While the various measures taken to implement the provisions of the Act have to a large extent been successful in restraining speculation and in introducing a measure of check on wild and unhealthy fluctuations in prices, both forward and spot, Government is keenly alive to the fact that certain loopholes in the existing Act have been exploited by some elements of the trading community to circumvent its provisions.

It would be obvious that if special margins are imposed and a particular trader does not disclose his real position and deposits the actual amount of money that is due from him, his mischief is not entirely stopped. Thus, it has happened in many associations where stiff special margins have been imposed that members have had resort to trading outside the association, thereby escaping the rigour of the special margins. In that process, regulation has naturally been less effective. Further, a part of the trading is generally in the guise of non-transferable specific delivery contracts, which are outside the association and are not at present regulated at all, but which really are converted into transferable specific delivery contracts and which virtually are hedge contracts in practice.

In respect of illegal trading, the present provisions of the Act do not go far enough to enable the mischievous elements to be hauled up and properly tried in a court of law.

I would now make a brief comment on some of the important provisions of the Bill which are designed to curb illegal trading. The House will observe that clause 14 of the amending Bill provides for compulsory registration of all associations, other than recognised associations, who may be conducting forward trading in commodities. There are, it is estimated, about 100 to 200 associations spread all over the country engaged in forward trading of one kind or another. In order to enable the Forward Markets Commission to keep a watch over the activities of these associations for any violation of the Forward Contracts (Regulation) Act, it is proposed to take powers to require such associations to get themselves registered with the Commission and to furnish periodically the minimum necessary data concerning their activities. The idea is that their registration will enable the Commission to have a census of all bodies conducting trading in transferable specific delivery contracts in free commodities as well as in non-transferable specific delivery contracts in regulated or banned commodities. Incidentally, it is hoped that by this means the extent to which such associations indulge in the so-called non-transferable specific delivery contracts for speculative purposes would also be known.

As the existing punishment for detected cases of illegal trading is not severe enough, clauses 17, 18 and 19 provide for the tightening of the penal provisions of the Act. Besides enhancing the amount of fine and fixing a minimum therefor, it has also now been proposed to make recurrent offences under these clauses punishable by compulsory imprisonment. Further, the burden of proof would also rest on the accused in any trial for the said offences. In such manner, it is expected that the misuse of non-transferable specific delivery contracts, trading in commodities in which forward contracts are banned and trading in options would be effectively checked.

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Under clause 6, it is proposed to vest the Commission with powers to enforce attendance of persons and examine them on oath. The Commission receives constant complaints from affected parties regarding various matters connected with the working of recognised associations, the manipulation of markets by individuals acting separately or in concert, and various types of illegal activities. It has to enquire into each of the complaints received and to take suitable action. Persons or parties concerned are usually reluctant to furnish information or are prone to furnish incorrect information. In order to enable the Commission to discharge its functions effectively, it is necessary that it should be given legal powers in the matter.

Clauses 11 and 15 are intended to enable the recognised associations to specify bye-laws, any transactions done in contravention of which would be illegal. Under the existing Act, contracts entered into in contravention of the provisions of certain bye-laws of a recognised association are void and for such contravention, the member is liable to disciplinary action only. The present provision in the Act, however, has not been found to be sufficiently deterrent when intentional contravention of the bye-laws motivated by profit consideration takes place. It is now proposed to make all contracts entered into, otherwise than in accordance with the specified bye-laws, illegal, instead of merely void as at present. This would effectively check trading beyond the official trading hours, as the association may provide that such transactions would be illegal.

An important punitive power is proposed to be taken in clause 13 under which the Commission may suspend operators whose operations are to the detriment of public interest. At present, disciplinary action can be taken against a member or broker only by the Board of Directors of the individual Exchanges in which he operates;

and the Exchanges are as a rule unwilling to exercise their powers in this regard. Most members belong to more than one Exchange and there are a few who trade in practically all the Exchanges in the country. If a check is to be put on their activities, separate action would be called for on the part of each individual Exchange which is hardly feasible in practice. Such a provision is in line with the regulation in USA.

It will be observed that the amendments contained in the Bill are mainly directed towards strengthening the existing machinery of regulation of forward contracts and making it possible for the courts to award deterrent punishment when necessary. Considering the enormous damage that could be done to the national economy by excessive speculative pressure, it will be conceded that the proposed Bill is not only necessary but has not come a day too soon. Experience in the administration of the principal Act has shown both its utility and its inadequacy in certain respects. We have, therefore, to improve upon the existing scheme and I hope that when this amending Bill is passed, the success already achieved with regard to regulation of forward trading, though it may be limited so far, would be considerably enhanced. I have no doubt that this amending Bill would in its own way contribute to price stabilisation, which is essential to the success of the Third Plan.

With these words I commend the motion for the acceptance of the House.

**Mr. Deputy-Speaker:** Motion moved:

"That the Bill further to amend the Forward Contracts (Regulation) Act, 1952, be taken into consideration."

There are some amendments. Shall we fix some time-limit for the consideration stage? Will we be able to finish it at least by 3 O'Clock today?

**Shri A. C. Guha** (Barasat): We can have three hours for the consideration stage.

**Mr. Deputy-Speaker:** It means that we should conclude by 3 O'Clock. The consideration stage should be finished today and the clause-by-clause consideration can be taken up tomorrow.

**Shri A. C. Guha:** The Minister's reply to consideration motion can be made tomorrow.

**Shri V. P. Nayar:** We require more than three hours. The three-hour limit was fixed by the Committee.

**Mr. Deputy-Speaker:** We are having five hours for this. That was decided today morning.

**Shri V. P. Nayar:** We will have one hour for clause-by-clause consideration.

**Mr. Deputy-Speaker:** Will it be sufficient?

**Shri Morarka:** I think so.

**Shri A. C. Guha:** The Minister may reply tomorrow.

**Mr. Deputy-Speaker:** So that members may have more time? I do not think the hon. Minister has any objection to that.

**Shri Kanungo:** No, Sir.

**Mr. Deputy-Speaker:** Then it is all right.

**Shri V. P. Nayar:** I beg to move:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 31st January, 1961." (12)

At the outset, I would like to assure you . . .

**Mr. Deputy-Speaker:** He may move his other amendment also so that afterwards his speech would be a continuous one.

**Shri V. P. Nayar:** If I am permitted to move my first amendment, then the second amendment is not necessary.

**Mr. Deputy-Speaker:** That is good.

**Shri V. P. Nayar:** At the outset, I would like to assure you that the object of my moving this amendment is not to indulge in any dilatory tactics at all. As you know, Sir, it has been my genuine desire, a desire which has been consistently expressed in this House from the year 1952, that the Forward Contracts (Regulation) Act should not be had. Today I am more convinced than ever that the Act should be repealed, and repealed immediately, because whatever be the amendments which we may have to this piece of legislation, the Act as such will pose certain dangers to the future economy of our country and especially the Third Five Year Plan. Therefore, I do not think any amendment to the original Act is called for, more so because the original Act itself has not had the advantage of public opinion being given for it.

As I was reading the original speech of Shri Harekrushna Mehtab, who moved the first Bill which lapsed in the provisional Parliament, I found that then also Government did not consider it desirable or necessary to send the Bill for eliciting public opinion. The Bill was first drafted by Government and it was sent to certain trade associations and, perhaps, some State Governments. Shri Mehtab categorically stated that he did not consider it necessary at all to send the Bill for eliciting public opinion. There have been amendments after that but at no stage, we find, was public opinion asked for on this Bill which, we know, has certain pernicious effects in our economy.

At the time when the original Bill was moved here, he said that the Bill was brought in largely on the report of an expert committee. I am suggesting that the expert committee did

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not consist of any interest in this country except the vested interests which operate in that business in this country. If you go through the list, you will find, of course, that Government had three representatives; one member of this hon. House, the late Shri C. C. Shah, also happened to be a member; but, apart from that, the other five members of this expert body had been representatives of big business in our country. Shri A. D. Shroff was the Chairman, and we all know who he is; then Shri R. G. Saraiya, Shri K. P. Goenka, Shri Ratilal Gandhi and Shri Maganlal Mehta were the five members. No interests other than the interest which is indulging in future trading were consulted; apart from stock exchanges, which do forward trading, no interest in the country had been consulted about this Bill at all.

This Bill has its repercussions on several sections of the society. The producers are affected and the consumers are affected, because middlemen operate in between the consumer and the producer. They indulge in several voices, creating a fluctuation in the market, to take advantage of the price, because future trading is nothing but taking profit. There will be no dispute about the fact that future trading is primarily intended to take more and more profits, and if there is no price fluctuation there is no scope for future trading also; then there is no necessity for regulating the forward markets.

Therefore, even at the first time when the Bill was introduced in 1952, we in this House were opposed to this Bill and we tried our best to see that the Bill was dropped. But that was a different context altogether. At that time our Government did not have any plan or the socialistic pattern in view. There was, of course, the First Five Year Plan but nobody had thought of the socialistic pattern of society and the Plan had no relationship to the socialistic pattern of society. But what is the position

today? Shri Mehtab expressly made it very clear why he moved this Bill and I may be permitted to read one or two sentences from his speech. He said:

"The Bill which I am now placing before the House and recommending for reference to a Select Committee has really been adopted on the basis of a report which has been submitted to the Government by that committee except for certain minor matters."

Then he goes on, and I do not have enough time to quote it, because it is a very long speech. He made it clear in the course of that speech that regulation was necessary in respect of trading in future. He also said that it is inevitable that we should have trading in future.

I ask this simple question to the hon. Minister—whom I do not find here; so I will ask his senior colleague—what is the purpose of regulating forward trading? Unless you want the prices to fluctuate—it is common knowledge that unless prices fluctuate the forward markets or future trading cannot exist—what is the object of this Bill. What is your policy now?

Every piece of legislation has its particular context and for its continuation also certain circumstances should justify it. In the case of certain enactments you will find that the circumstances do not change for a long long period. Take, for example, the Penal Code. An offence of murder remains an offence of murder; it does not change. An offence of theft always remains an offence of theft; may be, even in the case of Evidence Act it is like that. It is so even in the case of the Transfer of Property Act. Certain enactments are warranted only in special circumstances in a given context. I concede for argument's sake that in the year 1951 Government may have had sufficient justification to regulate or control the forward markets in such a way

because they were not committed to the socialistic pattern of society. But today the context is different, and it is the duty of every Legislature to see that the moment a particular Bill or its provision have got to be changed, to change them.

If a Bill becomes unnecessary in the given circumstances after having been worked out for some time, it is also the duty of the legislature to repeal it. I contend that the duty of this legislature now is to repeal the original enactment itself because circumstances today do not justify its continuance at all.

Why do I say so? I say so because it will be directly against the policy as we find from the Draft Third Five-Year Plan formulations. There is a chapter on price policy in it and on page 14 it says:

"Another important aspect of the Third Plan, to which special attention is being given at present, may also be mentioned here, namely, price policy. It is recognised that in the ordinary course the progressive step-up in investment which the Plan envisages is likely to exert an upward pressure on prices. The task of policy is to ensure that prices, especially of essential consumer goods, remain relatively stable despite this pressure."

Later on it says that this particular question is engaging the attention of a committee appointed by the Planning Commission. It is stated here:

"These problems are at present under study by a Commission of the National Development Council."

So, the Third Five-Year Plan has a very definite concept about this. The Draft says that we should hold to certain price line. I heard the hon. Minister, who was reading out his speech, mentioning something about holding the price line. I ask this question, namely, if for the Third

Five-Year Plan our very concept is that prices should not be allowed to fluctuate and must be stabilised for the success of the Third Plan, what then is the object of bringing forward this amendment in order to regularise or legalise certain illegal transactions? I again say that if the Government have in their view that by effective measures prices will be stabilised, at least of essential commodities, in the near future, there is absolutely no necessity for bringing forward any amendment. The only necessity then will be to repeal the Act because we know that if the prices are stabilised at a given level and if Government have control over stability, there is no chance for any man to operate in the forward market.

**Shri Morarka (Jhunjhunu):** What would be the effect if the Act is repealed?

**Shri V. P. Nayar:** I will come to that. It is a very pertinent question and I shall answer Shri Morarka also specifically. That is one reason why I want this to be circulated for eliciting public opinion. But he will have to wait for some time for my answer.

**Shri Naushir Bharucha (East Khandesh):** Stabilised prices do not mean fixed prices.

**Shri V. P. Nayar:** I know the distinction between stabilised prices and fixed prices, but Shri Bharucha would do well to read the whole passage about the policy of price fixation.

I was arguing that if prices get stabilised and you and I know what the prices will be, there is no question of operating on the price differential on which alone the forward market can thrive. If prices are stabilised, there is no question. Even Shri Morarka, let alone Shri Naushir Bharucha, will not say that when prices do not fluctuate and when they get stabilised, the forward market will have its heyday. Therefore I say, as Government have very clearly stated in the Draft Third Five-Year

[Shri V. P. Nayar]

Plan the price stabilisation is one of the most important objectives, that there is no need, if they were sincere in the Draft Plan, to come forward with the amendment Bill. By whatever method or by whatever amendments we may regulate the forward contracts the sharks who operate on it will somehow avoid all the provisions of law. You have only to read the annual reports. But I am not going into that.

Then the question asked by Shri Morarka also deserves attention because that is an additional point in my favour. As all of us know, the operation in the forward market amounts to gambling. It is gambling, but it is gambling done only by the richest people. In the very scheme of the Act, Shri Mahatab had made it clear, options had been forbidden only because if options were not forbidden the smaller interests would get into the trade and the volume of business would, therefore, go up. That is why options are prevented. We have every reason to prevent options, but Shri Mahatab, the then mover, had only this reason for preventing options.

We know what is gambling. The point will be that if it is not regulated, there will be uncontrolled speculation to the very serious detriment of our economy. That is not the position. Government cannot leave it at that. Government will not be helpless in that matter also because we know that there is the Public Gaming Act. There is an all-India Act also and in several States there are State enactments. Can we not fit it in there? Is it not gaming? Is it supposed to be a game of skill. I do not think any skill is required.

**Shri Warior (Trichur):** A lot of skill is required.

**Shri V. P. Nayar:** Intellectual skill perhaps. It may be a game of skill for them, but I do not consider that

it is a game of skill. Even so, why is it not possible? Let us not have this enactment. Take for example the Penal Code. Shri Morarka knows that the Penal Code does not confine itself to describing offences relating either to the person or to property. There are so many chapters in it. I do not propose to go into them. But there is a chapter describing offences of elections in the Penal Code. There is another chapter on offences relating to public tranquility. Yet another chapter on offences relating to religion. Then there is a chapter on offences relating to public health, safety, convenience, decency and morals. Can we not have one chapter like this in the Penal Code whereby we can prohibit and penalise operations on the forward market which affect the economy of our country? Is it so very difficult? Even if we do not find it possible to proceed under the Gambling Act or under the Gaming Act, it is easy for the Government to do away with trading in futures. If they want to forbid it or if they want to see that such trading in futures is not resorted to, the best method which I can suggest is to incorporate in the Penal Code itself, which has several chapters which are not related with either the person or the property, a chapter on offences relating to these commercial practices. That will be the answer to Shri Morarka. If he has any more questions to ask, I shall be glad to answer them because I think we will get some more education by them.

**Shri Morarka:** You have not answered the question at all. You say that the Act should be repealed. My question was as to how the repealing of this Act would meet with your objective.

**Shri V. P. Nayar:** I consider that if the Act is repealed and if no suitable provision is made in some other enactment then the sharks will find a very good time. They will make merry. I know that. But that is precisely

the reason why I want this to be repealed and immediately suitable provisions incorporated in a suitable Act, whether it is in the Gaming Act or in the Penal Code. Is that sufficiently clear?

Therefore I say that it is absolutely essential that this Bill should be circulated for eliciting public opinion. In 1952 when we passed the original Bill you will remember that that Bill had a very interesting history also. It so happened, if I may recall certain facts, that the most vehement critic of the Bill which Shri Mahatab had moved, to shoulder the responsibility of moving in 1952, I mean Shri T. T. Krishnamachari. From then on we have consistently been having the plea that we should not have this enactment. We are stronger in our case, today because there is the perspective of socialist planning and because the Draft Plan itself says that we have to hold to certain price lines. If in this context Government want it, we have only one thing to say and that is that we feel that Government are not sincere in what they have said in the Draft Third Five-Year Plan. Therefore I would urge with all the emphasis at my command that the Bill if Government finds it difficult to drop it, should at least be sent for eliciting public opinion because the States would also like to express their opinion once again. The States have their planning. The States specially those where producers have a powerful voice know how people who are responsible for the production are hit by the nefarious activities of those who operate in the forward market. Therefore on this point also I want this Bill to be sent for eliciting public opinion and that is why I have chosen to move this amendment.

I do not propose to go into the details of the Bill because I have had occasion in 1952 to discuss all the details of the main Bill itself. Sir, I command my motion.

13 hrs.

**Mr. Deputy-Speaker:** Motion moved:

"That the Bill be circulated for the purpose of eliciting public opinion thereon by the 31st January, 1961." (12).

Now, both the motion for consideration and this amendment for circulation are before the House. I hope hon. Members would try to conclude their speeches within 15 minutes, each.

**Shri A. C. Guha:** Mr. Deputy-Speaker, Sir, speaking immediately after Shri V. P. Nayar's contention that the whole Act should be repealed,.....

**Shri Warior:** There are my amendments to the clauses.

**Mr. Deputy-Speaker:** They would be taken up when we take the Bill clause by clause.

**Shri A. C. Guha:**....it may sound surprising to him if say that I welcome the Bill as far as it goes. It may be that the Amending Bill may not be quite adequate to meet the situation. That is another point. To say that the whole Act should be repealed, I think, is going beyond any reasonable limits. A question was put to him, what would be the remedy and what would be the result if the Act is repealed. His only reply was that suitable provision may be made in the Penal Code. That means that the Forward Contracts (Regulation) Act or certain relevant portions of it may be put in the Penal Code. I do not know how the situation would be improved by that. Initially, I oppose his amendment that the Bill should be circulated and his contention that the whole Act should be repealed.

There is an element of urgency in proceeding with this Bill. I come from Calcutta and West Bengal. I know the situation which exists in the jute market there. I think, this

[Shri A. C. Guha]

morning also, there was a question and the reply of the Minister to that question has been that the price of raw jute is still rising further. In the opening speech, the hon. Minister has stated that speculation is going on in the jute market i.e. in the trade of raw jute as also jute products. This abnormally high price of raw jute this year, which will affect our export trade considerably, is due primarily to the speculative tendencies in the raw jute trade and also in the jute products.

The Minister, in his speech, has admitted and it has also been stated in the Statement of Objects and Reasons, that the Act, as it is, has not been able to meet the situation. Excessive speculation and other malpractices have been going on. The court has often given light punishment. Trading outside official hours in associations recognised for forward trading cannot be stopped under the existing provisions of the Act. So, this Bill is necessary to remove these lacunae in the present Act.

Before proceeding to the provisions of the Amending Bill, I think it would be relevant for me to refer to how far the Commission or the Government have been able to or have been serious enough to utilise the provisions of the existint Act. Having stated that the present Act has not been able to stop the malpractices and speculative tendencies, the Minister has stated that the Commission has worked in all these seven years in a creditable manner. He has also stated that the Commission has used its authority in a very sparing manner. If the Commission or the Government are aware that these malpractices were going on, I think the House may humbly ask the Government why the Commission has not taken appropriate action under the already existing provisions of the Act.

The Annual report seems to me to be a disappointing record. In the

section on Administration, the report has stated only how many Members are in the Commission. It is only just 10 or 12 lines. I think this section on Administration should give a clear picture of how the Commission has worked. There are several punitive sections in the existing Act. I have not been able to find any particulars from the three reports that I have got with me, if the Commission has taken any action under those sections. Under sections 7, 8, 10, 12, 13 and 14, I think the Commission could have taken many actions against the offending parties. The Central Government can make or amend bye-laws or recognised associations. We have been only told that under section 26 of the Act, the Central Government has delegated its power to the Commission to make bye-laws. We do not know whether the Central Government has itself made any bye-laws for recognised associations so that the Associations may work properly. I hope the Minister, in his reply, will tell this House if they have taken any action.

Section 13 gives power to the Central Government to supersede the governing body of recognised associations. If these recognised associations have been violating the provisions of the law or indulging in malpractices, it was quite just and fitting for the Government to take certain action under sections 13 and 14 of the present Act. From the report, it has not been possible for me to find out if the Commission or the Central Government has taken any action under these sections. Similarly, there are other sections also under which the Central Government or the Commission could have taken certain action against offending associations or the members of those associations. I am afraid the report is practically silent on all these matters. I hope in future reports these things would be clearly mentioned: what action the Commission or the Central Government might have taken or may in future take as regarded offending parties. The House

is approached with the request to pass certain Bills to give certain powers to the Central Government or to certain statutory authorities. It is expected that these powers will be properly used and in the right direction. If the powers are not used, it will be somewhat unfair to this House for the Government to come for a second dose of powers either for the Government itself or for the statutory authorities set up under the Act.

Coming to the present situation, I should mostly concentrate my remarks to the jute trade. This Bill deals with a very technical matter. I can admit that I do not clearly understand the implications of all these technical terms: hedge, transferable or non-transferable forward contract, etc. But, I can understand this much that speculation in jute trade has been doing a great harm to the economy of Bengal as also to the economy of the whole of India. Last year, on several occasions, we had to come before this House for giving some price support to raw jute, and almost at the end of the season, Government announced the policy that the State Trading Corporation would for export purchase raw jute through co-operative societies. The co-operative societies were mostly non-existent then, and only a negligible quantity of raw jute was purchased by the State Trading Corporation, and the jute-growers had to pass through very bad days during last year. The result is that the acreage under jute has gone down, and jute production this year has gone down, and the speculators find it convenient to corner raw jute and start speculation again in raw jute, pushing up the price to an abnormally high level. The price this year is veering round about Rs. 50 to Rs. 60 per maund in the rural market, whereas the price last year was near about Rs. 20 per maund in the rural market. You can understand what devastating effect these serious variations in the price of a principal agricultural commodity of the eastern States of India can have on the rural economy of those States.

I am particularly anxious for this reason that immediately after Partition, it was realised that jute had almost a strategic importance, and West Bengal was asked, as also some other eastern States, to produce as much raw jute as possible. The cultivators and the Government, also did their job, but the Central Government could not give relief to the cultivators, and I should say, they betrayed the interests of the cultivators of jute.

In this connection, it should also be realised that the jute industry today stands on a separate footing from what it stood on before Independence. Before Independence the jute industry was in the hands of industrialists, but now it is in the hands of traders, who have trade in raw jute, who supply raw jute, and who are themselves the industrialists and also shippers in some cases. Thus, the same person is operating in different fields in different capacities. So, it is easier for him to indulge in malpractices and speculation. That is why the position of the jute industry in India today is in such a bad condition.

We have been earning about Rs. 115 crores every year from the export of jute products, and if this industry is properly nursed, I think the cultivators will be able to give surplus raw jute also for export. But the export of raw jute is out of question, because of such a high price nobody can take this raw jute, and I do not know how far the export of jute products also will be affected this year. Fortunately, there was some higher demand of burlap in U.S.A. during the last six months, about three or four months of which were covered by the supply of raw jute of last year, and, therefore, the price was not so high, and the export was not to much affected, but since July, I think the export has gone down considerably and it will go down considerably still, if we cannot check this abnormal rise in the price of raw jute.

In this condition, I think, this Bill, even if it may not be quite adequate

[Shri A. C. Guha]

to meet the situation has an element of urgency about it, and it should be passed as soon as possible. So, I welcome the decision that the Bill will not be referred to a Select Committee. The Select Committee might have made certain changes, but I hope Government will be amenable to make certain changes suggested by hon. Members and if that is done, then the Bill may be improved to some extent in the course of the second reading.

Coming to the provisions of the present Bill, in clause 5, certain changes have been sought to be made in section 4 of the original Act. According to the original section, the function of the Forward Markets Commission will be to make certain recommendations to the Central Government. But, now, it has been provided that the Forward Markets Commission would 'keep forward markets under observation and take such action in relation to them as it may consider necessary in exercise of the powers assigned to it by or under this Act'. This means that the commission can act by itself without any reference to the Central Government, but I feel that the Central Government should at least be informed of the circumstances under which the commission is going to take action as also of the nature of such action. The commission may not wait for the Central Government to take the appropriate action, but I think the Central Government should at least be kept informed.

As regards prosecution, I do not know how far the commission or the Central Government will depend on the State Governments concerned for prosecutions. I think there are certain obligations on the part of the Central Government to depend in such cases on the machinery of the State Government for prosecution, but I would ask the hon. Minister to explore how far the Central Government or the commission can take up prosecution itself, without depending too much on the State Governments. Even the

Central Government or the commission may not be very efficient, but surely, I would say that the Central Government is more efficient than most of the State Governments. So, I would depend more upon the machinery of the Central Government rather than that it should be left to the machinery of the State Governments.

In clause 11, by the proposed amendment, Government have sought to delete the obligation to publish certain notifications in the official gazette of the State. But I think this is not a welcome amendment. Any step which is going to be taken should be notified in the State Government's official gazette as also in the Central Government's official gazette, and it should be given wide publicity in the respective regions, so that people may know. I do not know what the idea is in deleting the publication of these notifications in the official gazette of the State in which the principal office of the recognised association is situated.

A new chapter has been put in on 'Registered Associations'. There are certain associations which have been operating, without being registered. That is a serious lacuna in the existing Act, and I am rather surprised that Government have allowed such a state of affairs for such a long time. So, I welcome this provision that all associations dealing in forward contracts should be registered and should get a certificate of registration.

There is another thing that is very much prevalent in Calcutta—doing forward contract business outside the recognised office hours and thus escaping the provisions of the Act. This Bill has also tried to put a stop to such practices. I would like to tell the Minister that if this provision is to be really effective, the Commission should have a branch office in Calcutta with one of the members of the Commission and a complement of staff, to put a stop to this bad practice in the Calcutta jute market. The

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number of members of the Commission is going to be increased. So I think it should be possible for the Minister to see that at least one of the members with a suitable staff stay in Calcutta and watch the working of the Calcutta jute market and take effective steps immediately if anything comes to notice. Here again, I would suggest that as far as possible they should proceed with the help of the Central vigilance department and the Central machinery like the Special police Establishment. Of course, I can realise that they cannot altogether dispense with the State Government's authority or intervention, but as far as possible, inquiries and investigation into serious allegations should be done by the Central Government machinery through the branch office of the Commission sitting in Calcutta.

Lastly, if all these bad practices cannot be effectively stopped, Government should see how far State trading in these agricultural commodities can be taken up. If the State Trading Corporation as such is not a suitable machinery for this, I think a Marketing Corporation can be properly mobilised to take up this task of dealing with the sale and supply of agricultural commodities. Jute, cotton and oilseeds, these are the three items on which State trading should be taken up more and more increasingly, so that the perpetrators of these evil practices may come to know that there is an alternative to which Government can resort to, and we need not depend on them altogether for all time to come. With these words, I support the Bill as far as it goes.

**Shri Naushir Bharucha:** Before we discuss a piece of legislation of the character of the Forward Contracts (Regulation) Amendment Bill, it is very necessary to examine what in essence is a forward contract. It is true that on account of certain mal-practices and abuses of forward markets, forward trading has come into

disrepute. But originally, forward trading was intended to serve a very useful, economic and social purpose.

Let us examine forward trading, what healthy forward trading really means. Assume for a moment that a dealer in cloth desires to book orders in advance. He contracts with a mill for delivery, let us say, six months hence of certain bales of cloth. The mill in its turn would like to secure itself against fluctuations in cotton. Therefore, forward trading in cotton comes in. There is nothing wrong in healthy forward trading. But unfortunately, forward contracts have been abused. Hence the need for regulating them.

I do not agree with the suggestion made by my hon. friend, Shri V. P. Nayar, that this Bill should be altogether dropped and suitable provision incorporated in the Indian Penal Code with the object of penalising certain speculative transactions. The point he misses is that the courts have repeatedly held that speculative transactions are totally different from what are known as wagering transactions. Speculative transactions, however speculative they might be, are still legal transactions. In any commercial or trading activity, there is hardly a transaction which has not in it an element of speculation. When a party goes out and buys for future, obviously there is an element of speculation, because nobody can predict whether the market will go up or down. But these are valid and legal transactions. The courts even award decrees to plaintiffs who sue the defendants for damages for non-performance of forward contracts, because they are valid and legal contracts. Just because they contain an element of speculation, you cannot rule them out as wagering contracts or gambling. Wagering and gambling are totally different and distinct from these transactions. Therefore, there is need for regulating forward contracts.

[Shri Naushir Bharucha]

The Bill seeks to remedy the following mischiefs: first, excessive speculation; second malpractices such as trading outside office hours or kerb trading and so forth. Then difficulty is there to prosecute for want of adequate documentary evidence. Another mischief it seeks to remedy is the lack of powers with the Forward Markets Commission. It is felt that the powers already with the Commission are not enough and more powers are required. Similarly, exercise of stricter control by the Central Government is another objective of the Bill. Let us see whether the Bill, as it stands, will attain any of these objectives.

First, take the case of excessive speculation. What is excessive speculation? Once you make a legitimate or valid or legal a particular trading activity, is it ever possible to prevent excessive trading in that activity, in that particular commodity? It is humanly impossible. You cannot make it illegal unless you ban all trade in that particular commodity. Therefore, to say that excessive speculation can be curbed by any sort of Bill is a proposition which I as a lawyer am not prepared to accept. It is humanly impossible, with all the ingenuity of parliamentary draftsmanship, to devise measures where certain speculative transactions are regarded by law as valid and yet excessive speculation in that can be categorised as illegal.

**Shri Morarka:** The system of margins is there.

**Shri Naushir Bharucha:** That does not stop excessive speculation. That might stop even such activities which are *bona fide* and genuine trade activities. Suppose I enter into a forward transaction not with the object of speculation but for the purpose of genuine trading. The margin will equally apply to me as to the speculator. It is no remedy against excessive speculation. It will hit both the genuine trader and the speculator.

**Shri Morarka:** The person who indulges in that will have to give an excessive margin.

**Shri Naushir Bharucha:** It all depends. If I am a millowner owning 10 mills, my dealings will be 10 times bigger than the party who has got one mil'. Therefore, the system of extra margins and extra deposit is not the remedy. It can only check the total volume of forward transactions. It cannot distinguish between genuine transaction and speculative transaction.

The point I am making is that this excessive speculation cannot be eradicated like this. It is bound to remain and it will remain. This is a social evil which can only be eradicated by education. So long as human nature is what it is, I am afraid it is not possible to eradicate it. You may take certain measures, e.g. trading outside office hours, kerb trading and so forth. These can perhaps be done.

Then it is proposed to check excessive speculation by making certain transferable specific delivery contracts subject to the condition that the number of transfers of such contracts shall be limited. Here again, I really do not know how it gets at the essence of the thing. If you have got transferable specific delivery contracts and if you, by rules and by-laws, say that a particular transferable contract shall not pass on from dealer to dealer or merchant to merchant and say it shall not pass on more than two times, all that you do is you give rise to more contracts of the same type. If, for instance, I have entered into a contract for 100 bales of jute and I pass it on before the period of delivery—I sell it—to another, he is entitled to the delivery. After finding that the market has appreciated, he, in his turn sells it to a third party and similarly is sold to a fourth party and so on. If I find it profitable, I may buy the same bales again and so it goes on.

If, by amending the definition of transferable specific delivery contracts you subject such contracts to a limited number of transfers, what you really do is, you do not prevent the speculative trade in it. All that you do is that you give impetus to new contracts of the same type being further formulated. If one contract cannot go through the hands of more than 3 parties and if 6 parties are interested in it, there is nothing to prevent the fourth man entering into a new contract for the same goods. So this is not the correct remedy.

Also this type of prevention of a number of transfers might hit certain trades when it becomes necessary that the goods must pass through certain channels and certain hands.

Coming to the question of trading outside office hours, this is sought to be remedied by the Central Government assuming powers to direct recognised associations to make rules. That is clause 10. Enhancing the powers of recognised associations to make by-laws—clause 11; power of the commission to suspend a member of a recognised association—that is proposed new section 12B; and making certain contracts illegal or void and providing severe punishments.

Let us examine how far this will happen. I am sure this will certainly happen—trading outside office hours. Why is it so; what is the cause? Because, in periods of excessive fluctuations of prices, the parties who have entered into a contract have not got the patience to wait till the next day and the next trading hours. They would like to enquire how the market has fluctuated in the meantime. Therefore, they may meet at night time, after 9 or 10 o'clock; and kerb markets are well known in Bombay and Calcutta. Not only are the prices quoted as on the Stock Exchange but considerable trading activity goes on.

The hon. Minister seeks to impose the sanction of law on this kerb trad-

ing. No such contract shall be recognised by law. They would be void or invalid. But who cares for your sanctions of law? When the members meet in kerb trading and nobody thinks that he will go to a court of law to enforce contracts made on the kerb side. Who cares, therefore, whether the contract is declared void by law or not. So long as the payment is made the member is satisfied.

13.34 hrs.

[SHRI JAGANATHA RAO in the Chair]

Therefore, the sanction of this kerb trade is the honesty among thieves. There is some such thing as honesty among thieves so that all people who disregard the Forward Market rules gather together and there is some honesty among themselves. Each one sees that it is a matter of his honour to see that that void or illegal contract is honoured properly. Otherwise he is thrown out of kerb trading. So, there also, these amendments have limited efficacy. Also the next day the kerb contracts are entered in the regular books of account, so that the danger of detection is there only for a few hours, from night till morning. Therefore, it is very difficult to curb it. Certainly, so far as gambling is concerned, it is possible to curb it to a certain extent.

I welcome the provision with regard to the registration of associations. It is very necessary. I am surprised that this was not there before. It will help to bring more order and introduce uniformity among the various associations and, in the rules and regulations governing them; and that is a thing which is desirable.

The Commission is proposed to be vested with the powers of a civil court. To an extent it is inevitable. I think the powers of the civil court must be given to the Commission if the Commission is to discharge its functions mentioned in section 4. But, I think, that before exercising these functions

[Shri Naushir Bharucha]

either as a matter of administrative practice or as a matter of directive from the Central Government, it should be made clear to the Commission that while it calls for any information or exercises any powers regarding seizure of books of account of any member of a recognised association, there should be some complaint before the Commission or some sort of information on which the Commission feels that a *prima facie* case has been made out for looking into the books of account of the particular member. I do not desire, on the one hand, that members of recognised associations to be completely immune from this type of procedure. At the same time, I do not desire that the Commission should go about having a roving inspection, which, I am sure, they will not. But some such directive from the Central Government would be necessary that this provision should be resorted to only where a *prima facie* case has been made out or the violation of any of the rules or by laws of the Associations by a member is strongly suspected.

Coming to the question of punishment, the hon. Minister, out of sheer desperation, is proposing certain minimum punishment. I for one have still to see how social reform can be introduced this way. We have got in Bombay the Prohibition Act. Very severe punishments are prescribed and the minimum sentence is prescribed. Still the process of illicit distillation goes on merrily. It has not got the slightest effect; and it becomes very difficult to control, merely by severe penalties, a malpractice which has been so long in existence.

I am of the view that, on the whole, though this Bill will not achieve the purpose of curbing excessive speculation, still it is a necessary step and a step in the right direction. Therefore, we have to place it on the statute-book and amend the Forward Contracts Act

as best as we can. I definitely say that it will not prevent kerb trading; it will not prevent excessive speculation and the various suggestions which the hon. Minister has made and to which my hon. friend Shri Morarka referred, are suggestions which have a limited use.

Take, for instance, the question of asking for bigger margins. It has got its own limitations. Without materially obstructing legitimate trading, you cannot insist upon higher and higher margins indefinitely. They also have got a limited use. Ultimately, it will depend upon how far the associations themselves are vigilant and how far the Commission itself is vigilant in suppressing such speculative activities.

I say, though I am convinced that the Bill may not materially assist in remedying the mischiefs it has sought to remedy, still it is a step in the right direction, though a step not coming up to our fullest expectations. I think it is one which we must welcome in the interest of seeing that there is the development of a healthy Forward Contracts market which, I feel, is an essential component of our present day economy.

**Shri Morarka:** Mr. Chairman Sir, I am speaking on this Bill with a certain amount of handicap because I thought that this Bill, as it was originally proposed, should go to the Select Committee. I hoped that when it went the Select Committee, we would consider it more carefully and more leisurely and would be able to bring to the notice of the Minister the various points that we wanted to urge. But, as the hon. Minister said in his opening speech that there is a certain amount of urgency about this measure created by certain forward markets in Calcutta and elsewhere, the idea of a Select Committee had to be given up and this Bill has to be passed here and now.

I heard two speeches, one from a communist Member and another from Shri Guha. The first speech left an impression on me that the hon. Member opposed the very idea of the existence of forward markets. The other two hon. Members who spoke opposed the idea of speculation and excessive speculation. I am one with the hon. Member who opposes the idea of excessive speculation because excessive speculation always degenerates into gambling. But one cannot deny that the existence of forward markets and legitimate speculation is necessary and vital for the health of any economy. Many orthodox economists have justified the existence of speculation and one of them has defined speculation as a struggle of intelligence against chances. According to him, an element of speculation is necessary not only in the interest of stabilising the prices but also for increasing and promoting production. I may be permitted to quote a small passage from this book—*Principles of Economics* by Alfred Marshall:

"It has been well observed that a speculator, who, without manipulating prices by false intelligence or otherwise, anticipates the future correctly; and who makes his gains by shrewd purchases and sales on the Stock Exchange or in Produce Markets, generally renders a public service by pushing forward production where it is wanted, and repressing it where it is not: but that a speculator in land in an old country can render no such public service, because the stock of land is fixed. At the best he can prevent a site with great possibilities from being devoted to inferior uses in consequence of the haste, ignorance or impecuniosity of those in control of it."

On page 719, it says again:

"It is true that many of the largest fortunes are made by  
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speculation rather than by truly constructive work: and much of this speculation is associated with anti-social strategy, and even with evil manipulation of the sources from which ordinary investors derive their guidance. A remedy is not easy, and may never be perfect. Hasty attempts to control speculation by simple enactments have invariably proved either futile or mischievous: but this is one of those matters in which the rapidly increasing force of economic studies may be expected to render great service to the world in the course of this century."

**Mr. Chairman:** What do the modern economists say?

**Shri Morarka:** Even the modern economists agree on this point that speculation is necessary but it must be controlled and one of the methods of control is the Forward Market Control Act. The other says that hasty attempts are futile: he did not say any attempts would be futile.

My purpose is to show that speculation by itself is not bad. Any type of forward trading is bound to have an element of speculation. Take for instance the stock exchange. The total number of shares of a company at any given time is limited. It is not as if it depends upon future production or any such thing or like the cotton crop or jute crop or other products. Even though the total number of shares is limited, still there is such a volume of transaction that the shares purchased and sold in these stock exchanges are much more than the total number of shares issued by the company and even then it has the legal recognition not only of the association but also of the Government. Why? Because, after all it is by the interaction of demand and supply that the real price is determined, if you leave aside contingencies and emergencies in which they are controlled by the Government. Ordinarily, price is to be left to be determined by the laws of demand and supply. The hon. Minister in his

[Shri Morarka]

opening speech made a very good case as to why these forward markets are necessary and he gave two reasons: for the producers to be able to market their products within a short time and yet get a reasonable price and also for the industrialist who could have proper and planned production. The term 'hedging' has been used. It is not only permissible; it is essential as every industry has to plan production ahead. If you want to sell your cloth today you can make calculations only if you are in a position to purchase cotton. You can ensure your profit or loss only if you purchase your raw materials for producing the goods. So, the definition of 'hedging' has been very well known: future sales against present purchase or future purchases against present sales. This is a very well known policy in any free economic society and I do not think that anybody can seriously suggest that the existence of forward markets can be detrimental to the national economy or for the fulfilment of the Third Plan. The hon. Member Shri Nayar's reference to the Third Plan was a little misconceived. Stabilisation of prices is one thing and the rigid fixation of price for the entire period is another thing. I think you can fix the price in a rigid manner only if the commodity is in existence and the supply and demand position is known. You cannot anticipate production and fix the price at a fixed level. In such an event, the producer would suffer, production would suffer and I do not know who would benefit.

I will now say a word about kerb trading. My hon. friend, Shri Bharucha mentioned about this. I agree largely with what he said. It is very difficult to check this kerb trading. What is this kerb trading? Let us understand this. Any transaction done outside the official hours and outside the official hall—ring—is called kerb trading. Formerly, when the hall was closed members were pushed out and they came to the foot path

and they used to do these transactions on the foot path and therefore, it was called kerb trading. That was the traditional method but now this trading takes place even at midnight over the telephone between one broker and another. Shri Bharucha pointed out that they entered these transactions in the regular books as if these transactions had taken places in the next day. No amount of law can prevent this kind of a trade. But where is the necessity to prevent it? Every day in the *Times of India* and other newspapers we have a special box giving 'kerb rates'. These rates are officially quoted and they become the guiding rates for the next day's operations. But here too the forces of supply and demand do not cease to work; they work even during the night time. The prices fluctuate even when the official ring remains closed and the next day the transactions start on that price. These transactions are unofficial. While these are against the rules or bye-laws of the association or against the wishes of the Forward Markets Commission, still they take place every day. While I am not in favour of encouraging any such thing, I personally do not see how any great harm could be done by this kerb trading. The only risk in the kerb trading is that any party to a transaction can say that the transaction is not binding on him, and if that party says so the other party cannot compel. As my hon. friend Shri Bharucha, again, rightly put it, after all it is a question of confidence or faith between one member and another and as long as they have got confidence and they trust one another if they enter into that type of transactions they are welcome to do it.

There are two points, in particular, in this Bill to which I would like to refer, and I would request the hon. Minister to consider them. This Bill has come, as I said in the beginning, perhaps as a result of the experience which the Forward Markets Commission and other Government machi-

neries have got. So far so good. In clause 13 which purports to introduce a new section in the Forward Contracts Act it is said—I am referring to 12B—

"12B. (1) If, in the interest of trade or in the public interest, the Commission considers it necessary to suspend a member from his membership of any recognised association or to prohibit such member from entering into any forward contract for the sale or purchase in his own name or through another member of a recognised association of any goods or class of goods, then, notwithstanding anything contained in any law for the time being in force or in the rules or bye-laws of a recognised association, the Commission may, after giving an opportunity to the member concerned of being heard, by order suspend his membership of any association or prohibit him from entering into any such contract."

Sub-section (3), to which my main objection relates, says:

"(3) No order made under sub-section (1) in respect of any member of a recognised association shall affect the validity of any forward contract entered into or made by, with or through such member on or before the date of such order and remaining to be performed on or after the said date; but the Commission may make such provision as it deems fit in such order or in any subsequent order for the closing out of any such forward contract."

Now, Sir, here the Commission is taking power not only to suspend a member, if it is deemed necessary in the public interest, but to close the outstanding business of that particular member at any price or on any terms which the Commission considers proper and fair. My point is this. After all, a member does business mostly on behalf of others, on behalf of outsiders. For some activity or the other

of that member the member is suspended for any length of time not exceeding three years. That is a punishment to the member. So far as his outstanding business is concerned, you want to close his business, you want to square it off compulsorily. At that time, my point is, you must give a chance to the member either to transfer his business to any other member or do some such thing. If you want to close the business, I suggest that you do it in consultation with the Board of Directors of that association, because the Board of Directors of the association is always a responsible body mostly elected. There are also Government representatives on the Board, and they would not act in an arbitrary manner. I think, Sir, in the interest of the Commission itself they must accept this position, either in the Act itself or by any rules or regulations, that before they close or square up the business of a suspended member they shall do so in consultation with the elected Board of the association. That will be a safeguard not only for the member and the other customers but also for the Commission itself. The Commission can insulate itself from public criticism of arbitrary action if the Commission can take the elected members of the association into confidence before giving their verdict. I hope the hon. Minister will give his consideration to this matter and see whether in the Bill itself or through some procedural means he would be able to tell the Commission to consult the elected members of the Board before the business is closed.

My next point is with regard to clauses 17, 18 and 19. In these three clauses we are prescribing the quantum of punishment. What we are saying is, if a person commits an offence he is to be sentenced to a term of imprisonment compulsorily by a court. If the offence is a first offence it is said that he may be sentenced either to imprisonment or to fine or both, but if the offence is a second offence we are compelling the courts to sentence that person to a term of imprisonment. Not only that, we go a step further and

[Shri Morarka]

say that so far as the fine is concerned it shall not be less than Rs. 1,000 and so far as the imprisonment is concerned it shall not be for a period less than one month unless the reasons are recorded in writing as to why it should be for a lesser period. My point is very simple. If you think that the offences are serious and require drastic remedies, you provide for bigger penalties, provide bigger fines and bigger terms of imprisonment or, if you like, provide both. But leave the discretion to the court. After all, that independent authority must be able to say what quantum of punishment would meet the ends of justice. Do not compel a judge to send a man to jail. The first offence or even the second offence may be very technical offences. If the offences are serious, if the offences are heinous, certainly the court would send the persons concerned to jail, but in case the offences are only of a technical nature surely you do not want that person also to go to jail merely because he has committed some technical offences. But if the provisions are allowed to remain as they are in the Bill, even if the court is not inclined to send a person to jail the court shall be duty bound to send him to jail for a certain period—it may be for a short period.

Sir, you know, recently we passed the Companies (Amendment) Bill. You also know that some hon. Members made a fervent appeal and made a complaint that there was a judicial leniency shown in many cases, because in some cases the courts had fined only five naye paise, ten naye paise and amounts like that. So the Company Law Administration and some hon. Members here made a grievance that such judicial leniency has helped the offenders to commit offences and get away with them. Even in spite of that the main principle recognised was, that after all, these offences are of a commercial nature and they have to be distinguished from other offences. But here, in the peculiar cir-

cumstances of our economy, Sir, if we want some deterrent punishments to be provided, by all means provide for imprisonment also, but leave it to the judges to decide whether in a particular case the sentence should be actual imprisonment or fine or both. If you are not satisfied with the first judgment, with the punishment given by the lower court, by all means go to the High Court or even to the Supreme Court as the other party is entitled to go. If all the courts feel that the punishment given is adequate and a mere imposition of fine would meet the ends of justice I do not think the Forward Markets Commission or the Government should become so vindictive as to send a person to jail. So, I feel and I do hope that the hon. Minister would consider this point. I do not want to plead for offenders, and I do not want to say that they should be let off lightly. I am only raising this as a question of principle: whether you must pass a law circumscribing the rights of the judges and the jurists before whom these offences are tried. Can they say to the judges, "If you find a person guilty, you shall be bound to send him to jail, and you will have no discretion in the matter"?

14 hrs.

In this connection, I have been reading the annual report of the Forward Markets Commission. Here, I have a suggestion to make. I have got this report for the year 1958. This report was received by the Library on the 16th May, 1960. I think it is a little ante-dated. We must have some up-to-date reports so that one can intelligently apply one's mind and make criticisms in support or in opposition to the measures.

Mr. Chairman: You have got the 1959 report.

Shri Morarka: it is not available in the Library. Anyway, this is the latest one which is available to Mem-

bers. In chapter VI of the report, at page 54, they have dealt with the prevention of illegal forward trading which is in contravention of sections 15, 17 and 19 of the Act. I think my hon. friend Shri Guha—he is not here at present—was complaining that there is no mention made in the report about these things. The mention is made there. If one reads through paragraph 200 of the report, one will come to the conclusion that the situation, as pointed out by the Forward Markets Commission, is not alarming. I may be allowed to read only one passage for the information of the House, and that point, according to me, is the most serious one in the report. It says:

"At Calcutta it was reported that forward trading in jute and jute goods was conducted in the guise of ready delivery contracts under the auspices of the Indian Forward and Futures Market Association Limited, Calcutta. At the instance of the Commission, the Calcutta Police in April, 1958 raided more than 40 places including the premises of the concerned Association, and arrested about 110 persons. The Commission prepared a scrutiny report based on the seized documents and forwarded it to the investigating authorities. The Government of West Bengal appointed a special Advocate to handle the prosecutions. Accordingly, 4 cases were registered affecting nearly 160 persons. Though the cases were still pending before the trial Courts, the large scale apprehension of persons and the launching of prosecutions had the desired effect and it may be reasonably expected that illegal forward trading in raw jute and jute products would have been greatly minimised, if not completely eradicated."

**Shri Kanungo:** Those expectations have not come true.

**Shri Morarka:** I agree; I bow down to the latest knowledge of the hon.

Minister. It may be that the expectations have not materialised. But what I am saying is, a recent happening here or there on a certain scale may justify our re-writing the law, but should we re-write it in such a way and make the law so rigorous so as to take away the discretion of the judiciary and impose an obligation on them to send a person to jail? I am not pleading for persons who are offenders and who really commit heinous offences. Let them be punished. But why write a law in such a way that the judge would be compelled to send a man to jail? I think, after all, you should look upon these offences slightly differently from the other offences which are of a serious nature where imprisonment is mandatory and compulsory. For example, waging war against the country, subversive activities, etc.

**Shri Warior (Trichur):** This is the worst form of subversive activity. (Interruption).

**Shri Morarka:** The attempt to overthrow the Government is one thing. Also, it is an offence when a person tries to make illegal profit and tries to by-pass a law or tries to harm the economy. If all these things are done, certainly, the court will say what is to be done and my hon. friends need not fear about it. I am not saying that there should be no sentence of imprisonment. But do not think that the judges are blind. The judges would weigh all these things and they will take into consideration whether a person's activities were really subversive or not, and whether they are anti-social or not. If the judge comes to the conclusion that the activities were anti-social, the provision for imprisonment is there. He will send the person to jail, by awarding him a sentence of imprisonment. But do not tie his hand and do not compel him to send a person to jail by awarding the person a sentence of imprisonment. Whether the activity is anti-social or not, merely because he has committed a technical offence—

**Shri Warior:** Why is it 'technical'?

**Shri Morarka:** You will kindly see what are the offences for which a person would be bound to be sent to jail. I do not know whether my hon. friend Shri Warior who showed an enthusiasm has read those clauses in question. If you will bear with me for a few minutes, I shall refer to page 8 of the Bill, clause 17, where the offences have been enumerated. The offences are enumerated in section 20, sub-sections (a) to (e); and sub-section (ii) says:

"for a second or subsequent offence under clause (d), or under clause (3) [other than an offence in respect of a contravention of the provisions of sub-section (4) of section 15] with imprisonment . . . etc.

So offences committed under clauses (d) and (e) would entail compulsory imprisonment. What are these clauses? Clause (d) says as follows:

"organises, or assists in organising, or is a member of, any association in contravention of the provisions contained in the proviso to sub-section (1) of section 18;"

Pausing here for a moment, if a person who organises or assists in contravention of section 18, is that offence so severe that a man must compulsorily be sent to jail?

**Shri Naushir Bharucha:** The association may be declared illegal afterwards.

**Shri Morarka:** It may be declared illegal at any time. But merely because a person is a member—and he may not be a member knowingly,—and after all he may be a technical member. My hon. friend asked me why I used the word 'technical.' Suppose the man's name is on the register when the documents are seized, and he has paid his subscription only for one year, that is, at the beginning of

year. Yet, his name appears on the register, and so, technically he would be a member and he might have committed that offence. But surely, I do not think anyone would want him to go to jail for that.

**Shri Warior:** This is the second offence; not the first offence. For the second offence only, imprisonment is compulsory. You know that immediately after the war and even during the war, when many commodities were in short supply, there was anti-hoarding and other laws passed. In some of those Acts the same provision was made, namely, that a person shall be sentenced to imprisonment. But what happened was, the civil supplies department requires the persons to submit a weekly return of all the stocks they had, and if some of the citizens by mistake—not by intention or design—forgot to send the return on the day, say, Monday, and instead they sent the return on Tuesday or Wednesday, technically, those persons committed an offence and the matter went to court. The magistrate was helpless and he sentenced those persons to a term of imprisonment or sometimes the punishment was an imprisonment till the court rises, or simple imprisonment and so on. But here, let us see what is contained in the proviso at page 9 of the Bill. We go a step further and say:

"provided that in the absence of special reasons to the contrary to be mentioned in the judgment of the court, the imprisonment shall be not less than one month .

So, not only do you say that there will be a sentence of imprisonment but you also say that the imprisonment shall not be less than such and such a period. I have looked into the Indian Penal Code to find out whether there is a parallel provision even for more heinous crimes.

**An hon. Member:** What about corruption?

**Shri Morarka:** It may be so so far as corruption is concerned. I am only speaking about an offence which is a commercial one. There are offences against morality, offences against Government, offences against the State, offences against property, etc. It is nobody's case here that you should not provide for the penalty of imprisonment. By all means provide it, but must it be compulsory? Must you take away the discretion of the judiciary?

**Shri A. C. Guha:** There is discretion left to the judiciary.

**Shri Morarka:** It is only in the case of the first offence.

**Mr. Chairman:** In the second and subsequent offences also, it is there.

**Shri Morarka:** If that is the intention, I have nothing more to say; It reads as follows:

"for a second or subsequent offences under clause (d), or under clause (e) [other than an offence in respect of a contravention of the provisions of sub-section (4) of section 15] with imprisonment which may extend to one year and also with fine"—

The minimum fine is Rs. 1000; there is no maximum limit.

'provided that in the absence of special reasons to the contrary to be mentioned in the judgment of the court, the imprisonment shall be not less than one month and the fine shall be not less than one thousand rupees.'

So, the imprisonment shall not be less than one month.

**Shri A. C. Guha:** For special reasons to be mentioned in the judgment, the judge may give a lesser sentence.

**Shri Morarka:** It may be less, but imprisonment is necessary.

**Shri A. C. Guha:** That is necessary.

**Shri Morarka:** There is no escape from imprisonment. Imprisonment will have to be given. The only thing is, for special reasons, they may give less than one month.

If these provisions are considered necessary in the larger interest of the society and the country, the Minister can have them. But let him at least provide some safety valve, as provided in the Company Law, viz., for awarding imprisonment, it must be proved that the offence was committed wilfully, deliberately, in spite of warning, etc. I hope the hon. Minister will consider what I have submitted and do something by providing some safety clause, to check the arbitrary exercise of the power by the executive

**Shri Warior:** In this debate, I would like to commend the very same arguments which Shri Nayar had advanced, not precisely because all those arguments are accepted by me. The circumstances in which this amending Bill has come warrant such a thing. I submit for the consideration of the Minister that many things have changed in recent years. The parent Act was passed in 1952; in 1953 there was an amendment and in 1957 also there was an amendment. With all these amendments before us and with the annual reports of the Commission, we can safely say that the Act as it is will not be effective enough to curb what should be curbed. The very ideology, aim and objective of the nation have changed practically. Day by day, we are experiencing more and more difficulties in our economy.

I for one never accept that market economy will be regulating the price or for that matter even the futures trading. Rather it is the other way about. Futures trading is regulating the market economy in India. I can understand futures trading in a developing economy. The Minister has been saying about developed countries. That is understandable, because there the production itself is organised. But here production

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is unorganised and marketing is organised; so, naturally the contradiction is there. What Shri Morarka has been saying is all misleading.

I have gone through this futures trading; for 4 years I was in the market. I know what happens in regard to the plantations, for example.

**An hon. Member:** In what capacity?

**Shri Warior:** As an accountant. The element of speculation, etc. is all misleading, because that element of speculation is also controlled. When I was in the rubber market for instance, in the post-war years, it was fetching about Rs. 3. The rubber market then came down to 1 anna 3 pies, not all of a sudden, but gradually. The bulls and bears are active and in spite of that, the market was coming down very regularly. I have not seen any instance of anybody collapsing in the market. But is that the state of affairs in the Bombay or Calcutta or Cochin markets? I can show any number of millionaires even in Cochin. I had the experience of one Bombay seth dealing in pepper. All of a sudden he collapsed and he is now doing some idli work in some hotel. We do not see such an instance in an organised developing economy. I can understand about New York, London and even Singapore, but not such a thing in our economy. That is why I am supporting Shri Nayar and not because forward markets will do all the havoc.

For instance, in hedging he can do that. When a purchase is made and sale is made, if the position is not too long or too short, he can do that. Even switching to some extent, he can do, but not this sort of wild anarchic state of affairs in the market, which sabotages the entire economy of our State.

If there is any sense in the framers of this draft Plan, if you attribute some wisdom to them, and if this is

for public consumption, it should be realised that this forward contract sort or thing which is existing in our country militates against the very grain of the policy statement here. How can you stabilise the market? The Minister was referring to the law of supply and demand and other old, worn-out, moth-eaten theories. Supply and demand never controlled the market. The market is controlled today by much more stronger powers and elements. I have flagged so many things here to quote regarding the market trends in India. When the supply is short and the demand is much more, does the market rise? Never. If supply is much less and demand is much more, does the market rise? Never. I can quote instance after instance to show that it never rises like that. There are much more powerful elements which control the market. Now, if you look into the whole year, you will see that in the very same month of delivery the difference ranges from Rs. 1 to 50.

**Shri Kanungo:** Rs. 1 to 50? Where?

**Shri Warior:** Rs. 70 even, and that is shown in the market report. Now the entire economy is developing in a particular pattern, in a planned way. When we talk of planned economy we should not allow this. Otherwise, I have no objection to whatever these people may do; and they will do whatever they like. But when we have accepted a planned economy, that necessitates some control. If that control comes in, somebody argues against it in a legalistic way and somebody in a realistic way and it results in confusion.

**An hon. Member:** What is your way?

**Shri Warior:** My way is a very realistic way.

**Pandit Munishwar Dutt Upadhyay:** You want the entire thing to be repealed.

**Shri Warior:** Yes. Now, I will take only two points from the Report of the Forward Markets Commission. Firstly, what has been the effect of this forward trading on the price structure in India? The 1955 Report says:

"The utility of regulation of futures trading under the auspices of a recognized association depends upon the prevention of illegal futures trading. The problem of prevention still remains to be tackled effectively."

Having said so in the 1955 Report—mind you, in the 1955 Report, not in the 1958 Report—it gives a long tale of unending pathos of how the illegal market is going on. It is a long report, and before I come to "market conditions" I will quote a few sentences from this Report. Para 90 of the Report says:

"Option business is prohibited under the Forward Contracts (Regulation) Act. The business has been rampant particularly in the cotton futures market at Bombay."

Here we are talking of prohibition but there it is rampant. Then para 91 says:

"An important reason for this misuse of the contracts in cotton was the inadequacy of the futures contract in providing proper hedging facilities in all the varieties of cotton."

I do not know what is meant by this. Usually, in the advanced countries, as far as I know hedging or switching of the tender market is confined only to the best qualities, that is, the most superior quality; not all qualities are allowed for hedging or switching in the tender market. They specify the commodities in which there can be tender market and there is standardisation of both quality and quantity.

If these preliminary things are attended to, then naturally there is no sense in saying that proper hedging

facilities or switching facilities should be provided for all varieties of cotton. If all varieties of cotton are coming into the tender market, the condition of the tender market will become anarchic. No other country does it. I do not know of any other country with a developing economy which has permitted it. But here it is done, and I have reason to believe that this seems to be a recommendation coming out of experience. I will come to that also, because I have made a thorough study of this report. I know every inch of that.

Similarly, para 112 of the 1956 Report says on page 49:

"The principal commodity in which futures trading was illegally conducted in the guise of trading in some other free commodity was gram."

Now foodgrains are banned from futures market. So, they have taken to grams. From Bombay cotton they have shifted to Bhatinda, Ganganagar and Ludhiana, places in Punjab and they are dealing in foodgrains. There is a cry that the foodgrains market must be controlled and the price structure must be controlled. At the same time, these people are doing it. How are they doing it? There are some commodities like gram or peas. They have the same price. So, they put in the record all this gram as peas and then they do it. What is the effect? The contract is for gram the price is that of gram, the delivery is gram but the records are of peas. This is the 1956 discovery. Of course, the 1956 Report refers to rubber trading also.

Shri Morarka was speaking here and he wanted to show it is a very innocent thing. He referred to the practices they are adhering to and said it is a very innocent thing, and added "What is there? It is not anti-social, anti-national or anti-economic and not at all heinous." But what does the Report say? The 1957 report says on page 74, para 211:

"Of special concern to the Commission this year, however, was

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the problem of illegal trading in wheat and gram."

In the 1958 Report it was reported that forward trading in jute goods was conducted under the guise of ready delivery contracts under the auspices of the Indian Forwards and Futures Market Association, Calcutta. If this discovery had not been made, I am quite sure that this business house will be the most respectable business house in the world. Unluckily or unfortunately, this was discovered and now, perhaps, they have been black-listed.

So this is what the reports from 1955 to 1958—the latest Report available in the library is that of 1958—say. And I may say here that I have picked the report only at random. There are many other discoveries also like kerb. Shri Morarka was referring to kerb. Shri Bharucha also said it is an innocent thing. After office hours they do it. Why should they do it?

**Shri N. R. Muniswamy:** Because they find it very easy.

**Shri Warior:** They find it very easy to disturb the market the next morning. That is the reason. Even at midnight they may be doing it. At midnight when thieves are awake, these people are also awake.

**Shri N. R. Muniswamy:** It is to their advantage.

**Shri Warior:** Yes, and to our disadvantage. But my feeling is that they are not so innocent as they are innocent-looking.

Now I will come to the market conditions. Para 43 of the 1955 Report says:

"The average price of the contract which was about Rs. 620—640 in September and October respectively rose to about Rs. 680

in November and Rs. 720 in December. The average price in December was about Rs. 70 higher than the price of the February 1955 contract in December 1954 (after making adjustment for the change in the basis of the contract)."

How much is the difference? Rs. 70 on the same month delivery contract. Does this mean stability? Does this mean even ordinary or normal fluctuation? Is that not violent fluctuation enough? This is how the market is tossing, and there are reasons for it, I know. The Forward Markets Commission puts in certain reasons. Do you want to hear them? There was some political instability in Indonesia, there were huge floods in Punjab and, probably, also the Presidential election in the United States! So, the Indian forward market must be tossed by the bulls from Rs. 620 to Rs. 770. That is the result. Because there was a Kennedy coming against a Nixon we have to put our market in the hands of the bulls of Bombay, thereby disturbing the entire economy of the country. How many workers are thrown out of employment? Thousands of our workers in the handloom industry do not get any yarn because of the instability in the market. Government itself found it very difficult to control the prices of cloth. Questions were asked about it in this House. Even in today's *Statesman*.....

**Shri Kanungo:** May I interrupt the hon. Member? There is no hedge trading in cotton goods.

**Shri Warior:** Not in cotton goods. But cotton is put into the mills and made into yarn and then woven. That is how cloth comes. Cloth does not come from the cotton plants.

Then there is the pepper market. The pepper market is entirely controlled by one big firm in Cochin, a European firm. It is a continental

firm. At one time—it is in our debates—they quoted 120 cents to the sellers of the produce in Cochin, when the actual quotation from New York was 180 cents. Only one man by name Pothan Joseph resisted that while stocks of pepper were cornered at 120 cents. He cornered all the produce of the year and made lakhs. The one man who resisted that also made some Rs. 8 lakhs out of that. But not a single cent out of this has gone to the producer of pepper. If you analyse the market reports you will find that pepper is always down in January and February, because that is the harvesting season. Again in May, June and July, the lean months of the monsoon, it shoots up. Pepper is sold sometimes at Rs. 4,000 per candy.

If you will permit me I would like to quote certain figures from the Bulletin of Agricultural Prices, published by the Ministry of Food and Agriculture. For example the price of a certain commodity for one quintal on 14th October, 1960 it was Rs. 77.55. The Bombay rates were Rs. 73.50 and Rs. 82.88 respectively. This is not a quinquennial report. It is only a monthly report and within one month the price ranges are from Rs. 5 to Rs. 8. On account of this wide fluctuation, our commodities do not get a good reception in foreign markets.

Now what is the effect of all this? All the profits whether in a rising market or a slum market, whether there is a boom or a recession, goes to the middlemen. India is a country of middlemen. Everything is in their hands; even the economy is in their hands. Between the producer and the consumer there is a whole range of people. They take all the cream of profit from the economy, and the producing class is left to the tender mercies of these sharks of the market. It is speculation of the most rabid and rampant type that is going on.

I have given notice of certain amendments to give deterrent punish-

ments and if the Government is willing to accept them, I think they will go to some extent in curbing these activities.

**Shri N. R. Muniswamy** (Vellore): Mr. Chairman, Sir, at the very outset I have to disagree with the hon. Minister's robust optimism. Human nature being what it is, we cannot expect that a time will come when this Act will be eliminated altogether from the statute book. We have seen the working of this Act for the last eight years. There has been one amendment and they have now come forward with a second amendment. We have to expect such moves from the Government for some time more, because loopholes wherever they come to notice should be plugged.

Mr. Morarka was magnificently obsessed over the penal provisions of this measure. The scheme of the measure is such that they have provided two ways. For the first offence they have prescribed a minimum of not less than Rs. 1000, or imprisonment which may extend to one year. For the second or subsequent offence they have prescribed a imprisonment which may extend to one year and also a fine. It should be logically so. It has also been provided that in the absence of special reasons to the contrary to be mentioned in the judgement of the court, the imprisonment shall be not less than one month and the fine shall be not less than one thousand rupees. According to him whether they give reasons or no reasons the discretion for imprisonment must be left to the Court. It is no use putting a man into jail. He may probably pay a fine of even Rs. 5,000, but not undergo a day's imprisonment or even till the rising of the court.

But inspite of our having penal provisions, human ingenuity is such that they can always find a way out. There will be no second offence at all, for this reason that one has to lose his liberty and as such they will

[Shri N. R. Muniswamy.]

square it up before the second offence is booked for trial.

From the financial memorandum attached to the Bill I find that a sum of Rs. 50,000 may have to be spent for the appointment of a fourth Member and so on. With three Members on the Commission they were able to do that much. I do not know whether they are going to do much more by having another Member. Whatever it may be, the House must be given some idea as to the pay of the staff which they propose to employ, the UDCs, the LDCs, etc. These must be given in the financial memorandum which I find totally missing. I am sure the Minister would be able to throw some light on this aspect.

I wish to say a word about clause 3. In sub-clause (b) of clause (2) of section 2 of the principal Act the words are "and it is subject to such conditions relating to its transferability as the Central Government may by notification specify in this behalf."

The definition clause as it stands today is that a transferable specific delivery contract is approved. But now they want to put certain conditions as to the transferability of such contracts. A man who has got a right over certain property can always exercise that right by transferring it to anybody. This is a fundamental right. But still I find that in the Constitution one of the articles about fundamental rights says that they can put reasonable restrictions on the exercise of our fundamental right. But we have to see whether the conditions which they are now having in their mind relating to transferability are reasonable or not. Therefore when we are delegating the right to the Central Government we have to see that they do not in any way violate or infringe upon the fundamental rights while putting conditions as regards transferability. This is with regard to that aspect of the question. I am only going by the provision in the Act

thinking that something might be done at the time of second reading.

I find that the Commission shall, in the performance of its functions, have all the powers of a civil court under the Code of Civil Procedure of 1908 while trying a suit in respect of the following matters, namely—then they enumerate those. We are giving the Commission jurisdiction over the whole territory of India. I am happy that Jammu and Kashmir is also contemplated to be brought under its jurisdiction by this amendment Bill. To that extent I am happy because there should be no discrimination in applying the principles of this Act. What I am not able to understand is that having given them the power under the Code of Civil Procedure, here it is stated that the case has to be filed not where the defendant resides or where the cause of action arises, but where the Commission holds its office. They are being controlled by the Code of Civil Procedure, but I do not find this in the Code of Civil Procedure. There I find that the case has to be filed where the cause of action arose or where the defendant resides. The Commission's writ extends to the whole of Indian territory. I agree that it is a nice thing. But when you apply the Code of Civil Procedure and ask the man who is away from the jurisdiction to come and give evidence or to get himself tried by the Commission, I think you are doing something wrong. This has to be looked into. Having conceded that the Code of Civil Procedure would be applicable in this case, as the Code of Civil Procedure definitely says that a petitioner or defendant should be tried only in a place where he resides.....

**Mr. Chairman:** The Code of Civil Procedure is applied only to a limited extent. Several orders of the Code of Civil Procedure are made applicable, not section 20.

Shri N. R. Muniswamy: Here the explanation says:

"For the purposes of enforcing the attendance of witnesses, the local limits of the Commission's jurisdiction shall be the limits of the territory of India."

That is with regard to the attendance of witnesses. But there is no other procedure or proceeding except examining the witnesses. After examining the witnesses they have to give decision. There is no other extra procedure or proceedings in the court except taking things on evidence. The moment you take evidence, you call him and subject him to a trial, he becomes the counter-petitioner and not exactly a defendant or an accused. The moment you take him to be a counter-petitioner, the Commission must move to the place where he resides and not where the Commission holds its office. I only ask you to examine the question from that angle. I wish I am wrong. But I wanted to bring this to the notice of the Government. But what I say is correct. After taking certain evidence if the Commission finds that there is something wrong they can institute criminal proceedings and forward the case to the magistrate having jurisdiction. So far as the question of criminal proceedings is concerned, they are governed by the Code of Criminal Procedure which means that the case will be tried where the offence is committed and not where a person resides. I might commit an offence and I may be tried here. I cannot claim that my residence is somewhere else. But so far as the civil aspect is concerned, they must take the evidence where the counter-petitioner or the respondent resides. When you have conceded that it will be tried by magistrate having jurisdiction over the accused because the reference is under section 482 of the Indian Penal Code, we must also extend the same formula and the same reason with regard to the Civil Procedure Code. But this is only for bringing to the notice of the

Government whether they should do anything here.

Again, I find that the Commission has to discharge functions in two capacities. It has to function not only as a judge but also as a prosecutor because it is the Commission only which wants some information to be supplied to it and if the information supplied to it in any way infringes the provisions of this Act, they will be hauled up. So they put forth the case and happen to sit on that. This aspect I do not like. I only want that just as they send the whole file to the magistrate for trial, when an offence is committed according to the other provisions of the Act they must put up their case and send the file to the judge who has got jurisdiction over it instead of they themselves trying it.

About the new chapter which they have included about registered associations, that is, Chapter IIIA, I will make one small observation. That aspect has also been referred to by my hon. friend, Shri Guha. A recognised association will have to be registered to carry on trade in the forward market. But I shall first read clause 14A. sub-clause 3(b), which says:

"to require a recognised association in existence at such commencement to make an application under sub-section (2); and every such association shall, as soon as may be after such commencement, be granted free of cost by the Commission a certificate of registration."

There is no option. The moment they file an application for registration it shall be granted. There is no question of a refusal. But subsequent to this in section 14B I find this provision, namely,—

"On receipt of an application under section 14A, the Commission, after making such enquiry as it considers necessary in this behalf, may by order in writing

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grant a certificate of registration or refuse to grant it."

I say they have no right to refuse it because earlier they have made a provision to make it absolute. The association is a recognised association. It is only for the purpose of tabulation and for informing the Commission as to how many registered associations are there that the provision has been made. The moment the provision is made it is a mere formality. It is merely filing an application for getting it registered as an association. It must *ipso facto* be granted without anything. It is an absolute right given to the petitioner. But I find from clause 14B that what was given by the left hand is taken away by the right hand or *vice versa*. Clause 14B, says that after making enquiry they can refuse. They have no right to refuse. I feel that they will be put to difficulty if they have such defective drafting. This much only with regard to the provisions of the Bill.

Now I shall go to the general principles of this Act. The Forward Contracts Act postulates that something has to be done beforehand, before actually the transfer of goods takes place. There is bound to be some element of speculation. Ordinarily we can expect or anticipate something. Something else is for our benefit. But when we expect something by way of speculation as one of self-aggrandisement jeopardising the general economy this has to be objected to. To that extent I agree. But how can you avoid speculation? Speculation I do not think is there. What they are now doing is regulating speculation. While regulating speculation you are also now trying to speculate over the regulation. For this reason we are now imagining a great deal as what all possible things might be adopted by the associations and what all things they can invent by their ingenuity. The Commission supplies this information or from the previous experience we have gathered some aspects and ac-

cordingly we do it. But we do it not knowing that the moment we get it into the regulations, you will find that new things will come in and crop up which have not been practised. These things are not foreseeable at this distance of time. They do it with the best of intentions, for the sake of economy, for the sake of the country, for the sake of planned economy. Hon. friends who have spoken before me have been very eloquent over that, forgetting for a moment that the whole human set up in the country is such. The only thing is that they have been cataloguing the several commodities over which there is regulation, and there is free speculation also.

**Mr. Chairman:** His time is up.

**Shri N. R. Muniswamy:** I know there is only one more member to speak. By this interruption I have lost the trend.

**Mr. Chairman:** The hon. Member may conclude.

**Some hon. Members:** There are many Members to speak.

**Shri N. R. Muniswamy:** Well, Sir, I resume my seat

**Shri Heda (Nizamabad):** Sir, the Bill deals with a very important aspect of our economic life. If we just compare the labour, time, attention that this House bestowed when we passed the original Act, one comes to the irresistible conclusion that we are not doing justice to this Amending Bill. This is a time when we should have taken stock of the working of the entire Act for the last 8 years or so and the various reports of the Commission which are as many as 22: may be more.

As to the various aspects that this Bill deals with, let us first take this basic point, namely, to what extent we can regulate forward markets.

Some of our friends are very optimistic. Rather they raise the demand that we should control it in such a way that there is no need for this Act. The hon. Mover was also very optimistic. But, the economic structure that we have adopted for ourselves, is a mixed economy of allowing the private sector to play its part. Added to it, we have taken to planned economy. We have got the Plans. I think, therefore, forward contracts would always remain. To say that a time would come when the private sector will be working, that the planned economy will go on and yet there will be no forward contracts, will not be true. The point is whether there will be forward contracts without a speculative tendency. The speculative tendency would be there in every contract, even non-forward, even in ready contracts. The point is, to what extent the speculative tendency is and to what extent speculative tendency is not there. We can regulate to a certain extent. We cannot regulate beyond that particular point. But, the conditions in India are not satisfactory. My hon. friend Shri Warior gave the example of pepper. If I give the example of cotton or oilseeds or anything, we will find that the variations in the price range in the course of a year is so much that even if we take all the necessary expenditure for storage, for wastage, for loss in weight, for transport, interest on capital blocked, there remains enough.

To arrest the speculative tendencies, this Act itself will not do very much. The amendments that we are bringing forward will not go far. For that, the remedy is outside this Act. Those remedies have to be taken intelligently.

I shall deal with this point. When we compare the labour that we put when we passed this Bill, and the attention that we bestowed on it and the way we are rushing this Amending Bill or the shape of the Amending Bill, we will find that we are not doing justice to it. Let us see how this Bill went through. For the first time, in February, 1950, a Bill was

drafted. The name of the Bill was Future Markets Regulation Bill, to provide for the regulation of certain matters regarding future markets and prohibition of options in bonds and for matters connected therewith. It was more or less on the lines of a similar Bill in the Bombay State. The Bill was circulated to the State Governments, Chambers of Commerce, Reserve Bank of India, and other interests. The draft Bill along with the comments received were referred to an Expert Committee under the Chairmanship of Shri A. D. Shroff. The Bill as revised by the Committee, under the new name, Forward Contracts Bill, was introduced in the Provisional Parliament in December, 1950. That new Bill, as compared with the first draft Bill, differed in various particulars. That Bill was referred to a Select Committee. The report of the Select Committee came. But, it did not go through the Provisional Parliament. Therefore, another Bill was introduced in the First Parliament and it was also referred to a Select Committee. That Select Committee made very drastic or important changes. In fact, in one particular aspect, they differed diametrically. After all this labour, we passed that Bill in 1952. Eight years have elapsed. Take the parallel of the Company Law. In that case, we saw how the department was working and what was the Administration's view. Then, we took certain steps. The Amending Bill which we have passed recently has come up very well, improving the company law very nicely. Is the case similar here? It is not so. We have not given thought to the problem. We have not made a proper study or assessment of the working of the Commission or the working of the Bill.

14.55 hrs.

[MR. DEPUTY-SPEAKER in the Chair]

Another aspect also needs to be mentioned. My point is that this Bill, instead of being rushed through in this way, should have been referred to the Select Committee. The provisions of this Bill by themselves are

[Shri Heda]

not very important. Because of that, probably, the hon. Minister has not done that. But, there would have been one advantage. Not only would the Members of the Select Committee have given thought to the Bill and suggested certain ways and measures, but it would have another advantage also. The concerned interests, whether they are the producers, whether they are consumers, or the industries or the actual dealers in forward contracts or their associations or Members, whoever they are, would have an opportunity to have their say how they feel about it. That would have been a distinct advantage. I think in the democracy that we are working, it is necessary that we consult all these various interests. We ask them, we find out from the difficulties that they are experiencing, find out what their experience is, and find out what are the problems that they would like to solve and then come to amending or improving the scheme. This should have been undertaken. But, that is not being done.

The Bill, as it has been presented before us, aims at certain objectives. They have made a very big claim. As an hon. Member pointed out, it is very difficult to say whether we will be able to achieve those very objects. The first objective in the Statement of Objects and Reasons is, that the provisions of the Act were not adequate to deal with excessive speculation and other malpractices now prevalent in some of the forward markets. Are increasing the fine and providing for jail punishment the measures by which we can arrest excessive speculation? I do not say that they will not be effective at all. They may be effective, but they may not go very far. Except these provisions, I do not find anything by which we can regulate, we can arrest excessive speculation. Excessive speculation and the speculative tendency is a social evil. Therefore, I think we have to create a different social climate. Thereby only we can deal with this.

Or, if you want to deal with it from the economic point of view, this Act will not come to our help. We will have to take other measures, very radical ones, under a different Act or under our economic policy, whether it is taxation scheme or whether it is regulation of the various markets and these commodities.

For instance, take the case of coffee. There was a time when there was speculation in coffee, but today there is no speculation in coffee. If we could deal with coffee satisfactorily, we could equally deal with cotton, oil-seeds and various other commodities and thus eliminate quite a good element of speculation from the market. Therefore, if there is excessive speculation, we may not be able to do much with this Bill, though certain provisions therein may help us in that direction.

15 hrs.

For one thing, I am happy that some more powers are given to the Commission. I doubt very much whether those powers were necessary or whether in the absence of those powers the Commission was being hampered in its work. My own assessment of the working of the Commission for the last seven years is that it was working in the right direction, but it was working with some hesitancy; it was not working with speed and with confidence. My apprehension is that the powers which are now being given may rather increase the element of hesitancy than create more confidence.

What is the duty of the Commission? The duty of the Commission is vigilance in the actual market. The Commission knows the market trends from day to day, from hour to hour, and from time to time. And it knows what clique or what group or which particular person is indulging in such speculation, and from what angle, and what the capacity of that clique or group or person is. So, it

can take adequate measures or suggest some measures to Government.

With the powers now proposed to be given, my fear is that Commission will not merely frame its report on the basis of its observation, but it will also try to collect some evidence, and try to make its file perfect.

**Mr. Deputy-Speaker:** Is the hon. Member concluding within the next two or three minutes?

**Shri Heda:** No, I would take some more time.

**Mr. Deputy-Speaker:** Then, he may continue tomorrow. Now, we shall take up the Indian Post Office (Amendment) Bill, 1960.

15.02 hrs

#### INDIAN POST OFFICE (AMENDMENT) BILL

**The Minister of Transport and Communication (Dr. P. Subbarayan):** I beg to move:

"That the Bill further to amend the Indian Post Office Act, 1898, be taken into consideration".

This measure is needed because we are changing from the ordinary tola to metric measures. What we have done is to equate the tola to the gramme. A tola is equal to 11.66 gms. but we are making it 10 gms. because it will not make much difference; in all the letters that we have seen being used, we have found that nobody generally uses more than 10 gms. So, this conversion would not send up the revenues, as people anticipate; it may send up a little, but it would not compensate for all that is needed.

As a matter of fact, a post-card which costs only five naye paise now actually causes a great deal of loss. It causes nearly Rs. 2 crores of annual loss to Government. But all that we

anticipate by the measures which we are now undertaking to translate tolas into gms. is that it will lead to a gain of only Rs. 40 lakhs, which I do not anticipate really, because when the accounts are finalised, it will be found that the gain is much less than anticipated. That is the reason why this Bill has been brought forward.

This is a very simple Bill, and I hope that there would not be much objection in having this Bill passed into law.

**Mr. Deputy-Speaker:** Motion moved:

"That the Bill further to amend the Indian Post Office Act, 1898, be taken into consideration".

Now, Shri T. B. Vittal Rao. The hon. Member should be as brief as the hon. Minister.

**Shri T. B. Vittal Rao (Khammam):** The hon. Minister has been brief because of something else.

Whenever this kind of conversion is done, we always find that advantage is taken of it to increase the rates and earn more revenue. As the hon. Minister himself has said, one tola is equal to 11.66 gms, whereas he is making it equal to 10 gms. actually. This means that the people will be called upon to pay much more than they have been paying so far.

**Dr. P. Subbarayan:** I would like to point out to the hon. Member that if he wrote on four sheets of paper, then they would not even come to 10 gms. Therefore, there will be really no gain to Government, as he anticipates.

**Mr. Deputy-Speaker:** There will be a loss of Rs. 2 crores on post-cards also.

**Shri T. B. Vittal Rao:** The hon. Minister is arguing out the point that a post-card costs much more actually. We know it very well, that a post-card costs much more than what it