

marketing? These, Mr. Vice-Chairman, are my suggestions and I sincerely submit, let us not look at it from the partisan point of view at all but from the point of view of the people of India who include the traders and shopkeepers and let us not assume that all of them are hoarders and black-marketeers as all of the police inspectors are not corrupt. But a large number are becoming so because this is a powerful tool in their hands to which there is no answer. Thank you very much.

MESSAGES FROM THE LOK SABHA

(I) The Foreign Exchange Regulation (Amendment) Bill, 1993.

(II) The Multimodal Transportation of Goods Bill, 1993.

SECRETARY-GENERAL : Sir, I have to report to the House the following messages received from the Lok Sabha signed by the Secretary-General of the Lok Sabha :

(I)

"In accordance with the provisions of rule 96 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose the Foreign Exchange Regulation (Amendment) Bill, 1993, as passed by Lok Sabha at its sitting held on the 23rd March, 1993."

(II)

"In accordance with the provisions of rule 120 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to inform you that Lok Sabha, at its sitting held on the 23rd March, 1993, agreed without any amendment to the Multimodal Transportation of Goods Bill, 1993, which was passed by Rajya Sabha at its sitting held on the 17th March, 1993.

Sir, I lay a copy of The Foreign Exchange Regulation (Amendment) Bill, 1993, on the Table.

I. STATUTORY RESOLUTION SEEKING DISAPPROVAL THE ESSENTIAL COMMODITIES (SPECIAL PROVISIONS) AMENDMENT ORDINANCE, 1993.

II. ESSENTIAL COMMODITIES (SPECIAL PROVISIONS) AMENDMENT BILL, 1993—contd.

SHRI JAGESH DESAI : Sir, I appreciate the point regarding raids that was mentioned by Mr. Viren Shah. But I would like to point out that there was a written answer to a question in the Rajya Sabha that in Himachal Pradesh 13,000 raids took place when Mr. Shanta Kumar was the Chief Minister... (*Interruptions*)

SHRI VIREN J. SHAH : If you give such a power, they will do it... (*Interruptions*).

SHRI JAGESH DESAI : Not a single gram of foodgrains... (*Interruptions*)

SHRI VIREN J. SHAH : If there was no such power, they might not have done that... (*Interruptions*) No Government should give such a power.

SHRI DAVID LEDGER (ASSAM) : Mr. Vice-Chairman, Sir, the primary intention of the Government when the Essential Commodities Act was legislated was to regulate the production, supply and prices of essential commodities, to see that essential commodities are supplied to the consumer at a reasonable price and to ensure that unscrupulous traders cannot exploit the consumer by resorting to hoarding and artificial inflation. In course of time when it was felt that the provisions of the Essential Commodities Act, 1955 were not adequate, amendments were brought in and the Essential Commodities (Special Provisions) Act, 1981 was specifically enacted, initially for a period of five years, with a view to providing more teeth to the Essential Commodities Act, 1955 and to make it more stringent. The idea, perhaps, was that if the situation improved, these stringent provisions could be withdrawn and could be done away with. As the situation

with. As the situation did not improve and the unscrupulous traders continued to exploit the consumer, these provisions had to be again extended for a further period of five years in 1987. As I can understand, the hon. Minister has been compelled to bring out this Bill with a view to extending these provisions for yet another period of five years for the same reasons. I, therefore, think that this Bill is absolutely essential to protect the interests of the consumer, to protect the interests of the million of people who are living below the poverty line in this country. If the Government is genuinely serious to protect the interests of the consumer, if the Government is genuinely interested to protect the interests of the vast millions of people who are living below the poverty line in this country, then the Government has to deal firmly with the unscrupulous traders, it has to deal very firmly with hoarders, profiteers. If the Government is serious, it is incumbent upon it to put an effective check on the anti-social activities of these unscrupulous traders, hoarders, black-marketeers and profiteers and if an effective check has to be put, it is imperative to provide more teeth to the existing legislation and this is exactly what the present Bill seeks to achieve.

Here, may I sound a note of caution? A stringent legislation alone is not going to serve any purpose unless it is followed by implementation. Here the role of the State Governments comes into the picture. It is the State Governments which will have to make sincere efforts to implement the various provisions of this Act. Therefore, a strong determination on the part of the State Governments will be required but at the same time care should also be taken to see that the provisions are not misused or misapplied by those who have the responsibility of implementing them. Quite often, we hear allegations that small traders, are being harassed by officials. Just now, my hon friend, Dr. Jain, was referring to it and at times it really becomes a matter of serious concern. These allegations should be looked into promptly and adequate action should be taken... (interruptions)...

THE VICE-CHAIRMAN (SYED SIBTEY RAZI) : Mr. Ledger, just a minute.

If the House so agrees, I will invite Mr. Viren J. Shah to take the Chair.

[THE VICE-CHAIRMAN (SHRI VIREN J. SHAH) IN THE CHAIR]

SHRI DAVID LEDGER : Sir, I was saying that these allegations should be promptly looked into and whatever action was required to be taken in such cases should be taken. We cannot overlook this because the trading community plays a vital role in building up the economy of our country. Therefore, adequate protection of the trading community also is important.

Sir, the Bill has been criticised on several counts. My good friend, Dr. Jain, has pointed out that the Bill is harsh that it is unnecessarily stringent and that the provisions are draconian. The trading community is grumbling and the traders also are saying that the provisions are harsh, unduly harsh, stringent and extraordinary. We read in the newspapers that there are even pressures from the trading lobby that the provisions of this Act should no the further extended. I agree that the provisions are harsh and extraordinary. There is a provision for Special Courts for summary trials. The offences are non-bailable and cognizable and there is no scope for appeal before any judicial authority and if an appeal has to be preferred, it has to be preferred before the State Government. There is also a provision for the confiscation of goods. I quite appreciate the fact that none of these provisions is soft, but is harsh in nature. But may I remind my friend on the other side that the situation today is extraordinary? And, in this situation, the consumer continues to be exploited and the unscrupulous traders, black-marketeers, hoarders and profiteers continue to exploit those millions of people in this country who are living below the poverty line. I am sure that my friend on the other side will agree that this is an extraordinary situation and when we deal with an extraordinary situation, extraordinary and harsh measures are called for. I do not see any reason why an honest trader should be afraid or

scared. It is only the dishonest trader who should be afraid of these provisions. It is only the dishonest business snarks who suck the blood of the common man and who exploit the consumers who should be scared of these provisions. I do not see any reason why an honest dealer or an honest trader should take exception to the provisions or to the continuation of the provisions of the Bill.

Sir, I am sure that the Bill will generate new confidence among the consumers. May I humbly submit that the Bill is fully justified because the purpose for which the parent Act, the Essential Commodities Act, 1955 and also the subsequent amended legislation, the Essential Commodities (Special Provisions) Act, 1981, were brought forward still exists and the situation has not changed and the purpose still exists? As the honourable Minister has said in his opening remarks, there is unanimity among the State Governments. Irrespective of political affiliations, the State Governments have agreed that there is a need to continue this Act. Therefore, I support the extension of this Act for a further period of five years and I welcome this Bill. Thank you, Sir.

SHRI MENTAY PADMANABHAM (ANDHRA PRADESH) : Sir, as far as this Bill is concerned, this is to extend the Essential Commodities Act for a further period. I have no quarrel with that. This kind of a Bill is needed in view of the vast population living below the poverty line and certain areas where market facilities are not there. This kind of a Bill would be of great help to the rural population who have been suffering from lack of some essential commodities. This is the reason why I am not able to support the Resolution moved by my friend, Dr. Jain. But, Sir, there is one very important issue involved here. As one of my hon. colleagues said, this Act was conceived in a situation where there were scarcities. There was scarcity in food items, there was scarcity in a number of consumer items. In 1955 or even earlier to that, the essential commodities which are needed for the very existence

of the people, were scarce. Therefore, this legislation was conceived to effect some equitable distribution among all sections of the people irrespective of their purchasing power. So, this legislation was conceived in that situation of scarcities. Now, we have progressed a lot more. During the last four decades, we have achieved certain improvement in various sectors. Sir, as you yourself suggested, there is no need for this list of 60 or 65 items. Let the Government concentrate on those essential items which are in scare, which require control over distribution. Whether they are available or not is not the point. The point is that the Government of India are now following certain policies. They are liberalising the entire economy. They are doing away with controls. Even this public distribution system is being diluted. And they are leaving most of the things to the market economy. In such a situation, this kind of a Bill with a criminal provisions angle attached to it, is not needed. But, all the same, this kind of a legislation is needed. The immediate purpose of this Bill is very limited. I, therefore, request the hon. Minister to bring in a comprehensive legislation on essential commodities. And we have the experience that during the last 40 years, the provisions of this Act have been misused. They are being used to harass the traders. As the statistics show, the number of people who are actually convicted is much less than the number of cases, prosecutions.

In this connection, Sir, I would like to make one point. This refers to the power to arrest under Clause 10AA. Clause 10AA says :

"Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no officer below the rank of an officer in charge of a police station or any police officer authorised by him in this behalf in writing, shall arrest any person accused of committing an offence punishable under this Act."

Sir, this gives wide scope for the local police to harass the traders. My friend from the treasury bench has said that an honest trader need not fear. I should

say that everybody needs protection from a dishonest police officer at the local level. We all have experience that in the rural areas, in small towns in various States, the police officers who are in charge of implementing the provisions of this Act are unnecessarily harassing the people. Therefore, this provision has to be looked into. Kindly go over this. Don't give such draconian powers to the local police officer. A police officer who is in charge of a police station means what? He is a Sub-Inspector. And he can authorise any police constable to go and harass a trader who is actually not dishonest, but honest. Therefore, Sir, this has to be looked into. Sir, as you know, the entire criminal jurisprudence rests on one principle. That is, let hundred culprits go scotfree, but let not one honest person be punished. Therefore, in view of this salient feature of our criminal jurisprudence, kindly revise this. Once again look into this provision and do the needful. Thank you, Sir.

SHRI KRISHNA KUMAR BIRLA (Rajasthan) : Sir, I rise in support of this Bill. But side by side, I would also like to mention that in respect of certain provisions, re-consideration is necessary.

The history of the Act is that the Essential Commodities Act was passed in 1955 and this Act, The Essential Commodities (Special Provisions) Act was passed some time in 1981. It became effective from 1982 for a period of five years and after that, it was extended for a further period of five years. Now, as I said, I support this Bill. But there are two or three points which I would like to mention for the consideration of the hon. Minister. One is, as a result of this Bill, all the offences under this Act have become non-bailable. The second point is that appellate jurisdiction authority has been transferred from judiciary to the executive. These are the two provisions of the Act which, in my opinion, need consideration. They are very harsh. In practice, what happens is that on a minor transgression of a technical nature, the shopkeepers and the traders are arrested and are declared criminals. I will give two instances how this law is being misused. One is, for every essential commodity, the trader is required to show everyday in his shop the stock of that commodity. Everyday, the trader has to

mention the stock on hand. In case of a slip or unintentional error, there could be a mistake of say even one Kg. while giving stock of that particular commodity. That constitutes a violation of the provisions of the Act and it is regarded as a criminal offence and the trader could be prosecuted. Sir, human error is a common feature in any trade in any business. But the Bill, unfortunately, does not provide any relief as far as human error is concerned. This is one point which I would like to bring to the notice of the hon. Minister.

I will give another illustration. Take the case of sugar which again is an essential commodity. When the trader purchases sugar, there are two criteria laid down for the sale and purchase. One is the colour and the other is the grain. Better the colour and the grain of the sugar, higher is the price that it fetches in the market, because that is regarded as a better quality. Now, if the sugar is inferior in colour or in grain, then it is regarded as a criminal offence. The question that I would like to pose before the hon. Minister is, purely because the colour has gone down, it does not mean in any way that the nutritional value of the sugar has gone down. The nutritional value is still the same. I can well understand if the trader were to adulterate the sugar—an essential commodity—in which case you punish him and give him the severest possible punishment. But to arrest a person on technical offences is too harsh a punishment.

The fact that the Act is harsh can be judged from certain figures which I place before you. In 1990-91, one lakh and forty thousand raids were conducted throughout the country. Of these, only five thousand people were arrested.

Of these 5,000 people, 267 persons, i.e. 5 per cent of them, were convicted when the Government filed cases against them, when the Government filed criminal cases against them, in courts of law. The rest of them, use balance 95 per cent of them, who were innocent were arrested harassed, humiliated and had to spend quite some time in police lockup owing to the misuse of power by petty officials.

As I mentioned earlier, the Essential Commodities (Special Provisions) Act was first extended, in 1982, for a period of five years, i.e. up to 1987. Then, again, in 1987, it was further extended for a period of another five years, i.e. till 1992. My proposal is that this Bill should be referred to a Select Committee where they can consider all the provisions in detail. Or, if it is not possible, at least, the Government should remove the clauses which I referred to; firstly, where all offences are made non-bailable; secondly, where, on technical grounds, people are arrested and, thirdly, where the appellate jurisdiction has been transferred from the judiciary to the executive. Let these provisions be rescinded. These are my observations. Thank you.

THE VICE-CHAIRMAN (SHRI VIREN J. SHAH) : Dr. Jain, do you wish to press your motion, or, do you want to withdraw it?

DR. JINENDRA KUMAR JAIN : Sir, I would like to press my motion.

Mr. Vice-Chairman, Sir, by way of reply to the debate, I would like to say a few words for the consideration of the House and that of the hon. Minister. I am thankful to the the hon. Members who took part in the debate and supported the spirit of my disapproval motion. I expected hon. Viren Shah to support me, but I am specially thankful to Mr. Birla. I appreciate that he is a member of the ruling party. There are certain laws of the land which do not permit him to say that he does not agree with the Bill and supports the disapproval motion. But his entire speech was a statement of facts. He is a very distinguished leader of Indian trade and industry. Although he represents one of the large houses, I am grateful to Mr. Birla that he was honest and he spoke here, in Parliament, truthfully about the harassment that this law is causing to the members of the trading community. It is an improvement.

Sir, I am sure, if the hon. Minister does not wish to oblige me,....

THE MINISTER OF CIVIL SUPPLIES CONSUMER AFFAIRS AND PUBLIC DISTRIBUTION (SHRI A. K. ANTONY) : Why not?

DR. JINENDRA KUMAR JAIN : Because you may say that I belong to the Bharatiya Janata Party, to the opposition. You may say, 'I do not want to listen to you'. But please listen to Mr. Birla. Please listen to the voice of sanity, to the experience and wisdom which was so eloquently, honestly and brilliantly put forward by Mr. Birla in the House. Please. It is not a matter of partisanship. We are all working towards building a better society. We are trying to lay bridges of understanding. I would say that your whole economic theme of liberalisation is being defeated by this Bill. I know Mr. Antony is a man of understanding and great ideas. So is the Minister of State.

SHRI A. K. ANTONY : We will discuss it later.

DR. JINENDRA KUMAR JAIN : I would request them both....

SHRI MENTAY PADMANABHAM : You can discuss these things personally with him.

DR. JINENDRA KUMAR JAIN : Mr. Padmanabham, it is not

THE VICE-CHAIRMAN (SHRI VIREN J. SHAH) : No personal discussions. Dr. Jain, are you finishing?

DR. JINENDRA KUMAR JAIN : Last word, Sir. If it is a matter of personal thing, I know both the Ministers will never say 'no' to me. But I never ask for a personal favour. I owe it to the people whom I represent here. We all owe it, collectively, to the people of India that the laws that we make should be humane, decent and sensible. This is not in order with the spirit of your policies. This is not in conformity with the policies of the Government. Therefore, I say, let us respect the judiciary. Let us not give draconian powers to the police officials. Let us not have such laws which harass the weaker traders.

Honest citizens, poorer people. Sir, I am sorry to say that in spite of the brilliance and eloquence of the hon. Minister, he has not been able to convince me to withdraw my motion of disapproval.

I have all respect for the hon. Ministers, especially for Mr. Anthony, whom I respect so much—for the first time he has come to this House with a Bill. But I am sorry to say that they have failed to convince me that I should withdraw the motion of disapproval. I know I would be defeated by the majority that the ruling party has in this House.

THE VICE-CHAIRMAN (SHRI VIREN J. SHAH) : Dr. Jain, I think you have made your point.

DR. JINENDRA KUMAR JAIN : I would press that my motion of disapproval be put to vote.

THE MINISTER OF STATE IN THE MINISTRY OF CIVIL SUPPLIES, CONSUMER AFFAIRS AND PUBLIC DISTRIBUTION WITH ADDITIONAL CHARGE OF THE MINISTER OF STATE IN THE MINISTRY OF COMMERCE (SHRI KAMALUDDIN AHMED) : Mr. Vice-Chairman, Sir, I will not take much of the time. I hope after hearing me Dr. Jain will be inclined to withdraw his motion, he will not press for his motion.

Sir, I am grateful to the hon. Members who have spoken on this Bill. The Bill was moved to replace the Ordinance. I have already explained the circumstances in which the Bill was brought. Here I wish to make one submission that before this Ordinance was promulgated in the month of August 1992, in fact, I travelled to almost all the big business centres, I spoke to a number of trade organisations, FICCI, SHOW, a number of organisation in Delhi, Bombay and Calcutta. I heard them, I took their views. They mentioned about a number of things. In fact, this particular amendment about the sub-inspectors to arrest has been brought forward on the basis of the representations made to us that everybody was coming and harassing them. In the morning some Civil Supplies fellow comes, in the afternoon some policeman comes and in the evening some income-tax or sales-tax fellow comes. They represented that all these people were harassing them. They represented, "If this authority rests with only one particular department or person, then perhaps we may have to answer only particular authority."

So, this was the representation made to us by the very traders' organisations. I agree that there are a number of control orders, a number of restrictions in this, particularly in the matter of food articles. But you know the circumstances that we are in today, particularly with regard to the food articles. Such restrictions are very very necessary, even for maintaining the prices also. Sir, this morning you have seen that the inflation rate is 6.8. If you look to the inflation rate of other countries, particularly of a number of African countries, it has gone into three digits, and I am very happy to say that in spite of the difficult situation, we have been able to maintain the civil supply line, we have been maintaining the prices also. I do agree that last year the prices had gone very high and the trend also was very very alarming, but this year the prices of essential commodities, particularly of the food articles, have been either steady or have come down.

Coming to the list of 66 items of the essential commodities, you will kindly see that this list consists of the food items which are necessary to run our industries. If there is anything which is brought to our notice that such and such item is not necessary at all, we can look into it, there is no objection to that.

One point has been made about a large number of raids and a low number of arrests. As I said, this Bill is intended only to create a sort of fear in the minds so that the people should not resort to black-marketing, hoarding and then raising the prices and all that.

So, with that view, sometimes the State Government officials do go and check the stocks and all that. About the number of raids which were reported, all these figures are given by the States. These are not Central Government figures; all these figures have been furnished to the Centre by the State Governments.

SHRI MENTAY PADMANABHAM : Mr. Minister, do you say that the States have given you wrong figures or what?

SHRI KAMALUDDIN AHMED : No, I do not say that they are wrong figures. What I was submitting is, in one particular

State the figure appeared to be quite abnormal; that was in Himachal Pradesh. The number of raids they had shown was quite high. So, when we enquired and tried to find out what it was, it was brought to our notice that even the ordinary checks which the officials used to make were also included in the number of raids, and that is how the figure had gone up to that level.

Sir, I am grateful to hon. Mr. Padmanabham that he has supported this Bill. He has also pointed out certain things, to which I can only say that while I had spoken to these trade organizations, I had assured them that we would issue proper guidelines to see that no harassment is meted out to the traders and there won't be any harassment on technical grounds. So, this was the thing that I had said. I never said that the Act will not be extended and the Ordinance will not be issued. It was not like that. I did assure them, "Yes, wherever such things are reported to us, we will definitely look into them and, even otherwise, we will issue proper guidelines not to make indiscriminate use of this Act, even for technical offences. So, Sir, with these words I submit to the....

श्री अनन्तराम जायसवाल : (उत्तर प्रदेश)
माननीय मंत्री जी इस पर दृष्टि डालिये कि
गाइडलाइन कानून को कैसे बदल देगा ?

SHRI KAMALUDDIN AHMED : The law does not allow harassment of a person. It is only to administer the availability and prices of essential commodities.

THE VICE-CHAIRMAN (SHRI VIREN J. SHAH) : Thank you, Mr. Minister... (*Interruptions*)... No more speeches now.

SHRI MENTAY PADMANABHAM : Sir, the hon. Minister may kindly realize this also : The high number of prosecutions and the low number of convictions also shows that there is tremendous harassment of a number of people.

THE VICE-CHAIRMAN (SHRI VIREN J. SHAH) : I don't think the Minister needs to reply to this. Now, Dr. Jain, are you pressing your Resolution? ... (*Interruptions*).... Are you pressing or withdrawing ?

DR. JINENDRA KUMAR JAIN : Sir, I don't want to appear unreasonable, but the hon. Minister has totally failed to convince me. Ministers come and go, but what remains on the Statute Book.

THE VICE-CHAIRMAN (SHRI VIREN J. SHAH) : No more speeches.

DR. JINENDRA KUMAR JAIN : So, his personal assurance won't work. Therefore, I would like to press my Resolution.

THE VICE-CHAIRMAN (SHRI VIREN J. SHAH) : I shall first put the Resolution moved by Dr. Jinendra Kumar Jain to vote. The question is :

"That this House disapproves of the Essential Commodities (Special Provisions) Amendment Ordinance, 1993 (No. 1 of 1993) promulgated by the President on the 2nd January, 1993."

The motion was negative.

THE VICE-CHAIRMAN (SHRI VIREN J. SHAH) : I shall now put the motion moved by Shri Kamaluddin Ahmed to vote. The question is :

"That the Bill further to amend the Essential Commodities (Special Provisions) Act, 1981 and to make special provisions by way of amendment to the Essential Commodities Act, 1955, as passed by the Lok Sabha, be taken into consideration."

The motion was adopted.

THE VICE-CHAIRMAN (SHRI VIREN J. SHAH) : We shall now take up clause-by clause consideration of the Bill.

Clause 2 to 5 were added to the Bill.

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

SHRI KAMALUDDIN AHMED : Sir, I move :

"That the Bill be passed."
The question was put and the motion was adopted.