

जाये और एक्साइजेज और कस्टम्स जो हैं वह उन पर भी लगा सकें जो अभी तक इस से संबंधित रहे हैं। तो मैं समझता हूँ कि इस विषय में ज्यादा कुछ दलील की आवश्यकता नहीं है और हम लोग इसका पूर्ण समर्थन करें और हाउस से भी इसका समर्थन होना चाहिये।

SHRI S. C. KARAYALAR (Madras): Sir, the object of this Bill is to make provision for the imposition of duties of customs and central excises on goods belonging either to the Central Government or to the State Governments. Sir, in order to understand the implications of this Bill, it is necessary to examine the provisions of article 289 of the Constitution. Article 289 consists of three clauses. Under clause (1) exemption is granted to the property and income of a State from Union taxation. That is a general provision. Under clause (2) provision is made for Union taxation to be imposed by Parliament by law in respect of a trade or business of any kind carried on by the Government of a State or any operations connected therewith or any property used for purposes of such trade or business. There is a clear distinction made in respect of trade or business and that means trade or business which is alien to the operations or functions of the Government. This is further emphasised in clause (3) of the article, where it says:—

“Nothing in clause (2) shall apply to any trade or business, or to any class of trade or business, which Parliament may by law declare to be incidental to the ordinary functions of government.”

So, it is clear that the object of article 289 is to enable . . .

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): Mr. Karayalar, are you likely to take more time?

SHRI S. C. KARAYALAR: I will take some five minutes.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): You can continue in the afternoon. The House stands adjourned till 2.30 P.M.

The House adjourned for lunch at one of the clock.

The House reassembled after lunch at half past two of the clock, **THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA)** in the Chair.

ALLOTMENT OF TIME FOR GOVERNMENT LEGISLATIVE AND OTHER BUSINESS

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): I have to inform Members that the Business Advisory Committee at its meeting held today has recommended the allocation of time for Government legislative and other business as follows:—

Time allotted

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| (1) The Customs and Central Excises (Amendment) Bill, 1963 | 1 hour | } As already allotted by the Chairman. |
| (2) The Appropriation (Railways) No. 5 Bill, 1963 | 1 hour | |
| (3) The Warehousing Corporation (Amendment) Bill, 1963 | 1 hour 30 minutes. | |
| (4) The Drugs and Magic Remedies (Objectionable Advertisements) (Amendment) Bill, 1963 | 1 hour (in addition to the time already taken). | |
| (5) The Tenth and the Eleventh Reports of the Commissioner for Scheduled Castes and Scheduled Tribes | 7 hours. | |
| (6) Report of the Union Public Service Commission | 2 hours 30 minutes. | |
| (7) The Dramatic Performances (Delhi Repeal) Bill, 1963 | 1 hour 30 minutes. | |
| (8) The Report of the University Grants Commission | 3 hours 30 minutes. | |

SHRI BHUPESH GUPTA (West Bengal) What about the discussion on the motion that I have given?

THE VICE-CHAIRMAN (SHRI M P BHARGAVA) Which motion? Is it about the situation arising out of the judgment of the Supreme Court and the detention appeal cases? That is under the consideration of the Chairman

SHRI BHUPESH GUPTA Is it under your consideration, under the consideration of the Chairman?

THE VICE-CHAIRMAN (SHRI M P BHARGAVA) The Chairman is in correspondence with the Government and as soon as he receives a reply we will let you know

SHRI BHUPESH GUPTA I thank you very much I would request it before the Session ends We shall be meeting after two months This matter is serious and I would like the hon Minister to consider the proposition It is for them to express an opinion and say it, because I have pointed out in the motion, by supplying the judgement and all the papers, that we have got on the Statute Book a detention law under the Defence of India Rules It is incompatible with the provisions of the Constitution All Judges are agreed on that Now, this is a matter which Parliament cannot pass by It will be the end of democracy and the Constitution if, when the Supreme Court points out that the law is not in accordance with the Constitution, we do not discuss it Even if you take it as *obiter dicta* the ruling of the Privy Council was that the *obiter dicta* of the Privy Council should bind all courts Here we are not concerned with the courts The Supreme Court has pointed out a very serious gap in the law and I think as Members of Parliament we owe it to ourselves and the nation that we discuss it Therefore, I would like to appeal to you in all humility that you kindly convey the sense of urgency in the matter, not in the interests of a handful of com-

munists but in the larger interests of constitutional democracy and the Parliamentary system

SHRI B K P SINHA (Bihar) In connection with the point which the hon Member, Shri Bhupesh Gupta, has raised, it is entirely for the Government to decide whether they shall have a discussion or not I have nothing to say about it But if the Government are agreeable to a discussion in this House, then at least two days before the discussion, the full judgment of the Supreme Court, the majority and minority judgments, should be circulated to the Members of the House

SHRI BHUPESH GUPTA I fully support the demand because you have circulated their judgment in the case of Dr Pratap Singh and the State of Punjab.

THE VICE-CHAIRMAN (SHRI M P BHARGAVA) It has not been circulated by us

SHRI BHUPESH GUPTA Anyway, many of us have got that judgment I have given the name of the case You will understand that I am not after anybody as such I would request the judgment in the case of Mr Tarsikha and others *versus* the State of Punjab, which deals with the detention appeal cases, may kindly be circulated to Members of Parliament This House has got a number of very eminent jurists and lawyers I should like them and other Members also to consider, to reflect over the matter, so that generations that follow us do not say that even when the Supreme Court said that the law was bad and incompatible with the Constitution, Members of Parliament for party reasons or other reasons glossed over it I should not like this position to be created It would be a very bad precedent, I tell you Keep us in prison if you like but save the Constitution and the constitutional democracy