

Ministry of Food and Agriculture (Department of Food): —

- (i) Notification G.S.R. No. 1206, dated the 1st September, 1962. [Placed in Library. See No. LT-477/62.]
- (ii) Notification G.S.R. No. 1278, dated the 24th September, 1962. [Placed in Library. See No. LT-478/62.]
- (iii) Notification G.S.R. No. 1363, dated the 15th October, 1962. [Placed in Library. See No. LT-479/62.]
- (iv) Notification G.S.R. No. 1364, dated the 15th October, 1962. [Placed in Library. See No. LT-480/62].
- (v) Notification G.S.R. No. 1385, dated the 18th October, 1962. [Placed in Library. See No. LT-481/62.]
- (vi) Notification G.S.R. No. 1386, dated the 18th October, 1962. [Placed in Library. See No. LT-482/62.]

**SUPPLEMENTARY DEMANDS FOR  
GRANTS FOR EXPENDITURE OF  
THE CENTRAL GOVERNMENT  
(EXCLUDING RAILWAYS) IN 1962-63**

THE DEPUTY MINISTER IN THE MINISTRY OF FINANCE (SHRI B. R. BHAGAT) : Sir, on behalf of Shri Morarji Desai I beg to lay on the Table a Statement showing the Supplementary Demands for Grants for Expenditure of the Central Government (Excluding Railways) in the year 1962-63.

**THE INDIAN SALE OF GOODS  
(AMENDMENT) BILL, 1962**

THE MINISTER OF LAW (SHRI A. K. SEN) : May the Deputy Minister *move* it on my behalf, Sir?

MR. CHAIRMAN: Yes.

THE DEPUTY MINISTER IN THE MINISTRY OF LAW (SHRI BIBUDHEN-DRA MISRA) : Sir, I beg to move:

"That the Bill further to amend the Indian Sale of Goods Act, 1930, be taken into consideration."

Sir, the Indian Sale of Goods Act, 1930, which is mostly modelled on the English law on the subject, was reviewed by the Law Commission in the light of the judicial decisions obtaining in India after 1930, and also in the light of the development of the law that existed in other countries as well. It also received representations and suggestions from various bodies, and after examining all these it came to the conclusion that a radical change of the Act was not necessary and so suggested some minor changes only. A Bill was introduced in 1960 on the floor of this House incorporating all the recommendations that were made by the Law Commission. It was passed here and sent to the Lok Sabha, but it could not be passed there due to its dissolution, and hence this Bill has been brought here again. As I have said, Sir, the Bill that was brought in the year 1960 before this House sought to incorporate all the recommendations that were made by the Law Commission. The distinction now is that only one of the recommendations of the Law Commission has not been accepted in so far as the present Bill is concerned, namely the inclusion of electricity, gas and water in the definition of "goods" in section 2 of the Indian Sale of Goods Act. Sir, since there is also an amendment on the subject, that has been tabled by Mr. Chordia, that these be included in the Definition of "goods", as has been suggested by the Law Commission, I will first of all refer to that aspect of the matter.

Sir, after the Bill was passed by this House, representations were received from State Electricity Boards and Undertakings that the inclusion

[Shri Bibudhendra Misra.] of electricity, water and gas in the Indian Sale of Goods Act may have the result of imposing sales tax on the sale of electricity. Therefore, they suggested that these should not be included in the definition of "goods" in the Indian Sale of Goods Act. So far as that apprehension is concerned, Sir, it was found to be baseless, because tax on the sale and consumption of electricity is included in the State List, Entry 53 of the State List, and therefore either the inclusion of electricity or the exclusion of electricity from the definition of "goods" would not take away the power of the State Government under Entry 53 of the State List to levy a tax or not to levy a tax. But, then, there were other considerations also which were subsequently examined and it was thought that it would be proper that these should not be included in the definition of "goods" at all. Firstly, Sir, it will be seen that the whole idea of the Sale of Goods Act revolves round the sale of tangible goods only and not intangible goods like electricity, gas and water. There is no country in the world where electricity, gas and water have been included in the definition of "goods" in the Sale of Goods Act; there is no parallel to such a recommendation. And secondly, if you analyse the scheme of the Indian Sale of Goods Act, if you analyse the different provisions, like sale by sample, ascertainment of goods, appropriation of goods, stoppage in transit, specific goods, perishable goods, you will find that these deal with these matters only and not with intangible goods, as I have said. Excepting probably some of the provisions regarding warranty in certain cases, the whole idea of the Act and the whole scheme cannot be made applicable to electricity, water and gas. And then, Sir, there are also specific Acts dealing with the subject of electricity and water and gas, regulating the sale and supply of electricity or of water or of gas. Therefore, Sir, it was considered that it would

serve no purpose, that rather it may create difficulties.

SHRI V. M. CHORDIA (Madhya Pradesh): You just now referred to it and said that there was some Act for water.

SHRI BIBUDHENDRA MISRA: It is always covered by municipal Acts; it is always covered by local Acts. There are the municipal Acts and for electricity there is the Electricity Supply Act of 1948 and the Electricity Supply Act of 1940 and others. They also regulate, they also say when power is deemed to be supplied to the purchaser, or not. All those provisions are there. Therefore it was thought that no useful purpose would be served if gas, water and electricity were included in the definition of "goods" in the Sale of Goods Act.

Then, Sir, incidentally I may also mention in this connection—it has been stated also in the Statement of Objects and Reasons—that the Bombay High Court is also opposed to the inclusion of electricity, gas and water in the definition of "goods", etc.

Then, Sir, as I have said, the other recommendations have been accepted in this Bill. First of all, I may refer to sub-section 13(2) of the present Act, which reads:

"Where a contract of sale is not severable and the buyer has accepted the goods or part thereof, or where the contract is for specific goods the property in which has passed to the buyer, the breach of any condition to be fulfilled by the<sup>1</sup> seller can only be treated as a breach of warranty . . .".

Now these words, "Where the contract is for specific goods the property in which has passed to the buyers", occurring in sub-section 13(2) have been recommended for deletion by the Law Commission, the reason, in their

opinion, being that it comes in conflict with sections 15 and 17 of the Act itself.

[THE DEPUTY CHAIRMAN in the Chair.]

If you will kindly see, Madam, section 12 of the Act defines what a condition is and what a warranty is. A condition is a stipulation essential to the main purpose of the contract, whereas warranty is a stipulation collateral to the main purpose of the contract. The very wording of sub-section (2) of section 13 is a contradiction in terms by itself because, if the property has passed to the buyer, then, of course, it cannot be a condition; it must be a warranty; otherwise it cannot pass. And if it is a condition, the first condition is that it cannot pass, and if it has passed, it is bound to be a warranty. So it is a contradiction in terms. This is also referred to and discussed in the Law Commission's Report itself. And secondly, sale by description and sale by sample, which are covered by section 15 and section 17 of the Act, deal with these specific goods as well, and they say what conditions should be there in such sale. Therefore, if you say that these are the conditions which are inherent in sale by sample or sale by description, and if in sub-section 13(2) you say that it is not a condition but it is a warranty, there is bound to be some amount of contradiction and confusion between section 13, and sections 15 and 17. And, therefore, the Law Commission has recommended that it is better that these words occurring in sub-section 2 of section 13 should be deleted.

Then, Madam, coming to section 25 which deals with a very important right of a seller, the right to control the passing of the properties in the goods to the buyer even after the goods have been ascertained, this section, as it is, is confined only to bills of lading and transit by ship. The Law Commission has recommended that railway receipts and transit of goods by railway should also come

under it because today largely the goods are consigned by railways, and there is no reason why transit by railways and railway receipts should be included within section 25 so as to enlarge its scope.

Then, Madam, so far as section 64 is concerned, it confines itself to the imposition or increase or reduction in any excise or customs duty. It means that wherever after a contract is made and customs duty is imposed or increased or reduced, the contract price should be adjusted accordingly. Now, it is sought to introduce in the same section sales tax and purchase tax also so that if the parties otherwise agree, if there is no different intention, then if there is an imposition of sales tax or purchase tax sometimes, if there is increase or reduction, the sale price, the contract price, has to be adjusted according to such imposition or reduction.

These are, Madam, the changes that have been incorporated in the present Bill.

*The question was proposed.*

श्री विमलकुमार मन्नालालजी चौर-  
डिया : माननीया उपसभापति महोदया,  
जो बिल माननीय मंत्री जी ने प्रस्तुत किया है  
उसका समर्थन करने के लिये मैं खड़ा हुआ  
हूँ और साथ ही कुछ सुझाव भी देना चाहता  
हूँ और माननीय मंत्री जी से प्रार्थना करूँगा  
कि पुनर्विचार करके उन संशोधनों को स्वीकार  
करने का कष्ट करें ।

यह इंडियन सेल आफ गुड्स ऐक्ट १९३०  
ई० में बना और उसके बाद मामूली परिवर्तन  
हुए, फिर लॉ कमीशन बैठा और लॉ कमीशन  
ने अपनी रिपोर्ट दी और उस रिपोर्ट के  
आधार पर हमारे शासन ने इंडियन सेल आफ  
गुड्स ऐक्ट में परिवर्तन करने की सोची ।  
उसके हिसाब से उन्होंने पुरानी राज्य सभा में—  
राज्य सभा तो इन कांटीनुएशन में है यानी

[श्री विमलकुमार मन्नालालजी चौरडिया] पहले राज्य सभा में—इस बिल को प्रस्तुत किया और जहाँ पर वह १९६० ई० में स्वीकार भी हो गया, किन्तु लोक सभा के न होने की वजह से, लोक सभा में पारित नहीं होने की वजह से, पुरानी लोक सभा की अवधि समाप्त हो जाने की वजह से, पुनः इस बिल को यहाँ प्रस्तुत किया। इस थोड़ी सी अवधि में, मामूली परिवर्तनों में ही, हमारी सरकार ने पहले के बिल में और अभी के बिल में जो परिवर्तन किये हैं उनसे मुझे ऐसा लगता है कि हमारी सरकार के दिमाग में इन कानूनों के बारे में अभी तक कुछ स्टैबिलिटी नहीं है और थोड़ा सा इशारा किसका कुछ मिल जाने पर फिर परिवर्तन करती है। मेरा आशय यह है कि जब लॉ कमीशन ने सुझाव दिया कि पानी, गैस और बिजली को इस विधान के अन्तर्गत लाया जाये और जब इस उस समय उसको बिल्कुल स्वीकार किया और जैसा कि लॉ कमीशन ने सुझाव दिया था उसी हिसाब से विधेयक प्रस्तुत किया था, किन्तु, जैसा कि मंत्री जी ने अभी दलील दी कि कुछ लोगों के रिप्रेजेंटेशन आये कि इसमें इनको शामिल नहीं किया जाये—किन किन के रिप्रेजेंटेशन आये उसे तो कहा नहीं, मगर चूंकि मंत्री जी कहते हैं इसलिये मैं उसको मान्यता जरूर देता हूँ—परन्तु जो दलील उनके द्वारा दी गई उसमें कुछ वजन मुझे मालूम नहीं पड़ता और मैं उनसे प्रार्थना करूँगा कि वह इस पर पुनर्विचार करें।

उन्होंने सब से पहले जो दलील दी, वह यह कि बिजली को अगर इंडियन सेल आफ गुड्स एक्ट में लिया जाएगा तो सेल्स टैक्स वगैरह इसमें लगने लग जायगा। मेरी यह प्रार्थना है कि अभी जो हमारी "गुड्स" की परिभाषा है उस में जो सामग्रियाँ हैं . . . .

HRI A. K. SEN: It is not merely for sales tax because sales tax may be levied otherwise. The main purpose

is that electricities are considered to be properly dealt with by a separate law, known as the Electricity Act and the two laws should not converge on the same field. Particularly now the problem of power is such that this separate law of electricity should be exclusively meant for dealing with electricity. That is the main purpose.

SHRI BIBUDHENDRA MISRA: I never said that if it is included in the definition of "Goods", sales tax can be levied. I said whether it is included or not, the levy of sales tax is a State subject. That cannot take away the power of the State Government to levy a tax on sale of goods or consumption of electricity as provided for in Item 53 of the State List.

THE DEPUTY CHAIRMAN: Mr. Chordia, now you understand it clearly.

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श्री विमलकुमार मन्नालालजी चौरडिया : मैं तो पहले भी समझ गया था मगर श्रीमान् ने जो दलील दी थी उसमें बताया था कि जो रिप्रेजेंटेशन आये थे उन रिप्रेजेंटेशन में भी यह समस्या रखी गई थी, ये सुझाव दिये गये थे, कि सेल्स टैक्स वगैरह का झगड़ा होगा और जैसा कि मंत्री जी मानते हैं कि इसमें सेल्स टैक्स की कोई समस्या पैदा होने वाली नहीं है, मैं भी मानता हूँ कि इसमें कोई ऐसी समस्या पैदा नहीं होने वाली है।

दूसरी उन्होंने दलील दी थी कि वह टन्जिबल (Tangible) थ्रीब्जेक्ट होना चाहिये तो जहाँ तक पानी का सवाल है, पानी बराबर टन्जिबल है और उसके लिये भी हम उसकी व्यवस्था इस कानून में कर सकते हैं।

इन सारी बातों के अतिरिक्त भी जो लॉ कमीशन ने रिपोर्ट दी है उसमें उन्होंने बिल्कुल स्पष्ट तरीके से सारा अपना सुझाव दिया है और उनको मान्य कर के ही हमारे शासन ने बिल्कुल उसी आश का विधेयक

प्रस्तुत किया था जैसा कि ला कमीशन ने सुझाव दिया था। तो ऐसी स्थिति में यह कि इलेक्ट्रिसिटी के लिये अलग कानून है और पानी के लिये नगरपालिकाओं या कॉर्पोरेशंस या नगर निगम के जो कानून हैं उनके तहत व्यवस्था होती है, इनकी वजह से पानी और बिजली और गैस को सेल आफ गुड्स एक्ट के तहत लाने में किसी तरह से कठिनाई नहीं है। इस सारी की सारी बात पर लॉ कमीशन ने अपनी रिपोर्ट में अच्छी तरह से प्रकाश डाला है। उन्होंने बताया है कि किस रिपोर्ट में क्या बात है और अमेरिका के ज्यूरिसप्रूडेंस द्वारा इसके बारे में क्या राय दी गई है, किस हिसाब से इसकी सारी व्यवस्था होती है। उसको पढ़ कर मैं सदन का समय नहीं लेना चाहता हूँ। इसमें स्पष्ट दलीलें दी गई हैं कि किन कारणों से ये तीनों चीजें इस विधेयक में रखनी चाहिये। जहाँ तक बिक्री और खरीद का सवाल है, इन तीनों चीजों को खरीदने या बिक्री करने से जो लाभ होंगे, वह जो खरीदने और बेचने वालों को मिलेगा—जिस कानून के तहत वह काम चलता होगा—वह सेल्स आफ गुड्स एक्ट में भी खरीदने और बेचने वालों को उसके अन्तर्गत दिया गया है, वह लाभ इसके अन्तर्गत मिला हुआ है। इसलिये यह अत्यंत आवश्यक है कि इसके बारे में विचार कर के—जैसा कि विधि आयोग ने सुझाव दिया है—पानी को, बिजली को, गैस को, इन तीनों को गुड्स की परिभाषा में शामिल करना चाहिये। वह अत्यंत लाभदायक होगा।

इसके साथ ही इसमें अन्य संशोधन दिये हैं। जो दूसरा संशोधन दिया गया है उससे एक जगह धारा १३ के अन्तर्गत जो मौदा वारंटी हो सकता है वही धारा १७ के अन्तर्गत कंडीशन बन जाता है, धारा १७ के अन्तर्गत जो कंडीशन होता है वह वारंटी हो जाता है। जैसा कि मंत्री जी ने सदन को बताया कि यह अत्यंत आवश्यक

था कि हमारे विधान में जो फ्ला रह गया था, जो गलती थी, उसको ठीक किया जाए और वह संशोधन बिल्कुल ही मान्य है।

तीसरा जो संशोधन इसमें बताया है, वह यह है: "Reservation of right of disposal" बेचने वाले ने जब तक कि उसकी पूरी कंडीशन—सामान खरीदने वाले की, खरीददार की,—पूरी नहीं कर दी हो तब तक चाहे उसने बेली को या एजेंट को या चाहे किसी को भी सामग्री दे दी हो फिर भी उसका अधिकार रहेगा। यह अधिकार अभी तक केवल सामुद्रिक यातायात के जो साधन थे उन्हीं को लगता था और मंत्री जी ने अब रेलवे के लिये भी उसको लगाया है, जो कि बहुत अच्छा किया। किन्तु, साथ ही एक प्रश्न मेरे मन में उठता है कि क्यों नहीं हमने यह व्यवस्था जो आजकल मोटर वेहिकल्स द्वारा गुड्स का ट्रांसपोर्ट होता है—और उसमें भी जो बेली बगैर रहते हैं और उनको जो सामग्री दी जाती है, बेचने वाले द्वारा खरीददार तक पहुंचाने को—उन पर लागू की। मोटर वालों की अलग अलग कम्पनीज बन चुकी हैं; कहीं कहीं सरकार के द्वारा भी यह होता हो, यह गुड्स ट्रांसपोर्ट का काम—राष्ट्रीयकरण होने के तहत—सम्भवतः सरकार भी इसको करती हो। तो ऐसी स्थिति में क्यों नहीं हम यह व्यवस्था समुद्र से लेकर रेल तक और रेल से लेकर सड़क तक ले जायें और इस विधान का लाभ मोटर वेहिकल्स से गुड्स ट्रांसपोर्ट करने के लिये भी क्यों न दें, इसका अगर स्पष्टीकरण माननीय मंत्री जी दे दें तो ज्यादा अच्छा होगा, नहीं तो, इसमें संशोधन करने का कष्ट कगेर तो ज्यादा अच्छा होगा।

ठीक इसी तरह से धारा ६४ में जो परिवर्तन चाहा गया है, टैक्सेज से पहले केवल कस्टम और एक्साइज तक ही हमारे विधान में बेचने वाले को लाभ देने का अधिकार था

[श्री विमलकुमार मन्नालालजी चौरडिया] किन्तु अब हमारे मंत्री जी और दूसरे सेल्स और परचेज आफ गुड्स टैक्स का लाभ देना चाहते हैं। उसमें किसी प्रकार की रोक नहीं; क्योंकि जो बेचने वाला होता है वह जानता है कि मुझे अभी की वर्तमान परिस्थिति में इतना मुनाफा मिलने वाला है और उसमें टैक्सेज से बढ़ोत्तरी अथवा घटोत्तरी होती है तो वह खरीददार पर जाता है। तो जैसे हम बेचने वालों को लाभ दे रहे हैं वैसे ही क्यों नहीं हम वह लाभ लोकल थ्रयारिटीज के द्वारा जो अलग अन्य प्रकार के टैक्सेज इम्पोज किये जाते हैं, उनमें बढ़ोत्तरी और घटोत्तरी का लाभ नहीं देना चाहते, इस पर भी विचार होना चाहिये।

साथ ही, जो परिभाषा क्लॉज ६४ (ए) में दी है, जिसको अभी संशोधित किया है, उससे ऐसा लगता है कि वह सारा लिटीगेशन बढ़ायेगा, कम नहीं करेगा। इसमें लिखा है कि :

"Unless a different intention appears from the terms of contract..".

पहले तो लिखना चाहिये कि इरादा कैसा था और इरादे के आधार पर ही वहाँ पर मुकदमे-बाजी शुरू हो जाती। हम ने क्यों नहीं अपने कानून को बिल्कुल निश्चित बनाया कि जब तक इसके विपरीत एग्रीमेन्ट न हुआ हो तब तक हम वही मान कर चलेंगे, और यहाँ पर केवल इन्टेन्शन के आधार पर ही हम झगड़े के कारण पैदा करते हैं और इन्टेन्शन की वजह से कितना झगड़ा हो सकता है, इसकी संभावना माननीय मंत्री जी भी अच्छी तरह जानते हैं कि इस इन्टेन्शन के आधार पर कितने केसेज कोर्ट में जाते हैं, कितने नहीं जाते हैं। ऐसी स्थिति में जो परिभाषा विधि आयोग ने अपने प्राविधान में दी, जिसका मैंने संशोधन भी दिया है और जब संशोधन प्रस्तुत होगा, उसके बारे में विचार रखूंगा। उसके शब्द इस प्रकार हैं :

"Unless otherwise agreed". अभी जो वर्तमान शब्द हैं : "Unless a different intention appears" "इन्टेन्शन" और "एग्रीमेंट" दोनों ऐसे लूज वर्ड्स हैं कि जिसके आधार पर झगड़ों की संभावना ज्यादा है और लॉ कमीशन ने जो अपना मॉडल बनाया था उसमें लिखा था : "अनलेस अदरवाइज एग्रीड"। तो इसमें हम जरा स्पेसिफिक होते हैं। आपका जो आशय है वही हमारा आशय है। हम यह चाहते हैं कि इन शब्दों की वजह से जो व्यर्थ में लिटीगेशन होता है उसको रोका जाय और एक स्पेसिफिक शब्द हम डालें तो ज्यादा अच्छा होगा।

इन शब्दों के साथ, जो बिल प्रस्तुत किया है उसका समर्थन करता हूँ और निवेदन करता हूँ कि जो संशोधन दिये गये हैं और जो समय पर चर्चा के लिये आयेंगे उन पर विचार करके माननीय मंत्री जी स्वीकार करें।

SHRI M. P. BHARGAVA (Uttar Pradesh): Madam, when this Bill came in the Order Paper for the proceeding\* of the day, I had thought that the Bill was a very simple one and there should be no objection to the House in accepting the same but yesterday I had an opportunity of scrutinising the old Bill and the Bill as it is before the House today and I find that in this particular Bill the mind of the Law Commission as well as the Law Ministry has been wavering from time to time. The Law Ministry have neither accepted in toto the recommendations of the Law Commission nor have they provided us the reasons why they are not accepting the recommendations of the Law Commission. I will read out first the Statement of Objects and Reasons given in the Bill which was introduced in this House on 12th February 1960. It reads as follows:

"The Bill seeks to implement the recommendations of the Law Commission in their 8th report."

It is a very simple statement.

"2. The notes on clauses explain in detail the provisions of the Bill."

I have no fight with the Objects and Reasons given in that Bill. Now I come to the Statement of Objects and Reasons for the present Bill and there several questions arise and I would like the hon. Deputy Law Minister to give the House the answers for the questions which I am going to raise. The Statement says:

"Subject to one exception, this Bill to implement the Eighth Report of the Law Commission on the Indian Sale of Goods Act, 1930, is identical with the Bill which was passed by the Rajya Sabha on 29th February, 1960."

That means the Bill was passed in this House in its 28th Session. Today we are sitting in the 41st Session. Thirteen Sessions of the Rajya Sabha have passed. We have not been told — except what I am going to read — why this Bill could not be passed in the other House earlier than what it is intended to be done now.

"... and which lapsed on the dissolution of the Second Lok Sabha as it could not be passed by that House before its dissolution."

The House is aware that the Bill was passed in this House on the 29th of February 1960 and the Second Lok Sabha was dissolved on 30th March, 1962. That means there were more than 2 years before the Law Ministry to get this Bill passed in the Lok Sabha. Several Sessions of the Lok Sabha were held. If I gave the corresponding Sessions here, 28th to 37th, that means 10 Sessions of the Rajya Sabha were held during that period. Now our numbering is slightly higher than the numbering in the Lok Sabha.

I say that at least six Sessions of the Lok Sabha were also held after the Bill was passed in this House. I would like the hon. Deputy Law Minister to tell us whether it was not pressed by the Law Ministry, whether they thought that the Bill, was not important enough or what were the reasons for not getting the Bill through from the other House during the last two years.

Coming to the second paragraph of the Statement of Objects and Reasons, it says:

"The Law Commission recommended that the definition of 'goods' in the Act be amplified so as to include electricity, water and gas. This was given effect to in the earlier Bill but after the Bill was passed by the Rajya Sabha, concern was expressed in some quarters..."

Again I would like to know what are those quarters, why the House has not been taken into confidence and not told what were those quarters, who advised and on what basis, the Government thought that one of the clauses of the old Bill be dropped.

" \_\_\_ as respects the amplification and the Judges of the Bombay High Court also expressed themselves against it."

May I again put a relevant question here. What was the occasion for the Judges of the Bombay High Court to express their opinion on that BUI and if the opinion of the Judges was only concerned, there was the opinion of the Bombay High Court, there was the opinion of the Calcutta High Court and there was the opinion of the Punjab High Court before us when we discussed the Bill in 1960. So what special importance the Government gave to the opinion of the Judges of the Bombay High Court to delete a clause from the old Bill? That is another question on which I would like the hon. Minister to throw some light. It goes on:

"After further examination...".

[Shri M. P. Bhargava.] Here again what were the reasons for further examination, whether any representations were received, whether any questions were raised by the relevant Departments or what was it which made the Law Ministry to feel that further examination of the Bill was necessary?

"After further examination, it is felt that while on the one hand no great advantage may be gained by the proposed amplification as most of the provisions of the Sale of Goods Act can have no application to electricity, gas and water, on the other hand a good deal of confusion may be caused as the sale and distribution of these items is largely governed by special enactments. Accordingly this recommendation has not been given effect to in the present Bill."

I am not at all convinced by this statement in this Statement of Objects and Reasons and it is for the hon. Minister to convince this House why all these changes had to be made.

Now, I would like to refer to the proceedings of 1960 in this House and say that my hon. friend, Shri Amolakh Chand, who used to sit just to my right here had pointed out at that very time that it was neither feasible nor practicable to include electricity, water and gas. I may, with your permission, invite the attention of the hon. Minister to what Shri Amolakh Chand said at that time:

"Now, Sir, coming to clause 3, I do find that 'electricity, gas, water', are to be included in the definition of 'goods'. Now, Sir, in 1930, if I recollect aright, there were the municipalities supplying water—at least about Calcutta, I know. Sir, and from where the hon. Minister comes. There was the gas company there supplying gas, and there was one also in Bombay. All that was there, but then in 1930 it was not thought proper that 'electricity, gas, water\*' should be

included in the definition of 'goods'. Now, let us see what is the definition of the word 'goods', a given in clause (7) of section 2 of the Act of 1930. It says:

(7) 'goods' means every kind of movable property other than actionable claims and money;

Now, Sir, I fail to understand how electricity can be called 'goods' or be deemed to come within the definition of 'goods' as we find it here—

'goods' means every kind of movable property.

I do not know if electricity is a movable property. Then the question arises: What is movable property? Movable property is property which can be moved, and since electricity or gas or water is made to flow from one place to another, because of that, probably the idea is that they should be called 'goods'. Now, Sir, I have gone through the reasonings of the Law Commission. They say it was doubtful either way and therefore they have recommended that these three words, "electricity, gas, water", should also be included in the definition of 'goods'. But what I personally feel is that instead of putting it here, to be inserted after the words "stock and shares", in clause (7) itself, it could have been put in another clause in this form:"

This is what was said in this House. If the Ministry had any doubt, why did they press the amendment at that time? What made them change their opinion *so* soon after that? That is a very valid question for which we seek a reply.

Sir, this has somehow confirmed my feeling, a feeling that I have been having for some time past that we are enacting hastily legislation^ without giving due thought to them. There have been several cases where our enactments have been challenged



in the Supreme Court and other law courts. Therefore, this raises a fundamental question and it is this, that all the Bills that come before the House, should be fully scrutinised by the Ministry and also full time should be allowed to the Members to express their views for and against particular provisions, and due weight should be given to the amendments which are moved in this House by hon Members. There should not be any rigidity that since the Government has made up its mind and has come with certain provisions, the Government should stick to them. If any good suggestion emanates from this House or the other House, there should be no hesitation on the part of the Government to accept the same. This much as far as the objects and reasons for the Bill are concerned.

Next I come to the provision of the Bill themselves. Here I would say that clause 2 is very welcome, because it accepts the principle for which we have been clamouring for some time now. After gaining independence, it was unnecessary to have the word "Indian" put into every enactment which we bring before this House or the other House. That is redundant. I am happy that the recommendation of the Law Commission in this connection has been accepted by the Law Ministry and the word "Indian" is sought to be deleted from the Title—The Indian Sales of Goods Act. I do hope that this practice of not having the word "Indian" put into every statute will be followed and we will be enacting laws without this word. After all we are a free country and we can enact our own laws and it is not necessary to put in "Indian" again and again in every legislation that we enact.

Clause 3 is for amending section 13 of the old Act. I would like to invite the attention of the House to para 16 of the Law Commission's Report in this connection. This para-

graph deals with this subject. Leaving aside the reasons, I will straight come to the operative part. The operative part runs thus:

"Two courses have been suggested to meet this difficulty:

(a) To take away the sale of specific goods by sample from the operation of section 13(2) to avoid the conflict with section 17 which provides for implied conditions in the case of contracts for sale by sample. Property in specific goods in a deliverable state passes to the buyer when the contract is made (section 20). In modern times, there is a large volume of sale of specific goods by sample. Section 17(2) (a) gives rise to an implied condition that the bulk should correspond with the sample in quality."

I need not quote further. The whole point that I am making is that this House has not been told on what considerations the Government thought it fit to accept one of the two alternatives recommended by the Law Commission. This should have been clearly told so that we could have made up our mind about the reasoning which the Government has had in arriving at a decision about the two alternatives. I do hope that in his reply the hon. Minister will tell us why they have accepted one alternative as recommended by the Law Commission and not the other.

I now come to clause 4, amendment of section 25. Here also, I am afraid, I will have to read out something from what my hon. friend, Shri Amolakh Chand, said in regard to the reasoning given for the non-inclusion of motor transport and air transport. In 1962 we seek to include the Railways only. I fail to understand why carriage by air and carriage by motor transport are not included within the purview of this

[Shri M. P. Bhargava.] Bill. Here is what he said at that time:

"Then I come to another point, and that is about clause 5 where we find that mention is made of a railway administration. May I remind, you, Sir, and through you the House that when this Act of 1930 was passed, or when the provisions of this Act were being considered with reference to the Indian Contracts Act of 1872, the whole basis was the English common law, and as we know, Sir, then transport was limited to sea transport, as far as England was concerned, and when it was adopted as India for the import of goods, sea transport or ships were the only available transport to convey goods from outside India to India? Now, in the year 1960, or even in the year 1958 when the Law Commission went through all these things, I am constrained to say, with due respect to the learned personnel of the Law Commission that they forgot about air transport and motor transport. We know that bills of lading only in case of shipping. Cargoes are sent right from New York and London to India and they have also got a receipt. Now, in 1960, or as I said on 1st March, 1958, when this recommendation was made by the Law Commission—and the Law Ministry agreed with them—that air transport was a very ordinary method of transport and as such they thought only about railway transport which has had over a century's experience. We know that the Railways observed their centenary. Then, shipping also observed their centenary. As such, these methods of transport which have passed a test of at least a hundred years, should be included in the Sale of Goods Act.

As we know, Sir, air transport is becoming important day by day. It is not only from New York and

London that we receive cargoes, but sometimes special things are indented for by the Defence Ministry and other Ministries by air. We also know that the Airlines Corporation, about which we are going to have a good discussion this afternoon, and the Air-India International are all carriers... The Government's approach has surprised me. Even the other day I said that we should stay the Bill to give us more time. I said that provision should be made not only in respect of Railways but also in respect of air transport."

In this connection, I would like to invite the attention of the House to the Report of the Law Commission. In paragraph 28, they have dealt with this subject.

"It was suggested that the Indian Bills of Lading Act, 1859 should be consolidated with the Sale of Goods Act. In particular, it was suggested that section 2 of the Bills of Lading Act should be enacted as subsection (8) of section 51, of this Act which deals with duration of transit, and that sections 1 and 3 of the Bills of Lading Act should be inserted in this Act as section 51B and 51C in order to give effect to the right of stoppage in transit or claims for freight.

In our opinion, the ambit of the Bills of Lading Act is wider than that of the Sale of Goods Act and embodying the provisions of the Bills of Lading Act in the Sale of Goods Act, would result in disturbing the frame, the structure and the unity of the Sale of Goods Act. In our view, the proper place for the Bill of Lading Act would be a comprehensive enactment dealing with the Law of Carriers, in all its aspects. The framing of a comprehensive law dealing with Carriers is under our consideration."

Here again, I would like the hon. Law Minister to tell us the present

state of this legislation, when we can hope to have this law before us. If this law is coming before us soon, I would beg of the Deputy Law Minister<sup>1</sup> even at this late stage to hold back this Bill so that we may have a consolidated Bill before us and we may consider the various aspects of all modes of transport to be included in this Bill. It is not too *late*. When we have waited from 1957 to 1962/ without any harm being done to us, I see no reason why we cannot wait for another year or so and have a consolidated enactment. So, even at this late stage I would beg of him to give a second thought to this matter and see whether it is hot possible for him to hold back this Bill. This is so far as clause 4 is concerned.

I now come to clause 5. Here again, my hon. friend, Mr. Vimal Chandra Chordia, has already mentioned . . .

AN HON. MEMBER: Vimal Kumar.

श्री विमलकुमार मन्नालालजी चौरड़िया:  
मुझे कोई एतराज नहीं है। प्रेम से कहा  
जाना चाहिये।

श्री महावीर प्रसाद भार्गव : प्रेम की  
कोई कमी नहीं है।

श्री विमलकुमार मन्नालालजी चौरड़िया:  
वह मैं मानता हूँ, इसीलिए एतराज नहीं  
किमा।

SHRI M. P. BHARGAVA: He has already pointed out how a departure has been made from the recommendations of the Law Commission. The wording recommended by the Law Commission, in my humble opinion, is much very much clear and much more explanatory than the wording used in this Bill. I think it is vague and the wording suggested by the Law Commission conveys a clear meaning. As such, I would request the hon. Deputy Minister to give us the reasons why the recommendations

of the Law Commission in this regard have not been accepted and the Government have thought it fit to give their own wording in this connection. In this connection I may also invite the attention of the House to para 27 of the Report of the Law Commission where they themselves have given the reasons as to why they are recommending the insertion of section 64A and section 64B. Instead of those recommendations being accepted the Government have come out with section 64A(1) and 64A(2) with their own wording. It should be explained to us, as I stated earlier, why this has been done.

I would also invite the attention of the House to another paragraph in the Report of the Law Commission where they deal with another aspect of the same subject. Paragraph 12 reads as follows:

"There is no provision in the Act regulating a transaction of hire-purchase, which is also a method of selling goods. It is a transaction of hire at the inception with an option to purchase.

In the English Sale of Goods Act of 1893, there was no provision for such a transaction. Hence provision was made by a separate Act, namely, the Hire-Purchase Act of 1938, with a view to affording protection to the buyer of the good\* on hire-purchase, or on similar terms against certain abuses which had become apparent in the practice of hire-purchase trading. This Act has been supplemented by the Hire-Purchase Act, 1954".

This is as far as the English law is concerned. Now the Law Commission express their opinion in the next paragraph as far as the Indian conditions are concerned. It goes on to say:

"In our opinion, it is desirable that a separate Act on the lines of the English Hire-Purchase Acts and

[Shri M. P. Bhargava.] other similar laws should be enacted in India to regulate hire-purchase transactions. The Commission will make its recommendations in this connection in a separate report."

I would again request the Deputy Law Minister to tell us at what stage this work of the Commission is now, whether they have already submitted their report on this aspect about hire-purchase and whether the Government have taken any decision about this Act being brought.

Before I sit down, I have finally to invite the attention of the House to para 18 of the Report of the Law Commission who have made another recommendation. They say:

"The enactment of a statutory condition of warranty may affect a large class of merchants and middlemen. It is a matter of policy to be decided by the Union and the State Governments whether they should undertake such legislation. In the circumstances we do not propose to make any recommendation on the question raised....."

Here again it is the duty of the Deputy Law Minister to take the House into confidence and tell us whether the Government have taken any policy decision as suggested by the Law Commission and at what stage the matter stands.

These are the few points which I had in mind and I would expect a detailed reply from the hon. Deputy Law Minister.

SHRI R. S. KHANDEKAR (Madhya Pradesh): Madam Deputy Chairman, for the last four days we discussed here the two Resolutions on national emergency and we were very serious about the business. I had thought that the Government would also follow suit and would not bring—I do not mean to say unimportant Bills

but this is not an urgent Bill—such Bills and take the time of the House. I thought that the session would be shorter and the Government would bring only such business which is most urgent for the present. If this Bill could wait, as my learned friend just now submitted, for so many years, i.e. for the last five years, there was no hurry to bring this now in a half-hearted manner. i

Secondly, my submission is that it could wait for another reason also. We have seen in the last few years that the Government brings forward always piecemeal legislation. The Law Commission is also doing their business very leisurely. Now this report was submitted by the Law Commission in the year 1958. After two years the Government brought this Bill before this House in the year 1960. For the reasons stated by the previous speaker it could not go through the other House and therefore this Bill lapsed. Now this Bill has been brought here again with certain changes and my submission is, instead of bringing such piecemeal legislation the Government should bring a comprehensive, well-thought out and up-to-date legislation before the House. I need not repeat the arguments of the learned speaker who requested the Government to withhold even at this stage the passing of this Bill.

There is yet another reason why this Bill can wait. As has been pointed out by the previous speaker and also by the Law Commission, this Bill can be consolidated and brought in a more comprehensive manner. In para 28 of the Report, the Law Commission has stated:

"It was suggested that the Indian Bills of Lading Act, 1856 (Act K of 1856) should be consolidated with the Scale of Goods Act. In particular, it was suggested that section 2 of the Bills of Lading Act should be enacted as sub-section (8) of section 51 of this

Act which deals with duration of transit, and that sections 1 and 3 of the Bills of Lading Act should be inserted in this Act as sections 64B and 64C in order to give effect to the right of stoppage in transit or claims for freight."

They go on further and say:

"In our opinion, the ambit of the Bills of Lading Act is wider than that of the Sale of Goods Act and embodying the provisions of the Bills of Lading Act in the Sale of Goods Act, would result in disturbing the frame, the structure and the unity of the Sale of Goods Act. In our view, the proper place for the Bills of Lading Act would be a comprehensive enactment dealing with the Law of Carriers, in all its aspects. The framing of a comprehensive law dealing with Carriers is under our consideration."

I do not think that this amending Bill should be now taken up for these three reasons. My submission is that this Bill, even at this stage, could be deferred and a more comprehensive Bill on this subject could be brought before the House.

Having said this, Madam, I would submit that this Sale of Goods Act was enacted in the year 1930. Till when it was embodied in the Law of Contract. After this there was some difficulty in certain provisions of this Act and the Law Commission was asked to go through and revise the provisions of this Act. The Law Commission has gone through it carefully and come to the conclusion that no drastic changes are necessary. They therefore suggested only a few amendments. Those amendments were incorporated in the earlier Bill which was brought before this House two years before and as was pointed out it could not go through the other House. But surprisingly after two years the Government have made certain changes in it.

THE DEPUTY CHAIRMAN: You may continue later. The House stands adjourned till 2.30 P.M.

The House then 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. BHAR-GAVA) in the Chair.

SHRI R. S. KHANDEKAR: Mr. Vice-Chairman, I was submitting that the nation is not in a mood to hear or to read the speeches of Members of Parliament when there is other important business at this time of emergency. Therefore, the Government ought not to have brought forward this Bill before the House. I was also submitting that on account of the recommendations of the Law Commission, a more comprehensive Bill ought to have been brought forward, including these amending provisions. I also said that there are many laws in this country which need revision and there are so many laws which are redundant or overlapping. Therefore, a comprehensive Law Commission should be set up and all laws should be revised in that context. Then, I submitted about the history of the Act and also about the recommendations of the Law Commission. I pointed out that the Law Commission came to the conclusion that no drastic change was necessary in the present Act. They have suggested certain amendments, which are the only amendments brought forward by the Government in this Bill, except one. Then, I said that the last time this Bill came up here, certain provisions regarding electricity, water and gas were included, but now they have been omitted. The previous speakers have already spoken about them and I do not want to dilate and take the time of the House on those points.

Now, coming to the amendments, I would submit that the first amendment

[Shri R. S. Khandekar.] which is sought to be made is the deletion of the word "Indian". It is really a welcome suggestion and it ought to be implemented. There is no reason why we should prefix our Acts with the word "Indian" when we are a sovereign nation. All our Acts will necessarily be Indian Acts. In this connection I will refer to certain other Acts which the Government may take into account and bring about the necessary changes in future. For example, there is the Indian Evidence Act. There is the Indian Penal Code. I do not think there is now any necessity that this word "Indian" should be so prefixed to those Acts. Of course, we have other Acts also like the Civil Procedure Code and the Criminal Procedure Code. They are as good as the other Acts. There is no word "Indian" in these Acts. So, taking this opportunity I would request the Government to delete the word "Indian" from other Acts also.

Then, I come to the definition of goods, the words "electricity, gas and water", after the words "stocks and shares" be added. As I said, much has been discussed about this. Firstly, the Law Minister had another opinion. Now there is another opinion of the Law Minister, which he has made after receiving the recommendations of certain interests. The arguments put forward by the hon. Minister are not convincing. I believe that there is no harm if we add electricity, gas and water also in this Bill. We are now in a developing economy and with the rapid industrialisation of the country things like gas, electricity and water are coming more and more into the life of the general public. Therefore, it is necessary that these also should be included in this Bill.

Then clause 3 of this Bill reads:

"In section 13 of the principal Act, in sub-section (2), the words "or where the contract is for specific goods the property in which has passed to the buyer," shall be omitted."

This is a welcome amendment. It is natural that this should come now because there is a lot of conflicting case law and there were difficulties felt by the general public on account of the anomaly between sections 13(2) and 17(2). So, the Law Commission have exhaustively dealt with it in their Report giving the reasons why they have recommended this. I do not want to repeat those arguments.

Then, in clause 4, they have added railway receipts also. It is a welcome amendment. Nowadays the railways are transporting huge quantities of goods and people find difficulty in transactions on account of the fact that railway receipts are not included in the present Act. But I would submit that motor transport and air transport receipts also should be included in this clause. I have gone through the proceedings of the Rajya Sabha at that time and have also gone through the recommendations of the Law Commission carefully. I do not find that the arguments put forward by the hon. Minister while replying to that debate that motor transport and air transport receipts should not be included are convincing. Nowadays it is an acknowledged fact that more goods are transported through motor transport than railways. On account of increased air traffic, a large quantity of cargo is also transported by air. So, air and motor transport should be included in this Bill.

Now, in the last amendment in clause 5, they have made a good suggestion. Any duty of customs or excise on goods and any tax on the sale or purchase of goods have been included. That is a welcome amendment and it should be supported. But I have not followed why a purchase tax has been included in this. I am not aware of any such tax so far in this country. There is, of course, the sales tax, but purchase tax has not been imposed yet. Does it mean that the Government sooner or later want to impose this tax also? While referring to the sales tax, I would

draw the attention of the hon. Minister to the actual working of the sales tax. The working of the sales tax, whether it is the Central sales tax or the State sales tax, is not at all satisfactory. A large amount of tax is lying uncollected and certain steps should be taken for the realisation of this tax.

Lastly, to conclude I would say that this is a welcome Bill, although inopportune according to me. But it is a non-controversial Bill and it must be supported. The mercantile community will welcome the amendments. With these few words I support the Bill. Thank you.

SHRI KRISHAN DUTT (Jammu and Kashmir): Mr. Vice-Chairman, I support the Indian Sale of Goods (Amendment) Bill, 1962 brought forward by the Government. With regard to clause 2, we all agree that there is no necessity for prefixing the word "Indian" to every enactment that this House passes, because it is understood that all laws this Parliament passes are meant for India. So nothing more need be said about this clause.

With regard to clause 3 which deals with the amendment of section 13 of the principal Act, it is quite appropriate and necessary that the words "or where the contract is for specific goods the property in which has passed to the buyer" should be omitted. In the nature of things, the very implication in the contract about the passing of property in regard to sales is that, where the property has already passed, there is no necessity for inserting these words, and naturally they should be omitted. There has been no opposition to the omission of these words.

With regard to clause 4, I think that the omission of railway receipt in the previous Act should be filled up by the inclusion of carriage by railway and railway receipt. It has been suggested that road transport and air

transport should also be included in this clause. With regard to that, I think there must be sufficient reasons for not including those two modes of transport in this clause. The Motor Vehicles Act or the Aircraft Act may be referred to in this connection. I am not sure whether those two Acts have some provision with regard to the carriage of goods by road transport and air transport. So, I think at this stage the inclusion of railway transport in this clause is necessary. If in future examination of the question with regard to road transport and air transport the necessity arises, that question may be considered separately. There is no harm in that. Therefore, the clause as it stands now has been hailed by all the previous speakers.

With regard to clause 5, it has been said that the words "unless a different intention appears from the terms of the contract" are vague and they should be replaced, and that in their place some such words as "unless otherwise agreed" or "subject to a contract to the contrary", as we often find in the Sale of Goods Act, should be included. I have given my thought to this point. I find that the words "unless a different intention appears from the terms of the contract" are wider in scope than the words suggested to be substituted in their place. The words "unless a different intention appears from the terms of the contract" allow the courts to go deeper into the words of the contract which suggest a different meaning from the provisions contained herein, and I think the parties to a contract would gain if the present words are left as they have been put here. Sometimes words used in the contracts on the face of them do not mean what they actually say; rather a deeper delving into the words gives some other meaning or a more comprehensive meaning. Therefore, I think, Sir, that the present words are more conducive to the convenience of the parties in their present dealings, and it is not necessary to change the wording of the present phrase.

[Shri Krishan Dutt.]

Then, Sir, it was also suggested that this legislation which is now brought forward is a piecemeal legislation and that it should be deferred till the time a comprehensive Bill, that is, the Carriers Bill, is brought before the House. I do not agree with that. When the changes that we are now making by the present Bill are needed and necessary, why should we wait till another enactment comes before the House? We do not know how much time it will take to bring forward that measure. Therefore, in the meanwhile, why not remove the difficulties which are being felt at present by this timely amendment? No doubt, sufficient time has already passed without these amendments, but that is no reason why we should waste more time in keeping back this Bill. Therefore, Sir, I feel that the Bill which has been brought forward deserves the approval of the House, and there is nothing to be lost by passing the present Bill in the form in which it has been brought forward.

With regard to the contention that the words electricity, gas and water should be included in the definition of "goods", I think that is not in keeping with commonsense or with the natural meaning of the words. As we all know, electricity is an ethereal substance, and so is gas. With regard to water, my friend, Mr. Chordia, has said that water is sufficiently tangible. I would disagree with him. Water, as we know it, as we use it, is too mobile to be included in the definition of "goods". Of course, aerated water in bottles is goods, but water as such, as we get from the tap, is not goods. That is ordinary common sense. Therefore, it has been rightly excluded from the definition of "goods" by the present Bill. Moreover, since we have got separate Acts which control the sale of electricity and gas and also the supply of water, there is no meaning in having the provisions of the Sale of Goods Act applied to these substances also. There will be duplication of legislation, and I feel there may be a conflict of laws, a conflict

of legislations. Therefore, it is wise and correct that these substances, that is, electricity, water and gas, should be left to be controlled by those separate enactments, and we need not include them in the definition of "goods".

With these words, Sir, I give my whole-hearted support to the present Bill, and I appeal to the House to pass the Bill as it has been brought before the House.

SHRI N. M. ANWAR (Madras): Mr. Vice-Chairman, I rise to extend my support to this Bill, the Indian Sale of Goods (Amendment) Bill, 1962. Firstly, let me strike a personal note. I was indeed much delighted when my good friend, the Deputy Minister of Law, piloted this Bill with supreme self-confidence. But there is another note which I should strike now. I feel most embarrassed to speak now when you are in the Chair. It was your observations, Mr. Vice-Chairman, while sitting over there in that distant and safe corner that prompted me to participate in this debate. I should think that you made some very provocative observations and pardon me, if I should now have to say by way of understanding how I feel that there is every justification that the Government should have brought this Bill once again before this House. This Bill is a proof in point of the leisurely wisdom of parliamentary democracy. Two years ago when the Government did not anticipate some of the problems, it went before the court and we have now the verdict of the High Court of Bombay and it is but fit and proper that the Government should have become wiser after the event. True, Mr. Vice-Chairman, hasty legislation allows many loopholes for a lawyer's paradise. That has been quite often our experience particularly in recent years when we had passed many a piece of legislation which, unfortunately, were not as accurately worded as to be foolproof in any court



of law. But happily enough, here is a Bill which for some mysterious reasons could not go before the Lok Sabha. Before that, it was dissolved. And that has provided an opportunity for the Government, meanwhile, to re-examine the provisions of this Bill and come back again to this very House and reintroduce this Bill in its amended form. But, Mr. Vice-Chairman, I am really very happy that in the Statement of Objects and Reasons the Government have rightly emphasised that even with regard to the recommendation of the Law Commission which they had accepted *in toto* with regard to the amplification, it has been proved now that it is but necessary that these public utility concerns such as electricity, water and gas be excused from the purview of "this Bill.

Sir, the Deputy Minister of Law has given us very adequate reasons as to why we should not have these undertakings within the purview of this Bill. Already we have got certain Acts which especially refer to these undertakings. But there is one point where I feel that we must have to support this Bill and that is with regard to the contract of price. Well, we have got international contracts whereby we carry on import and export of merchandise. There is an important provision which in French parlance is called *force majeure* which extends immunity to the contracting parties when, for circumstances beyond the control of the contracting parties, certain changes have been effected either due to the change of policy of the government or due to calamities of nature. But here, Sir, where a duty, excise or customs, or sales tax is imposed, increased or reduced, it is but right and fair that the contracting parties should be given the benefit according as the circumstances may be. But here we find this provision about sales tax, and that has been quite a very big bugbear to the mercantile community particularly transacting within the country. This sales tax the imposi-

tion of which cannot be foreseen at the time of the contract, should it be imposed or should it be increased? Naturally, that question has allowed room for very vexatious litigation between the contracting parties. I am happy that this Bill in its amended form anticipates and forestalls the contingency whereby the contracting parties, either the buyer or the seller, will be saved from recourse to litigation.

Now, Mr. Vice-Chairman, I am unable to understand one thing for which, of course, the Government must have enough reasons to justify. Even some Members on the floor of the House had extended support to it. But I for one am unable to reconcile myself to that viewpoint and that is this dropping of the word 'Indian' from the title of this legislation. I could not know why we should do so. I know—and I take it for granted—that any legislation concerning the sale of goods within the country is *ipso facto* Indian. But where merchandise most often is carried as between different countries, I should very much wish to see that this title is not dropped because it will provide for clarity, and we should not fight shy of an expression which only describes the national character of the Bill. We have got a provision here—

"In section 1 of the Indian Sale of Goods Act, 1930 (hereinafter referred to as the principal Act), in sub-section (1), the word 'Indian' shall be omitted."

I think, Mr. Vice-Chairman, that my good friend, the Deputy Minister of Law, will have second thoughts and try to see that this word is not dropped. That is my own view, and I am sure that he will also like to accept that view because there is nothing that we need fight shy of that expression; on the contrary, we feel proud of it.

Sir, there is a point about which I feel very happy but which I am not

[Shri N. M. Anwar.] at the moment able to understand. In the Notes on clauses furnished as part of the Bill, we have got a statement which reads:—

"Property in specific goods in a deliverable state passes to the buyer when the contract is made."

From our own experience, we know that it is not when a contract is made but when a contract is executed, that the property passes on to the buyer. We know that particularly in international trade the buyers reserve the right to claim against any shortages in quantity or against any difference in quality even long after the goods have reached them. Often the contract is over a period of two or three years. And it is not when a contract is made, or even when the goods are delivered that the property passes on to the buyer. It is only after the final stage and until then the buyer reserves the right to inspect the goods according to sample, and then, when he is satisfied that the goods are in accordance with the sample, then only he accepts them. Until then the buyer reserves the right to accept or not to accept the goods, as is the case in almost every international contract of which I have experience, and the buyer prefers claims in the event of poor delivery; the buyer prefers damages in the event of deliveries not being according to the terms of the contract either in the manner of rates or with regard to standards of delivery. Therefore, Mr. Vice-Chairman, I would very much seek a clarification from the Minister, seek of him to throw new light on this matter because I know that this legislation, as has been lately improved upon, will meet with widest acceptance in this House. But now that we have proved ourselves to be a little wiser than we were before in 1960, when this legislation first came here and was passed by this House only, time and tide must naturally hasten everyone and even so the Gov-

ernment to make them wise. But in the light of these discussions, I hope, our Deputy Minister for law can also throw more light and tell us when actually this property passes on to the buyer, whether it is immediately when a contract is made, or when that contract is executed in the manner in which we have got provisions in international contracts where a contract is accepted to be executed only when it is accepted and not until it is accepted. I hope he will throw more light on this and clarify the position to the satisfaction of this House.

Thank you.

SHRI BIBUDHENDRA MISRA: Mr. Vice-Chairman, Sir, the question has been posed as to why the Bill which was passed in the Rajya Sabha in the year 1960 could not get through the Lok Sabha till its dissolution in 1962, and on that score attack has been made on the Law Ministry for its negligence. At the same time it has been suggested that we should cry a halt to hasty legislation. It is exactly for the same reason, Sir, that though the Bill was passed in the year 1960 in the Rajya Sabha, when it was brought to notice that certain far-reaching consequences might ensue—which were not visualised when the Bill was passed then—it was thought necessary that it should be examined in greater detail. Now it is the practice of the Law Commission to send its reports to the different State Governments for their comments, and formerly, when this report was given, that was not the practice of the Law Commission.

Then, Sir, a reference has been made to the Objects and Reasons and objection has been taken to the words expressed there. Concern was expressed in some quarters and it has been said that it ought to have been clarified. As I have already stated while moving this Bill for consideration, an apprehension was expressed by certain State Electricity Boards and Undertakings, and also by the Ministry of

Irrigation and Power—by those who were in charge of electricity—that certain consequences might arise—which probably had not been visualised before—and of course, that apprehension that was expressed by most of them has no substance at all, as I have stated already. Their apprehension was that once this is included in the definition of "goods", probably it might be subjected to sales tax. As I have already stated, Sir, the matter was considered and it was found that the power to levy sales tax is a power flowing to the States from Entry 53 of the State List, and whether or not electricity is included in the definition of "goods" in the Sale of Goods Act, it would not make any difference, because it cannot either add to their power or take away from their power. This power is given to the States in the State List, in Entry 53. But then there are other consequences also. As I have already stated, if you take the whole scheme of the Act, the arrangement of the different sections, the different chapters which deal with tangible goods, it was never visualised by the authors of this law that electricity, water and gas should be regulated by the ordinary law of the Sale of Goods Act. And then again, it has no parallel in any country of the world, in any democratic country of the world; not even in England, not even in America do you find electricity, water and gas included in the definition of "goods" in the Sale of Goods Act. Then, Sir, it was also thought that it would always be better to leave it to the concerned Ministries, leave it to the particular Acts concerned, the Electricity Acts and otherwise, to regulate the sale or consumption of electricity according to the circumstances—because they are more competent to say—than allow it to be regulated by the Sale of Goods Act.

These are some of the weighty reasons which weighed with us in the Ministry. There is no hide and seek here, and the Ministry thought that there was no prestige to lose; because

it was a vital matter, there was no question of any prestige to lose, and because a position was shown in 1960, there is no reason why it should be continued even when we find that some consequences, which could not be foreseen when the Bill was brought before the House earlier would ensue otherwise. So it is not a question of prestige. We want to avoid hasty legislation. We want to find out the loopholes that are there. It is the essence of the functioning of democracy also that if you see a point which, maybe we have not seen but you have seen, and it is pointed out to us, then it is worth while examining it, and accept it if after examination it is found to be acceptable.

Next, Sir, reference has been made to the opinion by the Judges of the Bombay High Court, and it has been asked: How could it go there? As I have already stated, it was not the practice of the Law Commission to send their report to the State Governments or the High Courts earlier as is being done now, and when it was sent to them for comments after this question was made by the Ministry of Irrigation and Power, and by the different State Electricity Boards and Undertakings, they said that these should not be included in the definition, that it does not serve any purpose. That is the reason, Sir, why after all this deliberation and after all this careful thought and after obtaining the opinion of others this matter has been brought here in the year 1962 as it is.

Sir, I would not dilate again and say why water, electricity and gas have not been included in the definition of "goods" as was done earlier. I think, I have explained it sufficiently and well. But may I take the liberty of pointing out to this House that when this matter again cropped up, we again sought the advice of the Law Commission? The Law Commission thought it proper not to express any opinion in the matter since the matter

[Shri Bibudhendra Misra.] had already been considered by an earlier Law Commission, by the first Law Commission. All the same, some of the members expressed the view that this electricity, water and gas should not be included in the definition of "goods".

Then, about section 13, you, Sir, raised the question that it had not been stated why one of the two alternatives had been accepted, why the reasons for doing so had not been given. I would draw your attention, Sir, to the report of the Law Commission itself at page 7, in which they have indicated their preference, and their preference has been accepted in this Bill. While discussing this subsection 13(2) they have said:

"In our opinion the better course would be to omit from section 13(2) the words, "or where the contract is for specific goods the property in which has passed to the buyer."

They have themselves suggested that out of the two alternatives, the better course would seem to be to omit these words, and therefore we have accepted that suggestion. And if you look to the Appendix, there also they have suggested the same thing. Therefore, the preference that has been indicated by the Law Commission itself, has been accepted by us; not that no reason has been given for acceptance of one of the two alternatives—it has been pointed out by them.

Then, Sir, a question was raised about the Carriers Act. I think it has already been said in the Law Commission's Report that they are examining the matter. There are more important matters at hand now and it is just possible it may take some time, but I do not find any justification or logic behind the demand that pending the formulation of a Carriers Act, this Sale of Goods Act must be kept in abeyance. Assuming that you have a full-fledged Carriers Act taking

into consideration the problems of road and air transport, that at best would affect the operation of section 25 of the Act; assuming that all are accepted, that will widen the scope of section 25 of the Act. But there are other items. Here also, there are other provisions in this Bill which do not touch the carriers at all. Assuming, therefore, that the Carriers Act will come sometime, there is no reason why this Bill should be postponed.

Sir, there has been a demand for scrapping the legislation, that there should be a thorough legislation covering all aspects. The matter has been considered by the Law Commission not only in the light of the judicial decisions obtaining in this country but also it was considered with the growth of the law in other countries. And after considering all these aspects, the Law Commission came to the conclusion that it does not at all require any radical change. And whatever changes they have suggested, excepting the one which we have not accepted, have been incorporated in this Bill. Therefore, I do not understand how it could have been more thorough-bred.

Then, Sir, a question was put about the hire-purchase. I may state here that the Twentieth Report of the Law Commission was laid on the Table of this House on the 20th November, 1961. Now it has been sent to the concerned Ministries for their opinion and, I think, we will come forward with legislation after getting the opinion of the concerned Ministries.

Then, Sir, coming to the question of the demand for the inclusion of road transport and air transport in section 25, I do not think I can do better than to read a portion of the speech of the Law Minister in his reply in this House on 29th November, 1960, when this Bill was discussed here.

THE VICE-CHAMAN (SHRI M. P. BHARGAVA): 29th February.

SHRI BIBUDHENDRA MISRA: I am sorry, 29th February. This is what he said about this aspect:

"In the world of commerce, air transport is of very little importance. Air companies carry mostly freights of persons who are travelling as passengers and very little commercial freight today is carried excepting from the inaccessible territories. In the world of commerce today, air transport is of extremely insignificant importance.

The second reason is that the law of air carriage forms a subject-matter of international convention, which we have accepted ourselves, and it is not really proper to deviate from the international convention, to which we are parties, and try to draft some innovation by way of Sale of Goods Act in the well-known incidence of air transport.

The third and the final reason is that the law regarding air transport is still in the process of developing. Though it is now the subject-matter of international convention and of domestic laws of every country, yet it is in the process of growth and all its aspects have not yet been properly worked out or tried out, nor has there been any demand from the commercial world for including air transport within the ambit of section 35 as there has been insistently a demand for a long time with regard to the inclusion of transport of goods by railways. These are the reasons which have prompted us not to include air transport yet."

These are the reasons which have prompted us not to include air transport in it.

Then, about road transport he says:

"It is out of the question because, as the hon. Members are aware, it is not a subject-matter of documents of title. Goods are carried by fits and starts by carriers who are well-

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known carriers, in the sense that they regularly issue receipts. As you know, their obligations are the obligations of carrying a baby under the Indian Contract Act and not the obligations of a Railway which is » subject-matter of statutory obligation. Like the obligations to a baby, the carriers carry goods on their own reputation and they do not issue documents of title. Even if they issue documents, these documents are not transferred from hand to hand as documents of title like a Railway Receipt. So it is very difficult. In no country yet—not even in America or in England where road transport is in a very developed state, which have very big and well-known road transport companies which have earned reputation in road transport—has it been included in these sections. Therefore, it is better to leave them out until such time as documents of title relating to transport of goods by road assume the same importance and same weight as documents of title issued by Railway authorities or by steamer companies."

There are the reasons, Sir, why it was thought not proper—nor did the Law Commission recommend it—to include air transport and road transport within the ambit of section 25.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : Mr. Misra, may I point out to you one thing, that notification regarding international rules relating to carriage by air has not yet been applied to Indian Air Lines?

SHRI BIBUDHENDRA MISRA: There is one Act . . .

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): That is the difficulty where the carriage by air comes in the way.

SHRI BIBUDHENDRA MISRA: No, Sir. There is an Act on the lines of the International Convention.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): On the floor of this House it has been said that notification has not yet been issued.

SHRI BIBUDHENDRA MISRA: Carriage by?

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): Carriage of goods by air. International rules have not been notified to be applicable to carriage within India.

SHRI BIBUDHENDRA MISRA: I have noted.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): You might consult the Ministry of Communications about it.

SHRI BIBUDHENDRA MISRA: About section 64, objection has been raised to the use of the words

"Unless a different intention appears from the terms of the contract"

and it has been suggested that

"Unless otherwise agreed"

probably would have been more appropriate. I do not think there is any difference in substance. If this expression has been accepted, it is a case of drafting. This has been accepted because you find the same expression in section 11, section 19(3) and other sections also;

"Unless otherwise a different intention appears from the contract"

That means that the contract itself is a vital document and you have to gather the intention from the contract itself. Once you say "Unless otherwise agreed", there is a danger, and that danger is that the parties may again have an oral contract after the contract is finalised. Whereas the wording suggested leaves room for oral contract after the contract is finalised, nobody knows where it ends. Therefore, it has only been put in a legal phraseology. It is a question of drafting; otherwise there is not

much

of difference in it. In my opinion, if you put it the other way, as has been suggested, it might lead to more of complications and difficulties in interpretation also.

Then, Sir, I may point out at this stage about my friend Mr. Chordia's amendment. He wants that in section 64A(2), besides (a) and (b) "any tax or duty imposed by a local authority" should be included as (c). There are difficulties about it, Sir. If you put "any tax or duty imposed by a local authority", many complications will arise. "Local Authority", is defined in the General Clauses Act as:-

"Local Authority includes a municipality, district board, a body of port commissioners, or any other authority legally entitled to the control or management of a municipal or local fund and would, therefore, include gram panchayats, pan-chayat samitis, zila parishads, port commissions and all kinds of similar bodies."

Then, there are various types of taxes also like the latrine tax, market tax and so on. How are you going to include them? Tax by whom and what type of taxes? That has not been specified. Once you say that taxes imposed by a local authority should also come within the ambit of section 64 of the Indian Sale of Goods Act it would create a good deal of confusion, and non-inclusion of them would not create any difficulty at all in the sense that the parties know the legal position. So far as local taxes are concerned, they can always be included because the wording is, "Unless a different intention appears". They can always have some agreement about the local taxes when they come to the contract itself instead of leaving it open. Afterwards, they can always say something about it when they enter into contract without leaving it there because it is very difficult to say what taxes can be included here and by what bodies. Therefore, it would create difficulties. I am thankful for the discussion by the Member\*

of this House. I am not sure, but I think I have tried my best to answer all the questions. Another question has been raised as to why the purchase tax has been included in section 64A though Purchase Tax has not been levied anywhere. This is only in consonance with Entry 92A of List I. It uses the words "taxes on sale and purchase". Therefore under the heading of goods, we wanted to cover both. That is why both these words have been included in section 64A

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): The question is:

"That the Bill further to amend the Indian Sale of Goods Act, 1930, be taken into consideration."

*The motion was adopted.*

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): We shall now take up the clause by clause consideration of the Bill.

*Clause 2 was added to the Bill.*

*New Clause 2A*

SHRI V. M. CHORDIA: Sir, I move.

1. "That at page 1, after line 7, the following new clause be inserted, namely:

\*2A. In sub-section (7) of section 2 of the principal Act, after the words "stock and shares" the words "electricity, water and gas" shall be inserted,"

इसके बार में पूर्व भी बर्चा कर चुका हूँ और उसको मैं दोहराना नहीं चाहता हूँ। माननीय मंत्री जी ने जो जवाब दिया है उससे ऐसा लगता है कि उन्होंने जो आधार इन शब्दों को इसमें सम्मिलित करने के लिए दिये हैं उनको मैं कम से कम माननीय मंत्री जी के ध्यान में लाने के लिए पढ़कर सुना देना चाहता हूँ और फिर प्रार्थना करूंगा कि अगर वे अब भी उचित समझें तो उसको इसमें सम्मिलित करने का कष्ट करेंगे। लॉ कमिशन ने अपनी रिपोर्ट के पेज २ में यह लिखा है :

"It has been suggested that the definition of 'goods' in clause (7) of section 2 should include electricity, gas and water.

POLLOCK AND MULLA in their Commentary on the Indian Sale of Goods Act, have expressed the view that it is doubtful whether the Act is applicable to such things as gas, water and electricity. The Calcutta High Court shares this doubt at least as regards electricity.

In England also, the position is uncertain. In (1909) 2 K.B. 804 the case was argued on the assumption that electrical energy was to be considered 'goods' for the purposes of the law relating to sale of goods, but it was expressly stated that the point was not being decided and might have to be considered later. As regards water, it was held in 11 Q.B.D. 21 that water supplied by a water company to a consumer and standing in his pipes, may be the subject of a larceny at common law. According to the decision in (1820) 4 C. and P. 87, an agreement for the supply of water by a water company comes within the exemption of 'contract for sale of goods' under the Stamp Act. Gas has been held to be goods by the Privy Council. However, in the U.S.A. it has been held that a contract to supply power is a contract of sale. Thus, electricity has been held to be personal property, capable of sale.

In India, according to section 39 of the Indian Electricity Act, electrical energy can be the subject-matter of theft. Article 287 of the Constitution, which prohibits a State Legislature from imposing a tax on the consumption or sale of electricity, shows that there can be a sale of electricity.

In view of the fact that contract with regard to the supply of electrical energy and water are common, we think that the matter should be

[Shri V. M. Chordia.] placed beyond doubt and an amendment should be made in section 2 (7) so as to include power in the shape of electrical energy, water and gas within the definition of 'goods'."

इसके अन्तर्गत भी उन्होंने इसी आघार पर अपने अमेन्डमेंट एक नई धारा में इसको इन्क्लूड किया। माननीय मंत्री जी ने अपने बवाब में बताया कि इलेक्ट्रिक कम्पनीज और कारपोरेशन्स का रिप्रेजेंटेशन आया और यह सही बात है कि जो आदमी कानून के द्वारा नियंत्रण में आता है वह चाहता है कि इसके चक्कर से बचने के लिए जितना प्रयत्न किया जाये उतना किया जाना चाहिये। इस एक्ट के तहत परचेजर को कुछ लाभ मिल सकता है और इस कानून में कुछ फायदा मिल सकता है, इसलिए खरीददार की हैसियत से लोगों को जो लाभ इस कानून के तहत मिलना चाहिये वह दिया जाना चाहिये और मैंने जो संशोधन रखा है वह भी इसी चीज को ध्यान में रख कर रखा है। साँ कमीशन ने भी अपनी रिपोर्ट में यह बात बतलाई है। इसलिए मैं माननीय मंत्री जी के समक्ष यह प्रार्थना करूंगा कि वह मेरे संशोधन को स्वीकार कर लें। अगर वह स्वीकार नहीं करते हैं तो सदन के सदस्यों से प्रार्थना करूंगा कि वे इन सारी बातों को ध्यान में रख कर इस संशोधन को स्वीकार करें।

*The question was proposed.*

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : Mr. Misra, you have already explained it. Any further remarks?

SHRI BIBUDHENDRA MISRA: May I point out that so far as this Calcutta case which has been reported in the Law Commission Report is concerned, actually what was before Their Lordships was an interpretation of section 39 of the Indian Electricity Act. This section provides that whoever dishonestly abstracts electrical energy, shall be deemed to have com-

mitted theft. Therefore the question there was even if all the ingredients of theft were not there, as we understand from the Penal Code, since the section by itself provides for a theft, so the question was whether they would be guilty or not. The defence was that once electrical energy passes through the meter, it cannot be the subject-matter of theft and only in that connection they said that the question was not covered by the definition of 'goods' in the Sale of Goods Act. This matter never came up directly. It was only in that connection that a passing reference was made to this section. Therefore I submit with all respect to the Law Commission that their reference to this decision reported in A.I.R. 1936, Calcutta 753 and citing it in this connection is entirely wrong.

SHRI A. D. MANI (Madhya Pradesh) : Whatever might have been the context in which those observations were made by Their Lordships of the Calcutta High Court, the specific recommendation of the Law Commission is that the Act should be amended to include power, gas and water. Let us not go over the question of theft or whether Their Lordships considered the matter. What are the practical difficulties in the way of the Government accepting this recommendation?

SHRI BIBUDHENDRA MISRA: I think I explained it twice. I gave three reasons. Firstly, I said, in no country of the world, nowhere, if you see the definition of sale of goods, electricity, water and gas are included. Secondly, the Sale of Goods Act, if you see the arrangements, concerns itself mainly with tangible goods and not intangible things like electricity, water and gas. Thirdly, there are specific acts dealing with electricity, water and gas themselves and therefore it is no use trying to restrict the other acts or to incorporate those into this. Actually you do not gain anything by including electricity, water and gas in the definition of 'goods' in the Sale of Goods Act itself. Also it may create hardship and may cause confusion.



THE VICE-CHAIRMAN (SHRI M. P. BHARGAYA): The question is:

1. "That at page 1, after line 7, the following new' clause be inserted, namely:

'2A. In sub-section (7) of section 2 of the principal Act, after the words "stock, and shares" the words "electricity, water and gas" shall be inserted."

*The motion was negatived.*

*Clauses 3 and 4 were added to the Bill.*

*Clause 5.—Stibstitution of new section for section 64A*

SHRI V. M. CHORDIA: Sir I move:

2. "That at page 2, lines 11-12, for the words 'unless a different intention appears from the terms of the contract' the words 'Unless otherwise agreed' be substituted."

I also move:

3. "That a\* page 2, after line 35, the following be inserted, namely:

'(c) any tax or duty imposed by a local authority'."

*The questions were proposed.*

**श्री विमलकुमार मन्नालालजी चौरडिया :**  
इन दोनों के बारे में मैं पूर्व भी निवेदन कर चुका हूँ और माननीय मंत्री जी ने जो जवाब दिया है उसके बारे में निवेदन है कि जैसा कि उन्होंने बतलाया कि विधान में नई धारा में इस तरह के शब्दों का उपयोग किया गया है "unless a different intention appears from the terms of the contract", अगर पुराने विधेयक में जिन शब्दों का प्रयोग किया गया है इस विधेयक में भी उन शब्दों को आप लेना चाहते हैं तो इसके बारे में मुझे कुछ कहना नहीं है। मगर यदि हमें इसे मेरिट के आधार पर देखना है तो हमको यह देखना पड़ेगा कि क्या हम ये नये शब्द ठीक ढंग से उपयोग

में ला सकते हैं। अगर पहले हमने गलती की हो तो हमें उन शब्दों को छोड़ करके और नये शब्द रखने चाहियें जो कि मने सुझाये हैं और जैसा कि विधि आयोग ने सुझाया है अपने माडल अमेंडमेंट में। "Unless otherwise agreed" ये शब्द बिल्कुल स्पेसिफिक हैं और इनमें कहीं भी झगड़े की गुंजाइश नहीं रहती है। माननीय मंत्री जी ने जवाब दिया कि इसके बाद भी ओरल ऐग्रीमेंट्स में बड़ी गुंजाइश रहती है। ये शब्द जो आपने पहले से रखे हैं उनमें तो और अधिक गुंजाइश रहती है। "Unless a different intention appears from the terms of the contract" पहले तो "इंटेंशन" में गड़बड़ होता है और फिर "अपियस" में गड़बड़ होता है। इन दोनों शब्दों से ज्यादा झगड़े की गुंजाइश रहती है। "Unless otherwise agreed" शब्द एकदम स्पेसिफिक हैं और इनमें झगड़े की गुंजाइश उतनी नहीं रहती है जितनी कि उन शब्दों में है जो कि अभी रखे गये हैं। इसलिए मैं निवेदन करूंगा कि मंत्री जी इस बारे में कुछ विचार करके इसमें सुधार करने का कष्ट करेंगे।

दूसरा संशोधन लोकल टैक्सेज के बारे में है। माननीय मंत्री जी ने अपने भाषण में ऐसा प्रगट किया कि जैसे खरीद और बिक्री के मामले में पंचायतें या लोकल अथॉरिटीज इतने टैक्सेज लगा देती होंगी कि उसकी वजह से बहुत काम्प्लीकेशन हो जायेगा। मगर जहां तक खरीद और बिक्री का सवाल है या माल के आयात करने का सवाल है, जैसे कि कस्टम्स और इक्साइज का सवाल है, उसी तरहसे उनकी भी सीमायें रहती हैं और वहां भी ऐसे विवादपूर्ण ट्रांजेक्शंस होते हैं और जहां खरीदारी और बिक्री होती है वहां के टैक्सेज वहीं पर अफेक्ट होने वाले हैं। तो उसकी एक भयानक स्वरूप की कल्पना करके इसको अस्वीकार करने से जो सेलर

[श्री विमलकुमार मन्नालालजी चौरडिया]  
को हम लाभ देना चाहते हैं उससे हम उसको  
बंचित करेंगे। इच्छा तो हमारी उनको  
लाभ देने की है और हम इसमें यह ऐड  
कर रहे हैं :

“(a) any duty of customs or excise  
on goods;

(b) any tax on the sale or purchase  
of goods.”

बे तो हम देते हैं, फिर सेल और परचेज  
में जो भी लोकल अथॉरिटी का टैक्स  
बस कर रहा है उसको क्यों न हम इसमें  
इनक्लूड करें? अगर कहीं म्युनिसिपैलिटी  
अथॉरिटी ड्यूटी लगाती है और किसी  
मोटर की खरीद का एप्रीमेंट होता है  
वो अथॉरिटी ड्यूटी उसी समय बढ़ जाती है।  
वो जो सेलर एक निश्चित मार्जिन अपने  
प्रॉफिट का रख करके अपना माल बेचता  
है उसको इसका लाभ आप क्यों नहीं देना  
चाहते हैं? इसलिए मैं माननीय मंत्री जी  
से प्रार्थना करूंगा कि जब उन्होंने यह नहीं  
सोचा कि इससे क्या लाभ और हानि होने  
वाली है, तो अभी सोच करके इस संशोधन  
को स्वीकार करें। उन्होंने जैसी चर्चा पहले  
भाषण में, रोड ट्रांसपोर्ट के बारे में की,  
इससे मुझे बड़ा आश्चर्य हुआ। माननीय  
ए० के० सेन का जो पुराना भाषण था उसको  
उन्होंने दोहराया। उसके बाद काफी परिवर्तन  
हो चुका है उस और उसको उन्होंने स्टडी  
नहीं किया। सन् १९६० से १९६२ तक जो  
परिवर्तन हुआ है उसको स्टडी करके यदि  
मंत्री महोदय जवाब देते तो ज्यादा उचित  
होता। पुरानी ही दलीलें दी गईं। इस  
लिए मेरी प्रार्थना है कि इस बारे में फिर  
से विचार किया जाये। जब कि हम सेलर  
को लाभ देना चाहते हैं कि एक निश्चित  
प्रॉफिट के बाद जो भी टैक्स लगे उसका  
नुक्सान उसको नहीं पड़ना चाहिये, तो यदि  
इस संशोधन के द्वारा वह यह लाभ पा  
जायेगा तो उचित ही होगा।

THE VICE-CHAIRMAN (SHRI M. P.  
BHARGAVA) : Any reply from the  
Government?

SHRI BIBUDHENDRA MISRA: I have  
already explained the position and I have  
nothing further to say.

THE VICE-CHAIRMAN (SHRI M. P.  
BHARGAVA) : The question is:

2. "That at page 2, lines 11-12,  
for the words 'unless a different  
intention appears from the terms  
of the contract' the words 'unless  
otherwise agreed' be substituted."

*The motion was negatived.*

THE VICE-CHAIRMAN (SHRI M. P.  
BHARGAVA) : The question is:

3. "That at page 2, after line 35,  
the following be inserted, namely:

'(c) any tax or duty imposed by a  
local authority'."

*The motion was negatived.*

THE VICE-CHAIRMAN (SHRI M. P.  
BHARGAVA) : The question is:

"That clause 5 stand part of the Bill."

*The motion was adopted.*

*Clause 5 was added to the Bill.*

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

SHRI BIBUDHENDRA MISRA: Sir, I  
move;

"That the Bill be passed."

*The question was put and the motion was  
adopted.*

#### THE EMPLOYEES' PROVIDENT FUNDS (AMENDMENT) BILL, 1962

THE MINISTER OF LABOUR IN THE  
MINISTRY OF LABOUR AND EM-  
PLOYMENT (SHRI JAISUKHLAL HATHI) :  
Sir, I beg to move: