Commission and Multi-purpose River Valley Projects. [Placed in the Library, *see* S-114/53.]

THE CENTRAL SILK BOARD (AMENDMENT) BILL, 1952—*continued.*

MR. CHAIRMAN: We will resume consideration of the Central Silk Board (Amendment) Bill.

SHRI K. S. HEGDE (Madras): I have very great pleasure, Sir, in supporting the objection raised by my friend Mr. Rajagopal Naidu yesterday as regards the validity of Clause 12 of the Bill. The objection was advanced on two grounds—firstly, that the clause in question is constitutionally bad and legally improper. So far as the legal propriety is concerned, it is more on convention rather than based on law. It is a healthy principle that in all democratic countries the rule of law is held to be the most fundamental concomitant of democracy. In fact, there can be no democracy without having the rule of law. All civilised countries have accepted as one of the canons of law that as far as possible no retrospective legislation will be enacted except in times of stress and emergency. In fact, in a country like England where the Parliament is both a constitutional body and a legislative body, where they can enact any legislation—as Lord Bryce has said, they can do anything excepting making a man a woman or a woman a man—even there it is an accepted practice, almost a canon of jurisprudence, that they will not ordinarily enact a retrospective piece of legislation In fact, it would be very rare in the history of English law that retrospective legislations have been enacted, and more so when we come to criminal law. For, it is based on the fundamental principle that a man is expected to obey the law that is existing at the time and not a law which should have existed at the time when it really did not exist. Today we are trying to punish certain people or hold them responsible for not obeying a law that in the eye of the law never existed. It is on that ground that my friend Mr. Naidu raised his objection. On a legal morality or a morality which is commonly accepted by lawyers and legislators as a correct one we should not enact retrospective legislation. It was not offered in a spirit of picking holes. It was really a guiding principle which we should not lose sight of in enacting legislation.

Now, Sir, a more important and a more fundamental objection is that the section may be constitutionally invalid. This section is a compendious one mixing several ideas and several requirements. I submit that in so far as it operates to validate offences or validate convictions or to sustain criminal proceedings which are pending, it is opposed to article 20 of the Constitution. In article 20 of the Indian Constitution it is laid down that "no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence." Now, in order to support our contention it is necessary to know the history of this piece of legislation. This was originally enacted in 1948 when we did not have the limitations that are placed by the Indian Constitution in 1950, when the subject-matter of this legislation was a Central subject. The Central legislature had passed the legislation in question and it was certainly a valid law until 26th January 1950, but on the passing of the Constitution the subject-matter of this piece of legislation—so far as the control of the silk industry is concerned—became a provincial subject under item 52 of the Seventh Schedule to the Indian Constitution.

SHRI RAJAGOPAL NAIDU (Madras): Item 24.

SHRI K. S. HEGDE: I am sorry, it is item 24. Now, if the Centre wanted to legislate on that matter, a declaration as now contemplated under subsection (2) of section 3 is absolutely necessary and such a declaration was not there on 26th January 1950 or thereafter up till this date. So that piece of legislation conflicted with article 13 of the Indian Constitution, because it was not one of those which were adapted as required by the Constitution and as such the law might be taken to have lapsed on 26th January 1950. Ever since that date this Act is not in existence—this Act of 1948. Today the Government is trying to resurrect that Act. It is trying to amend an Act which is no more legally existing. Such is the legal position so far as this amendment is concerned.

Now, if you pass that legislation, what is the effect? A number of persons might have been convicted under the old Act. Cases might be pending in courts of law now; pending in the trial court, or pending in appeal. In so far as those cases that have already ended either in conviction or in acquittal, there will be no difficulty, because a court of law can decide either rightly or wrongly and its decision is final. Even if it has decided a case wrongly, its decision is final. In fact, Sir, it is said that it is only the lawyers that are required to know the law and not the judges. While even a layman is presumed to know the law, a judge is not. I am not speaking in a belittling spirit, but it is a maxim which is necessary for the proper application of the law. The judge is not presumed to know the law. Let me not be misunderstood as saying that the judge does not know the law. It is not that. Probably he is one of those who knows it best But the point is, if a judge has wrongly convicted a man, that judgment is correct in the eye of the law. Those cases apart, there are likely to be a large number of cases which are now pending in the courts of law, which might be either before a magistrate or before an appellate judge or before a High Court or before the Supreme Court. What this clause tries to validate is those proceedings that are pending or those convictions which have been recorded by one of the lower courts. Now if you try to validate that law, you are convicting a man under a law which did not exist at the time when he was prosecuted or when he was tried. Possibly I expect that my friend, the Law Minister, would tell the House "No, no; that law was valid law. The 1948 Act did exist up till today—probably will exist even tomorrow." Then I am just asking with all humility: Why bring in this piece of legislation at all? You are not doing anything important. You are not introducing any fundamental changes in that. You are not trying to amend the 1948 Act—nothing more, nothing less, barring a few tinkerings here and there. I am putting a question to you with all sincerity and that is this. What is the purpose of this clause 12 at all? If the law existing in 1948 is a valid law, then this is superfluous. Supposing somebody has done something wrong in the eyes of the law; now if your contention is that that law is a valid law, there is no question of indemnity that arises at all. If you are going to validate an illegal conviction, it is not only opposed to law but it is opposed to the Constitution. To that extent I humbly implore the Government to see that we do not enact a law which contravenes the fundamental law of the land. There is already in the atmosphere a feeling of resistance against law. We should not be the breakers of law. We should not set an example to the country by breaking the laws ourselves. For God's sake, do not enact a legislation which comes into conflict with the Constitution of the land. Now in a country where we have a written Constitution and where the duties of the Legislatures are limited by the limitations placed by the Constitutions, one has got to be very chary. The guardians of the law will always have

to watch whether our executive actions and our legislative measures come into conflict with the Constitution. However careful we might be, yet we may commit slip here or there, but that is no reason to voluntarily make mistakes with blind eyes, with closed eyes, and then say "Let us wait for the result." Somebody outside, whom we cannot question, has told the Government that this is a good law. That is no argument. I am unable to accept that argument. It is for the Law Minister to advise this House and to convince this House that this provision does not come into conflict with article 20 of the Constitution. Sir, I request the Government to reconsider that position so far as certain portions of clause 12 are concerned and so far as it relates to acts, proceedings or sentences done, taken or passed under the principal Act. If the sentences are still pending in an appellate court, then it comes within the ambit of article 20 of the Indian Constitution. The hon. Minister for Commerce is a well-known lawyer, a lecturer in law, and probably if he applies his mind to this aspect of the question, it would be far better and it would be helpful to this House.

SHRI J. R. KAPOOR (Uttar Pradesh): Mr. Chairman, my hon. friend Mr. Naidu and also my hon. friend Mr. Hegde have raised a constitutional objection with regard to the retention of clause 12 in this Bill.

SHRI RAJAGOPAL NAIDU: Not the entire clause.

SHRI J. R. KAPOOR: Well, partly. I stand corrected. They are trying, it seems to me, Sir, to beat a dead horse and that too with an old and discarded stick, because this point has been raised, if I remember aright, on one or two previous occasions and the whole thing has been disposed of. Previously too this House was not convinced that there was any force in the contention which has once again been raised by our hon. friend Mr. Naidu.

SHRI K. S. HEGDE: To be accurate here, Sir, it was at the time of the Delhi Transport Authority Bill when this question was mooted and the hon. Minister for Railways gave us the assurance that the pending cases would be withdrawn so that there would be no difficulty in the matter.

SHRI J. R. KAPOOR: Exactly, Sir. The point was raised not so much when the Delhi Transport Authority Bill was under consideration but it was more particularly and specifically raised when another Bill, the Power Alcohol Bill, as has been pointed out by Mr. Naidu, was under discussion. This point had been thoroughly thrashed out. The same arguments were raised then as have been advanced today and after a thorough discussion of the whole question the House had come to the conclusion that there was neither anything unconstitutional nor anything legally improper in enacting a provision very much similar to the one which we have in clause 12 of this Bill. Reliance has been placed, Sir, on article 20 of the Constitution. Certainly, it should be the bounden duty of every one of us to see that no provision of the Constitution, particularly one which finds a place in the Chapter on Fundamental Rights, is violated in the slightest measure. We should ever be vigilant so far as that is concerned. But we have to see whether article 20 of the Constitution is being violated even in the slightest measure. My submission is, Sir, that certainly it is not being violated. All that article 20 lays down, and rightly too, is that nobody should be convicted for any act which was not an offence under any law at the time when the act was committed. Now the question is.....

SHRI K. S. HEGDE: Provision of any law in force.

SHRI J. R. KAPOOR: Exactly. Now the question is whether under clause 12 of this Bill we are, in the slightest measure, doing anything which contravenes this provision. The question

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is, Sir, whether there was any law in force prior to the date when this Bill becomes an Act. Certainly there was a law in force. But the contention is that that law which was in force was not a valid law. Even that is not really the contention. What they submit, what they urge, is that perhaps somebody thinks it may not have been a valid law and therefore that law, not being a valid law according to an imaginary doubt, was not a law in force. My submission is, Sir, that there is a great deal of difference between there being no law in force at all and there being a law in force which somebody may question. But even in fact nobody has questioned it. It is not even certain today, Sir, that the law which was in force was not a valid one. Nobody had questioned it so far. Even now, my hon. friends on the right and the left, who have already had their say on this subject, say definitely and categorically that that law was not a valid law. For the mere reason that the Government, as a measure of abundant precaution, have now considered it necessary to introduce clause 12 in this Bill, they urge that if possible it was not a valid law, then no indemnity should be granted firstly, and secondly, that if any proceedings are still pending in a court of law under the provisions of that law, they should not be validated. My submission is that the distinction is so very obvious between there being no law in force and there being a law in force which somebody perhaps might question. So in view of this distinction, Sir, I submit that there is no force in the contention of my hon. friend.

SHRI K. S. HEGDE: Sir, to my friend I would be obliged if he can enlighten us on this point. Is there any distinction between an invalid law and no law?

SHRI J. R. KAPOOR: Well, certainly there is a great deal of difference. The difference is this: If a person breaks a law which is invalid, he runs the risk of being convicted if it is held by a court of law that he has violated a valid law. He commits an act deliberately, knowingly. But if there is no law at all, then whatever act a person commits, he commits it in the definite belief and conviction that he does not commit an offence. If a person commits something which under the law of the land is an offence, certainly he runs the risk of being convicted. If he is under the belief and conviction that the law is not a valid law, if he is prosecuted, then it is open to him to question its validity. The intention in either case is very clear. In the first case, a man does not commit any act with the intention of committing an offence. In the other case, the law being there in force, the man violates it knowingly under the right belief or the mistaken belief that it is not a valid law. If a person commits an act which is an offence under the law in force, and if he wants to question its validity, it is open to him to question its validity, and if a court of law holds that an offence has been committed, he will run the risk of being convicted. My submission is that there is all the difference between the two cases. I entirely agree with my hon. friend that it is not advisable to have retrospective laws, but the provisions which is contained in clause 12 is not actually in the nature of a retrospective provision. It is, I submit, a provision which is being enacted as a measure of abundant caution. If anybody has done any act under the belief and conviction that he is doing something right, he must be no doubt indemnified. To that, I hope, my hon. friends have no objection. But if anybody has done something which was an offence under the law in force, there is no reason why he should also be granted indemnity. Now, to me there seems to be hardly any difference between the section 2 of the Act of 1948 and the section 2 as it will stand after this amending Bill is passed. The difference is the same as between Tweedledum and Tweedledee. The

existing section 2 of the Act runs thus:

> "It is hereby declared that it is expedient in the public interest that the Central Government should take under its control the development of the raw silk industry."

In the amended form, it will read thus:

> "It is hereby declared that it is expedient in the public interest.....

Now, so far, the words are absolutely identical:

> ".....that the Union should take under its control the silk industry."

In the place of the words "Central Government", we now substitute the word "Union". There is hardly any difference. In the place of the words "development of the raw silk industry", we now substitute the words "the silk industry".

SHRI RAJAGOPAL NAIDU: The question is whether a declaration has been made as required by law.

SHRI J. R. KAPOOR: Formerly also there was to be a declaration. Previously the declaration was as to the expediency of Central Government's control. Now the preamble talks about declaration as to the expediency of Union control. Formerly the declaration was that the Central Government considered it expedient. Now the declaration is that the Union considers it expedient. There is hardly any difference.

SHRI K. S. HEGDE: No declaration was necessary under the Act of 1935. The 1948 Act was passed under the Constitution of 1935, but the declaration was only necessitated by the Constitution of 1950. This Constitution was not in existence in 1948 and as such a declaration could not have been made.

SHRI J. R. KAPOOR: I take it that even if a declaration by the Central Government was not necessary, yet a declaration was there.

THE MINISTER FOR LAW AND MINORITY AFFAIRS (SHRI C. C. BISWAS): In the Government of India Act of 1935 there was a specific entry like this, entry 34 in List I:

> "Development of industries, where development under Dominion control is declared by Dominion law to be expedient in the public interest."

It was there.

SHRI J. R. KAPOOR: I am obliged to my hon. friend, the Law Minister, because he has corrected the wrong impression which was there in the mind of my hon. friend, Mr. Hegde, but my submission is that even if the contention of my hon. friend, Mr. Hegde, was correct, *viz.* that under the old Government of India Act it was not necessary at all to make such a declaration, that does not affect the position that there was a declaration made by the Central Government and Legislature. Even if it was superfluous, such a declaration was made by the then existing Legislature and this Legislature is only successor to that Legislature. The declaration that we are now going to make today is almost in similar words with the slight modification that in the place of the 'Central Government', we are now using the word 'Union' and in the place of the words "the development of the raw silk industry", we are now using the words "the silk industry". There is no difference between controlling the development of the raw silk industry and controlling the industry in its entirety. This is my submission, Sir, and I will repeat once again that, while I do agree that we should be very hesitant in making a law of a retrospective nature, we must make a distinction between that general proposition and the point which is under consideration at the present moment. We should not encourage the commission of an offence by anybody under the plea that the law is

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not a valid law. If a man commits an offence knowing, that he is doing something wrong according to the law in force, then he should not be permitted to escape the penalties thereof on the plea that the law was not a valid law unless, of course, there is anything improper or immoral in the contents of that law, and if that be the case, that law should not be tolerated by us at all, which is surely not the case in the present instance.

DR. SHRIMATI SEETA PARMANAND (Madhya Pradesh): Sir, I should like to take this opportunity to get some elucidation from the Minister in charge over certain doubts that I have in mind. I should have liked to speak yesterday when the Bill was introduced, but as I could not be present here at that time, I am speaking at this late stage.

MR. CHAIRMAN: Dr. Parmanand, you can speak on clause 12. If you want to enter into general discussion, you can do so at the third reading, not now.

SHRI B. K. P. SINHA (Bihar): Sir, I heartily support this measure. I support it because I am convinced that it is neither legally improper nor constitutionally invalid. Mr. Hegde and Mr. Naidu considered it legally improper because in their opinion it is a retrospective legislation and it makes something valid which was not valid at its inception. In strict law, there is a distinction between a retrospective legislation, indemnifying legislation and legislation *ex post facto.*

SHRI RAJAGOPAL NAIDU: It is retroactive legislation.

SHRI B. K. P. SINHA: It is legislation *ex post facto.* Retrospective legislation is, strictly speaking, involved when rights are vested, expectations have been aroused and a law wants to destroy those vested rights or to strike at the basis of those expectations. Indemnifying legislation is of a different sort. It exempts people and has nothing to do with vested rights. It saves people from consequences which might follow from the violation of law or which may follow from the absence of any law.

SHRI K. S. HEGDE: We only objected to retrospective legislation, not indemnifying legislation.

SHRI B. K. P. SINHA: That is a misinterpretation of the clause. We know that there is a provision in the Constitution that any Member who holds an office of profit is disqualified. Disqualification is very often incurred by Members of Parliament in India, in England as well as in other countries. Legislations are passed thereafter waiving those disqualifications, exempting the Members, saving them from the operation of that section relating to incurring of disqualification because of holding an office of profit. Strictly speaking, it is not a retrospective legislation for in this case no rights have accrued and no expectations have been aroused. A man has incurred disqualification. It is just the opposite; rights have been affected by mistake. A legislation is passed and those rights are restored. This is in strict parlance legislation *ex post facto.* Therefore whole retrospective legislation is something which is looked on with disfavour by jurists everywhere, indemnifying legislation is a legislation *ex post facto* and is not looked on with disfavour. Rather it is a normal procedure in law making and this legislation falls in the later category. We may call it an indemnifying legislation or legislation *ex post facto.* From this point of view I feel that there is nothing legally improper in this. Then my friend raised the point that it is constitutionally invalid. I submit that it is not. You are not making what was not an offence when it was committed, an offence now. It simply indemnifies officers, Government servants or people in authority who have taken action from the consequences of the absence of law, from the consequences that follow from the

presence of law which is invalid and which in the eyes of law is presumed to be non-existent.

SHRI RAJAGOPAL NAIDU: We have no quarrel—about the indemnifying provision in clause 12.

SHRI B. K. P. SINHA: Then to what has the hon. Member objected?

SHRI RAJAGOPAL NAIDU: To proceedings taken and sentences undergone and undergoing.

SHRI B. K. P. SINHA: The whole point is, what is the meaning of this clause? The confusion arises because of the word 'and'. The word 'and' is used in two ways in legislation It is used sometimes disjunctively and sometimes conjunctively. Here it is used conjunctively. Suppose a man is undergoing a sentence under the previous law which in the eyes of law does not exist, even after this Bill is passed and enforced, he can move for a writ of habeas corpus and he will at once get a release. This clause does not lay down that a sentence once it is imposed has become legal. It will not make that legal. If a man is illegally imprisoned, he will be released at once. If a man has come out after serving his time, if any proceedings have been taken against him or action taken against him, then, because of the defect in law, the officers who have taken that action are liable both to criminal action and to action for civil damages. This clause lays down that such criminal actions or civil suits shall be precluded. It does not make his continued incarceration legal. The whole emphasis is on the last clause 'and no suit or other legal proceeding shall be maintained or continued against any authority whatsoever on the ground that any such acts, proceedings or sentences were not done, taken or passed in accordance with law.' That is the purpose of this clause.

SHRI RAJAGOPAL NAIDU: No.

SHRI K. S. HEGDE: What about the words 'proceedings or sentences which have been done etc.' Are you going to ignore them?

SHRI B. K. P. SINHA: No. Suppose a man has undergone any term, if this clause were not there, it will be open to him to bring a suit for damage against a person who was responsible.....

SHRI K. S. HEGDE: Can you, merely for a wrong conviction, bring a suit if he were successfully convicted?

MR. CHAIRMAN: Continue.

SHRI B. K. P. SINHA: Suppose a man has been convicted under a law which is not constitutionally a law, of course, when he comes out, it is open to him to sue the Government for damages or even bring a criminal action against officers who were responsible for putting him in jail or prosecuting him. It is perfectly valid and this is a normal course.

SHRI K. S. HEGDE: That is about malicious prosecution?

SHRI B. K. P. SINHA: Malicious prosecution is entirely different But prosecution under a law which does not exist is entirely different. Both are different.

I feel that this is simply an indemnifying clause. It does not make legal something which was illegal. It will make it legal to the extent that no suit for damages, no criminal action can be brought against officers. That is the purport of this Bill and the Statement of Objects and Reasons—clause (c)—makes it clear. It says that the purpose is:—

> "To indemnify all authorities in respect of action taken between the commencement of the Constitution and the commencement of this Act, as a doubt may be raised as to whether, in the absence of a declaration made by Parliament by law, the declaration contained in section 2 was effective during that period."

[Shri B. K. P. Sinha.]

It does not say that this clause purports to make the continued incarceration of a man legal. It simply indemnifies. The way in which the clause is worded and especially the way in which this word 'and' has been used makes it very clear that it is merely an indemnifying clause and it does not offend against article 20 of the Constitution. I therefore fully support this.

SHRI R. C. GUPTA: (Uttar Pradesh): Sir, on this legal question I agree with Messrs. Hegde and Naidu and probably it is because of the defective language employed in clause 12. It is true that if you read subclause (c) in the Statement of Objects and Reasons, it would appear that probably the object of the Government is only to indemnify the persons in respect of the action taken by them. But the language employed in clause 12 goes further than that. It is incorrect to say that clause 12 only indemnifies the officer who has taken action, prior to the commencement of this Act. If you read it, you will find that the plain meaning of this clause will be this. It provides for two things. It validates certain acts, that is to say acts of executive authority, proceedings and sentences which have been done, taken or passed. It also indemnifies authorities concerned. If you read the clause as a whole, you will find that it seeks to validate sentences which have been passed. This is a provision which certainly is in conflict with article 20 of the Constitution. No law can be passed which conflicts with the Constitution and in this particular case, my submission is that the validation of sentences which have been passed does conflict with article 20 of the Constitution.

SHRI RAJAGOPAL NAIDU: All proceedings taken?

SHRI R. C. GUPTA: Yes. If a man was convicted under a bad law, then it should be taken that he was wrongly convicted by amending that law we cannot validate that conviction. That is an elementary principle of law. My opinion is that this portion of clause 12 comes into conflict with the Constitution where it refers to the sentences passed between the 26th of January 1950 and the commencement of this Act.

As regards indemnity to the authorities for having taken action, I think there is no invalidity in that.

SHRI GOVINDA REDDY (Mysore): What would be the position if that clause was not there?

MR. CHAIRMAN: Order, order, no question.

SHRI O. SOBHANI (Hyderabad): Sir, I had no intention of participating in this debate, but after hearing the speeches of the eminent lawyers who have preceded me, I thought that as a layman I should make an appeal to the hon. Minister for Law to make the law a little less confusing, because this is a law which affects mostly those people who are ignorant, and by far the largest number of people who are involved in this silk business are not only uneducated, but most of them are illiterate. And when eminent lawyers have found it so difficult to give the exact interpretation of this particular clause, what is the position of the poor layman who are affected by it? Sir, in a country where there is so much of illiteracy and where ignorance of the law is no defence, our laws must be simple so that poor folk have not to depend on astute lawyers to interpret the law in any way they like. That is all I have to submit, Sir, and I hope the hon. the Law Minister will, even at this stage, modify the clause to make it simple

10 A.M.

SHRI C. C. BISWAS: Sir, I was wondering if the Council of States had been converted into a court of law and you, Sir, were to be the judge,

although a judge who knows no law, as it was said here, and would have to decide the question. Well, as the hon. Member, Mr. Kapoor pointed out, this is not the first occasion on which such objection has been raised. He has referred very rightly to the previous Bill—The Indian Power Alcohol (Amendment) Bill of 1952 which contained a clause almost exactly in the same terms as clause 12 of this Bill. There it was clause 4 and here it is clause 12. That is the difference. It contained an indemnity provision and also a validating provision.

SHRI RAJAGOPAL NAIDU: Does the hon. Minister plead estoppel?

SHRI C. C. BISWAS: Sir, I am not suggesting estoppel. I am only pointing out that this question had been fully considered and it was accepted by the House that such a provision was legal and constitutional. There might be some hon. Members who might not share that view, but the opinion of the House was that it was valid and constitutional. That is what I am pointing out. And this is not the first time that this objection is being raised. And let me tell you, Sir, and the House that the Ministry of law, responsible for the drafting of these Bills, took good care to see that what was being provided in the Bills was legally and constitutionally correct. The opinion of the Attorney General was taken on that occasion and I have got that opinion here and I shall presently place the substance of that opinion before the House, just to make it clear that the Ministry was not acting thoughtlessly or without consideration. This question had been fully considered and it was after obtaining the opinion from the Government's first legal adviser that this provision was introduced also in the present Bill.

Sir, there are two points. Reference has been made to the Statement of Objects and Reasons. This Statement explains why clause 2 was introduced. Let me deal with that point first. As I pointed out in the course of the reply to the remarks made by Mr. Hegde, there was a provision in the Government of India Act in the portion which I read out. Now, by virtue of article 372(1) of the Constitution, this provision which is contained in that law would continue to be in force.....

SHRI K. S. HEGDE: Then why this piece of legislation?

SHRI C. C. BISWAS: Let me finish, please. That is what is provided there. It says:

> "Notwithstanding the repeal by this Constitution of the enactments referred to in article 395 but subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority."

SHRI K. S. HEGDE: May I intervene, Sir? In spite of that, did the High Court of Madras and the Supreme Court hold the Criminal Law Amendment Act *ultra vires* and opposed to the Chapter on Fundamental Rights?

SHRI C. C. BISWAS: Sir, I do not have the Criminal Law Amendment Act before me and I do not express an opinion on that. I do not know now the specific grounds upon which the Supreme Court took that view about that enactment. But that is a different matter. What I was pointing out was that ordinarily this provision in the Government of India Act would be in force even after the commencement of the Constitution.

Then, Sir, if you look at entry No. 52 in List I of the Constitution, it reads thus:

> "Industries, the control of which by the Union is declared by Parlia-

[Shri C. C. Biswas.]

ment by law to be expedient in the public interest."

So this legislation, in order to come within the strict terms of the Constitution, should be a law in respect of an industry the control of which by the Union is declared by Parliament by law to be expedient in the public interests.

Now, Sir, let us compare this with another entry, entry 27 in the same List. Entry 27 reads thus: "Ports declared by or under law made by Parliament *or existing law*...etc". Now, you find reference is made here not only to law made by Parliament but also to "*existing law*."

SHRI K. S. HEGDE: It is a point against you.

SHRI RAJAGOPAL NAIDU: This point goes against you, Sir.

SHRI C. C. BISWAS: Let me continue. If you turn to entry 52, it mentions "declaration by Parliament by law" and no reference is made to existing law. Therefore, it might be argued that what the present entry requires is that there must be legislation by Parliament. If something was done under the existing law, that could not come strictly within the terms of the Constitution. It is because of this doubt that it was thought that opportunity should now be taken, as this Act was being amended, to remove that doubt, so that the declaration could be in strict accord with the requirements of the present article of the Constitution. As a matter of fact article 372(1) might have been left to operate, but when this legislation was going to be enacted, opportunity was taken to remove any possible doubt.

If you now refer to the Statement of Objects and Reasons, you will find that, in clause (b) of paragraph 2 it is stated "opportunity has also been taken to substitute a new clause for section 2 of the principal Act in order to bring its language in conformity with the language of entry 52 of List I in the Seventh Schedule to the Constitution". That explains, Sir, why this was done. Reference is also made in clause (c) of paragraph 2 of the Statement of Objects and Reasons to section 2, and reliance has been placed thereon by my hon. friend Mr. Naidu and also possibly by Mr. Hegde. It is stated there that "opportunity has been taken to grant indemnity to certain persons for certain acts as a doubt might be raised as to whether, in the absence of the declaration made by Parliament by law, the declaration was effective during that period." It is mentioned there, Sir, but that does not suggest that the provision which has been included is in contravention of article 20 of the Constitution. That is the main objection which has been raised, that it is unconstitutional because article 20 lays down that no person shall be convicted of an offence except for violation of a law in force during the time of the commission of the act charged as an offence. Now, Sir, for the purpose of the argument which was put forward by my hon. friends there, it was assumed that there was no law in force on the day the sentence was passed. As a matter of fact, what is it that article 20(1) prohibits? It does not prohibit the enactment of an *ex post facto* law. It does not. Whether it is an *ex post facto* law or not is a different matter, but the article does not prohibit the enactment of an *ex post facto* law. There are, Sir, countries in which the Constitution does prevent such legislation; but, so far as article 20 of our Constitution is concerned, it does not prohibit the enactment of *ex post facto* law in that way.

SHRI K. S. HEGDE: It becomes legally ineffective in such a case.

SHRI C. C. BISWAS: The provision in the Bill only validates the law which did lay down that the act constituted an offence. It was an offence under the Central Silk Board Act of 1948, and we are not creating

a new offence for the first time by the present Bill. We are not doing that. There was an offence and the conviction took place for that offence. There is no question of somebody being convicted now or a conviction being made valid now although that conviction had been obtained for an act which was not an offence at the date the sentence was passed and the conviction took place. That is the point, Sir, to bear in mind and that seems to be obvious.

Here again, it may be asked, "Why do you put that in?" As a matter of fact, we are introducing an indemnity clause, the main object of which is to grant indemnity to certain.....

SHRI K. S. HEGDE: Where does the indemnity come in if there is a valid law?

SHRI C. C. BISWAS: In order to put it beyond the possibility of doubt.....

(Interruption by Shri K. S. Hegde.)

MR. CHAIRMAN: Look here, Mr. Hegde, you are cross examining him.

SHRI C. C. BISWAS: For that purpose, this was inserted there in order to make it perfectly certain that there was no legal flaw in the conviction which might have been passed in the earlier stage when the offence was committed.

Sir, may I now place before the House the opinion which we had obtained from the Attorney General on a provision exactly similar to the one we have in the present Bill. What he says is this: "The Constitution prohibits the conviction....."

SHRI RAJAGOPAL NAIDU: On a point of order, Sir. Has the Attorney General given an opinion with regard to this Bill? If the Attorney General has given an opinion with regard to an analogous Bill.....

MR. CHAIRMAN: He said "on a provision similar to the one which is here."

SHRI C. C. BISWAS: It is exactly similar; there the words were "commencement of the Industries (Development and Regulation) Act 1951"; instead of that, we have got the "Central Silk Board Act"; otherwise, both are identical. Kindly compare the following with the language of the present Bill. "All acts of executive authority, proceedings and sentences which have been done, taken or passed with respect to or on account of power alcohol during the period commencing on the 26th day of January 1950 and ending with the commencement of the Act (mentioned by the Government) or by any officer of the Government or by any other authority in the belief or purported belief that the acts, proceedings or sentences were being done, taken or passed under the Act mentioned, shall be as valid and operative as if they had been done, taken or passed in accordance with law (not in accordance with this Act) and no suit or other legal proceedings shall be maintained or continued against any authority whatsoever on the ground that any such acts, proceedings or sentences were not done, taken or passed in accordance with law." This is exactly similar to present clause 12. Sir, I will now, to satisfy the hon. Members, place the opinion which we had obtained from the Attorney General before. He says: "The Constitution prohibits a conviction by the Court in respect of any act which was not an offence under a law in force at the time of the commission of the act charged as an offence. The clause does not enact a prohibition against the Legislature from enacting what may be called an *ex post facto* law. In this respect, a deliberate departure seems to have been made from the American and other Constitutions which prevent the Legislature from passing *ex post facto* laws" Then, referring to clause 4 in this Bill, he

[Shri C. C. Biswas.]

says "the provision in section 4 under consideration is really not in the nature of an *ex post facto* law..... What the provision does is to validate a law which did lay down that an act constitutes an offence." In other words, a law was in existence at the date of the act but its validity is a matter of doubt. The effect of the provision is rather to validate sentences already passed in proceedings which have been closed on a conviction taking place."

Sir, that is the position. I need not dilate on the matter further. We have obtained the best legal opinion and I submit, Sir, that the provision here is entirely legal and constitutional.

SHRI K. S. HEGDE: If you permit; Sir, we would like to have one or two clarifications. Section 12 comes into operation only if the earlier Act is invalid; in that case, is it opposed to the Constitution or not?

MR. CHAIRMAN: As far as I understand, the law has been there but its validity may be questioned, and to obviate that questioning this is being done.

SHRI K. S. HEGDE: I am asking him as an eminent jurist; could there be an invalid law which can be a law? That is the only question that I am asking.

MR. CHAIRMAN: It does not say 'invalid'. It says 'whose validity may be questioned'.

The question is:

"That clause 12 stand part of the Bill."

The motion was adopted.

Clause 12 was added to the Bill.

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

THE MINISTER FOR COMMERCE (SHRI D. P. KARMARKAR): I beg to move:

"That the Bill be passed".

MR. CHAIRMAN: Motion moved:

"That the Bill be passed".

DR. SHRIMATI SEETA PARMANAND: After the legal acrobatics through which we have passed I would like to get down to plain facts and put certain points before the hon. Minister for elucidation.

[MR. DEPUTY CHAIRMAN in the Chair.]

Sir, this Bill has been introduced to promote the silk industry as a whole, and not merely the raw silk industry So it would be within the competence of this discussion to suggest what other steps should be taken by the Board to see that these industries are promoted properly.

Yesterday, while speaking, the Commerce Minister said that the main question about the import of raw silk was that it was necessary firstly to get some money in the shape of import duty for our revenues and secondly that it was not within the competence of Government to decide what type of material should be used by people, and that it was for the public to cultivate their taste and that it was perhaps the duty of the social workers and educationists to work in that direction. I would like to ask, Sir, whether the Minister has gone to the markets in big cities like Bombay, Calcutta and Delhi and seen how the markets are flooded with foreign materials, particularly with the cheap type of silk which the Commerce Minister himself said is very popular now, and as a result how it is bound to act to the detriment not only of the handloom industry and other industries but also of those fabrics of high quality produced by our cotton mills and even to the detriment of our own silk industry which, not yet being in a highly developed state, cannot afford to sell silk at a lower price. Though it is true that it is for the members of the public to direct and regulate their taste, I think in our country

when at present the helpless and ignorant public are not yet very conscious of their national duty and look to Government in every respect to give direction, it is for the Government to first take all the necessary steps, to introduce austerity in the country, so as to save every pie of the people and spend it on more important things like more nutrition, education and the like. That will take us on the road to prosperity. For instance, Sir, in countries like England, even to-day when they are not so much in need of any direction from anybody, Government has taken the lead, and not the public, in the matter of restricting the imports of various luxury articles. Foreign fabrics are certainly luxury articles and it should have been, therefore, the duty of the Government in the interest of the promotion of this silk industry to stop altogether the import particularly of this cheap artificial silk. Secondly, Sir, it should be asked here that if Government's aim is to promote handloom industries and cottage industries like the silk industry and for which it has brought in this Silk Bill and given certain directions to them, how is it in conformity with the promotion of these industries when Government is allowing such imports particularly of the cheap fabrics which are flimsy from the point of view of lasting quality and national economy, and do not stand comparison with products like Khadi or the silk from Mysore and Murshidabad? These are the two points that the hon. Minister explained yesterday as being matters for the public to consider and not for the Government. I would like the Government to explain this. It is felt, Sir, by everybody that the Government's policy in regard to various industries is not one of a co-ordinated nature but it works in water-tight compartments. For instance if Government wants some exchange it would not mind growing opium for export or selling alcohol though it is not the case now, as it has introduced prohibition. But in the matter of the silk industry because Government wants money it has not only allowed foreign silks to come in but also so many other items of luxury goods like cosmetics. I would say, Sir, that it is particularly necessary for the Commerce Department to show a broader vision, because most of the national economy is in their hands, and show that Government does not tackle every problem as it comes piecemeal but takes a full picture of national economy. Otherwise it is this type of fluctuating policy that creates doubts in the minds of people as to what the Government's actual policy is. The policy is changing every now and then. Sometimes a duty is levied and after some time it is withdrawn. Sometimes imported goods are allowed and in a few months they are stopped. I would like to know whether Government will decide these policies after taking a complete picture of all the industries and national economy and whether it is going to make up its mind firmly to direct the people's mind to an austerity drive with a view to inducing the people to put all their energies to the promotion of our Five Year Plan. Thank you, Sir.

SHRI D. NARAYAN (Bombay):

श्री डी० नारायण (बम्बई) : उपाध्यक्ष महोदय, मुझे माननीय उद्योग मंत्री जी से एक विशेष प्रार्थना करनी है और वह यह है कि जिस उद्देश्य से आपने यह विधेयक बनाया है वह उद्देश्य तब तक कामयाब न होगा जब तक कि आप इस उद्योग को आर्टीफीशियल सिल्क (artificial silk) से न बचायेंगे। मैं चाहता था कि ऐसी कोई तजवीज होती जिससे यह "सिल्क" का जो शब्द है उसकी व्याख्या की जाती।

आज हम बाजारों में देखते हैं कि कई तरह का कपड़ा चाहे वह सस्ता हो या महंगा हो "रेशम" के नाम से बिकता है और गरीब लोगों को धोखा दिया जाता है। जिस तरह से खादी के लिए एक बिल पास हुआ है जिससे

[Shri D. Narayan.]

खादी की व्याख्या अच्छी तरह से हो उसी तरह से अगर "सिल्क" की भी व्याख्या हो जाती तो आज जिस तरह से "सिल्क" के नाम पर नकली रेशम बेचा जा रहा है और जनता को धोखा दिया जा रहा है वह न हो पाता।

आज बाजारों में नकली रेशम कई प्रकार का दिखाई देता है। केले के फाइबर (fibre) से भी सिल्क बनाया जाता है और बहुत सी दूसरी चीजों से भी सिल्क बनाया जाता है और वह सिल्क के नाम से सस्ते दामों में बेचा जाता है। इस तरह का सिल्क पानी में डालते ही किसी काम का नहीं रह जाता। मेरी माननीय मंत्री जी से यही प्रार्थना है कि "सिल्क" शब्द की व्याख्या अगर हो जाती तो आज बाजारों में असली सिल्क के नाम से जो "नकली सिल्क" बेचा जा रहा है और गरीब जनता को धोखा दिया जा रहा है वह न हो पाता। नकली रेशम का शब्द ऐसा है जिससे कि बराबर गड़बड़ पैदा होती है। जिस तरह से आपने "वेजीटेबिल घी" शब्द को हटा करके उसकी जगह पर उपयुक्त शब्द "वेजीटेबिल आयल" रख दिया है ताकि जनता को धोखा न हो सके, उसी तरह से आपको इस "सिल्क" शब्द की भी उचित व्याख्या करनी चाहिये। अगर आपन इस तरह से इस शब्द की उचित व्याख्या कर दी तो आप इस घरेलू उद्योग की ठीक तरह से हिफाजत कर सकते हैं और जनता को भी धोखे से बचा सकते हैं। इस के लिए अगर कोई बिल या कोई अमेन्डमेन्ट (amendment) इस बिल में लाया जा सकता है तो बहुत ही अच्छा होगा नहीं तो इसके लिए कोई दूसरा बिल लाया जा सकता है।

[For English translation, *see* Appendix V. Annexure No. 13.]

MR. DEPUTY CHAIRMAN. The hon. Minister.

(Dr. P. C. Mitra rose to speak.)

I have called the hon. Minister to speak.

SHRI D. P. KARMARKAR: I thought he rose a little earlier.

SHRI B. C. GHOSE (West Bengal): The hon. Minister is very generous

MR. DEPUTY CHAIRMAN. Yes, Dr. Mitra.

DR. P. C. MITRA (Bihar).

डा० पी० सी० मित्रा (बिहार) : हमारे देश का इतिहास बतलाता है कि हमारे देश में पहिले रेशम बहुत अधिक और अच्छे किस्म का होता था। ब्रिटिश गवर्नमेंट (British Government) के इस देश में आने पर इस उद्योग को नष्ट किया गया। इसका कुछ इतिहास मैं आपके सम्मुख रखना चाहता हूं।

हम लोग अच्छी तरह से जानते हैं कि रेशम का उद्योग बंगाल में घर घर में किया जाता था। उस समय जो रेशम तैयार किया जाता था वह सारे देश के ही काम में नहीं आता था बल्कि विदेशों को भी भेजा जाता था और उसकी बहुत मांग थी। अंग्रेजों ने इस गृह उद्योग को कोई तरक्की नहीं दी और उसको हर तरह से नुकसान पहुंचाया गया जिससे कि वह फिर पनप नहीं सका। हमारे यहां बरहमपुरा में एक सिल्क इंस्टीट्यूट (silk institute) खोला गया था जहां पर पेस्ट (pest) के बारे में कुछ उपाय किया गया था। वहां जो 'पेस्ट' होता था वह ३० मील तक फैला हुआ था। उनके लिए इंसपैक्टर रक्खे गये और वे लोग माइक्रोस्कोप (microscope) से पेस्ट को देख देख कर डिस्ट्रोय (destroy) कर देते थे।। मगर आज हमारी सरकार

आर्टीफीशियल सिल्क को बढ़ावा देने के लिये क्यों फारेन कन्ट्रीज़ (foreign countries से सिल्क को मंगा रही है।

मैं सरकार से कहना चाहता हूं कि अगर सरकार की ओर से कुकून (cocoon) पैदा करने के लिये लोगों को फ्री (free) कर दिया जाय तो इससे हमारे इस घरेलू उद्योग को फायदा होगा और अच्छा रेशम हमको काफी मात्रा में मिलने लगेगा। इस समय कुकून का उद्योग करने पर रेस्ट्रिक्शंस (restrictions) लगे हुए हैं जिससे कि गांव के लोग इस उद्योग को आजादी के साथ नहीं कर सकते हैं। अगर कुकून बनाने की इजाजत फ्री कर दी जाय तो हमारे देश में जो इस समय बेरोजगारी है वह बहुत हद तक कम हो जायगी। अगर कुकून फ्री कर दिया गया तो आप देखेंगे कि २२ दिन के अन्दर उसमें से सोना निकलने लगेगा। अगर मध्यान्ह को और सांझ को उनको पत्ता खिलाया गया तो ठीक २२ रोज के अन्दर उसमें से रेशम निकाला जा सकता है। इस तरह से अगर लोगों को इजाजत मिल गई तो आपके लिये अनएम्प्लोयमेंट (unemployment) का सवाल भी हल हो जायेगा और घर घर में यह उद्योग होने लगेगा। इस तरह से आपको सोना ही सोना मिल सकेगा। इतनी बड़ी जगह यहां पर है इसलिए वह यहां पर भी हो सकता है।

SHRI D. P. KARMARKAR

श्री डी० पी० करमारकर : हाल में नहीं चाहिये।

DR. P. C. MITRA:

डा० पी० सी० मित्रा : इसका एक किस्म का पेड़ होता है जिसमें कुकून रहता है। उसमें ही वह चलता है और पत्ते खाता है और २२ रोज के भीतर वह रेशम के रूप में निकल आता है। अगर इसके उत्पादन करने पर कोई रेस्ट्रिक्शन सरकार की ओर से न हो तो आप देखेंगे कि सिल्क बहुत सस्ता हो जायेगा।

[For English translation, *see* Appendix V, Annexure No. 14.]

SHRI D. P. KARMARKAR Mr. Deputy Chairman, Sir, there are one or two points made by my esteemed colleagues at this stage. The first point sought to be made by Dr. Parmanand was very interesting. She spoke, for instance, on the advisability of banning all things which, in her opinion, were undesirable. Sir, as I said a little earlier, I will not dilate on that point, because ultimately you have to partially move along with the consumers' tastes and as I said yesterday in this particular matter, as in other matters, the tendency is towards having a larger number of articles at cheaper prices. That may or may not be right, but there can be no regimentation about such matters. We can educate the public no doubt, but we cannot coerce the public into accepting those things that we consider to be right. If a thing is harmful or deleterious to health or public morals Government comes in on the scene, but to prohibit them from using things like art silk, for instance, is not advisable. It may be that somebody, he or she, looks much better in art silk than in pure silk; it is a matter of their own taste. It is very difficult to fetter their choice where it is a question of taste or economy. Regimentation is not possible here. If art silk happens to be popular with some of our countrymen, obviously the reason is that it is a little cheaper and a little brighter and it enables people to have a larger number of articles in the same economic budget. Now, in a matter like that, she rightly pointed out, anticipating me, that this was a field for social workers.

Austerity, of course, is always a good thing but I wish everyone gave proper priority in matters of austerity.

[Shri D. P. Karmarkar.]

While I was listening with very great interest to what fell from my esteemed colleague, I remembered three years back a deputation on behalf of a responsible society waiting upon the then Commerce Minister—Shri Sri Prakashji—which wanted to stop all this nonsense—they did not say nonsense—the banning of cosmetics for instance. They said the cosmetics that were manufactured in this country harmed the skin rather it helped. In justification of their demand they said that we ought to test their quality and utility. Recently we have made some liberalisation on cosmetics and other luxury articles but the liberalisation is very small compared to the whole of our foreign exchange and it will not make it possible for large quantities to come in. So I think there is an immense field for creating public opinion rather than trying to fetter people's tastes in such matters by any coercive legislation. And that is the reason why Government feel it impossible to place restrictions on art silk. It is much better for us to promote the use of silk, to enlarge its production and to make it popular in more and more centres than to ban art silk completely. Art silk is being produced in our country and may be in a sizeable time we might become self-sufficient in respect of art silk.

Now Sir, there was a point made by my esteemed friend on my right asking me to remove all restrictions. I wonder what restrictions he refers to. Anyone is welcome to grow any number of cocoons and produce any amount of raw silk. We have not placed any restriction on that except of course where it is a question of spreading disease through cocoons. That, of course, is necessary for the proper propagation of seed-cocoons and development of the industry as a whole. So, Sir, I could not follow what he said, because at the present moment there are no restrictions at all. So far as actual production is concerned I am sure his efforts—particularly of my colleague, wherever he goes he preaches the cause of silk—will have a proper effect. Except those who are wedded to art silk these days others will certainly follow his advice.

SHRI D. NARAYAN: Why not define silk?

SHRI D. P. KARMARKAR: Yes, there was a point made about that. There is something in that, I must say. We shall have the matter considered—just to define silk in a manner so as to separate it completely from the notion of art silk. There again, I am afraid, Sir, that people who buy know the stuff that they are buying. It is not because a particular thing is called art silk that they are buying it and it is not that if there were a correct definition of silk by legal enactment that people would cease to buy what is known as art silk or what might be known as rayon. If tomorrow we make it impossible for rayon to be called art silk, I am afraid the number of purchasers of rayon—to begin the use of the word from now on—would be about the same. There is the other question of adulteration. That is an offence under the present law. People do not wait for the amendment of a definition to commit an offence. My hon. friend appreciates that, I am sure, very nicely. But still, in order to remove the psychological effect, if any, that the term 'art silk' might have, we shall have the matter considered and looked into.

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill be passed."

The motion was adopted.

THE COLLECTION OF STATISTICS BILL, 1952.

MR. DEPUTY CHAIRMAN : We will now take up the Collection of Statistics Bill.

THE MINISTER FOR COMMERCE (SHRI D. P. KARMARKAR): Sir, I beg to move: