

16.26 hrs.

CONSTITUTION (FORTY-SIXTH AMENDMENT) BILL

MR. SPEAKER: The House will now take up the Constitution (Forty-sixth Amendment) Bill, 1981 for which 3 hours have been allotted. If the House agrees, we may have 2 hours for general discussion and one hour for clause-by-clause consideration and third reading. We shall with the consensus of the House sit till it is over.

Agreed?

HON. MEMBERS: Yes

THE MINISTER OF FINANCE (SHRI PRANAB MUKHERJEE): I beg to move that the Bill further to amend the Constitution of India be taken into consideration.

I would like first to set out briefly the present Constitutional position with regard to sales tax levied by the Union and the States. Entry 54 of the State List in the Seventh Schedule to the Constitution authorises the States to levy tax on the sale or purchase of goods (other than newspapers) taking place within their respective territories. Entry 92A of the Union List authorises the Parliament to levy tax on sale or purchase of goods (other than newspapers) where such sale or purchase takes place in the course of inter-State trade or commerce, the revenue from such tax being assigned to the States under Article 269(1)(g) of the Constitution. Under Article 286(3) Parliament is authorised to declare goods to be of special importance in inter-State trade or commerce and to lay down restrictions and conditions in regard to the system of levy, rates and other incidents of tax by States on such goods.

In the absence of a definition of the expression sale of "goods" in the Constitution, the Supreme Court has consistently held that this expression as used in the legislative entries in the Constitution bears the same meaning as that expression has in section 4 of the Sale of Goods Act, 1930. Therefore,

while the State Legislatures may, under the State List, legislate to levy a tax in respect of a transaction having the ingredients of a sale, viz. parties competent to contract, mutual assent, transfer of property from one of the parties to the agreement to the other party thereto for a price, it cannot levy tax on a transaction which is not a "sale" within the meaning of the Sale of Goods Act, 1930. In view of the present Constitutional position, consignment of goods by a principal to an agent or transfer of goods by a head office to a branch or vice versa is resorted to in order to avoid liability under the Central Sales Tax, since these transactions cannot be regarded as sale, there being no passing of property for a price from one person to another. Besides, a works contract, which is entirely indivisible is regarded as a contract of works involving skill and labour and not directly pertaining to transfer of property in goods. A hire purchase agreement is not regarded as sale as no property passes in such a transaction until the option to purchase is exercised and the other terms of the agreement are fulfilled. Further, in a judgement delivered in September, 1978, the Supreme Court held that service of meals whether in a hotel or restaurant does not constitute a sale of food for the purpose of levy of sales tax but must be regarded as the rendering of a service in the satisfaction of a human need or ministering to the bodily want of human beings. Some of these court pronouncements have been referred to briefly in the Statement of Objects and Reasons appended to the Bill.

Sir, the entire revenue from sales tax including Central Sales Tax levied on inter-State sales of goods flows to the States. The State Government, who administer sales tax (including Central sales tax) have been reporting large-scale avoidance of Central sales tax through the device of consignment of goods as also leakage of local sales tax in works contracts, hire-purchase transactions etc. The various problems connected with the

powers of States to levy a tax on the sale of goods and with the Central Sales Tax Act, 1956 were examined by the Law Commission in their 61st Report which was laid on the Table of this House on 21st March, 1978. The recommendations of the Law Commission relating to the amendment of the Constitution was examined in consultation with the State Governments and a Bill for amendment of the Constitution was introduced in the Lok Sabha on 15th March 1979 as the Constitution (49th Amendment) Bill, 1979. However, with the dissolution of the House, the said Bill lapsed.

After elections for the present Lok Sabha and assumption of office by the present Government, the question of reform in the existing sales tax system was discussed at length in a Conference of Chief Ministers convened specifically for the purpose at New Delhi on 16th and 17th September, 1980. At the concluding Session, the Conference adopted a resolution recommending *inter alia*, that the Central Government should consider introduction of a Constitution (Amendment) Bill on the lines of the lapsed Constitution (49th Amendment) Bill at an early date.

Sir, this recommendation of the Conference of Chief Ministers was carefully considered by the Government and it was felt that in the interest of finances of the States, it is necessary to take steps to ensure that there is no leakage of revenue from sales tax through various means for tax avoidance such as consignment transfers. It is also essential to ensure that the States do not lose revenue which they have hitherto been getting on certain categories of sales such as sales of food in hotels. It is accordingly proposed through this Bill to amend the Constitution of India to insert a new Entry 92B in the Union List in the Seventh Schedule to enable the levy of tax on consignment of goods where such consignment takes place in the course of inter-State trade of commerce, the revenue from such tax

being as signed to the States by amending Article 269. It is also proposed to include in Article 366 of the Constitution a definition of "tax on the sale or purchase of goods" as inclusive of—

(a) transfer for consideration of controlled commodities;

(b) transfer of property in goods involved in the execution of a works contract;

(c) delivery of goods on hire-purchase or any system of payment by instalments;

(d) transfer of the right to use any goods for any purpose for cash, deferred payment or other valuable consideration;

(e) supply of goods by an unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration (supply of goods by an incorporated society to its members is already regarded as a sale for the purpose of levy of sales tax); and

(f) supply, by way of or as part of any service, of food or any drink for cash, deferred payment or other valuable consideration.

Clause (3) of Article 286 is also proposed to be amended to enable Parliament to specify by law, restrictions and conditions in regard to the system of levy, rates and other incidence of tax on transfer of goods involved in the execution of a works contract, delivery of goods on hire-purchase or any system of payment by instalments and on the right to use any goods. In order to protect the States from refunding the taxes already collected, which they would otherwise be required to do in the light of the Supreme Court's judgements relating to supply of foodstuffs by hotels and restaurants, a provision to validate the past levies of the States has also been included in the Bill. Care has been taken in making this validating provision that no sales tax will be payable during the period between the dates of the relevant Supreme Court judgements and the commencement of this amendment Act, if the dealer



[Shri Pranab Kumar Mukherjee] concerned did not collect the tax from his customer during that period on the ground that no such tax could have been levied or collected at that time. The burden of proof in such a case will, however, be on the dealer.

Sir, the effect of the proposals contained in the Bill would be to transfer to the States, an area of taxation with respect to transactions on the border line of or connected with transactions by way of sale of goods but which cannot be subjected to sales tax by them in view of the Court pronouncements. Technically, this area may be covered by the residuary entry 97 of the Union List but the same is not capable of effective exploitation by the Centre because sales tax is an area largely falling within the States' sphere of taxation. Keeping this point in view, the proposals contained in the Bill could only amount to an attempt at rationalisation of the Constitutional scheme relating to tax on sales or purchase of goods and confirmation of the practice which has been followed by States hitherto.

There is no doubt that, if the proposed amendments are carried out, the scope for raising additional resources by the State Governments for their developmental plans would improve.

In view of the revenue implications, State Governments have been pressing for early enactment of the Bill. I have, therefore, no doubt that the proposed amendments will commend themselves to all sections of the House.

Sir, I move.

MR. SPEAKER: Motion moved:

"That the Bill further to amend the Constitution of India be taken into consideration."

SHRI BAPUSAHEB PARULEKAR (Ratnagiri): Sir, I beg to move:

That the Bill further to amend the Constitution of India, be referred to a Select Committee consisting of 9 members, namely :—

- (1) Shri Satish Agarwal
- (2) Shri Xavier Arakal
- (3) Shri Satyasadhan Chakraborty
- (4) Shri Somnath Chatterjee
- (5) Shri Mool Chand Daga
- (6) Shri Ram Vilas Paswan
- (7) Dr. Subramaniam Swamy
- (8) Shri Pranab Kumar Mukherjee; and
- (9) Shri Bapusaheb Parulekar

with instructions to report by the 1st day of the winter session, 1982.

SHRI SOMNATH CHATTERJEE (Jadavpur): Mr. Speaker, Sir, we welcome this Bill. It should have been brought much earlier. With limited and unrealistic sources of revenue which are available to the States, certain interpretations of several constitutional provisions by courts of law had "restricted the States' income from sale tax. Further, the ingenuity of the trading class and the business community has been such that they have been trying to evolve newer and newer methods of transactions, like, consignment transfers, etc. by which they could avoid tax and, many a time, on many occasions, they had successfully avoided the incidence of taxation. By taking advantage of the meaning of works contract which was held to be outside the pale of sales-tax legislation, there have been numerous disputes and numerous litigations which had resulted in a loss of revenue by way of taxes to the State and also a further loss by way of litigation expenses.

I am happy that various types of transactions which were initially no doubt intended to be brought within the taxable net, these taxable transactions which escaped legitimate incidence of taxation so far, are now being brought within the taxable net and all that is being corrected. As the Bill seeks to remove many of the lacunae and recognises the States' right to levy sales-tax and as it further shows some awareness of the necessity of the States' being allowed to augment their resources by way of sales-tax, we welcome the Bill and support it, as I said, though belated.

Sir, I do not wish to go into the details of the nature of transactions which are sought to be now incorporated by this amendment which should have been also subject to taxation, as the hon. Minister has referred to them. But there are certain aspects to which, with your kind permission, I would like to draw the attention of the hon. Minister.

Firstly, I refer to Clause 3, Article 286 is proposed to be amended. Article 286 (3), as it stands today, permits the Parliament to specify the system of levy, rates and other incidents of tax in respect of sale or purchase of goods in the course of inter-State trade or commerce. Under the Constitution, the right to levy tax on inter-State trade and commerce has been on the Union Parliament and that is why the Central Sales-tax Act has been enacted by the Union Parliament. So far as inter-State sales are concerned, the right to levy tax is of the State Government. We welcome the proposed amendment. It is suggested by Clause 4 of the Bill

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[SHRI CHINTAMANI PANIGRAHI *in the Chair*]

which now makes it clear what types of transactions will be included within the definition or description of 'sale or purchase of goods'.

Now while Article 366 is being amended by incorporation of a sub-article 29-A to widen the ambit of the definition—this is the definition, you know in Article 366—the definition is widened to include the meaning of the words 'sale or purchase of goods' by incorporating or inserting various types of transactions which, it is understood, were always considered to be within the taxable items or taxable provisions but, which by the judicial interpretation were kept out of the accessibility to them, we welcome this. But I do not understand why the Hon. Minister wants the Central Government to take the power of laying down the system of levy, rates and

other incidence of tax with regard to transactions of 'sales and purchases' which do not relate to inter-State trade and sale, which do not relate to import or export and take the power which was only so far restricted to inter-State trade and commerce.

Kindly see (b), of clause 3, which says, the tax on the sale or purchase of goods or tax mentioned in 29A of Article 366 "be subject to such restrictions and conditions in regard to system of levy, rates and other incidence of tax as Parliament by law specify."

Take the case of the consignment transfer. A consignment transfer is now being put within the definition of sale or purchase of goods. Now Parliament has no control over it, if it comes within intra-State trade and commerce. If it is intra-State, the power should be with the State to decide the rate of tax also and the system of levy also. Previously, only with regard to inter-State trade and export-oriented and import-oriented trade and commerce, transactions were within the powers of Parliament which nobody questioned because it has wide jurisdiction. But, I earnestly request the Hon. Minister to incorporate (b) in Clause 3 to make it a part of the Constitutional amendment.

After this Bill is adopted, Clause 6 will not form part of the Constitution. Clause 6 will not be a constitutional provision at all. It will not result in an amendment of the Constitution, not result in insertion of a new provision in the Constitution. It will have effect as a statutory enactment, nothing more. Although Clause 6 is inserted in a Constitution Amendment Bill, if you will kindly look at it, it does not say that it will be part of the Constitution or it will amount to amendment of any constitutional provision. Therefore, its effect will be, although it is passed as a Constitution Bill, it is a mere ordinary statutory enactment.

[Shri Somnath Chatterjee]

Now kindly see first line of Clause 6 "for the purpose of every provision of the Constitution in which the 'tax on the sale or purchase of goods occurs'. Then certain amendments are given. Here the legislature is seeking by its mandate to give a meaning to Constitutional expressions. The interpretation of the Constitution is not the job of the legislature either in its constituent capacity or in its legislative capacity unless the interpretation is made a part of the Constitution itself. Article 366 contains the interpretation Clause. Therefore, I have grave doubts whether a statutory interpretation given to a Constitutional provision which is in the form of an extended meaning given to a certain expression will stand the test of scrutiny.

I want this law to be upheld and maintained. I do not want this law to be questioned because this is a welcome legislation and we support it. But the matter of interpretation is left to the court. It is not a matter of legislative mandate as to what is the meaning of the Constitution or certain provisions in the Constitution.

But, Sir, I have grave doubts whether, by this process, that problem can be solved. I would have liked it to be a part of the Constitution itself.

With this, I now want to go to a very important aspect and I hope I shall have the indulgence of the House to raise it because of its great importance. The question is this. Our Finance Minister comes with a Constitution Amendment Bill to remove the lacunae with regard to the recovery of sales-tax, to make provisions in the Constitution itself which will maintain the rights, if not expand the rights, of the States to collect revenue by way of sales-tax, and he has said in the Statement of Objects and Reasons that they want that the States' revenue out of sales-tax should be augmented, but at the same time, we have got the greatest concern, the Government is trying to abolish the whole system of sales-tax. The Cen-

tre has got undoubted responsibilities to discharge in this country under the Constitution; in matters of all India perspective like external affairs, communications, defence services and such other services which nobody questions. But everybody in this hon. House is also aware of the great responsibility which this very Constitution enjoins upon the States to fulfil. The health problem is the primary responsibility of the State; the education problem is the primary responsibility of the State; the industry problem is the primary responsibility of the State; public welfare schemes are the primary responsibility of the State. But what is the source of revenue? The source of revenue in this country is primarily nothing but sales-tax....

SHRI CHITTA BASU (Barasat):  
For the States.

SHRI SOMNATH CHATTERJEE: I am talking of the States. In vital matters concerning people, concerning the welfare of the people, the States obviously need money and it is axiomatic that the States should be entitled to a fair share of money. But how is money raised in this country. The Central Government can raise money by taxation, can raise money by international borrowing, can raise money by bearer bonds, can raise money by special and auxiliary customs duty, income-tax customs, Central excise and so many other things....

AN HON. MEMBER: And surcharge.

SHRI SOMNATH CHATTERJEE: These are the types of levies. As you know, the residuary power of taxation is also with the Centre—except those which are specifically provided. I am happy that the Chairman of the Finance Commission has come. I hope the power of his Commission is not further diluted. This is what I find that it is being diminished. Now a system has to be evolved in this country. In fact, the Constitution contemplated it that, in view of the responsi-



bility enjoined upon the States and their resources of revenue being limited there has to be an all India perspective taken, apart from sale-tax realisation, of all India realisations like those of income-tax, customs, Central excise, etc., these have to be distributed between the Centre and the States according to some formula to be adopted by the Finance Commission. But today the Finance Commission does not any longer decide. The decision is not taken by a Constitutional body like the Finance Commission put by a non-statutory and administrative body like the Planning Commission, and the Planning Commission is deciding about the distribution of the assets the moneys, that are available. I hope the hon. Minister smiles—his smile is for the good of the country, he is a very nice man, I wish him well...

MR. CHAIRMAN: He smiles because you have said that it is the Planning Commission which allocates Central resources to the States, not the Finance Commission.

SHRI SOMNATH CHATTERJEE. I have said that now the power of distribution has, in effect, been given to the Planning Commission which is a non-statutory and an administrative body. I am sure Mr. Chavan will agree, and he will not be happy if the Finance Commission is denuded of its power and authority day by day.

Now the point I wish to make is that in one hand the hon. Finance Minister comes with this constitution Amendment Bill to augment the resources of sales tax revenue for the State and at the same time it is their Government which is doing an exercise of abolishing sales tax. By what? By an additional excise duty or something like that and the exercise is going on. I would like to know from the hon. Finance Minister that he has in his wisdom, this Government in its wisdom and almost with an attitude, if not ordering on arrogance, of complete insensitiveness have taken a decision of no overdraft from tomorrow, no overdraft from tomorrow. Well you are in

the Centre. You have got the Reserve Bank in your control. You can take up that attitude well, it does not matter whatever may happen to the States, I can say, no more overdraft. But what about the resources? You have control of the Planning Commission. The Finance Commission is yet to function. The pattern which has been laid down is only crying up the resources of revenue for the State. I am happy I am not expressing the views of only one State. The hon. Minister knows that every State has joined in this demand. In the little time, I will show that this is a matter which needs immediate consideration of this Government.

Now the hon. Minister has said and he has given his diktat, his executive fiat that no more overdraft will be given. The position to-day with respect of every State is: how to meet the necessary expenditure for essential public welfare schemes and the question of availability of State resources has necessarily assumed a very great importance in the context of the so-called overdraft problem in the light of the recent decision of the Central Government. Although I know that the decision will not be changed so easily but at one time some better approach will be accepted by the hon. Minister as the people of the States in the aggregate constitute the people of the country. There is no Indian citizen as such outside the citizens of the State.

What is the position in this country? Until 1957 the sales tax was allowed to be levied by the States on all goods because under the Constitution as existed then till 1957, the sole authority to impose sales tax was given only to the State legislatures and to nobody else. In 1957 a Chief Ministers' Conference was held. Then in the country all the Chief Ministers belonged to the same Party. The Chief Ministers held a conference in Delhi and in spite of the reservations of Dr. B. C. Roy came to a decision that certain items of goods will be declared as goods of special importance. Kindly note the

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goods: sugar, tobacco, cotton fabrics, cotton yarn, rayon, artificial silk and woollen fabrics. Some of them are the biggest revenue earners in this country. Now, in 1957 a new Act was passed for the first time—The additional Duties of Excise (Goods of Special Importance) Act, 1957 which said that no State Government can impose tax on these except at rate higher than 2 per cent at that time which was subsequently raised to 4 per cent. What happened? Kindly appreciate, Sir that it will affect your State and it is affecting your State. The Central Government will impose an additional excise duty, will collect them all over India and will distribute the same according to the formula that is the percentage mentioned in the Act of 1957.

Now, as a result, the rates of additional duties are fixed by the Centre. They have been proverbially still low as compared to the other rates of excise duty. As a result, the money available for distribution amongst the States according to the formula laid down in the statute itself become much less than what would have been realised by way of sale tax. Why the Chief Ministers agreed to this in 1957? They agreed to this on this basis that the States will get a much greater share by way of additional duty, then, sales-tax and it will have an all-India bearing. 'You will get much more by way of additional duties. Why do you fear when you are getting rid of the responsibility of the levy and collection of sales tax on these items which we, the Central Government, shall do and give you the money and you will be very happy.' They thought so and believed that. On the basis of this, the great personality, Pandit Nehru was there and others were also there, they all accepted that. The position as a result was that there has been a steep decline in the quantum of money, revenue, available on account of the imposts on this very valuable items of common use. You know un-

der the Constitution, so far as the auxiliary duty or special duty is concerned, it has not got to be shared with the States. So far as the Central Excise is concerned or customs duty is concerned, out of whatever is realised, a proportion of it is to be shared with the States. The additional duty has to go to the States.

No, Sir whenever money has to be raised by way of increase in the rates of Central excise and customs duty, they never increase the additional duty because the entire money goes to the States. The methodology is still being followed by imposing special duty which goes to the Centre entirely or to impose auxiliary duty or to increase the rate which goes to the Centre entirely. Only a part of excise duty or customs duty goes to the States. This is the position. That is why in the year 1970...

SHRI K. BRAHMANANDA REDDY (Narasaraopet): I would like to speak on this.

SHRI SOMNATH CHATTERJEE: Very good. Kindly try to prove whether we are wrong. In 1970, when the left front Government in West Bengal was not there at that stage, only the Congress ruled States were there. The Chief Ministers Conference was held in Delhi in 1970. What was the decision taken? The decision taken in the year of grace—1970 was that within two or three years, that is, 12 years from now, the additional duties of excise will be raised to 10.8 per cent of clearance of goods. The additional excise duty was kept at low rate. The unanimous decision taken was that it would be raised from 1972-73 to 10.8 per cent. The second decision was this—I hope Mr Reddy has got the minutes of that meeting—that the ratio between the basic excise duty and special excise duty on the one hand and the additional excise duty on the other would be achieved and maintained and 2:1 should be the ratio. 12 years have passed. That is not the ratio 2:1 meant that it would

have to raised the quantum of the additional duty which is to be distributed to the States. The third was the unanimous decision that was taken namely that a Review committee would be constituted by the Central Government immediately for a continuous appraisal of the problems arising in the implementation of this scheme of additional excise duties.

Sir, in 1970 it was a unanimous decision because all the Chief Ministers belonged to the same party then. What happened? The incidence of additional duties remained as low as 6.8 per cent for years and years together. Still the ratio of 2:1 has not yet been achieved, for 12 years, no new decision has been taken. The Review Committee was set up only in 1979 during the Janata regime after the National Development Council raised this question. But, Sir, in 1981 at least and, I believe, in 1982 also the Review Committee did not sit. This is not my grievance. The Fifth Finance Commission (1969) was specifically asked and I quote:

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"The Fifth Finance Commission (1969) was specifically asked by its terms of reference to make recommendation regarding the desirability of otherwise of maintaining the existing arrangement in regard to the additional excise duties, with or without modification and the scope for extending the same to other items. It was observed, *inter alia*, by the Fifth Finance Commission that "it appears that if the States had been free to exercise their power to levy sales-tax on textiles, sugar and tobacco, many of them would have been able to realise more tax revenue from them. The producing States would also have derived from them. The producing States would also have derived the benefit by Central Sales tax on exports of these commodities to other States". The Fifth Finance Commission recommended, *inter alia*, that "Inasmuch as the States are generally opposed to it, we consider that it would not be desirable to

continue the scheme unless the Government of India, after discussing the matter further with the State Governments, can arrive at a general agreement for its continuance with suitable modifications".

Nothing has been done, Sir. Then the Seventh Finance Commission—not set-up by anyone of us—what did they say. They went into the question and they said and I quote:

"It has been observed that instead of raising the rate of Additional Excise Duties to the level of 10.8 per cent on the value of clearance the actual percentage was so low as 8.66 per cent in 1975-74, which gradually went down further to 6.8 per cent in 1977-78. The Seventh Finance Commission has further taken note of the fact that the Review Committee in which the State Governments were to be represented for constant reapaisal of the scheme of Additional Excise Duties had not met at all."

It was constituted in 1979—after nine year but it had not met. What is the position? I am giving the figures of West Bengal. In 1958-59 the sales-tax realisation was Rs. 16.65 crores and the additional duties that we got were Rs. 3.35 crores. If we take the figures of 1978-79, the latest one I have got, this Rs. 16 crores of Sales Tax have become Rs. 249.61 crores and these items on which the incidence would be the highest that the people could bear it from Rs. 3.55 crores it has become only Rs. 25 crores. This is the result of imposition of additional excise duty. Therefore, I earnestly request and I have not used any strong words. I only said that the decision on over-draft scheme showed a little bit of arrogance on the part of the hon. Minister or if you like insensitiveness to the problems of the State...

MR. CHAIRMAN: Arrogance is not a good word.

SHRI SOMNATH CHATTERJEE: Sir, I call it 'supposed arrogance or insensitiveness to the problems of the State. Now, where will the revenue come from? You are going to take



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away sales tax. What is this amendment for? It is an eye-wash. I want a clear declaration from the hon. Minister that this Government will not abolish sales tax unit all the States agree to it...and there is a clear requirement of complete, assured, acceptable compensation in a scale which will maintain the graduated increase in the realisation of recovery. Sir, as I stated already, from Rs. 16 crores, the latest realisation has come to Rs. 250 crores but there is no proportionate increase of the additional duty.

Therefore the request that I would make to the hon. Finance Minister is only this: If you bring in any proposal which is in consonance with the interests of the nation and the States shall certainly support you as we have been doing all along. We have been supporting you. We have been extending all our helping hand. The unanimous decision of the Chief Minister taken as long back as in 1970 has still not been carried out. In every National Development Council meeting this is the demand of the Chief Ministers. You are accusing them of not looking after the interests of the people. You have been accusing them of not looking after the welfare schemes. You have been accusing them of not increasing the employment potential and so on. But you are concentrating more and more resources in your hands, you do not wish to part with those resources. From Delhi you are issuing executive fiat. This is a matter of vital concern to all the States, not to West Bengal alone, West Bengal will struggle in difficulties and come out triumphant, you will not be able to subjugate West Bengal. You can not finish us, you cannot halt the onward progress to the Left and the Democratic forces in the country. My only request to you is: Please have a practical and a pragmatic attitude for the all-round development of all the States of the country. I am happy that I have the opportunity of the presence of two illustrious Chairmen present today in

the House and I am sure they will at least hear the agony of the States and consider these problems in their proper perspective.

With these words I support the Bill. Thank you.

PROF. SATYASADHAN CHAKRABORTY (Calcutta South): Don't reduce the States to a position of glorified municipalities.

(Interruptions)

श्री गिरधारीलाल व्यास (भीलवाड़ा): Sir, I will support West Bengal. But, I will not support Marxists.

सभापति महोदय, यह जो बिल प्रस्तुत किया गया है, इसका मैं समर्थन करता हूँ और खासतौर से निवेदन यह है कि इसमें जो इन्टरस्टेट सेल्सटैक्स लगाया गया है, उसमें माननीय वित्त मंत्री जी से गुजारिश है कि जो स्टेट गुड्स प्रोड्यूस करता है, उसका हंड आफिस दूसरी स्टेट में बना दिया जाता है, सारा गुड्स उस स्टेट में जाता है और वहां पर सेल होता है तो जो प्रोड्यूसिंग स्टेट है, उसको तो सेल्स टैक्स नहीं मिलता और जिस जगह जाकर बिकता है, उस स्टेट को सेल्स टैक्स मिलता है।

इसमें प्रावधान किया गया है कि सेंट्रल गवर्नमेन्ट सेल्स टैक्स वसूल करेगी। इसका मतलब यह होगा कि उस सेल्स टैक्स से दोनों स्टेट्स को बराबर-बराबर सेल्स टैक्स मिलेगा। इससे जो प्रोड्यूसिंग स्टेट है, उसको नुकसान होगा और जो प्रोड्यूस नहीं करता, केवल वहां पर सेल होता है, उस स्टेट को उससे फायदा मिलेगा।

ऐसा बहुत सी पब्लिक सेक्टर की और प्राइवेट सेक्टर की इन्डस्ट्रीज है, जिनके हंड आफिससे बम्बई और कलकत्ता में है और वहां पर सारा गुड्स जाता है और सेल होता है। इस बिक्री का फायदा प्रोड्यूसिंग स्टेट को होना चाहिए न कि जहां पर सेल होता है।

इसलिए मैं आपका ध्यान इस ओर आकर्षित करना चाहता हूँ कि इस वजह से प्रोड्यूसिंग स्टेट्स को बहुत बड़ा नुकसान हो रहा है और उसकी सेल टैक्स की आमदनी खत्म हो रही है और फायदा उस स्टेट को मिल रहा है जो प्रोड्यूस नहीं करता, बल्कि वहाँ पर सेल होता है। इसलिए इस संबंध में ऐसी व्यवस्था की जानी चाहिए कि अगर भारत सरकार उस सेल्स टैक्स को वसूल करती है तो उसका ज्यादा से ज्यादा फायदा उस स्टेट को मिलना चाहिए जो प्रोड्यूस करता है। ऐसे लोग अपने हेड आफिस को उस स्टेट में रख लेते हैं या स्थानान्तरित कर देते हैं जहाँ सेल्स टैक्स कम होता है। सेल्स टैक्स की उंची दर से बचने के लिए वे वहाँ अपने हेड आफिस रख लेते हैं और वहाँ से सेल दिखाते हैं। इस तरह से वे प्रोड्यूसिंग स्टेट को सेल्स टैक्स से महसूस करते हैं। सेल्स टैक्स उस स्टेट को मिलना चाहिये जो प्रोड्यूस करती है।

आपने नई व्यवस्था करने की बात कही है। आपसे खास तौर से फूड डिंडक्स या होटल्स के सम्बन्ध में प्रावधान किए हैं। फाइव स्टार होटलों को आपने छूट देने की बात इसलिए की है कि सुप्रीम कोर्ट ने अपनी व्यवस्था दी है कि खाने पीने का जो सामान है चूँकि उस में कोई परचेज नहीं होती है इस वास्ते उसको सेल्स टैक्स से छूट मिलनी चाहिए। फाइव स्टार होटल्स को पहले भी सेल्स टैक्स से छूट दी गई थी जो बिल्कुल गलत है। वे होटल दूसरे होटलों के मुकाबले में कम से कम दस या प्रन्द्रह गुना ज्यादा वसूल करते हैं। केवल सर्विसिस के आधार पर उन्हें सेल्स टैक्स से छूट दी जाए और लाभ पहुँचाया जाए यह बिल्कुल गलत है। यह छूट नहीं मिलनी चाहिये। पहले जो उनको छोड़ा गया था उसका सेल्स टैक्स का पैसा भी उन से वसूल किया जाना चाहिये। वहाँ ऐसे लोग नहीं जाते हैं जिन को किसी प्रकार की छूट मिलनी चाहिये। बड़े बड़े लोग वहाँ रहते हैं, बड़ी आमदनियों वाले रहते हैं, प्राइवेट या पब्लिक कंपनियों के लोग रहते हैं और उनको किसी भी प्रकार की छूट दी जाती है तो यह गलत है, यह बेमानी है। उनको किसी प्रकार की रियायत नहीं मिलनी चाहिए।

अब मैं ओवर ड्राफ्ट्स के सम्बन्ध में कुछ कहना चाहता हूँ। जो राज्य अपनी आमदनी से ज्यादा खर्च करते हैं, ऐसी चीजों पर खर्च करते हैं जिस की वजह से उनकी पाटी स्ट्रैंग्थन हो और आम जनता का कोई फायदा न हो, यह ठीक नहीं है। चुनाव के समय मैं वेस्ट बगल गया था। बहुत सी बातों की मुझे जानकारी मिली। फूड फार वर्क का सारा काम वहाँ अपनी पाटी कम्प्ले स्ट्रैंग्थन करने के लिए, क्रेडर को बनाने के लिए हुआ है। जहाँ पर इस प्रकार से पैसा खराब किया जाए—

SHRI ROOP CHAND (Hooghly) : Sir, I have a point of order. Taking the opportunity of discussion on the subject, he is slandering the State Government. He is slandering the State Government that the Food Work Programme benefited only the party workers when the truth is that the International Labour Organisation people came there....

MR. CHAIRMAN: What is the point of order involved in this. There is no point of order. You can also speak when your turn comes.

श्री गिरधारी लाल व्यास: यह बिल्कुल सही बात है, गलत बात नहीं है इस वास्ते इसको सुन कर आपको तकलीफ होती है। वहाँ फूड फार वर्क के अन्दर जो अनाज लिया गया आज तक उसका हिसाब भारत सरकार को नहीं दिया और लाखों करोंडों रुपये का अनाज बरबाद कर दिया। मार्क्सवादी कम्युनिस्ट पार्टी के माननीय सदस्य ने ओवर ड्राफ्ट्स का जिक्र किया और कहा कि उनको स्वीकृत किया जाना चाहिए। इन्होंने इस तरह से करोंडों रुपये मिसयूज किया। तीन चार सौ करोंडों का ओवर ड्राफ्ट इनकी स्टेट के ऊपर है। अगर इस प्रकार से हर स्टेट पैसे का मिसयूज करे, पैसे को बरबाद करे तो कैसे काम चल सकता है। सतरह सौ करोंडों रुपये के ऊपर के अवर ड्राफ्ट सभी स्टेट्स के ऊपर है। मैं अपनी स्टेट की भी बात कहता हूँ जिन-जिन स्टेट्स में ओवर ड्राफ्ट

[श्री गिरधारी लाल व्यास]

किया है उसके लिये वित्त मंत्री जी ने जो चेतावनी दी है कि आइन्दा ओवर ड्राफ्ट सहन नहीं किया जाएगा, यह अच्छी बात है। अगर फाइनेंशियल डिडिप्लिन नहीं रखा गया तो सारी व्यवस्था बिगड़ जायेगी। जो लोग ओवर ड्राफ्ट करते हैं उनके खिलाफ सख्त फाइनेंशियल डिडिप्लिन इम्पोज किया जाना चाहिए भारत सरकार और रिजर्व बैंक की तरफ से। वेस्ट बंगाल सरकार ने काफी पैसा बरबाद किया है, सारा पैसा गलत तरीके से बरबाद किया है। इतना पैसा और किसी स्टेट में बरबाद नहीं हुआ है। इसके लिये वित्त मंत्री जी बराबर चेतावनी देते रहते हैं, और हमारे मार्क्सवादी सदस्यों को तकलीफ होती है कि वित्त मंत्री उनके खिलाफ हैं। यह तो फाइनेंशियल डिडिप्लिन मंटेन करने की बात है। इन्होंने डेवलपमेंटल वर्क्स में भी बहुत सारी गड़बड़ की है। प्लानिंग कमीशन की तरफ से जो स्वीकृतियां दी गयी हैं उनका सारा फायदा अपनी फाटीं कांडेर को मंटेन करने के लिए किया है। इन्होंने जितनी गड़बड़ वेस्ट बंगाल में चुनाव के समय की है अगर इलेक्शन कमीशन उसकी जांच कराये तो मालूम पड़ जायगा कि कितनी गड़बड़ी की है। इन्होंने ला एंड आर्डर को खत्म किया।

इन शब्दों के साथ मैं इस विधेयक का समर्थन करता हूँ।

श्री जगपाल सिंह (हरिद्वार): मान्यवर, संविधान के 46 वें संशोधन विधेयक के द्वारा अनुच्छेद 269, 286, 366 का संशोधन करके पूंजीवादी सेल्स टैक्स की दमनकारी प्रक्रिया को सरल बनाने के नाम पर जो वित्त मंत्री जी संशोधन विधेयक लाए

है इसका मैं कुछ हद तक तो समर्थन करता हूँ, और वह भी इसलिये कि पिछले 33, 34 साल की आजादी में जो सिस्टम हमारे समाज का पूंजीवादी बन गया वह इस सरकार की मजबूरी है, और हमारी भी मजबूरी है कि इस तरीके का संशोधन सदन के अन्दर पेश होना चाहिये। लेकिन दूसरी तरफ जहां देश में यह चर्चा चल रही थी कि इस देश की सरकार को सेल्स टैक्स को बोझ को खत्म करना चाहिए, सेल्स टैक्स खत्म होना चाहिये क्योंकि पूरे देश की जनता का एक तरफ जहां यह व्यवस्था व्यापारियों के दमन का रास्ता बन गयी, वहीं दूसरी तरफ जनता का भी शोषण सेल्स टैक्स के नाम पर व्यापारियों और अधिकारियों द्वारा होता है। ऐसे वक्त में मैं वित्त मंत्री से अपील करूंगा हमारे समाज में जिस तरीके से करप्शन है और आपकी सरकार में जो करप्शन को चरम सीमा बढ़ी, अगर थोड़ा भी आप अंकुश लगाना चाहते हैं करप्शन पर तो सेल्स टैक्स की प्रक्रिया को खत्म कीजिये। और अगर सेल्स टैक्स लगाना चाहते हैं तो कोई ऐसी प्रक्रिया लाइये प्रोडक्शन टैक्स लगा सकते हैं। कारखानों और उद्योगधंधों से जैसे ही समान निकल कर चले आपकी सरकार उद्योगपतियों के साथ बैठ कर तय कर सकती है कि इतना इस पर प्रोडक्शन टैक्स लगेगा और जनता को इतना भुगतान करना पड़ेगा। इससे जनता का दमन जो ब्यूरोक्रेसी करती है और कॉर्पोरेटिस्ट क्लास करती है वह खत्म होगा। इसलिये मैं अपील करूंगा कि आप ऐसे वक्त देश के लोगों को यह आश्वासन दीजिये। पिछले दिनों सेल्स टैक्स के बारे में चर्चा चल रही थी। एक तरफ व्यापारी हैं, आपका छोटा सा दारोगा जाकर सेल्स टैक्स के नाम पर झूठे मुकदमों बनाकर उसकी दुकान बन्द करा देता है,



उसको गिरफ्तार करा देता है। फिर वही व्यापारी सेल्स टैक्स के नाम पर मंहगा सामान बेचकर जनता को शोषण करता है। मेरा निवेदन है कि आप सेल्स टैक्स की प्रक्रिया को समाप्त करने पर विचार करें। अगर आप ऐसा नहीं करते तो मैं और देश की जनता यह समझेंगे कि आप पूंजीवादी व्यवस्था को मजबूत करने के लिए यह बिल ला रहे हैं।

फाइव स्टार होटल का हमारे एक सदस्य ने जिक्र किया। यह फाइव स्टार होटल आपके सिस्टम का प्रतिबिम्ब है। आप इस अमेंडमेंट बिल के द्वारा फाइव स्टार होटल की कल्चर को बढ़ावा दे रहे हैं। मैं नहीं जानता कि आपकी सरकार ने माननीय इन्दिरा गांधी जी के आशीर्वाद से, क्या एम. पी. ज. की कॉरिडोरों की जगह काटकर, म्युनिसिपैलिटी के नियमों का उल्लंघन कर के श्री चरणजीत सिंह जी को फाइव स्टार होटल बनाने की इजाजत दी है? मैं समझता हूँ कि फाइव स्टार होटल की कल्चर को इस देश पर थोपने के लिये यह किया गया है।

हमारे पूरे देश में एक फैमिली की आमदनी पूरे साल में 1200 रुपये से ज्यादा नहीं है और फाइव स्टार होटल में एक रात के ठहरने के लिये 1,000 रुपये बसूल किये जाते हैं। आपके मॉर्ग होटल में एक रात के ठहरने के लिये 2,700 रुपये बसूल किये जाते हैं। इस तरह से आप फाइव स्टार होटल की कल्चर को बढ़ावा दे रहे हैं।

हमारा कांस्टीट्यूशन फेडरल सिस्टम पर है। उसके अनुसार राज्यों की शक्तियाँ कम नहीं होनी चाहियें। सेल्स टैक्स के नाम पर स्टेट्स को जो आमदनी होती थी, आप उनके अधिकार को छीन रहे हैं। मेरा निवेदन है कि आप राज्यों के अधिकार को कम न करें।

राज्य के डेवलपमेंट के कार्य चाहें उसमें सड़क बनाना हो, हस्पताल का कार्य हो, देहात के अन्दर कच्ची सड़क बनाने का काम हो, अनाज के बदले काम की योजना तो थी उन सब पर आप इस तरह से स्टेट की आमदनी पर अंकुश लगाना चाहते हैं।

आप इन्टर स्टेट के नाम पर स्टेट की आमदनी और उसकी शक्तियों को कम करने जा रहे हैं।

मेरा निवेदन है कि जो भी उत्पादक राज्य है, जो भी मॅटीरियल जो भी स्टेट पैदा करती है, इस बिल के आने से उस स्टेट को कोई फायदा नहीं होगा बल्कि जहाँ जाकर वह माल बिकेगा, उस राज्य को फायदा होगा। मैं माननीय सदस्य को बात का जवाब देना चाहता हूँ कि जिस प्रदेश में भी प्रॉडक्शन होता है, वही पर आप टैक्स लगाइयें ताकि उस टैक्स को आमदनी से प्रदेश के लोगों को फायदा पहुँचाया जा सके। अगर आप इस संशोधन के द्वारा कार्य करना चाहें तो इसमें आपका उद्देश्य पूरा नहीं होगा।

मेरा निवेदन है कि आप अपनी और कांग्रेस पार्टी की नीति सरल बनाकर सेल्स टैक्स को खत्म करने पर विचार करें।

SHRI C. T. DHANDAPANI: (Pollachi): Mr. Chairman, Sir, this Bill deals with a set of provisions and a minor insertion in the original Act, but I heard some of my friends on the entire dealings of the Centre-State relationship in the field of finance.

While welcoming this measure, I would like to say something about the Constitutional propriety of the Government:

Sir, as far as entry 54 is concerned. I would like to say that entry 52(b) might encroach on the State List. If 52(a) or (b) is accepted, the State Governments will have no power to levy tax on commodities which are going outside. Of course, the Finance Minister has given a convincing argument that the proceeds will be distributed among the States. However, in our Constitution, there is no overlapping. As far as List I is concerned, Central Government has got exclusive power to levy taxes in particular areas. As far as the State List is concerned, the State Governments have got exclusive powers. In the Concurrent List, either the States or the Centre have got the power to levy taxes.

[Shri C. T. Dhandapani]

(ii) to the States.

I have my own doubts whether this amendment will erode the powers of State Governments. The Law Commission's report has also spoken about whether these powers could be given to the States, or they can be retained by the Centre itself. The report has stated:

"(i) The Union has the power to tax works contracts under Constitution, Seventh Schedule, Union List, entry 97.".....

Again it says:

"Narrow interpretation of the expression 'sale' was not the practice before the Supreme Court judgments. Entries in the legislative list should receive a broad interpretation. Fine nuances need not be material. The transactions resemble sale in substance. Hence, the power should be given to the States.

If this alternative is adopted, there are several drafting devices open, e.g.

(a) amending State List, entry 54, or

(b) adding a fresh entry in the State List, or

(c) inserting in article 366 a wide definition of "sale" so as to include works contracts."

But on another occasion, about hire-purchasing the Commission has stated this—and I would like to quote:

"If we abolish the dichotomy referred to above in regard to hire-purchase, the position would become less complicated, as the above difficulties would be avoided. The whole power to tax (intra-State) hire-purchase in the wide sense could be transferred:

(i) either to the Union with a provision for assignment of the proceeds to the State; or

Which of the two course should be adopted, is a matter of policy. Our preference is for transfer of the power to the States, because in our view basically the entire transaction takes place in the State and the States should be given the power."

This has been said in the Law Commission's report. In the same manner, the Rajamannar Committee appointed by the DMK Government in those days, also stated this. I do not have the exact portion of it. It speaks about items specified in Article 269 from which additional revenues could be raised. But it has left rate structure and other relevant matters to the Centre for examination. But it is a general feeling that the taxes in Article 269 have not been exploited to any appreciable degree by the Central Government. The States are always complaining that they are not being properly exploited because the Centre has got less enthusiasm. Another reason is that no share is being taken by the Central Government. In this context I would like to say that the State Governments should be given some hand in this matter. Some members from West Bengal have stated about it, but I do not want to go into that line. But if any State Government wants to collect levy on a particular item, the Central Government can make that particular State Government as an agent so that collection could be made to the fullest degree by that particular State Government as an agent of the Central Government. Therefore, I would request the hon. Minister to highlight this matter because he may have some other view or argument in this matter.

Article 302 deals with absolute power to the Centre. I would request the hon. Minister to look into the matter also. My friends have stated about it, but I don't think the intention of the Government or the Minister is against the States. Already it has been stated on many occasions. "Even the Taxation Enquiry Commission has

suggested amendment of the Constitution empowering the Union Government to define inter-State trade and levy taxes on it. This was done by intersecting an additional item 92-A in the Union list and sub-clause (g) of Article 269(i). The proceeds of this tax were to be assigned to the States." I think the Government has brought forward this Bill for this purpose. It is a big issue - Union State financial relations. We need more time to discuss it. I have confidence in our Minister and I hope that there will be no erosion on the powers of States with regard to levy of taxes. With these words, I welcome this Bill.

SHRI BAPUSAHEB PARULEKAR: Mr. Chairman, my friends on this side as well as on that side have supported this measure, but I am sorry I am unable to fall in line with them. I feel that this legislative measure has been introduced to fill in the purses of the States. Of course, I would have no objection to that, but while doing so, the interest of the common man is ignored. I feel that if this legislative measure is passed, a common man would be hit and strongly hit. I would, therefore, place before the hon. Finance Minister certain points for his consideration and I would request him to reconsider this measure as a whole before he moves that this Bill be passed.

17.34 hrs.

[MR. DEPUTY SPEAKER *in the Chair*].

To start with, in all humility, I may say that this constitutional Bill is itself unconstitutional. The title and clause 1 of the Bill fully indicate that this is a Bill to amend the Constitution. Of course, my esteemed colleague Shri Somnath Chatterjee only referred to it and said that this is all right, without going deep into it. But the reason why I am making this point is, I sincerely feel I am afraid, if this point is not brought to the notice of the Finance Minister, it is likely that the Supreme Court may strike down this Bill in no time.

If we read this Bill, we find that Clauses 2 to 4 relate to the amendment of Articles 269, 286 and 366 of the Constitution. Clause 5 relates to new entry 92B in List I in the Seventh Schedule. These are Constitutional amendments. But Clause 6, I feel, is not a Constitutional amendment. I am happy that the ex-Law Minister and the present Law Minister are both here and that would be of much help to us in coming to a proper conclusion.

Para 13 of the Statement of Objects and Reasons mentions that "Clause 6 of the Bill seeks to validate laws levying tax on the supply of food or drink for consideration and also the collection or recoveries made by way of tax under any such law." So, this statement in paragraph 13 of the Objects *prima facie* indicates that Clause 6 has nothing to do with the amendment of any Article of the Constitution. So, the point, therefore is, whether the various acts can be validated by a Constitution Amendment Act and whether Constitution can be amended retrospectively. These are the two points to which I would request the hon. Finance Minister to give a thought and kindly try to reply to these points.

Constitutional power of Parliament under Article 368 is totally different from the legislative power under Article 246 under which the ordinary laws are passed. An Act to amend the Constitution is a law but a different kind of law from the law made in the exercise of legislative powers under Article 246. Article 368 does not confer on the amending body the competence to pass any ordinary law whether with or without retrospective effect.

Sir, in support of my submission, I may invite the attention of the Finance Minister to the President's recommendation on page 8 of the Bill. It states, I quote:

"The President, having been apprised of the subject matter of the



[Shri Bapusaheb Parulekar]

Bill further to amend the Constitution of India, has been pleased to recommend under clause (1) of article 117 and clause (1) of article 274 of the Constitution, the introduction of the Bill in Lok Sabha.'

So, the President has permitted the introduction of this Bill under Article 117 and Article 274. Article 117 is with respect to the Money Bill and Article 274 pertains to taxation. The point, therefore, is the President has allowed the introduction under Article 117 and 274, that is, treating this as a Money Bill. The point which I would like to make is, as to how Clause 6 can be combined in a Constitution Amendment Bill, when that savings in clause 6 should have been done by a separate Bill. Money Bills and bills affecting taxation, I need not say, they are ordinary laws and they are governed by Article 246 and not 368. The President's recommendation, assume for a moment that the recommendation is under a wrong Article, treating the Constitution Bill as Money Bill, in my opinion, it would be unconstitutional. I would also therefore respectfully submit, that this measure combining the ordinary legislative powers given under Article 246, with the Constitutional measures, is something which surpasses my imagination. I would be very happy if I am enlightened on this point.

A reference was made by my esteemed colleague, Mr. Somnath Chatterjee. But I do not agree to what he has said though he has referred to it cursorily.

The second point to which I would like to invite the attention of the hon. Finance Minister is clause 4. Clause 4, especially sub-clause (d) says:

"A tax on the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration."

This clause is probably introduced because of the experience of the Government with reference to the persons in film industry. On page 6, para 6 it is mentioned in the Objects and Reasons:

"Device by way of lease of films has also been resulting in avoidance of sales tax. The main right in regard to a film relates to its exploitation and after exploitation for a certain period of time, in most cases, the film ceases to have any value."

Probably, this might be the intention as to why this clause (d) came to be included in this particular Bill. But the wording of this particular clause, in my respectful opinion, will lead to disastrous results. If the equipment is given for use on hire, for agricultural purposes tractors are given on hire, furniture is given on hire, are they liable to pay sales tax? We MPs take furniture on hire, are we liable to pay tax? If we interpret this clause strictly, I submit that even the hire of cycles by kids for one hour will be liable to sales tax. What I feel is that some more intelligent sales tax officer may charge the sales tax from a newly born baby because he would be using the cradle in the maternity home. All this, in my respectful opinion, has been totally ignored. This would throw wide open the doors of corruption. The sales tax officer will start running after these people. Your intention may be very good; your objective may be very good. But your drafting, permit me to say so, is very poor. Maybe this has been worded like this in order to give all these powers to the officers who would be recovering this particular tax. I would respectfully submit that this should be reconsidered and, therefore, I have given an amendment that this should be deleted. Of course, the intention is not that the tax should not be collected and the revenue should not come to the Government. But I feel that this should be reconsidered.

You know that the Madras High Court has held that copyrights are

goods. If the licence of a copyright is given, will it not be governed by this clause (d)? And will it not lead to disastrous results? Has the Government given thought to this particular aspect. I would respectfully submit that the framers of this particular clause have not given thought to this. These instances can be multiplied. I would, therefore, feel with all humility that the draftsmen of our parliamentary laws will not make haste resulting into wide powers in the hands of the State. I would, therefore, request the hon. Finance Minister either to delete or amend this particular clause and see that instances which I have quoted, are not covered by this clause (d). Otherwise, everyone of us and every common man would be hit if the sales tax officers and even the High Court judges try to interpret this way. We have High Court judges here. We do not know how they would have interpreted it had they been on the bench today.

Thirdly, I come to sub-clause (f) which talks of "a tax on the supply, by way of or as part of any service or in any other manner whatsoever". I have nothing to say about the recovery of this tax, but the retrospective effect given since the Constitution came into force i.e. 26th January 1950, is something which passes my comprehension. Probably, this particular sub-clause (f) came to be included because of two rulings of the Supreme Court. One ruling was given on the 4th January, 1972, in the Associated Hotels case, where the Supreme Court held that if food articles are served to the lodgers, then sales-tax cannot be recovered. But, at that time, the question of giving food in restaurants was not under consideration. That was considered in another case, in Northern India Caterer's case, which was decided on 7th September, 1978. It is because of these two cases that this particular clause has been incorporated. Read with the savings, clause it means that tax would be recovered from 26th January 1950 to 4th January, 1972 and from

the date of passing the Bill, from the hotel owners for having supplied food. As far as restaurants are concerned, the tax would be recovered from 26th January, 1950 to 7th September, 1978 and from the date of passing the Bill. If we read sub-clause (f) with the validation clause, i.e. clause 6(2), the position is very clear.

As I submitted in the beginning, I have my own doubts as to whether the amendment of the Constitution can be given retrospective effect, but there should be some fairness on the part of the Government if at all retrospective effect is to be given.

SHRI SOMNATH CHATTERJEE:  
There is also clause 6.

SHRI BAPUSAHEB PARULEKAR:  
I have already referred to it. I am not going into the details for want of time. The position is this. Subject to the law of limitation, you are giving power to the sales tax officers to recover this particular amount from the hotel owners from 1950 to 1972 and from the date of passing of this particular Bill. Even during this period, you will notice, tax would not be payable if the tax is not collected. But, if the tax is already collected, that cannot be refunded. It is an injustice. If the levy or assessment is already made for the period, it would be validated. If appeals are pending, they would be dismissed and, accordingly, tax would be recovered. If the Parliament is now called upon to legislate a law to validate a taxation from 1950 to 1972, that clearly does not show the *bona fide* of the Government.

I would respectfully submit that this type of retrospective amendment, and that too after a considerable time, may not be attempted.

Coming to sub-clause (c), which deals with hire purchase, I would say that the common man is going to be hit in all respects. No tax was recovered on the hire purchase agreement at the time of delivery, when the

[Shri Bapusaheb Parulekar]

agreement was actually executed. Only when the property was actually sold, and there was a sale that a tax was collected. In view of this clause, at the time of delivery the tax would be recovered, consider a case where there is a breach of the agreement of hire purchase and the goods are taken by the vendor. Under the hire purchase agreement the tax would be taken once. If the agreement is repudiated, the goods are taken back and again sold, there will be taxation thrice on the same article. So, I submit the common man will be hit.

Sir, coming to clause (4b) to which a reference was made by my learned friend, I am not in a position to appreciate that, and I will be very happy if I am enlightened on this. Clause 4(b) says:

“A tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract.”

What is the meaning of this? If I give a piece of cloth to a tailor for stitching my coat or for stitching my pant, is it not covered by this? If I tell a contractor to build a house after giving him corrugated iron sheets, the bricks, and cement, this will be covered by this. Therefore in the background of these two instances I will read this sub-clause:

“A tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract.”

It is only a transfer of property. So, ownership is not transferred. Sir, these instances can be multiplied. I thought about it and I felt about it. For instance, watch repairer's job. If I give my watch for repair and I give a part, it is transfer of property, not tracts, typewriting and cyclostyling, work executed. Construction of structures, electrical and plumbing contracts, typewriting and cyclostyling, all these should be covered if you seriously consider this particular

clause giving a particular article only, delivering without ownership for getting it typed or for getting it cyclostyled. This will be covered and I am making this submission because when the instances come after the Bill is passed, all these persons will be harassed. I do not know what will be the position of M.Ps. who are required to get dozens and hundreds of papers typed every day for which they are forced to pay. I would, therefore, request the hon. Finance Minister to explain this. Not only this. If I go to the hospital for an X-Ray sales tax will be there. Therefore, my humble submission to the hon. Minister is this. Kindly consider the wording of this particular Bill. Your intentions may be very good, your object may be laudable, but if you try to read this particular Act, you will find that many difficulties would come.

These examples which I gave can be multiplied. However, I feel that they are sufficient enough to make one appreciate the far-reaching impact on the proposed tax measures on the economy of the country.

Sir, I also invite the attention of this august House to Article 301 of the Constitution. I do not mean to suggest that in letter this Act violates, but in principle it does violate the provision of Article 301 which provides trade or commerce intercourse throughout India being free. The principle underlying this Article 301, in my respectful opinion, is being violated.

Sir, with reference to clause 2(a), many things could be said about the consignment, that is, the ordinary transfer. There may be some mischievous traders, mischievous dealers. But kindly consider the case of a genuine trader or a genuine manufacturer. Supposing I have a factory in Delhi and for the manufacture of a particular article in my factory in Delhi, I am required to bring raw material from foreign countries and that material could be brought only by ship. Ships cannot come to Delhi.



So, that cargo will be unloaded at Madras or Bombay or Calcutta. I will have to bring that raw material to Delhi for the purpose of manufacturing the product which I want to do. But I will have to pay sales tax for having transferred that particular raw material to Delhi and after the finished goods are ready, I will be sending them back to the various places where I have my shops; again I will have to pay the sales tax, and who will be bearing all these expenses? Even these instances could be multiplied. I therefore, submit that the intentions of the measure that is brought may be good, but it would cause greater hardship to the common man. I have, therefore, given an amendment that this particular Act, and every word of the clause and every word of the section will have to be considered afresh. We will have to give a serious thought to it. In the short time, it is not possible for me to give all the instances and therefore, I have suggested that this Bill be sent to the Select Committee. The hon. Members who are practising in Income-Tax and who are experienced in that trade should be included, they should give a thought, they should consider all these things which we want to say and which they are not in a position to say here and therefore, I request that the Bill may be sent to the Select Committee.

Lastly, I may submit that as far as the sales tax is concerned, we have always taken the stand that the sales tax should be abolished provided that it is replaced by some other tax, say, something like excise duty with a pre-condition that some percentage of that particular tax is given to the State. The State will not suffer and at the same time the common man will not suffer. Therefore, my respectful submission is that though I support your objects and intentions that the coffers of the States should be filled in and there should be revenue for the State, but the way in which you have brought this legislation, it would create more difficulties. It would throw doors open to corruption. We

will have many corrupt officers and the common man will be hit. I, therefore, submit that a better thought should be given to it. I would request the hon. Members to accept my amendment to send it to the Select Committee.

SHRI BHOGENDRA JHA (Madhubani): The present Bill before us i.e. the Forty-Sixth Amendment Bill seeks to give a bigger share to the States from the inter-State transactions in the form of sales tax.

The first point I would like to emphasise is that the sales tax in the form in which it is levied at present in our country is a big torture for the small traders and now consumers as well. So, throughout the country the petty trader, small trader, I mean the retailers have been complaining and wanting a single point sales tax. There was an apprehension that the States would lose their share. So, I was hoping that through the present Bill the Government will come forward with some suggestions where the income of the State does not decrease; the share of the States does increase. At the same time the multi-point sales tax is all done away with. It does not remain as it is because there is a large scale corruption. The Government does not get whatever the petty shop-keepers have to pay. They do pay, but the Government does not get. Only corruption is bred on it. Only a small fraction goes to the Government coffer. That is the present reality. So, I hope still that this Bill is sent to the select committee with this understanding that some way is found to make it a single point, at the point of production, so that the income does not go down. The states share increases and at the same time harassment on all the points is done away with.

The second thing I would like to state is that sure cannons are there when our Supreme Court and High Courts are constituted and the judges from which class they go, they very rarely give judgement in favour of the common man. Here is a case in

[Shri Bhagwat Jha]

point where the Supreme Court gave the ruling—

“That the service of meals whether in a hotel or restaurant does not constitute a sale of food for the purpose of levy of sales tax but must be regarded as the rendering of a service in the satisfaction of a human need or ministering to the bodily want of human beings.”

The Supreme Court ruling is that in the satisfaction of a human need on ministering to the bodily want of human beings' should be spared from the tax. By this Bill we are going to do away with that. I think it is a very serious thing. If we pass this Bill in that form, particularly Clause 6 which now does away with the ruling of the Supreme Court, on this point will impose sales tax on food materials in the hotels or restaurant for the persons who go there daily or who reside there. It is a very serious thing. When the Supreme Court gives some ruling in favour of the common man, you are going to do away with it. Sir, in the fight against the British, Gandhiji took a series of measures for the cause of common man. The whole country was moved by that struggle. In the present day, you are going to tax food against the Supreme Court ruling. I think, at least this point should be considered by this House, by the ruling Party also and by the Finance Minister. The food articles should not be taxed. That is my submission.

With regard to the other point which has been raised by some friends about the Food-for-Work Programme in West Bengal etc., I think, Food-for-Work Programme and I.R.D.P. are meant for the poorest. I know, in the Congress (I) ruled States, it is shared equally by all. The rich, the contractors and the officers, all have their share from the Food-for-Work Programme or I.R.D.P. I think, these programmes are only for the benefit of the poor in West Bengal and that should be the case in the whole coun-

try. If it is not in the whole country, that is our misfortune, country's misfortune and our failure. It is for the poor and it should go to the poor. It shows a sign of corruption wherever the middle-class people get the share and it should be resisted on the floor of this House.

The last point which I would like to make is that the object of the Bill in giving more share to the States, is good. With regard to the inter-State transactions, the taxes should go to the States—that is also good. But again, I would say, that there should be single-point sales tax and not multi-point sales tax. The food articles should be spared from taxation. That is my submission.

According to your directives, I am finishing my speech.

MR. DEPUTY-SPEAKER: We will continue to sit even after 6 O'clock and see that this Constitution (Amendment) Bill is passed. (Interruptions.)

MR. DEPUTY-SPEAKER: It has already been announced.

MR. CHITTA BASU: He is the last speaker.

SHRI CHITTA BASU (Barasat): Sir, I welcome the features of the Bill. The features are, firstly, that this Bill recognises the need for the augmentation of the revenue of the States. This is an important feature of this Bill. Secondly, Sir, tax on sales is treated as item of revenue to be assigned to the States, although the statement of objects and reasons says that it is within the domain of the Union Government. It means, it further strengthens the principle that the State Governments should have additional avenues for revenues.

But my only point of criticism, at this juncture, is although it has been recognised and I think and I hope, it should not merely end in platitude but it should also be followed in practice. As it has already been pointed

out, sales tax, today, has become the only primary resource for the States. The State Governments being in the close proximity of the people, people expect much from the State Governments for the expanding welfare activities. But it is quite well-known to everybody, all of us, that the resources of the States are inelastic. But the demands of the people, the hopes and aspirations of the people, are elastic. There remains a paradox. If we really want that there should be fair distribution of the revenue resources, it requires that the Centre-State financial relations are to be restructured. That has been not only the demand raised by some of our friends and colleagues today here but it has also been the consistent and persistent demand of the States irrespective of their political views and political affiliations. Even many Chief Ministers of the Congress-I ruled States also feel the same. I do not know whether they have got the courage to speak it out.

THE MINISTER OF COMMUNICATIONS (SHRI C. M. STEPHEN):  
Courage is your monopoly.

SHRI CHITTA BASU: That is not my monopoly.

MR. DEPUTY-SPEAKER: Their interests are very safe in your hands.

SHRI CHITTA BASU: As I was saying earlier, it should not be merely a question of platitude but it should be a question of practice also. I hope that this is a beginning and I am happy that at least there is a recognition of the fact that the States require more revenue resources. I hope, this is to be treated as a beginning.

Again, the question of overdraft comes in. The Finance Minister has been very harsh in the matter of offering a package programme for overdraft. I say, it is harsh. It is harsh for those States which want to expand the welfare activities. The Finance Minister has not provided

alternative avenues for resources collection. But he has tried to see that no overdraft is drawn by the State Governments and, if they do draw, they will be penalised.

Whom is he penalising? It is not a particular State Government, whether it is the State Government of West Bengal or Rajasthan. It is ultimately the people who are being penalised. It is the Central Government in whose hands the entire economic power is being concentrated. By virtue of the fact that the Central Government has been able to concentrate economic power in their hands, they are now trying to penalise the people. It is not a question of penalising this State Government or that State Government. If you feel that by penalising a particular State Government, the West Bengal Government, you will be happy, I think, it is not so. We know how to survive. It is ultimately the people belonging to this State or that State, the State run by this Government or that Government, by this party or that party, who will be suffering. Does that not need a reappraisal of the financial relationship between the Centre and the States?

The Central Government has enough scope of resorting to deficit finance. As far as I know, already the deficit financing has amounted to, over the period of a few years, to the tune of more than Rs. 7000 crores. But so far as overdrafts of the State Governments are concerned, they are to the tune of Rs. 1700 crores. The very moment you stop the right of the State Government to have the resources from the Reserve Bank of India by overdraft, much of the welfare activities in the States will have to be curtailed. Therefore, I say, while the Government by this Bill recognises the need of expanding revenue resources of the States, the actual practice does not commensurate with the actual reality of the situation.

This measure is welcome. There is no doubt about it. But this very fact



[Shri Chitta Basu]

that you recognise the need for expanding revenue resources of the States should be further followed up. For that matter, I feel, the entire financial relations between the Centre and the states should be re-structured and, for that matter—the Chairman of the Eighth Finance Commission is here—I hope, he would also apply his mind as to how this perennial problem of the States could be solved and how the States could be further helped in the matter of fulfilling the expanding hopes and aspirations of the people. Therefore, while supporting the Bill, I feel, this wider implication should be taken note of. This wider question should not be just ignored.

I hope that the Government should take this into account and see that certain steps are taken in the matter of expanding the revenue resources of the States.

The question has been raised—I also raise it again—that there is a proposal for abolition of sales tax. Some of my friends here are also very energetically pursuing the proposition. But what about the States? Who will compensate the sales tax?

As has been mentioned earlier by our esteemed colleague Shri Somnath Chatterjee, from Rs. 16 crores, the Centre has increased it to Rs. 240 to Rs. 250 crores in West Bengal. That has become the main-stay of the States' resources. Unless the State Governments are properly and adequately compensated for the sales tax, the State Governments cannot fulfil their obligation to the people.

Therefore, it is not a question of abolition of the sales tax. It is a question of providing more and more adequate revenue resources for the States.

I want to know from the Hon. Finance Minister at what stage does the proposal of abolition of sales tax rests

now and whether he can assure this House that even in the case of abolition of sales tax, proper and adequate compensation would be made for the abolition of the sales tax by the State Government.

In short, these are the three or four points that I would like to make and I hope the Hon. Finance Minister will consider it necessary to respond to these points.

MR. DEPUTY SPEAKER: Now the Hon. Minister will reply.

SHRI PRANAB MUKHERJEE: I express my gratitude to all the Hon. Members who have made contribution to the Bill. And particularly the Bill has received wide support from all sections of the House.

But, at the same time, I would like to clarify a few points, particularly to my friend Shri Bapusaheb Parulekar. Perhaps he is aware that what I am presenting today for your consideration has a little long history.

If the Lok Sabha was not dissolved, this very Bill with every comma and full stop would have been piloted by our good friend Shri Satish Agarwal not Shri Charan Singh. It is Shri Satish Agarwal. Instead of my predecessor, Shri Satish Agarwal, now it is simply written Shri R. Venkataraman, with whatever changes I have brought in an exactly like manner. There is no other change excepting that.

Therefore, in 1979, the Bill was introduced but, because the Lok Sabha was dissolved, it could not be taken up. Thereafter, when the new Government came into power, I mentioned this fact in the introductory remark.

In the State Chief Ministers' Conference when we discussed about the sales tax, there were differences of approach on many other items but this was the area for every Chief Minister, whatever be his political affiliation to agree upon and the unanimous recommendation was to bring

out the Constitution Amendment Bill on the lines of the last Bill.

We have, therefore, brought it in that form.

You have made another mistake. You have taken this piece of legislation as if it is a sales tax case. It is not a sales tax case. This is all your argument which you have concentrated on Clause 4 on the definition, what should be the definition of the sale of goods and this will be inclusive. This is not a sales Tax Bill. This is the enabling provision to provide the power to the State Government by amending the Constitution, to bring the appropriate sales tax laws on the basis of it and I am afraid no State Government—after all, every State Government is responsible and responsive to the people—would go to the extent of accepting your proposition. It is not a question of Sales Tax Officer. It should be in the Sales Tax law. Therefore, no State Government is going to have the Sales Tax laws, that when you are getting the services by typewriting or printing, each copy of the paper cyclo-styled or printed would be subject to sales tax. You may say that legally he has the power. But it has to be enacted, it has to be put on the Statute Book by the State Government, not by me. This Bill itself is not providing that power so far as sales-tax officer is concerned, this is only providing the power to the State Government to enact laws on the basis of this. Therefore, this should not be confused with that.

The second point which he has mentioned is whether clause 6 should form part of the Constitution. As a veteran lawyer, he should be aware that this is the normal process of legislation. Now what are we trying to aim at in the amending provisions of the Constitution Amendment Bill? Certain judgments have come, and in the course of those judgements, certain situations have been created. From Clause 2 to Clause 4 we are trying to

put the position in the correct perspective in view of the judgement of the Supreme Court, and in Clause 6 we are trying to legalise or validate the action which has already been taken and which has been declared illegal as a result of the judgment of the Supreme Court. Therefore, Clause 6 is the consequence of the amendment which are being brought from Clause 2 to Clause 4. This is not the first time that we are bringing this type of legislation. On an earlier occasion also this type of legislation was brought, and this is perfectly within the purview of legislative competence. In fact, a large number of amendments are there like section 29(2) of the Constitution (Seventh Amendment) Act 1956 and others. I would not like to quote and take the time of the House. Only three or four salient points, I would like to mention.

While making his observations, Mr. Somnath Chatterjee asked why we are not going to have the 2:1 ratio between the basic and special excise duties. In fact, we are trying to do so. In the revised budget estimates for 1981-82, the ratio has been 1.95:1. In my budget proposals I have made it 1.81:1. Therefore, 2:1 we are trying to attempt. So far as the ten per cent which was agreed upon is concerned, that has to be achieved through phases by 1989-90. We cannot expect to have it overnight.

Here I would like to make one point quite clear. This time not a single member of the Opposition who have strongly advocated that the Centre should go on increasing the additional excise duty complimented me. If you look at their observations on the budget, you will find that every one of them condemned me. This time I increased the additional excise duty which will go a hundred per cent to the States. Except Mr. Chavan who initiated the discussion, none of the Members complimented me. I did that exclusively for the State Governments—Rs. 50 crores or whatever be

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the amount; the exact amount I have forgotten. I took that responsibility. I incurred the wrath of the Members for imposing the duty, but the sale proceeds have gone to the State Governments. Therefore, we are increasing that duty. It is not that we are not increasing.

The second point is, in regard to taxes under article 269, whether we have referred the matter for the consideration of the Eighth Finance Commission. We have referred it, and the Eighth Finance Commission will explore the possibility, the scope of this particular area, whether we can increase the revenues of the States. I do agree with the observation made by the hon. Members that is a very important area on which the States are dependent. If you look at the figure which we are having as sales-tax revenue, you will find that from the figure of Rs. 965 crores in 1972—I am talking of all the States taken together—the sales-tax revenue has gone up today to Rs. 4,205 crores. So, it is not simply possible to do away with it and that is not the intention of the Government of India; when we had the Conference of the State Chief Ministers, it was not our intention to put the State Governments to difficulties. We assured them that we would fully compensate what they are getting today and that not only we are going to give them fullest compensation but at the same time we will see that there is a regular growth in it. Simply it is not merely the monetary consideration; after all the State Governments thought that this is an area in which they are the masters and why should they like to part with that power? But, on the other hand, those who are strongly advocating abolition of sales tax have a point because it is so much misused. There is so much evasion, avoidance and irritation. Therefore, I do not say that there is no point from either side and we tried to make a mix and after all we have to take the State Governments with us. Mr. Somnath Chat-

terjee and Mr. Chitta Basu have said it but I would like to make it clear. The Committee which is working under the chairmanship of Pandit Kamalapati Tripathi is not to abolish sales tax; it is to bring five other specific items which are agreed upon at the State Chief Ministers' Conference within the purview of additional excise. Therefore, that committee is not looking into the abolition of sales tax. We provided various alternative suggestions to the State Chief Ministers; that instead of the present sales tax structure, we can have some type of additional excise duty or some other type of duty which will protect the States' interests, would ensure the present revenues and would take care of prospective growth, but at the same time would be less irritant, less cumbersome and less tortuous and we have not yet been able to convince the State Governments still now. The original proposal was on the entire structure but when they did not agree, thereafter it was decided that at least these five items of importance should be brought within the purview of the additional excise duty in lieu of sales tax. This is the position. But I do feel that a stage has been reached when we shall have to say, 'Thus far and no further.' It is true this is an area. But at the same time if you find that on certain items the sale tax is 20 per cent when the excise duty is 8 or 9 per cent, then it would appear to be almost exorbitant.

I would not like to go into the other aspects which have been mentioned by some of the hon. Members. Only one point I would like to submit most respectfully for the consideration of the hon. Members. I have not stopped the overdraft merely to show arrogance. I have instructed that overdraft will be stopped after taking the responsibility of Rs. 1743 crores on my own hand and I know all the hon. Members would catch hold of me when I present the next year's budget and say 'Why your deficit has gone up so much?' I projected my deficit at Rs. 1365 crores but by one



stroke of pen, by taking the responsibility of the State Governments it has increased by more than Rs. 1763 crores. I have worked out the overdrafts which stood on 31st March 1982 and I discussed with the Chief Ministers. I am afraid none of the Chief Ministers shared your views—not even the Chief Minister of West Bengal. He wanted that it should be over a period of 7 years. Moratorium should be for a period of 7 years. I have given a period of 7 years. What would have been their fear? If the old formula would have continued, one-third of the overdraft which stood on 31st March 1982 would have been adjusted in the year 1982-83 itself. Instead of that, he is not to pay anything in 1982-83 and he is not to pay anything in 1983-84 and the first instalment falls due in 1984-85 and subsequently for five years after that....

SHRI CHITTA BASU: How will they adjust?

SHRI PRANAB MUKHERJEE: What would be the adjustment? It would be from 1st April to 30th June—what he has taken from 1st April to 30th June. The hon. Members should appreciate that after all they are responsible for the central finance and every money I spend with their approval and you should not allow me to be extravagant. It is your responsibility. What would be the situation? If you look at the States which did never resort to overdraft, simply they thought as the 8th Finance Commission is coming, from 1st April to 30th June they just went on drawing heavily from the Reserve Bank of India—many of the State Governments—on the understanding that, perhaps, the Government of India would take a decision to convert the entire amount outstanding on 30th June as medium term loans. This type of practice and approach is really serious and defrimental to the fiscal discipline and it cannot be permitted.

The second point is this. What has been suggested was that we are trying to dilute the authority of the

Finance Commission. This is absolutely wrong. The Finance Commission is a constitutional body. But, it is not a permanent body. There is no gap between the two—the recommendations of Seventh Finance Commission will over and the recommendations of the Eight Finance Commission will start. The Finance Commission functions for a period of 1/1-2 years. It depends upon the terms of reference and the magnitude of the work. The recommendations of the Finance Commission are obligatory. What the Planning Commission does is this. There should be no misunderstanding about it. The Planning Commission only suggests to the State Governments to mop up the resources. The Finance Commission takes the need of the State's requirements into account. You will just look at the recommendations of the Fourth or Fifth Finance Commissions. The Seventh Finance Commission has gone to the extent of allocating forty per cent of the excise duty—I am not talking of the income-tax or the direct taxes. Therefore, every Finance Commission takes into account all the States' problems and, I have no doubt that the Eighth Finance Commission which is presided over by Shri Chavan Ji—he has the experience both as the Chief Minister of a very important State and as the Finance Minister and so he will take care of the problems of mine and those of the State Chief Ministers—will make the appropriate recommendations. We are looking forward to that. There is no question of diluting the authority of the Finance Commission.

Sir, I do not think that any other point has been raised. I do hope that Shri Bapusaheb Parulekar will not insist on his amendment. I shall explain why I cannot accept his amendment. I thought of sending it to the Select Committee. But, this is an enabling provision only. Even Parliament will have to enact a law levying tax on consignment transfers and levying down conditions subject to which States can levy tax on certain transactions. If you consider at that

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stage that this legislation should go to the Select Committee and elucidate the view of the public I would feel that would be appropriate forum. This is only an enabling provision. We are amending the Constitution to give effect to certain provision which are being distorted by the judgment of the Supreme Court.

Another aspect is this. That is in regard to validity. You will have to keep in mind that the State Governments not only are prevented from realising the tax in certain areas but they would also have to refund some amount. When they are to refund that amount to whom is it going? After all, it is not going to consumers. Therefore, you will have to validate the action of the State Governments. Otherwise, a situation will come when money will go from the State's exchequer simply to the traders. The traders are not going to pass it on to the consumers. Therefore, this revalidation is necessary. That is why there is a little urgency of this Bill.

MR. DEPUTY-SPEAKER: Mr. Parulekar, are you pressing your amendment?

SHRI BAPUSAHEB PARULEKAR: Let it be put to the vote.

Sector 1 : Division No. 90

Sector 5 : Division No. 545

: Any one else in that sector who has not been recorded?

Sector 3 and 4 : Division Nos. 332, 340, 341, 345, 336, 343, 541, 345, 347,

Sector 2 : Division Nos. 121, 112, 131, 143, 145.

Sector 3 : 231, 246, 252, 228, 232, 240, 251, 263, 264.

Sector 6 : Division Nos. 498, 463, 526,

THE MINISTER OF DEFENCE AND HOME AFFAIRS (SHRI R. VENKATARAMAN); Mr. Speaker,

MR. DEPUTY-SPEAKER: I shall put amendment No. 3 moved by Shri Bapusaheb Parulekar to the vote of the House.

*Amendment No. 3 was put and negatived*

MR. DEPUTY-SPEAKER: Before I put the motion for consideration to the vote of the House, I shall make it clear that this being a constitution amendment Bill, the voting has to be by division.

The question is:

"That the Bill further to amend the Constitution of India be taken into consideration".

Let the Lobbies be cleared.

The Lobbies have been cleared Now. Division.

18.39 hrs.

[MR. SPEAKER in the Chair]

AN HON. MEMBER: The machine is not working.

MR. SPEAKER: The voting machine is not working properly; we can have the voting tomorrow.

May I know announce sector-wise corrections:

Sir, for the Constitution Amendment Bill, you will have to get a majority of the House not only in the

first reading, but in the clause-by-clause consideration and the final stage. Since the machine is not working properly, I would suggest that we take it up tomorrow and we adjourn the House now. We will have a proper majority tomorrow....

(Interruptions)

SHRI SATYASADHAN CHAKRABORTY: Actually, though we have a reason, yet since the voting has started, I think, according to rules, we cannot do it.

MR. SPEAKER: We can do it.

SHRI SATYASADHAN CHAKRABORTY: Whether the better course would be the other way, it is for you, you may adopt that, but according to rules, we cannot do it.

SHRI R. VENKATARAMAN: When the machine is not functioning, how do you record the votes?

SHRI SATYASADHAN CHAKRABORTY: You have the alternative method; we can use slips.

MR. SPEAKER: Here it is. On 1 December, 1971, after result of a division had appeared on board, on

complaint by many Members that their votes had not been recorded by machine, Speaker agreed to hold division *de novo*. So, we can hold another division.

Let the Lobbies be cleared again—The lobbies have been cleared. Please take your seats.

SHRI R. VENKATARAMAN: Mr. Speaker, Sir, before you again put the matter to the vote, I make a very respectful submission that since the machine is not functioning and since it is leading to considerable confusion, I would appeal to you to adjourn the House now so that the machine may be set right and tomorrow we can have the voting.

MR. SPEAKER: Is it the consensus of the House?

SEVERAL HON. MEMBERS: Yes.

MR. SPEAKER: O.K. I adjourn the House. The House stands adjourned to meet tomorrow at 11 A. M.

19.3 hrs.

[The Lok Sabha then adjourned till Eleven of the Clock on Wednesday, July 14, 1982/Asadha 23, 1904 (Saka)]