THE

PARLIAMENTARY DEBATES

(Part II—Proceedings other than Questions and Answers)

OFFICIAL REPORT

HOUSE OF THE PEOPLE

Friday, 4th September, 1953

The House met at a Quarter Past Eight of the Clock

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

QUESTIONS AND ANSWERS

(See Part I)

9-23 A.M.

LEAVE OF ABSENCE.

Mr. Deputy-Speaker: I have to inform the hon. Members that Shri N. Sathianathan, M.P., completed 63 days of continuous absence on the 27th August, 1953, and thereafter attended the meeting of the House on the 28th August, 1953. He has now sent an application for leave of absence which briefly reads as follows:

> "Ever since my return from Delhi on the 8th April, 1953, I was keeping bad and indifferent health and I am still under treatment. In fact, I attended the session on the 28th August, 1953, as against my Doctor's advice and I was forced to return immediately again. I may not be able to go back to Delhi for some more time.
>
> I therefore regret my absence in the House without its leave and in the above circumstances the above lapse may be condoned by the House and that the House may be also pleased to excuse my absence till the end of this session."

Is it the pleasure of the House that the absence of Shri Sathianathan for 63 days from 8th April to 27th August, 1953, be condoned and that permission be granted to him for remaining absent from all meetings of the House till the end of the current session, as requested by him in his letter?

Hon. Members: Yes.

Absence was condoned and leave granted.

ESTATE DUTY BILL.—*Contd.*

Clause 7.—*(Interests ceasing on death).—contd.*

Shri A. M. Thomas (Ernakulam): I would not have intervened at this stage to put forward my views in this matter but for the question of policy raised by the previous Speaker. The amendment which has been tabled by my hon. friend Mr. Sarmah and twenty other hon. Members reads like this:

> "for the purpose of this Act all property shall be deemed to be governed by the Mitakshara system of Hindu law of succession."

I find an attempt in this amendment to reach perfection and afford equal treatment as far as the incidence of this taxation measure is concerned. Much has been said on the invidious distinction made in the application of this contemplated measure. The whole debate at all

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stages centred round a few aspects and one was the effect of the Bill on persons to whom the *Dayabhaga* system of inheritance applies. I will not limit my argument to those people who follow *Dayabhaga* system, but to all those following other systems except *Mitakshara*. There is no denying the fact that the Bill will weigh more heavily on this set of people. The amendment may at first appear to be alluring and as many as twenty-one hon. Members of this House have subscribed to it. It appears to be a short-cut and may at first sight appear to cut the Gordian knot. But equal treatment as between citizen and citizen will not be possible in regard to people who follow different systems of inheritance.

There would have been no difficulty in accepting this amendment if before the enactment of this measure we had enacted a uniform system of law of inheritance and succession. As circumstances at present exist one system of inheritance cannot be preferred to another system of inheritance. In this amendment you will find that the *Mitakshara* system of inheritance has been accepted as the standard form. I am sure there will be difference of opinion in the House itself with regard to the fact whether it is the ideal system of inheritance. By fiction we can equate the *Dayabhaga* family to the *Mitakshara* family; it may be that the sons would be deemed to get proprietary right on birth. But is it possible in case of the *Marumakkattayam* where a different system of inheritance prevails? I also ask whether it is possible of application to the Christians, to the Muslims and to other people who follow other systems of inheritance than the *Mitakshara* system where female heirs come in. Even amidst people following the *Mitakshara* and *Dayabhaga* difficulties crop up when the nature of the estate is taken into consideration, whether it is self-acquired or otherwise. Achievement of equality by any such fiction as envisaged in the amendment is not possible and practicable, so that according to me this amendment has to be ruled out as impracticable of application in the present circumstances. I have, therefore, necessarily to oppose the amendment.

But while opposing it, I do not want to commit myself to a position that I am against the arguments advanced by my hon. friend Mr. Sarmah. They are weighty considerations which it is difficult to brush aside. The only way to tackle the problem is to take into consideration the different systems of inheritance and try to find ways and means to achieve equality in the incidence of taxation, as far as possible.

My hon. friend Mr. Sarmah made a very pathetic appeal to the good sense and fairness of the Finance Minister, but I cannot subscribe to a position of acceptance of this amendment as it is. One of the reasons why certain States like Travancore-Cochin and West Bengal have not acceded to the request sent by the Centre with regard to inclusion of agricultural land also as liable to estate duty is the reason that in those States the vast majority of people are people who do not follow the *Mitakshara* system of inheritance. I think that is the reason why they have not come forward to accept the suggestion from the Centre. If as a matter of fact the inequality can be bridged to a considerable extent I am sure those States also will be prepared to come forward and be ready to fall in line with the rest of India.

It has been stated by my hon. friend Mr. Sarmah that those people who follow systems of inheritance other than *Mitakshara* have been discriminated against. I do not think that is a correct expression to be used in the set-up of the Estate Duty Bill as laid before the House. If at all there is any discrimination in the strict sense of the word, or in the legally accepted sense of the word, the discrimination is against the *Mitakshara* people, because we are levying the duty on the estate that is

left behind by the deceased. As such if different considerations weigh with us with regard to those people who follow *Mitakshara* by fixing the exemption limit as Rs. 50,000 and in the case of those people who follow other systems of inheritance by fixing the exemption limit as Rs. 75,000, I would submit that the discrimination is against the people following the *Mitakshara* system. We are not levying a duty on the estate that is inherited by each person, but on the total estate that is left by the deceased person. The argument of discrimination will not have any weight in this matter to get any concession.

I would like to base my argument for a more equitable treatment for reasons other than the charge of discrimination that has been levelled by some Members of this House. It has even been suggested in the speech of the hon. Finance Minister that it was doubted whether there was some discrimination going by the strict application of the articles of the Constitution by fixing different exemption limits, but taking an overall view it is only a matter of relief that has been given to those persons who follow systems of inheritance other than *Mitakshara* and the opinion is that no article of the Constitution is violated. But all the same if at all there is any scope for argument on the ground of discrimination, my submission is that it is available only for those people who follow the *Mitakshara* system of inheritance The disabilities that a joint member of a *Mitakshara* family labours under are too well known and it is a peculiar institution which while affording certain rights puts so many checks in the way of exercise of the rights. People who follow the *Dayabhaga* system and other systems of inheritance take the property as absolute owners and they can do anything with their property. That is why I said I would put my case on altogether different considerations. Illustrations have been given times without number with regard to the hardship that would be caused to people who follow systems of inheritance other than *Mitakshara* and it has been stated that in the present form the Bill will work very much prejudicially so far as heirs following non-*Mitakshara* schools are concerned. These grounds, I submit, are genuine. The Select Committee has to a certain extent conceded its weight and that is why it has fixed one exemption limit for those following the *Mitakshara* system and another for those following the *Dayabhaga* system of inheritance: so that it cannot be denied that some differential treatment is called for and there is necessity to level this resulting inequality.

As I submitted already, we are not levying this tax on inheritance. If it were so, the hardships that have been mentioned by several hon. Members would not have arisen at all, because if it is on inheritance, the duty will be paid by each heir only on the property inherited by him. It is immaterial whether a *Dayabhaga* father has a dozen sons or more and a *Mitakshara* father has less number of sons.

No Government can ignore the factum of incidence of taxation. I will base my argument on that and that alone. It is necessary that the incidence must be fair and equitable, and we have necessarily to give some relief in certain cases. However hard it may be to devise a completely satisfactory means of measuring tax liability, it is imperative that each particular tax as well as the system as a whole should, as far as possible, try to reach the ideal of justice and fairness. Justice and administrative feasibility go hand in hand and both of them cannot be disregarded. Adam Smith's canons of taxation, though often violated, still hold good as the ideal principles. Of the four canons, equality in the treatment of tax burdens is the most important. The subjects of every State, according to Adam Smith, ought to contribute towards the support of the Government as nearly as possible in proportion to their respective abilities.

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If this distinction that is laid down in the Bill is adopted, that is Rs. 50,000 limit in the case of the *Mitakshara* people and Rs. 75,000 in the case of *Dayabhaga* and other systems, and if it is driven to its logical conclusion, it will appear that the *Dayabhaga* father can afford to have half a son besides himself. That will be the situation, though the analogy may be a little ridiculous. That is too narrow and uncharitable an approach to the administration of this measure. Once we are prepared to give a benefit I would submit that we must give it ungrudgingly.

I will submit for argument's sake that absolute equality in all circumstances is not possible. And under the present circumstances the only way in which we can approach the question is not by trying to reach perfection or an equal standard for all people under all circumstances, but to raise the exemption limit in the case of people who do not follow the *Mitakshara* form of inheritance—a little more than the Rs. 75,000 limit which has been prescribed in the Bill as reported by the Select Committee. This only possible method, I am sure, will commend itself to the attention of the hon. Finance Minister. And though nothing is possible to be done in this clause 7, I hope he will bear this fact in mind when we come to clause 34 and try to do justice between man and man.

From the standpoint of the economic system as a whole, taxes should not work undue hardship upon individuals or financial enterprises because it will have the undesirable effect of cutting down total production and affecting the standard of life. As far as lawyers practising in original courts are concerned, when any witness is examined it has been the unfortunate practice to measure the worth or the respectability of the witness by the wealth he owns. A few years back if a witness was put into the box and asked what he was worth and if he said he was worth Rs. 10,000, it would have been accepted as the wealth of, so to say, a middle class man. But, as you know, circumstances have changed. Standards have changed. And those very witnesses, when put into the box and asked about their worth according to the standards we adopted some years back at the close of the examination-in-chief, those very witnesses who said Rs. 10,000 now say they are worth rupees one lakh. So what I wish to point out is that the value of money has gone down. The cost of living has also gone up. As such I do not think that this Rs. 75,000 exemption limit is too high a limit and we can afford, according to me, to raise that limit a bit. I do not want to continue my arguments any further. As I have said already, though it is not possible to do anything in this clause on the suggestions made by the twentyone Members who have tabled this amendment—this being the charging clause, so to say; we are discussing the policy underlying the difference in the treatment to people who follow the *Mitakshara* system and the *Dayabhaga* system—I should think that the hon. Finance Minister will find his way to give an assurance to the House that when we come to clause 34 it may be possible to remedy the injustice and hardship that may be worked out in the application of this Bill.

The Minister of Finance (Shri C. D. Deshmukh): I rise to say a few words on my amendment No. 467, which I have already moved, so that hon. Members may speak on it. It is a very formal one. It reads:

In page 4, *for* lines 35 to 40, *substitute*:

(2) If a member of a Hindu coparcenary governed by the Mitakshara school of law dies, then the provisions of sub-section (1) shall apply with respect to the interest of the deceased in the coparcenary property only—

(a) if the deceased had completed his eighteenth year at the time of his death, or

(b) where he had not completed his eighteenth year at the time of his death, if his father or other male ascendant in the male line was not a coparcener of the same family at the time of his death."

Now, the object of sub-clause (2) of clause 7 is to provide that the interest in the Hindu undivided family property ceasing on the death of a minor member of a coparcenary shall not be deemed to pass on death and accordingly will not be chargeable to duty. There is, however, a limitation to this exception. If the minor at the time of his death had no father or any other male ascendent in the main line of his coparcenary in the same family then the exception does not apply. But the language used in the sub-clause is a double negative and is likely to be confusing. A doubt has been raised in some quarters as to whether the two exceptions in line 38 of page 4 are cumulative. The amendment proposed by me is merely a formal change so as to convert this part of the clause into a positive form and to make the meaning clearer.

Shri Punnoose (Alleppey): This is a piece of legislation on which I thought silence was golden but I wish to speak a few words for the simple reason that I want to point out certain facts.

I was listening to Mr. Thomas's speech and I could not understand him when he said that it was not discriminatory towards certain systems like the *Dayabhaga*. But at the close of his speech he said that the incidence of taxation is hitting harder certain kinds of families. To my mind it appears that I can characterise it as a discrimination when a certain section is more burdened than others. The fact that Rs. 50,000 or Rs. 75,000 worth of property is placed as the basis does not matter at all. The question is whether the incidence of taxation hits harder on a particular section. In that sense there is discrimination and there is much force in what Mr. Sarmah said. I completely associate myself with the argument and also the spirit of the amendment moved by Mr. Sarmah. That will logically lead to the position that a few more people are allowed to go out of the grips of this law. That means that less of estate duty will be collected.

It might look curious that I am arguing for it. Well, I must state the reason for it. As a matter of fact, though slightly younger to Shri Gadgil, I do not feel so enthusiastic about this measure as Mr. Gadgil is because I am confident that some of the largest fish will never come in the net cast by the Finance Minister. The foreign investors, the ex-Rulers are practically left out and the Finance Minister is satisfied with fishing in shallow waters. Therefore, I do not believe that there will be an egalitarian society as the natural consequence of this piece of legislation. I do not even believe that it will help to bring about that. Therefore, my first and foremost consideration is that none of the marginal men who gravitate between poverty and wealth shall be troubled. I have given up hopes of persuading the Finance Minister to catch old of the big fish. Then what I want to say is that people who are on the verge of financial strain may be left out. It is from that point of view that I am looking at this Bill.

Then, if a limit of Rs. 75,000 is put down with regard to *Dayabhaga* families and if this discriminatory provision is allowed to pass, I feel from experience that many families in our parts who are not poor but who are not wealthy either will be hit hard. It is not convincing to say that this is a matter of taxing the property of the receased and that we shall not look into the conditions of inheritance. That may be the legal definition of the position but I am

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not prepared to accept that perspective. When we tax the deceased's property we have first to consider what happens to those who live on this side of the grave. To say that this is the property of the dead; therefore, it shall be taxed in a particular way—no matter whether it is *Dayabhaga* or *Mitakshara*—is not correct.

Then Mr. Gadgil was saying that we are not creating inequalities between this system and that system. They are inherent in the existing systems.

Shri C. D. Pande (Naini Tal Distt. *cum* Almora Distt.—South West *cum* Bareilly Distt.—North): They are biological.

Shri Punnoose: With great respect for the person who advanced that argument I say it is a very unconvincing argument. How can a Government say that they are not prepared to take stock of the different systems that prevail in the country? People look up to this House and Government to take stock of the prevailing systems. They should see that one particular system should not be hit. I should, first of all, like it to be made clear whether this Government or this House considers the *Mitakshara* system of inheritance as a better and more progressive one. If we are for a particular system then we will encourage it through legislation. Of course, the incidence of taxation may be placed less on that system. Is that the position of the Government? The Finance Minister, I am sure, will say 'No'. It is not the object of the Government at all. Then we have to consider what happens to the *Dayabhaga* family.

Shri Gadgil was saying that, after all, law is the reflection of the will of the people. I agree. If the law is the reflection of the will of the people, then I say their highnesses will escape, the foreign investors will be left out. Apart from the financial results that may follow, a very serious consequence is likely to follow of which the Government should take jolly good care, because large sections of people in the South—in Kerala, in Bengal—will believe that this piece of legislation is being framed by people who are not directly connected with the system under which they are. For my part, I very frankly say that I may not be able to contradict it. I am quite sure that if people who are directly connected with *Dayabhaga*, the Christian and the Muslim systems of inheritance, had their say in the framing of this legislation they might have found out some arrangement by which this inequality would not happen. Even with my mediocre and limited knowledge about it, I may envisage a contingency by which we may have a number of Acts on estate duty. I am not concerned with *Mitakshara*, *Dayabhaga* or the Christian law. What I am concerned is that no particular section should be put to hardship. Previously so many cases have been cited of how the hardship will work. No argument, I am sure, can be advanced against it. I am not so much concerned with the rates and limits of the estate duty. It is, of course, my interest to see that duty is collected from all those who can pay it. But I strongly feel that clear injustice is being done to the *Dayabhaga* system.

Shri T. N. Singh (Banaras Distt.—East): But *Dayabhaga* is a rightist system of inheritance.

Shri Punnoose: Right or left. I am talking about the human beings involved.

There is another point. You know, Sir, in our parts the *Marumakkattayam* system is followed.

Mr. Deputy-Speaker: Christians also.

Shri Punnoose: No, Sir. Some of the biggest feudal families in the State will not come under the mischief of this law because there is inheritance for sons and daughters. One aspect of the case may be consi-

dered. For example, say, in Travancore-Cochin, land is a very precious commodity. A man having ten acres of land or eight acres of land with a moderate building will come under this measure, because the price of land is heavy. The man will come directly under taxation. I know people who leave behind them property worth Rs. 75 or Rs. 80 thousands, and whose children suffer. It is true that they have large property in the sense that if it is sold out, they will get a good price, say Rs. 90,000 or so. In a State like Travancore-Cochin, where land is so dear, and therefore very costly, this border-line of Rs. 75 000 is not at all fair. Some way has to be found out. Else, the responsibility will fall squarely on the shoulders of the Government. I frankly say that there is no point in saying that all of us belong to India, that there is no regional, linguistic or provincial considerations. All these arguments will not do, because large sections of people there will believe that their disabilities and their interests have been overlooked.

Shri C. C. Shah (Gohilwad-Sorath): I wish to say a few words about amendment No. 616 and the explanation to sub-clause (2) of clause 7. Amendment No. 424 has the same purpose as amendment No. 616, but in my opinion amendment 424 is inappropriate because it seeks to apply the *Mitakshara* system to every person under this Bill. Obviously, that cannot be done. Amendment No. 424 applies even to Christian, Parsi and Muslim communities. We cannot change the personal law of everybody by an amendment under this Bill. Secondly, that amendment speaks of properties which shall be governed by *Mitakshara* system. It is a *person* who is governed by the *Mitakshara* system, not *property*. Therefore, that amendment, from both points of view, is, if I may respectfully submit, out of order.

Amendment No. 616 moved by Mr. Chatterjee meets both these objections. It speaks of persons who shall be governed by—and it only confines itself to—*Dayabhaga*. But even as far as amendment No. 616 is concerned, there are certain objections to it, and I shall presently mention them. I cannot ignore the fact that both the amendments—424 and 616—arise out of a strong feeling on the part of the Members governed by the Dayabhaga school that there is some discrimination against those who are governed by that school. It is a very strong feeling which we cannot ignore. But I wish to point out that the sense of injustice under which they labour is not so great as it is made out to be. The Rs. 75,000 limit applies not only to *Dayabhaga* but it applies to all Muslims, Christians, Parsis—in fact everybody except *Mitakshara* joint family. So, that is one factor which has to be taken into consideration. It is not only against Hindus that are governed by *Dayabhaga* that the discrimination is there but it is against everybody except those governed by the *Mitakshara* system.

Secondly, even amongst the Hindus governed by the *Mitakshara* school, it is not everybody who is getting the benefit. It is only those who have joint family property—and there are very few in this category—that enjoy the benefit. Take, for instance, my own case. I am governed by the *Mitakshara* school of law. I have no property—joint family property, as opposed to self-acquired property.

An Hon. Member: How to find it out?

Shri C. C. Shah: It will be disclosed at the time of my death. Let me be permitted to go on.

Mr. Deputy-Speaker: Yes.

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Shri C. C. Shah: So, even amongst those governed by the *Mitakshara* joint family system, there are many persons who will not get the benefit—or rather, there is discrimination. That is the proper way of putting it There is some advantage given to joint family properties. If I quote

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some figures, you will find that out of the eight lakhs of assessees, the joint family assessees are only 64,000.

Mr. Deputy-Speaker: What is the intention of this Bill? Is it to tax the property of the deceased? Unless all members of the joint Hindu family die, the whole property cannot be taxed. The property belongs to all the members of the joint Hindu family. In the other system, only one man wants to enjoy the benefit of exclusive ownership of property. Therefore, the property is taxed in the hands of one or the other. Where is the discrimination against the joint Hindu family? Is it to be treated as if all the members have died even though only one member dies?

Shri C. C. Shah: His interest in the property, on his death, will be taxed.

Mr. Deputy-Speaker: Therefore, where is the discrimination?

Shri C. C. Shah: Out of the eight lakhs of assessees, only 64,000 come under the joint Hindu family, but even so, I concede that in the initial stage, the joint Hindu family governed by the *Mitakshara* system has some advantage over the *Dayabhaga*. That has been argued at length and I do not want to go into it again. But taking the initial advantage, as against the subsequent disadvantage, it was pointed out by so many Members that there was no discrimination. But one must say, balancing all the factors, that the amount of the disadvantage or the discrimination is not so great as is sought to be made out. Even so, there is a slight disadvantage. Two ways are suggested for meeting that discrimination or the sense of injustice. One way was suggested by Mr. Thomas. That was to increase the limit of Rs. 75,000 by a little bit. There is another way also, and that is to decrease the limit from Rs. 50,000 to a little less.

An Hon. Member: No, no.

Shri C. C. Shah: That is a method which can be adopted and which should be adopted. There is a sense of injustice that the exemption limit given to *Mitakshara* families as compared with the exemption limit given to non-*Mitakshara* families is high. There are two ways of meeting it. As I said, either one could be increased or the other could be decreased. In spite of the fact that I have given notice of an amendment to increase the amount from Rs. 75,000 to Rs. 1,00,000, after careful consideration, I have come to the conclusion that it is better to reduce the limit below Rs. 50,000 rather than to increase the limit from Rs. 75,000 to something more. The Government have yielded to man of property at several points. Even after the report of the Select Committee, amendments after amendments come in, and they surrender, so to say, to every point here and there. We must cry a halt somewhere. Probably, the cry of discrimination to the *Dayabhaga* system may be an indirect way to benefit all the rest, I do not know. But I would certainly object to any increase made in the exemption limit of Rs. 75,000, taking into account the amendment to clause 9 and the several amendments which are being moved, each giving concession after concession. Mr. Chatterjee's amendment No. 616, on the face of it, appears reasonable in the sense that all of them may be treated equally.

Shri U. M. Trivedi (Chittor): Sir, a point of order. No. 616 is an amendment to clause 5.

Shri N. C. Chatterjee (Hooghly): You may remember, Sir, that you pointed out that No. 616 should really be discussed along with clause 7. It is an amendment to Mr. Sarmah's amendment to No. 424 and Mr. Sarmah was allowed to move that amendment yesterday.

Shri C. D. Deshmukh: I suppose the form of the amendment will have to be changed so as to fit in clause 7.

Shri C. C. Shah: Amendment No. 616, on the face of it, as I said, appears reasonable in the sense that it seeks to treat everybody, *Dayabhaga* or *Mitakshara*, equally. But I do not know what the legal implications of such an amendment will be. Frankly speaking, I have not worked them out. But, one sometimes, has an instinctive reaction. My instinctive reaction, as a lawyer, to this amendment is that it will land us in greater difficulties than the difficulties which it seeks to solve. There are other ways of meeting that sense of injustice or discrimination which is felt by the Members of the *Dayabhaga* system. But, to attempt, in a measure of this nature, to say that the two systems which have far-reaching implications in their character, shall be treated equally as if there were no distinctions between the two, will be landing us in very great difficulties. My hon. friend Mr. Nathwani has worked out some of the implications of the amendment and the difficulties into which it is likely to land us. He will speak on them and I do not want to take the time of the House on that. My own feeling is that instead of attempting to simplify the matter by an amendment of this nature, a little adjustment can be made in the exemption limits, either lowering the one or raising the other. I would rather lower the one than raise the other.

My second submission is this. After all this Bill is not final in the sense that no amendment or no change can be made in it. Let us watch and see the working of this Bill for a couple of years. If, as a result of that, we find that it works a great hardship to those governed by the *Dayabhaga* system, there is nothing to prevent us from changing the law. In fact, I find a sort of feeling growing that we must amend this Bill and make it perfect, so to say, in every respect because it is going to be final and remain permanent. In fact, as one goes through the history of estate duties in England, enactment after enactment was heaped upon it in order to make changes arising out of experience. There is no reason why the same process should not be followed here. In this particular case, if we find as a result of experience that great hardship is caused to those who are governed by that system, some change can be made at that stage. There is nothing final or sacrosanct about any provision which we now pass which cannot be amended thereafter.

Shri S. V. Ramaswamy (Salem): Why not start with large exemptions?

Shri C. C. Shah: That is a question which I will answer at the proper time. I do not want to take the time of the House on this amendment. If we analyse all the amendments, we find two clear-cut divisions: some amendments which seek to exempt or take out as much property as possible from the purview of estate duty and others which seek to bring in as much as possible. There are only two provisions on which I differed: one was about public charities and the other was the necessity for having a judicial tribunal, on both of which I have submitted my views. Barring these two, in my opinion, this Bill is a mild measure. This Bill should not be watered down to any extent in any shape or form. Therefore, I oppose strongly any attempt to water down this Bill in this direction or that.

I want to say a few words about the Explanation to sub-clause (2) of clause 7. I am speaking on a point of information only, because reading that Explanation along with the amendment tabled by the hon. Finance Minister, I wish to know what it means: I mean sub-clause (2) in the light of the amendment which relates to the addition of a new clause 37A. In the first instance, what passes on the death of a coparcener is his interest in the joint family property. That interest is defined under the amendment now moved to sub-clause (2), namely, if he has not attained the age of 18, that interest will not be taken into account unless he has no male ascendant. What is that interest which will pass? That is the explanation which I seek. The

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necessity for that explanation arises out of the proposed clause 37A. I will take a simple instance. A joint family consists of three brothers. One of the brothers dies. His interest is one-third. Supposing that brother has two sons. Is the interest which passes his one-third or one-ninth? That is the question which I wish to put. I have some doubt in my mind because of that amendment.

The Deputy Minister of Finance (Shri M. C. Shah): That is clause 37A.

Shri C. C. Shah: That really relates to clause 7.

Shri S. S. More (Sholapur): What is the amendment moved by Mr. Deshmukh? That amendment is an amendment to clause 37A.

Shri C. D. Deshmukh: He refers to that amendment for illustrating his difficulty.

Shri S. S. More: What is the number of your amendment?

Shri C. D. Deshmukh: The amendment moved is No. 467. The amendment that I am going to move is 544. That is for another clause. That is relevant to this clause.

Shri C. C. Shah: The question is about the interest of the coparcenary passing on death. Under sub-clauses (1) and (2), the property which will pass on death of a coparcener will be his interest in the joint family property. What is that interest? I wanted to examine that in the light of the Explanation to sub-clause (2). The Explanation to sub-clause (2) says:

> "Where the deceased was also a member of a sub-coparcenary (within the coparcenary) possessing separate property of its own, the provisions of this sub-section shall have effect separately in respect of the coparcenary and the sub-coparcenary."

I gave the illustration. Supposing there are three brothers and one of the brothers dies. His interest in the joint family is one-third. But, he formed a sub-coparcenary with his two sons, so that, really his interest is one-third of that one-third, namely, one-ninth. I want you to understand that also, Kaka Saheb.

Shri A. M. Thomas: On a point of order, Sir. In innumerable instances, it has been found that Members specially appeal to Mr. Gadgil. A vote of any hon. Member of this House is equal to the vote of Mr. Gadgil.

Shri Gadgil (Poona Central): He was saying that I was inattentive.

Shri A. M. Thomas: We can understand a Member appealing to the Treasury Benches because they represent the Government. Is it proper to appeal to an individual Member like that?

Shri Gadgil: I will ask him to address you.

Shri C. C. Shah: I have not made any appeal to Kaka Saheb.

Mr. Deputy-Speaker: If hon. Members delight in doing so, and if the individual hon. Member also takes it in greater delight, I do not want to stand in the way.

Shri S. V. Ramaswamy: It seems that Kaka Saheb is the Father of the Bill.

An Hon. Member: Godfather.

Shri C. C. Shah: Following the illustration which I was giving, Mr. Deputy-Speaker,.....

Pandit Thakur Das Bhargava (Gurgaon): Where is this amendment No. 544?

Shri C. C. Shah: List No. 13, page 8.

I may take this instance. There were three brothers as I said and one of the brothers dies. He has two sons Under sub-clauses (1) and (2) of clause 7 as it stands, his interest will be one-ninth as it is understood commonly. If you read sub-clause (1) in amendment No. 544, it says:

".....the principal value of the share in the joint family property which would have been allotted to the deceased had there been a partition immediately before his death."

If there had been a partition before his death or at the time of his death, his share would have been one-third. As I read amendment No. 544, sub-clause (1) along with sub-clause (2), the intention appears to be to consider the interest to be one-third and not one-ninth.

Shri M. C. Shah: You are right; one-third.

Shri C. C. Shah: I refer to this in order to point out to the Members governed by the *Dayabhaga* system that the amount of benefit supposed to be derived by the persons under the *Mitakshara* system is much less than what ordinarily would have been, the case because, ordinarily the interest of the man dying would be one-ninth, because the one-third he gets—his own interest in it—is one-third of the one-third, because his sons get an interest by birth, but for the purposes of this taxation, if amendment No. 544 stands, it is the one-third which will be taxed, and not one-ninth and therefore, that sense of injustice which the Members of the *Dayabhaga* seem to labour under is not so great as it is supposed to be.

Shri C. D. Pande: If it is a co-parcenary between father and son, then what happens?

Shri C. C. Shah: That is precisely what I was talking about. When you come to assess or value the share of the deceased, that valuation will be in terms of amendment No. 544, and that says that the principal value of the share of the deceased shall be the share which would have been allotted to him on partition immediately before his death. The share which would have been allotted to him on partition immediately before his death would have been one-third.

Pandit S. C. Mishra (Monghyr North-East): One-ninth.

Shri C. C. Shah: Well, I would like an explanation from the Finance Minister.

Shri C. D. Pande: May I just put a question?

Shri C. C. Shah: It cannot be one-ninth.

Shri C. D. Pande: Take this example. If there is a person who shares his property with his sons when he dies, what happens? Have the sons a share in the property or not?

Shri C. C. Shah: Undoubtedly. If it consists of only his sons and there are no other co-parceners or brothers or cousins, then I agree it would be between father and sons, but I am talking of a co-parcenary which consists of brothers and sub-co-parcenaries in the case of each brother. I would request Members to consider this and I might.....

Shri C. D. Pande: If there is father and sons and nobody else?

Mr. Deputy-Speaker: Hon. Members must have a sense of time also. Of course, one can go on talking the whole day with respect to one single amendment. The hon. Member must state the point.

Shri C. D. Pande: The point is clear.

Mr. Deputy-Speaker: He has already said he is going to look to his friend on the right side to clarify. My mind is constantly on the clock. We have to finish up to clause 29 by this evening.

Shri C. C. Shah: I will take as little time of the House as possible. It is rarely that I speak, except on important occasions.

Mr. Deputy-Speaker: I am not preventing the hon. Member from speaking.

Shri C. C. Shah: I only wish to point that out.

Take the Explanation. The Explanation speaks of "a sub-coparcenary (within the coparcenary) possessing separate property of its own." That

[Shri C. C. Shah]

I can understand. If the father and sons have their own independent property apart from the share in the joint family property, to them the Explanation, in my opinion, is intended to apply, but it is not intended to apply to the share which the father gets out of the joint family property. I am making this submission with a view that the Finance Minister may consider it, and we may know exactly what the intention of the Explanation is read with amendment No. 544 and particularly in view of sub-clause (2) of that amendment.

There is only one word more which I wish to say. There is an amendment which seeks to raise the limit from 18 years to 21 years. Nobody has spoken in support of it. I see no reason why that limit should be raised, and I oppose that.

Shri N. P. Nathwani (Sorath): I rise to oppose the amendment moved by my hon. friend Shri Sarmah and others and I also oppose the amendment which is in the name of Shri N. C. Chatterjee. They deal with the same subject, though the scope of the amendment moved by Shri Sarmah is a bit wider.

With due respect to the hon. Members who have tabled these amendments—and I have got great respect for Shri Chatterjee who is an eminent counsel—I feel that this is a clumsy attempt to interweave the concept of property held in absolute ownership with the concept of coparcenary and the coparcenary property. Both these amendments assume that there is discrimination against the *Dayabhaga* school and other systems of inheritance. I would, for the purpose of argument, assume that there is a discrimination, but the hon. Members do not seek to remove the discrimination by either raising the limit of Rs. 75,000 or by lowering it. What they seek to do is to put the members of other systems on par with the members of a coparcenary, but let us see what would be the effect. In my opinion, if these amendments are accepted, they would suffer from the same infirmity or drawback from which they say that the present provisions are suffering, *viz.*, that there is a discrimination.

Now, some concession has been sought to be given to the coparcenary because in the case of coparcenary a son takes an interest on his birth; secondly because a coparcener cannot dispose of his share by gift, but if this amendment is given effect to, what would be the position? I submit there would be discrimination against the members of coparcenary, and the discrimination would arise in two ways. I want my learned friend Shri Chatterjee to consider this aspect, and if possible, if he thinks fit, to deal with it.

For the sake of illustrating my argument, I take the very example which was cited by Shri Sarmah. Suppose there are two families living side by side in Calcutta. One is governed by the *Mitakshara* school, the other governed by the *Dayabhaga* school, but in the case of the *Mitakshara* family any coparcener—the father—would not be able to alienate his share by way of gift during his lifetime. I think there cannot be any dispute about this position, but in the case of *Dayabhaga*, they would have an added advantage. The father can dispose of by way of gift any amount of property or even the entire property. In some cases a coparcener can make gift of his share. But there is a difference then. He has to obtain the consent of the other coparceners before he can alienate by way of gift. But as the position stands, you have to consider whether it would not discriminate against the members of the coparcenary. If he cannot give away by way of gift, but the head of the family in the *Dayabhaga* school can give away by way of gift, and reduce the estate and thus would have an added advantage over the father in the *Mitakshara* joint family

[SHRI PATASKAR *in the Chair*]

There would be another discrimination, and it would arise in this way. Both the amendments do not take into consideration the self-acquired property which a member of the coparcenary under the *Mitakshara* school may own. You are trying to give to the members of the *Dayabhaga* school the same position as obtains regarding a coparcenary and joint family property. But then, after this amendment is accepted, a coparcener who owns also self-acquired property will have to pay tax on his entire self-acquired property and he would not have the benefit of the concession which they want to obtain under these amendments. Therefore, there would be a discrimination against a member of a coparcenary who owns, in addition to his interest in the coparcenary property, self-acquired property. How is it proposed to deal with it? Therefore, I say that the amendments will suffer from the same drawbacks, from the some weaknesses which the hon. Members state that the present provisions are suffering from. For this reason, I oppose these amendments.

Several Hon. Members *rose*—

Mr. Chairman: I will give time to everybody. Of course, the Members may not repeat so that we can accommodate as many Members as possible.

Shri N. Somana (Coorg): We have our own separate amendments. Kindly give us a chance.

Shri N. C. Chatterjee: I shall be very short.

I must enter my protest against the observation made by some of my hon. friends that the *Dayabhaga* is rightist. I contend that it is a leftist measure, much more progressive than the old *Mitakshara* system.

Shri S. S. More: Not as far as inheritance is concerned.

Shri N. C. Chatterjee: Dr. Jolly, the greatest authority on Hindu law has said—I am quoting his language:

> "Jeemuthavahana, the author of the celebrated *Dayabhaga* will always occupy one of the foremost ranks in Hindu law literature, as being not only the leading authority of the Bengal school but one of the most striking compositions in the whole department of Indian jurisprudence."

Dr. Buhler, equally eminent and competent to speak on the subject has taken the same view. You should realise that *Dayabhaga* was an organic growth in Bengal. In that part of India, there was no question of repudiation of the cardinal principles of Hindu jurisprudence. But as you know better than anybody else, Hindu law has been a natural and organic development, linked with the traditions, customs and regional affinities of the people, and when Bengal had developed international trade with Sumatra, Java, Bali, the Indian archipelago, Indo-China and Siam, it was found impossible to have the old coparcenary maintained in that particular part of the country. Therefore, this great man, who was himself a Minister of Justice under one of the Sena Kings of Bengal, developed this kind of jurisprudence, the cardinal principle of which is this.

तत्र दायशब्देन यद्धनं स्वामिसम्बन्धादेव निमित्तादन्यस्य स्वं भवति तदुच्यते ।

According to Colebrook's translation, this means:

> "*Daya* means heritage, right arising by reason of relationship to former owner, on extension of his right either by natural death or by civil death."

That means you do not get an interest by way of mere accident of birth; so long as the father is there you cannot have any interest yourself.

The conception of *Mitakshara* is entirely different. *Mitakshara* says, if I remember the language aright,

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तत्र दायशब्देन यद्धनं स्वामिसम्बन्धदेव निमित्तादन्यस्य स्वं भवति तदुच्यते । स-च द्विविधः अप्रतिबन्धः सप्रतिबन्धश्च ।

"Here, the term heritage (*daya*) signifies that wealth which becomes the property of another, solely by reason of relation to the owner, it is of two sorts, unobstructed or liable to obstruction".

Sir. Dinshaw Mulla has pointed out that *Mitakshara* divides properties into two classes, *Sapratibandha* and *Apratibandha*, that is, obstructed heritage and unobstructed heritage. A heritage in which a person acquires a property by birth is called unobstructed heritage. We cannot have under the *Dayabhaga* any kind of unobstructed heritage. It is always obstructed, because you do not get any right by mere accident of birth; you have got to wait until the former owner dies.

I am saying this not in a spirit of levity. I have gone through the *Mitakshara*. I remember I was arguing a case in my younger days before an English Judge in the Calcutta High Court and I pointed out that *Mitakshara* coparcenary is a remarkable institution which deserved our admiration. He could not understand it. He asked me, "Mr. Chatterjee, who is this Mr. *Mitakshara*?" That was a common joke in Bengal, Bihar and Orissa for some years.

Shri C. D. Pande: The ghost has come here.

Shri N. C. Chatterjee: I told him that there was no "Mr. *Mitakshara*", but that it was the name of a book, a compendium or digest of Hindu law, framed by one of our greatest jurists. I am not minimizing the importance of *Mitakshara*, simply because I come from Bengal. If there is any one born in India, any Hindu jurist who is entitled to the highest respect of all, he is the great author, Vijnaneswara. His is a wonderful contribution to the unity and integrity of India. He was born in Kalyan in the Deccan which is now in Hyderabad, which we want to disintegrate, and he wrote a book called *Mitakshara*, which has been ruling the lives of millions and billions of people throughout India for centuries. He was an ascetic, he was called *Paramahansa, Yati, Sanyasi* or *Mahayogi*. What I am pointing out is not with a view to making any comparison or to indulge in an attitude of hostility towards the one system or the other. That is not the point. We respect both. It is the great contribution of *Mitakshara* that it has conquered the whole of India. In my part of the country, in Bengal, as you know well, being a distinguish lawyer, wherever the *Dayabhaga* is silent, *Mitakshara* still rules.

Dayabhaga, as you know, is only a portion of a bigger book called *Dharmaratna*.. Wherever *Dayabhaga* is silent, *Mitakshara* is ruling in Bengal, Bihar, Orissa and Assam, all the Bengalis and Assamese as also people belonging to Bengal but who have migrated to other parts of India.

We want to point out whether what you have done in this Bill is fair or not. Is it fair? Is it equitable or inequitable? In the course of my first speech, I had appealed to the hon. Finance Minister, and I am still appealing to him and I am not pleading merely for Bengalis or Bengali Hindus. I would be very happy if the same concession which I am demanding at the bar of this House will be extended to all, to Muslims, to Christians, and to Parsis, etc. who are outside the category of Hindu undivided family. I do appreciate the force of observations made by my hon. friend who has just spoken. Now take an instance of a family having a house and some cash, or property worth altogether rupees three lakhs. Let us suppose A is the father, and B, C, D, E, and F are his five sons. Now suppose that A is governed by the *Mitakshara* school, and he is the member of a coparcenary, and A dies leaving his five sons governed by the *Mitakshara* school of Hindu law. According to the hon. Finance Minister's latest Schedule of rates of estate duty, that

joint estate, although it is amenable to the jurisdiction of the Controller, will have to pay zero or nil. According to the *Dayabhaga*, I have calculated—and the hon. Finance Minister will check me if I am wrong—that the father's estate will have to pay Rs. 22,916-12-0. Is this equity? Is this justice? Is this fairplay? Now I have got a small house. Unfortunately I have got one, it was foolish not to have disposed of it earlier. I have got a small house in Theatre Road, Calcutta, which I had built. Next door to me there is a big *marwari* gentleman. When I die—and the Estate Duty Act will accelerate that eventuality—and suppose that house is valued at rupees five lakhs, what happens? Supposing the gentleman who is my next door neighbour, who is a friend of mine dies, leaving a property worth rupees five lakhs, what happens in his case? Supposing he has four sons, he will have to pay a duty of only Rs. 2500. When I die, if I leave four sons they will have to pay Rs. 52,916-12-0. I have worked it out, and here is the account. I am giving these figures, and let the hon. Finance Minister correct me, if I am wrong. In both cases—one, a Hindu undivided family governed by the *Mitakshara* school, and the other a Hindu undivided family under the *Dayabhaga*—there are joint families..

Pandit Thakur Das Bhargava: In both cases, the property is acquired by the man.

Shri N. C. Chatterjee: If it is coparcenary and is governed by part I of the Schedule then the estate will be liable to a duty of Rs. 2,500. I am not blaming the hon. Finance Minister, I am not blaming the Treasury Bench, I am not blaming the framers of this Bill, but what I would like to point out is that whatever you do, there is bound to be a certain amount of discrimination. It is impossible to put them on exact parity.

Shri S. V. Ramaswamy: Is it not a fact that the *Dayabhaga* father can dispose of it, during his life-time, which right a *Mitakshara* father has not got? (*Interruptions*)

Shri N. C. Chatterjee: If I may continue, Sir, I know that there are certain handicaps also on a *Mitakshara* coparcenary.

I am not oblivious of that fact. But I am pointing out that this is a case of gross disparity, and side by side the incidence of taxation is very very heavy in one case and almost insignificant in the other.

I am not saying that because it is Rs. 2500 in one case and 52,000 in the other, therefore give me exemption to the tune of 10 or 15 or 20 or 25 times. That will be absurd. Our suggestion is three-fold. Let the Finance Minister think over it. I am appealing to him. Redress the inequity, redress the inequality, redress the discrimination. Try to make it more reasonable, fair and equitable. I am not covering the ground which Mr. Sarmah has already covered. What I am pointing out is this. This redress of inequality can be done in three ways:

First, accept my suggestion or accept Mr. More's suggestion. My suggestion is: treat a *Dayabhaga*, a Bengali Hindu governed by the *Dayabhaga*, an Assamese Hindu governed by the *Dayabhaga*, an Oriya Hndu governed by *Dayabhaga* or a Bihari Hindu governed by the *Dayabhaga*—there are millions of such people—as members of a constructive co-parcenary so far as father and sons are concerned. Then the discrimination will be reduced in many cases.

The second thing that I am submitting for the consideration of the Finance Minister is that this inequality—glaring inequality—can be redressed to some extent by raising the exemption limit in the case of the *Dayabhaga*. I am appealing to him that that will also be fair to the Muslim community and the Christian community. If you make it Rs. 50,000 or Rs. 75,000, it will be neither fair, nor reasonable nor decent. You have got to legislate for the country. You have got to legislate for existing conditions. You have got to legislate having regard to

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the traditions, customs and personal laws obtaining in the country. What I am submitting is this: certainly you can make it Rs. 1,50,000 or Rs. 1,00,000. Then there will be some redress. I am not saying that that would bring them on parity. Nothing will bring them on parity.

The third thing that I am suggesting is this. I have just tabled an amendment after my hon. friend, the Finance Minister has sought to move his amendment incorporating the rates of estate duty as a Schedule in the parent Bill which we are considering. You know, Sir, I raised a technical objection that was upheld, but then the Rules of Business were suspended. What I am pointing out is this. Look at the Schedule:

> "Rates of Estate Duty—Part I—'In the case of property which consists of an interest in the joint family property of a Hindu family governed by the *Mitakshara*....."
>
> Part II—'In the case of property of any other kind
>
> (1) On the first Rs. 75,000 of the principal value of the estate.....nil
>
> (2) On the next Rs. 25,000..... 5 per cent.
>
> (3) On the next Rs. 50,000..... 7½ per cent.'....."

What I am submitting is that you should reduce the rate of duty in the case of non-*Mitakshara* coparcenary people; that means in the case of *Dayabhaga* Hindus, for whom I am pleading, and also for Muslims, Christians, Parsees etc. You make it three per cent. in the first slab, five per cent. in the second and 7½ per cent. in the third.

Shri Tek Chand (Ambala-Simla): And divide the *Mitakshara* family, not a coparcenary.

Shri N. C. Chatterjee: Mr. Tek Chand knows that property of any other kind would cover separate property of a Hindu governed by *Mitakshara*. The father will also get the benefit of it. "In the case of property which consists of an interest in the joint family property of a Hindu family.....", you come under Part I; otherwise you come under Part II. What I am pointing out is that the slab rates ought to be reduced. It is a matter for serious consideration. I am not saying that my suggestion is ideal. I have tried to think over it. I take it other Members also have tried to find a solution. It is a difficult problem. Everybody recognises it. Every fair-minded citizen of India recognises that there is going to be inequality and there is going to be discrimination between coparcenary and non-coparcenary. How to redress that? It is no use saying that 'you are born under a system under which there must be discrimination and therefore you must suffer'. No. Why? With regard to agricultural property, you give some concession. With regard to other kind of property, you bring them on parity as far as the incidence of taxation goes and there you stop. I am suggesting: let the Finance Minister and let his Deputy who is more hard-hearted.....

Shrimati Sucheta Kripalani (New Delhi): He is not listening.

Shri N. C. Chatterjee: I am appealing to him.

Shri C. D. Deshmukh: I have heard the appeal.

Shri N. C. Chatterjee: His Deputy is more difficult to tackle

Shri S. S More: What about Mr. Gadgil?

Shri N. C. Chatterjee: Mr. Gadgil is already converted.

When we—Bengal and Assam Members—went in deputation to Mr. Shah, he said that he would sympathetically consider our appeal. I take it he is still considering it! But what I am suggesting is, do any of the three. Have a constructive coparcenary with regard to other cases: do not reduce the Rs. 50,000 in the case of *Mitak-*

shara. That is not too high. Do not make it Rs. 30,000. I say Rs. 50,000 is a reasonable limit when you are not exempting the residential houses. What is this Rs. 50,000? I do not think it is fair for me, if I am not going to be governed by that, to say: reduce the 50,000 and make it Rs. 20,000. That will be spiting others without doing any good to us. What I am suggesting is: raise the exemption limit to Rs. 1,50,000, or vary the rates and make them in the second part more equitable and more just.

Shri C. D. Pande: I wish to support the amendment moved by Mr. Sarmah. (*Interruptions*). Since the very inception of this Estate Duty Bill.....

Shri S. S. More: May I ask one question which is in the interest of the economy of time of this House? Congress Members have been supporting and making speeches. But when a whip is issued, as a matter of fact, they go back, with the result that the time of the House is wasted. We are spending Rs. 80 per minute.

Mr. Chairman: Order, order. The Chair has nothing to do with this.

Shri C. D. Pande: I was saying that since the very inception of this Estate Duty Bill there was an opinion—and that was a very sound opinion—that instead of death duty, there should be inheritance tax or succession tax. That means, instead of computing tax on what a man has left, there should be a better method of computing tax on what one has received from the deceased.

You will observe that now in the case of *Mitakshara* school this has been practically put into action indirectly. In the case of *Mitakshara*, the tax, as it will be levied, will work out as if it is an inheritance tax, whereas in the case of the *Dayabhaga* school it will work out as if it is a death duty. The difference is that in the case of a man belonging to the *Mitakshara* law, his share will be according to the number of sons. That means, if the property is worth rupees three lakhs and there are three sons, each son will be worth about rupees one lakh. If there are four sons, then the share will be Rs. 75,000. In this way, this is, in fact, in an indirect form, an inheritance tax, whereas in the case of *Dayabhaga* it is, pure and simple, death duty.

I will explain by illustration as Mr. Chatterjee has done. If a man leaves —according to the *Dayabhaga* system —Rs. 75,000 and three sons, the inheritance of each son is only Rs. 25,000 —within the limit which you can tolerate according to Gadgil school of economic ideas. That man should have at least Rs. 50,000 which can be tolerated. If a man leaves Rs. 80,000 and has got three sons, then one son gets only Rs. 26,000 and yet he has to pay the tax; whereas under *Mitakshara*, even if a man has got Rs. three lakhs and three or four sons, he pays almost nothing. Therefore, the discrimination is so invidious and so obvious that those who belong to the *Dayabhaga* school feel more mortified when they hear that so much advantage is given to those belonging to the *Mitakshara* school.

Mr. Chairman: I think the hon. Member will need some more time.

Shri C. D. Pande: Yes, I will continue later.

Mr. Chairman: He may continue in the afternoon. We will now proceed with the resolution of Shri Gopalan.

RESOLUTION *RE* UNEMPLOYMENT —*Contd.*

Shri A. K. Gopalan (Cannanore): The other day I was speaking about the growing unemployment in our country. Our hon. Finance Minister has given an amendment to that resolution. I am not going to speak about the merits of the resolution. But I want to point out that the Finance Minister in that amendment has shown that there is growing unemployment in our country. I am glad that the Finance Minister has at last admitted that there is growing unemployment.